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 my humble judgment, of irresistible force, still remains.

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 expresly prohibits. To maintain, therefore, the constitution, the judges are a check upon the legislature. This doctrine I know is denied, and it is therefore incumbent upon me to show that it is found.

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 contravene 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 dissention and a dissolution of the general government. Will it be pretended that the state courts have the exclusive right of deciding upon the validity of our laws?

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 definitively 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 farther, 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 sovereign 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 elswhere. The infractors of the laws are brought before these courts; & 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 shewn. The constitution gave no power to pass such a law. On the contrary it expresly 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 of 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, tho' 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 expresly declared and established in practice since the existence of the government.

The 2d section of the 3d article of the constitution expresly extends the judicial power to all cases arising under the constitution, the laws, &c. The provision in the 2d clause of the 6th article leaves nothing to doubt. "This constitution & *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 of 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 25th sect. 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 expresly 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 acknowledgement, 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 is to restrain it?

I go farther, Mr. Chairman, and take a stronger ground. I say in the nature of things the dependence of the judges upon the legislature, & 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 your 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 an 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 neighbours and their friends. Will they risk civil dissention; 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 apprized 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 behaved 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 dependant on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependant 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 can 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 delusive view. We are all the people. We are, 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 partizans, 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 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 instrument 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 upon sudden changes. The first moments 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.

GENNESSEE.

For Sale,

All the Subscriber's Mills, Houses and improved Farms, in the Counties of Ontario and Steuben, in the state of New-York.

TO meet the views of the numerous applicants for this valuable property, and to give an opportunity of acquiring it on fair and equal terms, the subscriber offers it for sale at Public Auction, on Wednesday the 15th day of June next, at POWELL's Hotel in Geneva, on the favorable terms of one sixth cash, and the remainder payable in six annual payments with lawful interest.

The Mills are situated at Hopeton, Lyons, Sodus, Genesse Falls, Caledonia, Hemlock-Lake, Painted Post, Bath, and Canisteo, several of which are merchant mills, and the greater part of them are erected on the navigable waters leading to Montreal, Albany and Baltimore.

The houses are situated in Bath, Painted Post, Hopeton, Geneva, Lyons and Sodus, and the improved farms are in the neighborhood of these towns. All of which will positively be sold except the House and Farm occupied by the subscriber, near Bath.

CHARLs. WILLIAMSON.

Bath, March 1, 1802. ep3w

PROPOSALS

BY THOMAS HERTY,

For publishing by subscription an APPENDIX *to his Digest of the Laws of the United States.*

IT will contain all the public acts of the two preceding and present session of Congress, that is, the acts of the first and second sessions of the Sixth, and the first session of the Seventh Congress. It will be printed in the same order of arrangement, and have reference to such parts of the aforesaid work, as shall be repealed, is suffered to expire, or which may otherwise undergo alterations; subjoined to which, will be given, a correct table of the duties on imposts and tonnage, and a neat Index; this, connected with the foregoing, will embrace the whole law in force.

CONDITIONS.

It will be put to press immediately after the close of the present session of Congress, (provided a sufficient number offer to defray the expense of the work) and be ready for delivery in about two months thereafter.

The price to subscribers will be one dollar and fifty cents in boards, to be paid for on delivery. It shall be neatly printed on good paper.

Subscriptions received by the Editor, at his Conveyancing Office, near the Treasury Department, City of Washington; and by those in whose hands proposals are left.

March 12, 1802. 1awtf

WANTED—A ROOM, well furnished—Apply to the Printer.

March 5, 1802. ep3t

WASHINGTON CITY.

FRIDAY, MARCH 12, 1802.

RATIFICATION OF THE DEFINITIVE TREATY.

Captain Wyeth of the brig Happy Couple, who arrived at New-York in 48 days from St. Maloes, brings intelligence that the DEFINITIVE TREATY *was signed the ninth of January.*—We have but a moment before closing our paper, to insert this brief notice of an event highly interesting to the friends of humanity, and which we sincerely hope may secure a long repose to the European powers.

[*N. York Daily Adv.*]

The Editor of the National Intelligencer has received a letter from his correspondent at Dover (Eng.) dated Jan. 11th, who advises that there is no news respecting the Definitive Treaty.

It is with deep regret that we inform our readers that on Saturday last, about noon, *Princeton College* was entirely consumed by fire.

[From the New-York Citizen.]

The Editors have been favored with a sight of a letter from the hon. Robert R. Livingston, dated Paris, 20th December, from which the following is an extract:—

"This country is threatened with a scarcity—Bread is already very high, and the uncommon rains which have prevailed this winter, will be very prejudicial to the winter crops in the ground."

HOUSE OF REPRESENTATIVES, U. S.

WEDNESDAY, *March* 10, 1802.

The Naturalization bill was passed—Yeas, 59—Nays, 27.

A resolution was offered for adjourning the two houses on the second Monday in April, when it was moved to postpone the consideration of it until the 4th Monday of March, which, after debate, was carried.—Yeas 46—Nays 42.

The house then took up the amendment of the Senate to the act to amend an act to lay and collect a direct tax, and agreed thereto.

They also agreed to the amendment of the Senate to the act fixing the military peace establishment of the United States.

THURSDAY, *March* 11, 1802.

Mr. GRISWOLD laid the following motion, in substance, on the table.

Resolved, That it is proper to make provision by law towards indemnifying the merchants of the United States for French spoliations, so far as claims for the same have been abandoned by the convention with France.—Ordered to lie on the table.

Looking Glasses.

WILL be on to-morrow or next day, a few Looking Glasses, in handsome and fashionable frames, of moderate, large sizes. Ladies or gentlemen wanting such articles, will please apply to Mr. Charles Varden, Capitol Hill. Persons wishing to be supplied with large Pier Looking Glasses, Tables, Cornices for Beds or Windows, Picture Frames, &c. will be waited on in a few days by leaving their address as above.

N. B. Venetian blinds made to any size, and on very moderate terms.

March 12, 1802. ep3t

I offer for Sale,

A two story FRAME HOUSE and Lot.

THE lot is twenty eight feet front, by one hundred feet deep; it is lot No. 5, on Eleventh Street, and in square 347, between the President's house and Great Hotel, the house is not finished; but a reasonable deduction will be made to any person wishing to purchase the same. It is useless to go to any further particulars, as any person wishing to purchase the same, can view the premises at any time.—Application to be made to the subscriber living on the spot, or to Jasper Jackson, merchant, living in George-Town.

ANTHONY JONES.

March 12, 1802. ep3t

For Sale.

THAT elegant House and Lot in Liberty-Street, near the Springs in Bath, Berkley County Virginia, newly finished by, and for, the residence of the late Thomas Palmer, deceased. The House consisting of five rooms on the ground floor, over a very roomy cellar. Five rooms on the second floor, one large upper room over four of the rooms and cock loft. To one part is a jalousied piazza; to the best, an handsome railed balcony. Annexed to the house is a garden and shrubbery, laid out with taste; Also a new smoak house, coach house, and stabling for eight horses.

Also will be disposed of, six acres of Land near the town, lately cleared and walled in.

The reputation of the waters has rendered the description of the place unnecessary; and as it is the resort of the most genteel society in the summer season, it is presumed it would be a suitable dwelling for a family, or would well suit any person for a boarding house.—Apply to James Davidson, Esq. cashier of the branch bank, City of Washington.

March 12, 1802. 1aw3t