verfy between the legislature and the people, tho' perhaps the judges may be privately interested.

"If there can be judges in chancery who have no commission during good behavior, their tenure in office is absolutely *at the will of the legislature*, and they consequently are not independent. The people of Virginia intended that the judiciary should be independent of the other departments; they are to judge where the legislature is a party, and therefore should be independent of it: otherwise they might judge corruptly in order to please the legislature, and be consequently continued in office. It is an acknowledged principle in all countries that no man shall be judge in his own cause; but it is nearly the same thing where the tribunal of justice is under the influence of a party. If the legislature can transfer from constitutional to legislative courts all judicial powers, these dependent tribunals, being the creatures of the legislature itself, will not dare to oppose an unconstitutional law."

Judge Tyler.

"The constitution says that judges in chancery shall be appointed by joint ballot of both houses of assembly and commissioned by the governor during good behavior;—and for the most valuable purposes—to secure the *independence of the judiciary*. Contrary to this express direction, which admits of no doubt, implication or nice construction, that bane to political freedom, the legislature has made the appointment by an act mandatory to the judges, leaving them not at liberty to accept or refuse the office conferred, which is a right every citizen enjoys in every other case—a right too sacred to be yielded to any power on earth; but were I willing to do it as relates to myself, as a judge I ought not, because it would frustrate *that important object before mentioned*, intended by the constitution to be kept sacred for the wisest and best of purposes; to wit, that justice and the law be done to all manner of persons without fear or reward. For how would the right of individuals stand when brought in conflict with the public, or even an influential character, if the judges may be removed from office by the same power who appointed them, to wit, by a statute appointment as in this case, and by a statute disappointment as was the case in the court of appeals.—Might not danger be apprehended from this source when future times shall be more corrupt?" "Let me now compare the law with the constitution in another point; that of the want of a commission during good behavior, and the reasons will fully or forcibly apply.—When I receive the commission, I see the ground on which I stand—I see that my own integrity is that ground, and no opinions but such as are derived from base motives can be sufficient to remove me from office—in which case whensoever an appeal is made to me by an injured citizen, I will do him justice as far as my mental powers will enable me to discover it, without any apprehensions of an unjust attack."

"Judge Tucker, in a very elaborate opinion, which will do credit to his talents so long as it shall be read, thus expresses himself.

"The independence of the judiciary results from the tenure of their office which the constitution declares shall *be during good behavior*. The offices which they are to fill must therefore be permanent as the constitution itself, and not liable to be discontinued or annihilated by any other branch of the government. Hence the constitution has provided that the judiciary departments should be arranged in such a manner as not to be subject to legislative control. The court of appeals, court of chancery, and general court, are tribunals expressly required by it; and in these courts the judiciary power is either immediately or ultimately vested."

"These courts can neither be annihilated nor discontinued by any legislative act, nor can the judges of them be removed from their office for any cause except a breach of their good behavior."

"But if the legislature might at any time discontinue or annihilate either of these courts, it is plain that their tenure of office might be changed, since a judge, without any breach of of good behavior, might, in effect be removed from office by annihilating or discontinuing the office itself."

Mr. Morris then proceeded; I have stated these opinions at full length because I conceive that they determine every principle that we are contending for. We find, Sir, the ablest judges who have graced the benches of Virginia, deliberately declaring acts of the legislature of that state unconstitutional. We find them contending for and maintaining their independence against all legislative attempts to lessen or destroy it. We find them claiming this independence from the words of a constitution, which declares that they shall be commissioned during good behaviour. We find also that in a contest on this subject between the legislature and the judiciary that the latter prevailed, from whence we have a right to infer that the public sentiment was with the judges. Why then, Mr. Chairman, are most of the gentlemen who represent that state, anxious to divest the general government of a privilege so highly valued in their own state. Is the independence of the national judiciary of less importance than that of Virginia? I trust it is not. A state judiciary according to the opinion of the Virginia judges has to protect a citizen against the government as well as to decide between citizen and citizen. What have the national tribunals to do? Why, Sir, they have not only to protect a citizen against a state government, not only to protect him also against the general government, but, Sir, they may even be called upon to decide between a state and the general government. These are the great purposes for which your constitution has vested your judiciary with powers independent of the other departments of the government, that it may effectually interpose between the meanest of your citizens and secure them against the oppression either of an arbitrary legislature or a tyrannical executive.

Sir, previous to the commitment of this bill, when an incidental question arose on it in the house an honourable gentleman from Virginia (Mr. Randolph) spoke of the present as a very favourable moment for us to determine this great constitutional question. An honourable gentleman from Kentucky has this day expressed the same sentiment. Sir, I cannot agree with either of those honourable gentlemen. I believe that this is of all moments the most unfortunate for such a determination. I believe so because such have been the fatal effects of executive persecution, that it has wrought up party spirit to its highest pitch of irritation (here there was a cry of order from different parts of the house.)

Mr. Morris observed that he did not mean to say any thing that was disorderly, but that having occasion to allude to the present state of irritation of the public mind he could not help attributing it to what he believed to be the true cause of it. Mr. Morris then proceeded—Sir, I am incapable of attributing to a majority of this house, a settled determination of violating the constitution of their country, but I do believe that if they act from the impulse of the present moment, that valuable instrument will be sacrificed at the altar of resentment. And how can this belief be resisted when you hear so respectable a gentleman as the honourable member from Kentucky so far get the better of his usual discretion as to permit himself to say in his place that with the public sentiment judges and all other officers ought to be changed, and that he would vote for the bill because in no other way can the judges be driven from their posts. Sir, such a sentiment expressed on the floor of this house is of itself convincing that gentlemen are not in a state of mind to examine this subject cooly and dispassionately, and therefore I must repeat again that it is the most unfortunate of all moments for its discussion.

THURSDAY, *February* 18, 1802.

MR. STANLY. Mr. Chairman, the impression I feel of the importance of the question at present before us, would alone induce me to assign the reasons of the vote which I shall give; but, Sir, I am urged by another strong reason to justify that vote. The legislature of the state of North-Carolina, a part of which I have the honour to represent, has tho't proper to recommend to her representatives on this floor, to use their endeavours to effect the measure contemplated by the bill on your table for the repeal of the act of the last congress, entituled "an act for the more convenient organization of the courts of the United States." Holding myself responsible to my constituents for the vote which I shall give on this as on every other question, I cannot admit the right of any other authority, however respectable, to control, or in any manner to influence my conduct. The high respect I feel, and which is justly due to the honourable body which has made this recommendation, has induced me to review with deliberation and caution, the opinion I had formed, and though it is painful to differ from those whom I esteem, yet my duty to my constituents compels me to do so in this instance. I owe also a duty to myself to give no vote which my conscience and my understanding do not approve.

Every measure which is brought under the consideration of a legislature must first be tested by its expediency. Unhappily in the present instance another question arises—its constitutionality. I will endeavour concisely to examine the subject on both those points. And first, as to the expediency of the measure. In order to form a correct estimate, between the present judiciary system of the courts of the United States, and that for which it was substituted, it is proper to take a comparative view of both.

Under the former system there were six judges of the supreme court of the United States, who held two sessions of the supreme court in each year at the seat of government. Those judges also held in each state a circuit court, two terms in each year, in which the judge of the district was associated with the circuit judge. The organization of the district courts having jurisdiction principally of matters affecting the revenue and admiralty causes, not being connected with the present question, need not be examined. From the errors of this system resulted, 1st, a delay of justice. The judges bound to hold courts in succession at remote parts of the continent were continually travelling—from the variety of accidents to which travellers are subjected in this country, from the condition of roads and overflowing of rivers, it frequently happened that the judges failed in their attempts to get to the courts, or arrived so late that little business was done. Suitors, jurors, and witnesses were subjected to the trouble and expence of attending courts without the accomplishment of their business. Hence resulted a delay of justice. In the state to which I belong, during the few years existence of the former system, this was the case frequently.

Another great evil resulting from that system was, its tendency to lessen the character and respectability of the federal bench. Those best acquainted with the profession of the law will most readily admit, that even a life of patient study is unequal to the complete attainment of principles and rules; and that much labour and industry are necessary to preserve that which is gained. Consequently that extent of legal knowledge, correctness of judgment and respectability of character, which should designate the persons qualified for this important trust were seldom to be found, but in men far advanced in years. Men possessing these valuable qualifications, not inured to labour, are seldom equal to the fatigue of their duty; or if at the time of appointment, fast approaching to the infirmities of age, were not to be expected to relinquish the enjoyments of private life for an office, which, however honourable, subjected them to the fatigue of a day-labourer. The office with its incumbrances was, as it were, offered to the lowest bidder. And men best qualified to honour the bench were driven from it. True it is, men have been found eminently uniting virtue and talents, who have accepted the office under all its distressing circumstances, but we owe this rather to their patriotism than to the advantages of the situation. Let it also be remembered that in some instances, gentlemen who would have adorned the seat of justice of any country, were compelled to relinquish their seats, and in others refused to accept the appointment.

Another error of that system was, that the judges of the supreme court, the court in the last resort, before whom the errors of the inferior circuit courts were to be corrected, were the same men who presided in those circuit courts.

With great deference for the opinions of gentlemen who prefer that system, I pronounce my opinion, that its errors were radical; that those who justly estimated the importance to our interest and national character, of a speedy and correct administration of justice, ought to have desired a change. The present system has happily obviated these errors.—The states are divided into six circuits, in each state is appointed one judge, called a circuit judge; the judges of the states composing one circuit, ride together into the states of their circuit and together hold the court. The much smaller distance which those judges have to travel than the circuit judges under the former system, secures their due attendance, a portion of their time is left them to study & reflection, & the same persons presiding at successive terms an uniformity of decision is preserved. The six former judges hold the supreme court, with original constitutional jurisdiction in matters of the utmost national importance, and appellate jurisdiction in certain cases where the sum in dispute is 2000 dollars, they are also the court in which the errors of the circuit court are examined and corrected.

If, sir, the organization of the circuit courts could have been improved by a system preferable to the present, it is my misfortune not yet to have heard of it. I will now, sir, examine the objections which are urged against the present system, and the gentleman from Kentucky (Mr. Davis) must pardon me, if in doing so I notice some not yet advanced on *this floor*; which though he is pleased to term "shadows" have yet been imposed on the American people for *substance*.—The honorable member from Virga. Mr. Thompson, has charged this system with a great increase of expence.—What, sir, is the amount of this increase of expence? The estimate from the Treasury Department informs us that the salaries of the judges created under the act of last Congress, and the addition made to the salaries of the judges of Tennessee, Kentucky and N. W. Territory, amount to 32,000 dollars.—Some contingent expences are necessary, which cannot be estimated at more than 8,000 dollars; making together the sum of 40,000 dollars; a sum which, when compared with the magnitude of the object, or the vast revenue and resources of the country, becomes an atom, the dust of the balance. But, sir, permit me to ask, when was it discovered that the people of America were so sordid as to consider their gold their chief good? I had believed, sir, they justly estimated it the instrument by which their good might be promoted.—When we took the field for independence, did any cool calculator estimate the cost? Is our republican government, founded on and guaranteeing the equal rights of man, preferred because of its cheapness? No, sir, with the honest pride of an American I reply, they act from nobler motives.—If the purpose on which the money is bestowed be necessary, the people ought to submit to the expence; for an improvement in so valuable an institution as the judiciary, by which the weak and the poor are protected against the great and the opulent, the people will submit to it.

The President has laid before us a document exhibiting the business which has been decided in the federal courts, with a statement of what was pending when this document was taken. I shall say nothing further of the errors which have been detected in this document, than that I do not attribute them to the executive; as he received it I presume he submitted it to us. But, sir, I cannot but express my admiration of the novelty, if not the solidity of the argument, founded on this document, that courts are necessary and useful in proportion to the quantity of business before them. Can gentlemen believe that because at the time of taking these statements there was less business than there had been before, that therefore litigation would decline; that nothing would exist but peace and good will among men? If this is not believed, if commerce will continue and passion rule us, so long will there be litigation, so long will there be a necessity for courts; their existence will be beneficial though without business; they shew to the citizens and to the world, that we are prepared to punish crimes and administer justice; and it becomes our duty to establish that system which shall best promote the great objects of a speedy and correct administration of justice.—The argument drawn from this document is fallacious on another ground; the paucity of suits is owing not to the want of litigation on questions within federal jurisdiction, but because of the erroneous organization of the courts under the former system, suitors were driven into the state courts.

The same honorable member from Virginia has told us the former courts were sufficient; and to establish his point has adduced evidence from that respectable state the ancient dominion; the gentleman tells us, that in that state one venerable man has the whole extensive chancery jurisdiction of the state, the docket of which contains 2500 causes.—Without enquiring what portion of this multitude of business the judge is able to perform.

I do not hesitate to say, the fact can have no weight in establishing the gentleman's argument. We did not complain Sir, that under the former system the judges had too extensive a jurisdiction, nor that there was a multitude of causes; but that the discharge of their duty however limited their jurisdiction, however few the causes, compelled them to a perpetual travelling, leaving them no time for study, and subjecting the courts to delay, though their jurisdiction had been limited to one species of action only, and the business in court reduced to a single cause, the labour and uncertainty of travelling from N. Hampshire to Georgia was still the same.

It is objected against the act proposed to be repealed, that a dangerous patronage is created by it for the President. I shall pass over what I consider an inconsistency in this objection coming from gentlemen who profess that implicit confidence is due to the man chosen by the people, who, in his appointments, speaks not less the voice of the people than the voice of God, and examine the weight of the objection. If this apprehended patronage means the power of appointing the *judiciary*, that power is given by the constitution, and is the same whether the powers of the judiciary be vested in 6 or in 16 judges. If it fear an undue control over the people in favour of the executive, through the judiciary, make the judges as independent as we contend they are & ought to be, & they are placed beyond the necessity of descending to the practice of improper means to preserve executive favour.

We have been told Sir, that it is necessary the judges should ride into the states to gain a knowledge of the laws by which, in many cases, they are to decide. Until this occasion I have never heard, that the laws of a country could only be acquired in the atmosphere of that country where they are in force. Nine tenths of the decisions in our state courts and federal courts turn on questions of common law; yet, has it ever been suggested that an American judge was incompetent to decide on common law questions, because he had not studied in England? No Sir, the knowledge in both cases may be acquired in the closet. To these observations permit me to add, that the remonstrances from the bar of Philadelphia, composed of gentlemen no less celebrated for the respectability of their private than of their professional character, who on this occasion, so interesting to the welfare of their country, have sacrificed their political prejudices, strongly expressing their decided preference of the present system to the former, is to my mind conclusive that it ought to be preferred. I am therefore of opinion that it is inexpedient to pass the present repealing bill; and so long as my opinion is supported by the respectable authority I have just alluded to, and opposed only by the objections which I have noticed, I shall feel satisfied that opinion is correct.

[To be continued.]

WASHINGTON CITY.

WEDNESDAY, FEBRUARY 24, 1802.

{*As unauthorised assertions have been made on the floor of Congress, respecting the opinions of an eminent legal and political character of Pennsylvania, on the constitutionality of the bill at present before the Legislature on the subject of the Judiciary, we deem it a duty to publish the following Extract of a letter from that character to his friend in this City. And at the same time that the publication renders justice to him, it will shew the little respect which ought to be attached to the ascription of certain opinions to other characters.*

Lancaster, Feb. 6*th*, 1802.

"The vote of the Senate of the United States on the question for repealing the late judiciary law accords with my sentiments, as it seems to have been contrived and executed rather to serve the interest of a few, zealous partizans, than the people at large. That a legislature have the power, at a subsequent session, to repeal any act passed before, cannot admit of much doubt in a reflecting mind. The same power that can create, can assuredly annihilate, where there is no constitutional impediment: An *office* may be abolished, when it shall be deemed mischievous or unnecessary, tho' the *officer* may not otherwise be removeable but after a conviction of some misdemeanor; and when there is no existing office there cannot be an officer to execute it—both are nonentities."

In *the House of Representatives* the discussion of the bill from the Senate on the judiciary was yesterday continued. Mr. Huger spoke against, & Mr. Macon for the bill.

When at 3 o'clok a motion was made, that the committee rise, and ask leave to sit again.

Mr. Gregg said he hoped the committee would not rise. He said it must be evident to every gentleman that the subject was exhausted; and other business of importance claimed the attention of the house.

Messrs. Goddard, Bacon and Nicholson supported the rising of the committee. The motion to rise was carried.—Yeas, 60.

A. J. Dallas has resigned his office of Recorder of the city of Philadelphia.

OFFICIAL.

Applications for commissions for private armed vessels, under the act entitled "an act for the protection of the commerce and seamen of the United States, against the Tripolitan cruisers," must be directed to the Secretary of the Navy. And the names of the gentlemen who will become sureties in the bond, the name of the vessel for which a commission is required, of her commander, and lieutenants, her tonnage, number of guns and number of men, must be set forth, and a certificate from the Custom-house officer, that such vessel is American property, must also be produced.

VALUABLE LAND for SALE.

FOR sale about 4500 acres of land belonging to the estate of Judge Mercer, deceased, and situated in the county of London, on the waters of Goose Creek, about 40 miles from Alexandria and the Federal City. A large portion of this tract is meadow ground, of good quality, and the soil of the high land is well adapted to every species of produce usually cultivated on land similarly situated in the upper country. Such portion of it as remains uncleared, affords an extensive and excellent range for stock of every kind. On one part of this land is one of the most valuable mill seats in the state. The supply of water is inexhaustible, and the mill could be erected immediately on the side of the public road leading from Winchester to Alexandria. It is computed that the number of waggons almost constantly travelling along this road, amount to at least 5 or 600. So that a ready market might always be had here, for a very considerable quantity of grain and hay.

'Tis deemed unnecessary to describe more particularly the many advantages of this tract of Land, as it is expected that all persons disposed to purchase, will first view the premises.

To accommodate purchasers the whole tract will be divided into lots of 4 or 500 acres each, with as much wood and meadow land to every lot as circumstances will admit. And it is believed that the whole 4,500 acres may be so laid off into farms of the above-mentioned size, as to leave in each as much wood and meadow land as would be desired.

The price and time of payment will be made known by the subscribers. Letters directed to John T. Brooke, Fredericksburg, or to James M. Garnett, Laytons, will be answered without delay.

JOHN T. BROOKE, JAMES M. GARNETT, } Adm'rs

Feb. 8, 1802. eptf

For Sale or Rent,

Two three story brick houses in Alexandria, completely finished, on King and Columbia street, with sundry valuable property near the same, possession whereof may be had immediately. The situation for the flour and grocery business is equal to any in Alexandria.

For terms apply to Henry Thomas Moore, Alexandria, or to the subscriber.

NICHOLAS VOSS.