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National Intelligencer.

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DOCUMENTS
Accompanying the President's Message in No. 195.

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Agent for Indian Factories Office, United States Arsenal on Schuylkill, November 11, 1801.

Sir,

I herewith encloſe you a ſtatement of the Indian factories' accounts up to the firſt of January, 1801, agreeably to returns received from the factories to that period. In June laſt there was forwarded to the Georgia factory an invoice of merchandize, amounting to five thouſand five hundred and twelve dollars, ſeventy ſix cents; at the ſame time one to the Tellico factory, amounting to five thouſand two hundred ninety-ſeven dollars, thirty-three cents; alſo the articles in the care of Col. Meigs, which I have directed the factor to receive agreeably to your orders, amounting to two thouſand ſix hundred and fifty dollars, thirty one cents. This is the ſeaſon for their making the remittances of peltry, &c.

Mr. Wright informs, that the trade at Fort Wilkinſon is in a flouriſhing ſtate and that he has a much greater quantity of peltry to remit this winter than he has ever had before at any one time. Accounts from Mr. Hooker, the factor at Tellico, are not ſo favorable; he obſerves in his laſt letter, "buſineſs has been dull for ſome time paſt."

Agreeably to the within ſtatements, there is an increaſe of capital, including one third advance on the original coſt of the merchandiſe remaining at the factories, viz. Of the Georgia factories, fifteen thouſand ſeven hundred forty dollars and eighty three cents; of Tellico factories, three hundred and nine dollars, fifty three cents; which increaſe on account of both factories would have been much greater, had the peltry been diſpoſed of to advantage in Philadelphia.

Inſtead of its being ſold as ſoon as received, while it was in good order, it has been depoſited in Mr. Tybout's cellar (the perſon to whom the ſales were entruſted to be made) where a conſiderable part of it has been ſuffered to remain until worm-eaten and rotten, and then ſold for one half its original coſt, and ſome, rendered entirely unfit for ſale, has been thrown upon the common.

The great diſproportion of gain between the two factories is owing to the mode of tranſportation to either place, as all the merchandiſe forwarded to Tellico, as well as the peltry received from there are tranſported the whole of the way by land, at a high carriage; whereas the remittances to and from the Georgia factory are ſhipped to Savannah, and from thence forwarded to the factory by waggons; which rout renders the freight and land carriage of articles to and from the latter place to leſs than one third of the coſt of tranſportation on account of the Tellico factory.

(Signed) WILLIAM IRVIN.

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The Secretary of War has the honor of ſubmitting for the conſideration of the Preſident of the United States, the following ſtatement and obſervations on the ſubject of the eſtabliſhment of trading houſes with the Indians; from a careful examination of which it appears,

That Congreſs in March, 1795, appropriated fifty thouſand dollars, and in April, 1796, the additionl ſum of one hundred and fifty thouſand dollars, to be applied, under the direction of the Preſident of the United States, to the purpoſe of carrying on trade with the Indians; and that in conſequence one trading houſe was opened on the frontiers of Georgia, and another on the boundary between the ſtate of Tenneſſee, and the Cherokee nation; that for theſe objects the ſum of 90,000 dollars only has yet been drawn from the treaſury; and that the buſineſs of theſe two houſes has been ſo managed, as from the beſt information to be obtained, not only to ſave the original ſtock from diminution, but even to increaſe it about three or four per cent.

As far as the ſyſtem has been carried into operation, it appears to have had a very ſalutary effect on the minds of the Indians; and there can be little doubt remaining but that a much more extenſive diſtribution of the fund among the ſeveral Indian nations, would be attended with all the good effects that were originally contemplated by the government, and might be made without any diminution of the fund.

The ſeveral nations of Indians appear extremely deſirous of participating in the advantages which reſult from their being enabled to procure ſupplies, made under the immediate direction of the government, from a confidence that they will be fairly and honeſtly dealt with, and that they will not ſo frequently be ſubjected to the inconveniencies of travelling a great diſtance to an uncertain market, and being impoſed on in their dealings.

The intercourſe which grows out of ſuch eſtabliſhments has a powerful tendency towards ſtrengthening and confirming the friendſhip of the Indians to the people and government of the United States, and towards detaching them more and more from the influence of neighboring governments.

All which is reſpectfully ſubmitted.

(Signed)

H. DEARBORN.

War Department, December, 8, 1801.

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STATEMENT.

Of the veſſels now belonging to the Navy of the United States, with their preſent ſtate of equipment, and the ſervice in which they are reſpectively employed.

FRIGATES.

United States, Conſtitution, Preſident, Cheſapeake, Philadelphia,	of 44 guns.
Conſtellation, Congreſs, New-York,	of 36 guns.
Boſton, Eſſex,	of 32 guns.
Adams, John Adams, General Greene,	of 32 guns, but ſmaller than the two preceding veſſels.

Schooner Enterprize, of 12 guns—retainded as a Tender.

The frigates, Preſident, Philadelphia, Eſſex, and Boſton, are cruiſing in the Mediterranean, for the protection of our commerce againſt the Tripolitan corſairs. Two of theſe veſſels are expected home, in virtue of orders given the 15th of December laſt. The terms of ſervice for which the crews of theſe veſſels entered, will expire on or about the 1ſt of June next.

The Cheſapeake, the Conſtellation and the ſchooner Enterprize, deſtined for the Mediterranean, are nearly in a ſtate of complete preparation for ſea. Every neceſſary order for officering manning, proviſioning, and otherwiſe equipping them, has been given; and it is preſumed, they will be ready to ſail on or before the 20th of the enſuing month.

The Conſtitution, at Boſton, and the Adams, at New-York, are undergoing neceſſary repairs. The repairs of the Conſtitution will be completed in the courſe of three months; thoſe of the Adams, will be effected in one month.

The frigates, United States, Congreſs, New-York, John Adams and General Greene, are diſmantled and laid up, in ordinary, in the Eaſtern Branch. They are officered and manned, agreeably to the quota preſcribed by the act entitled "An act, providing for a Naval Peace Eſtabliſhment." Theſe veſſels are in ſuch a ſtate, that they might all be prepared for ſervice, on or before the 1ſt of March next.

The George Waſhington ſailed from Philadelphia in Auguſt laſt, with tributary ſtore for Algiers. On her return to the United States, it is intended to ſell her.

RT. SMITH,

Secretary of the Navy.

Navy Department, 29th January, 1802.

NOTICE.

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WHEREAS it is found from experience that from the delinquency of the parents and guardians of children hitherto ſent to Charlotte Hall School, that it becomes neceſſary to employ a collector to whom a commiſſion of 10 per cent. is paid; and whereas it is unreaſonable that the Truſtees ſhould be burthened with this additional expence of collection when the tuition money as ſtipulated ſhould be paid in advance.—Therefore,

Notice is hereby given,

That the tuition from after the firſt day of January 1802, be five and an half dollars per quarter, but five dollars per quarter paid in advance will be received in lieu thereof.

Signed by order,

NEALE H. SHAW, Reg.

N. B. A ſpecial meeting of the Truſtees is requeſted on the ſecond Monday in March, to take into conſideration a Law of the laſt ſeſſion of Aſſembly, reſpecting ſaid ſchool.

N. H. S. Reg.

Feb. 8, 1802. w3t

National Intelligencer.

SENATE
OF THE UNITED STATES.

Tuesday, Jan. 19, 1802.

JUDICIARY BILL.

[Mr. Chipman's Speech concluded.]

In the third ſection of the conſtitution, is a further proviſion, 'that the judicial power of the United States ſhall be veſted in one ſupreme court and in ſuch inferior courts, as the congreſs may from time to time ordain and appoint.' The higheſt judicial authority ſhall not be divided into two courts. It ſhall, to uſe a ruder phraſe, be one and indiviſible. I conſider it as imperative to congreſs to eſtabliſh not only a ſupreme court; but alſo to eſtabliſh ſome courts of inferior juriſdiction, which may be modified and extended from time to time as experience and future expedience ſhall dictate, ſo that it be without violence to any part of the conſtitution. The words, "as congreſs may from time to time, ordain & appoint," were introduced with intent ſo far to give a diſcretion on the ſubject. The power of erecting courts is here taken for granted, and is contained in the clauſe before cited from the 2d ſection ſupplied by the general clauſe by which it is declared, that "congreſs ſhall have power to make all laws which ſhall be neceſſary and proper, for carrying into effect all the powers veſted by the conſtitution in the government of the United States, or in any officer, or department of the government." I cannot underſtand it, for how is it poſſible ſo to underſtand it? that the words, "may ordain and appoint" in their connexion imply alſo a power to aboliſh; certainly it is not a neceſſary implication. That congreſs are required to make a proviſion of inferior courts, that the thing is not merely optional, is very clear from another part of this ſection, declaring to what claſs the judicial authority of the United States ſhall be extended. (Read that part of the ſect.) Here obſerve, the ſupreme court has original juriſdiction in the ſmaller number, only of the caſes ſpecified; ſo that without a proviſion of inferior courts there would be no proviſion for the greater number, and the judicial authority, inſtead of being extended to all the caſes enumerated, would in fact be limited to a few only. Let us now examine the proviſion relating to the judges, which is contained in the former part of this ſection; a proviſion intended to ſecure to the judges a proper degree of independence. It is declared, that "the judges both of the ſupreme court & inferior courts, ſhall hold their offices during good behaviour. The judges of all the courts are placed on the ſame footing. The expreſſion is not, that they ſhall continue in office, which might ſeem to be compulſory, but ſhall hold their offices, implying at their option, during good behaviour. For a judge may reſign, he may accept a place incompatible with the office of judge, as he may on election accept the place of ſenator or repreſentative in congreſs, by which his office of judge would be vacated by his own act, implying a reſignation. The force of the expreſſion clearly is, that no judge either of the ſupreme or inferior courts, ſo long as he continues to behave well, can be removed from the office, or the office removed from him by the act of any other. For the expreſſion being general with one only exception, in the nature of a proviſo, that he continues to behave well, it is excluſive of every power either to remove the judge from the office, or, as has been ingeniouſly indeed ſuggeſted, of recovering the office from the judge, cauſing it to vaniſh from his hold on any other ground or pretence whatever. It is a well known rule, that the expreſſion of an exception in any proviſion, excludes every exception by implication. Next it follows, 'and ſhall (the judges ſhall) at ſtated times receive for their ſervices a compenſation, which ſhall not be diminiſhed during their continuance in office.' How long ſhall they continue to receive, or be entitled to receive an undiminiſhed compenſation or ſalary? So long as they ſhall continue to hold their reſpective offices. And how long are they entitled to hold their offices? So long as they ſhall continue to behave well. That is, the duration of the time for which they ſhall be intitled to receive an undiminiſhed ſalary ſhall be equal to the duration of the time for which they are entitled to hold their offices, equal to the duration of the time in which they ſhall continue to behave well. What rarely happens in ſubjects of this nature, the poſition, that the judges cannot during good behaviour, without a direct violation of the conſtitution be deprived of holding their offices, or of receiving their ſalaries, is capable of the higheſt proof, not merely by a train of probable and metaphyſical reaſoning, but by the cleareſt and plaineſt mathematical demonſtration. It is a compariſon of quantities in the duration of time; or ſhall it now for the firſt time be ſaid, that when one quantity, or one length of duration is equal to a ſecond, and the ſecond to a third, that nevertheleſs they are not equal each to the other? Have intuitive truths at length changed their nature? Are they in theſe times inverted to falſehoods? Have the cleareſt axioms of ancient ſcience ſuffered a revolutionary ſubverſion? No ſir, they remain the ſame; they are ſtill capable of aſſiſting us to the ſame infallible concluſions.

The honorable gentleman from Kentucky has told us, that if the conſtruction againſt which he contended had been contemplated by the framers of the conſtitution, it would have been explicitly declared; that the judges ſhall hold their offices and ſalaries during good behaviour, fairly admitting, that a declaration thus explicit would have been concluſive for the conſtruction of his opponent. Surely it will not be contended, that the idiom of the Engliſh language is ſo inflexible, and its interpretation ſo preciſe, that identical poſitions to be equally clear and explicit, can be expreſſed by identical words and phraſes only. Had the expreſſion been, they ſhould hold their offices and receive their ſalaries during good behaviour; would not the meaning have been the ſame and equally expreſſive? Indeed the word hold, though well applied to an office, is not very properly applied to taking the payment of a ſalary. Or had it been, 'they ſhall hold their offices during good behaviour, and while they continue in office, which is to be during good behaviour, they ſhall continue to receive their ſalaries which ſhall not during that time be diminiſhed,' it certainly would have been a declaration equally explicit with that ſuggeſted by the gentleman. And this it has been clearly and demonſtrably proved, is the ſame as that which is expreſſed in the conſtitution.

I will here, ſir, though it might perhaps have been more properly done before, make a few obſervations on the independence of the judiciary. It has been ſaid by ſome gentlemen in effect, that though the judges ought to be independent of the executive, though they ought not to hold their offices or ſalaries, dependent on the will of the Preſident, yet, in a government like ours, there can be no reaſon why they ſhould not like the other departments of the government, be dependent on public opinion, & on congreſs as properly repreſenting that opinion. That if the judges are made thus independent, if congreſs cannot remove them by aboliſhing their offices or in any other way, except that of impeachment for miſbehaviour, they will become a dangerous body *in the ſtate;* they may by their diſcuſſions on the conſtitutionality of a law obſtruct the moſt important meaſures of government for the public good. Unfortunately for the argument, this doctrine agrees neither with the nature of our government, which is not veſted with the unlimited national ſovereignty, but from that derives its powers, nor with the poſitive and ſolemn declaration of the conſtitution. That conſtitution is a ſyſtem of powers, limitations and checks. The legiſlative power is there limited, with even more regarded caution than the executive; becauſe not capable of a check by impeachment, and becauſe it was apprehended, that left unlimited and uncontroled, it might be extended to dangerous encroachments on the remaining ſtate powers. But to what purpoſe are the powers of congreſs limited by that inſtrument? To what purpoſe is it declared to be the ſupreme law of the land, and as ſuch, binding on the courts of the United States, and of the ſeveral States, if it may not be applied to the derivative laws to teſt their conſtitutionality? Shall it be only called in to inforce obedience to the laws of congreſs, in oppoſition to the acts of the ſeveral ſtates, and even to their rightful powers! Such cannot have been the intention. But, ſir, it will be in vain long to expect from the judges, the firmneſs and integrity to oppoſe a conſtitutional deciſion to a law either of the national legiſlature, or to a law of any of the powerful States, unleſs it ſhould interfere with a law of congreſs; if ſuch deciſion is to be made at the riſk of office and ſalary, of public character, and the means of ſubſiſtence. And ſuch will be the ſituation of your judges, if congreſs can by law or in any otherway except by way of impeachment, deprive them of their offices and ſalaries on any pretence whatever. For it will be remembered, that the legiſlative powers of the ſeveral ſtates as well as thoſe of congreſs, are limited by the conſtitution. For inſtance they are prohibited as well as congreſs, to paſs any bill of attainder or ex poſt facto law. The deciſions of the judges upon ſuch laws, and ſuch deciſions they have already been called upon to make, may raiſe againſt them even in congreſs the influence of the moſt powerful ſtates in the Union. In ſuch a ſituation of the judges, the conſtitutional limitation on the legiſlative powers, can be but a dead letter. Better would it be they were even expunged.

Thus, ſir, it appears, that the independence of the judges, even of congreſs in their legiſlative capacity, is agreeable to the nature of our government, to the whole tenor as well as the expreſs letter of the conſtitution. But, ſir, at this late ſtage of the debate I will not farther enlarge; I will only add that upon theſe principles, and with theſe views of the ſubject, I ſhall give a hearty negative to the reſolution on your table.

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Mr. Colhoun, of South-Carolina—

Much time, Mr. Preſident, has been ſpent in the important debate on the reſolution before you; great ingenuity, great abilities, and much eloquence have been diſplayed on the occaſion, by gentlemen on both ſides of the queſtion, and the ſubject preſented in almoſt every poſſible point of view. For me, therefore, at this late ſtage of the debate to riſe, for the firſt time in this Houſe, on a ſubject of ſuch magnitude and intricacy, already ſo ably diſcuſſed, and expect to throw much light on the ſubject, or find much new ground to tread on, would be preſumptious. But, thinking as I do, that the preſent queſtion, both in principle and in its conſequences, is of the higheſt importance to the union; under this impreſſion, under this conviction, I ſhould be unfaithful to my own feelings, were I to give a ſilent vote on the occaſion. If I can, therefore, throw but the weight of a feather in the ſcale that I think ought to preponderate, I ſhall think myſelf juſtified in doing ſo. But, ſir, the ſubject has been ſo much exhauſted, as well as the patience of the Houſe, that I ſhall endeavour to be as conciſe as poſſible, and draw into as narrow a circle as ſo extenſive a ſubject will admit, the leading features of the caſe, which I apprehend, ſhould have moſt weight in deciding the queſtion. Firſt then I ſhall endeavor to ſhew, that the preſent reſolution in its effects is repugnant to the expreſs letter and ſpirit of the conſtitution—And ſecondly, I ſhall contraſt the obvious and natural conſequences that will ariſe from agreeing to the reſolution, with thoſe that would follow, ſhould we diſagree. On the firſt point, the moſt important, as well as the moſt proper queſtion is, have we power under the federal conſtitution to repeal the late act of Congreſs, ſo far as it reſpects the office and ſalary of the judges appointed under that act? If by the letter and expreſs words of the conſtitution we have not that power, then farther reaſoning on the ſubject would be unneceſſary, and arguments drawn from expediency or inexpediency would be uſeleſs and irrelevant to the queſtion.

I am not, ſir, diſpoſed to advocate the late judiciary ſyſtem in all its modifications, as I think it imperfect and not adequate to the purpoſes intended, and that it is not ſuch an arrangement of the judiciary as ought to have been adopted. But, as it has got into exiſtence, and is in operation, and the judges appointed under the act, commiſſioned, agreeable to the conſtitution, during good behaviour; the ground is now changed; and although previous to the adoption of the act, oppoſition to the inexpediency of the meaſure would have been right, would have been proper; yet now under exiſting circumſtances, as the law has paſſed and the conſtitution has attached to the office of the judges appointed under it, durability of office co-extenſive with good behaviour, to amend would be proper, but to repeal the act, at leaſt ſo far as it affects the judges, would be unconſtitutional; for I am of opinion, that as ſoon as their appointments were completed and their commiſſions during good behaviour received, that then their offices as judges were completely beyond the reach of legiſlative power; and that the [illegible] ſent reſolution in its oper[illegible] as it reſpects the office [illegible] unconſtitutional, and [illegible] agreed to.