NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

Vol. II. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. No. CCXX.

Five Dolls. per ann. MONDAY, APRIL 5th, 1802. Paid in Advance.

National Intelligencer.

CONGRESS OF THE UNITED STATES,

House of Representatives.

Thursday, February 25, 1802.

DEBATE

On the bill received from the Senate, entitled "An Act to repeal certain acts respecting the organisation of the courts of the United States."

[Mr. Rutledge—Concluded]

The district judge in Rhode Island was appointed circuit judge, and Mr. Greene was appointed district judge.—On the fourth day of March Mr. Greene took his seat in the senate—the friends of the administration objected to his keeping it—they said he was a judge, as appeared by the journals of the senate—they here made a complete recognition of his appointment as judge, and he vacated his seat—after getting home he received his commission, in which the blanks had been filled with the words *circuit judge* instead of district judge. Mr. Greene enclosed his commission to the executive in a letter most profoundly respectful, and requested the errors of the clerk in the department of state might be corrected, and his commission made to conform to the appointment, as recorded on the senatorial journal. To this letter which was in highly respectful terms, the president would not deign to have any answer given; he pocketed Mr. Greene's commission and placed another gentleman in his office—this is a history of the appointment of Mr. Greene, and the manner in which the president "corrected the procedure." To my friend from New-York, (Mr. Morris) who some days past adverted to the president's system of persecution, the honorable gentleman from Virginia says he is so ignorant of the existence of any such system that he cannot conceive what is alluded to—and my friend from North Carolina (Mr. Henderson) who spoke of the destructive spirit which had mounted in the whirlwind and now directs the storm against one half of the community, he charges with having winged his flight into the regions of fancy—and tells us the spirit he sees is a *mere spirit* thin as air, and without real form or substance. Sir, my honorable friend from North Carolina is under no magical delusion—the spirit he noticed is a gigantic spirit, and with a giant's size unites a giant's appetite—it attacks the independence of mind and violates the right of opinion—it establishes a mental tyranny—tampers with integrity and poisons morals—it has arranged one half of the community against the other—it denounces as a "*sect*" in our country all those whom the illustrious Washington took to his confidence and invested with his favor. It establishes boards of inquisition to know how men who are in office voted at the last election, and if they did not then subserve the views of the ruling party they are stript of their offices. Many of the proscribed are veterans of seventy six—they wasted their youth and their substance in fighting our revolutionary battles, and as a small reward for great services they had offices given to them by the distinguished Washington. Most of those who had been appointed by him, this destroying spirit has turned adrift, and to those who are not yet destroyed it gives (in the New-Haven reply) the promise of Polypheme to Ulysses, and says "you shall be devoured last." This is the spirit, sir, against which my friend from North Carolina has raised his voice, and if the honorable gentleman from Virginia will appeal to the wives and children of ninety or a hundred meritorious men who have been hurled from office to make way for those who are willing without examination to yield a blind support to ministerial measures—to sing Hozannas to the president, and bend to his will as the ozier does to the breeze; I say, sir, if he will appeal to the wives and children of those gentlemen, who have been degraded, disgraced, and reduced to want as far as it was in the power of the executive to degrade and reduce them, they will tell him this is a spirit of substance, and not thin as air. Fatigued by its labours we now see this great spirit resting on its club—it no longer dispatches its victims as heretofore by batches, but, as strength and appetite return, proscriptions are continued though in detail. Since the meeting of congress there have been many dismissals—in the last week only I heard of that of a meritorious officer who is an aged and war worn soldier. To this gentleman, who had grown grey in the service of his country, general Washington gave an office which might cheer the evening of his days; the duties of it were discharged with industry and fidelity. He has been a useful citizen—he has thirteen children, and most of them are daughters, the eldest has scarcely numbered 18 years, and the youngest not more than eight months. This gentleman has been placed on the proscribed list; not, sir, because he had been negligent of any of his duties, but because some of those hands which (as it has been modestly said) burst open the doors of honor and confidence, were widely stretched out for rewards; to give them loaves and fishes they have been taken from the support of this numerous and lovely family. Sir, there not only exists, as my friend from North Carolina tells us, a great and destroying spirit, but there are also subordinate spirits employed in this goodly work of proscription—the master spirit, unable to take a view of the whole ground, has its under spirits; these minor spirits, within the spheres of their respective departments, are singling out objects of executive vengeance. By some of the papers which lie before me on my desk, I see the Postmaster General is busily employed; every postmaster and every little deputy postmaster, who cannot prove his claims to executive favor by proofs of conformity to the orthodox faith of the day, is considered as a heretic. In the persecution by the Postmaster-General of those who are not devoted to the party, I observe something truly ridiculous; thinking, I suppose, that public opinion would demand some justification of this conduct, he undertakes to assign reasons for it. I observe in the paper of this morning the Postmaster-general has removed one of his deputies at Augusta in Georgia, and makes a sort of apology for it. He tells the man it is because he is a printer and the occupations are incompatible. This gentleman writes to him that he is not a printer and that he never was concerned directly nor indirectly in the publishing of a paper. It seems then the Postmaster-General was mistaken, but the deputy lost his office. This lesson will prevent future explanations probably by the Postmaster-General. It will be more convenient for him to wrap himself up in executive infallibility and insist "The king can do no wrong." The gentleman from Virginia has noticed the sedition act and says, the present executive requires no such shield for his protection; that he wants no artificial means of defence; yet in the very same breath we hear the gentleman complaining of defamatory scribblers, and of the profligacy of our presses. It does not become the honorable gentleman to complain of the public prints. It is well recollected that when heretofore we endeavoured to check the licentiousness of the press, he and his friends insisted that its licentiousness and liberty were so closely allied that should we attempt to touch this vein we would run the hazard of giving a mortal wound to the great arteries of the body politic. This was formerly the language of gentlemen who are now it seems suffering from the effects of their past policy; they are now experiencing what they might have learned from a good old book, "That who soweth the wind will reap the whirlwind." It did not become them (to use our Saviour's expression) "to cast the first stone." I shall here, sir, close my observations in answer to those offered by the gentleman of Virginia, to whom I have had occasion to refer so often; permit me however, before taking my leave of him, to express my sorrow that he deemed it necessary in ranging the wild field he occupied to visit Mount Vernon, and attempt to disturb the ashes of our political father.—This circumstance was not required to prove that pre-eminence is often obnoxious, "and why must Aristides be called more just than others" was asked by the envious Athenian who voted for his banishment.—Another honorable gentleman from Virginia (Mr. Thompson) asks my friend from North-Carolina, why he now mourns and sighs over the constitution, which he last year assisted to violate, and insists upon it we did wound the constitution, in putting down the two courts of Kentucky and Tennessee.—Sir, it has been satisfactorily shewn by my learned friend from Delaware, that the offices were not in those two instances destroyed but modified, and that we did not take their offices from the judges but merely assigned them new duties. This, however, the gentleman from Virginia calls wounding the constitution, and proceeds to say you did destroy two courts and we will destroy sixteen. What, sir, will he tell us that our hands are red with the blood of the constitution to justify his embruing his? Because he thinks we then violated the constitution, will he now murder it? Sir, it was by founding the alarm about meditated violations of the constitution and by gross misrepresentations of our intentions, and reiterated charges of not respecting the constitution, that public opinion was vitiated, the public mind mislead, and the administration of our government placed where it now is. But almost in the moment of changing, when the present administration is in its gristle, it assumes the attitude of a gladiator, attacks the judiciary, violates the rights of the judges, and says to us *you set the example*. Sir, had we set them the example, it was a bad one, and it does not become them to follow it; but we never gave any such examples, we always reverenced the judiciary as the bulwark of the constitution, and considered the rights of the judges as the rights of all the people of America. It is said by the gentleman from Virginia, that our devotion to the judiciary establishment makes us wince at any attempt to strip off some of its superfluous and expensive trappings, and that we will not part with the corinthian & composit pillars which have been added for its decoration.

Sir, the judiciary is, the fabric of the constitution not a corinthian pillar, not any ornament added by Congress; it is, Sir, the grand doric column; one of the three foundation pillars formed, not by Congress, but by the people themselves; it binds together the abutment, it is laid in the foundations of the fabric of our government, and if you demolish it the grand arch itself will totter and the whole will be endangered. We are asked by the gentleman from Virginia if the people want judges to protect them? Yes, Sir, in popular governments constitutional checks are necessary for their preservation; the people want to be protected against themselves; no man is so absurd as to suppose the people collectedly will consent to the prostration of their liberties; but if they be not shielded by some constitutional checks they will suffer them to be destroyed; to be destroyed by demagogues, who filch the confidence of the people by pretending to be their friends; demagogues who, at the time they are soothing and cajoling the people with bland and captivating speeches, are forging chains for them; demagogues who carry daggers in their hearts, and seductive smiles in their hypocritical faces; who are dooming the people to despotism, when they profess to be exclusively the friends of the people; against such designs and such artifices were our constitutional checks made to preserve the people of this country.—Will gentlemen look back to the histories of other countries, and then tell us the people here have nothing to apprehend from themselves? Who, sir, proved fatal to the liberties of Rome? The courtier of the people; one who professed to be "the man of the people," who had willed away his fortune to the people, and had exposed his will to the public eye; a man who, when a crown was proffered to him, shrunk from the offer, and affectedly said it did not come from the people; it was Julius Cæsar who prostrated the liberties of Rome, and yet Cæsar professed to be the friend of Rome, to be in fact *the people*.—Who was it that in England destroyed the representative government and concentrated all its powers in his own hands? One who styled himself the man of the people; who was plain, nay studiously negligent in his dress; disdaining to call himself Mister, it was plain unassuming Oliver—Oliver Cromwell, the friend of the people; the protector of the commonwealth. The gentleman from Virginia says he would rather live under a despot than a government where the judges are as independent as we wish them to be.—Had I his propensities, I like him, would fold my arms and look with indifference at this attack upon the constitution. It has been my fortune, Mr. Chairman, to have visited countries governed by despots; warned by the sufferings of the people I have seen there, I am zealous to avoid any thing which may establish a despotism here.—It is because I am a republican in principle and by birth, and because I love a republican form of government and none other, that I wish to keep our constitution unchanged. Independent judges, at the same time that they are useful to the people, are harmless to them. The judges cannot impose taxes; they cannot raise armies; they cannot equip fleets; they cannot enter into foreign alliances; these are powers which are exercised without controul by despots; and as the gentleman from Virginia does not hold despots in abhorrence, he and I can never agree in our opinions on government.

Whether another honorable gentleman from Vir. (Mr. Randolph) has derived all the service from his sling and his stone he had expected, or whether he feels acquitted of his promise and now thinks himself capable of prostrating the Goliah of this house, armed cap-a-pie, with the constitution of his country, I cannot conjecture; whether he has discovered the skill and the prowess of David, or whether he is likened to him only by the weapons he wars with, it is for the committee to judge—for myself I must say that his high promises had excited expectations which in me have not been realized, and when the gentleman sat down I was sorry to find my objections to the bill on your table undiminished.—I say sorry, for I can lay my hand upon my heart, and in the fulness of sincerity declare there is nothing I desire more anxiously than to be convinced by gentlemen that this measure is not unconstitutional. It is not competent for us to decide where the power of judging shall be placed, as is supposed by the gentleman from Virginia, who says the only question is where this power shall be placed. Sir, the true question is where *was* this power placed by the constitution? and the honest answer must be, that it was obtained to the judiciary by the will of the people:—Their power is paramount to that of the legislature and revocable only by the authority that gave it. In deprecating the adoption in this country of the common law of England, which was brought to it by our ancestors, and the principles of which are the fundamental maxims of our liberties, the gentleman from Virginia has attempted to shew the inconveniences resulting from its uncertain rules, and has noticed the case of Williams which occurred in Connecticut.—Sir, I am surprised that a gentleman so correct as he generally is, should have fallen into the inaccuracy he has. The case of Williams is a notorious one, and it was not a prosecution at common law—the history of it is, that when general Pinckney was at Paris he learned that some of the privateers which were then cruising against the American commerce were commanded by Americans—as soon as this information reached congress they passed a law to prohibit our citizens from going into the service of any of the belligerent powers. Williams continued to command a French privateer, and he had captured many of our vessels—he was afterwards brought into Connecticut, and there tried and punished—not under the common law as the gentleman from Virginia supposed; but under our statute; under the law we passed in 1798. The gentleman has asked whether if we had created an army of judges, and given them monstrous high salaries it would not be right to repeal the law; that if the power exists to repeal any law which might have passed on this subject, it might not now be used, and has been pleased to say we would have created more judges and given them higher salaries if we had not wanted nerves, and tells my honorable and learned friend from Delaware that we were restrained by the same feebleness of nerve which induced us at the presidential election to put blank votes into the ballot box. Sir, my friend from Delaware does want that sort of nerve that some gentlemen now discover; although he is as brave as he is wise, yet in living without fear he will live without reproach, and never make himself liable to the charge of prostrating the constitution of his country. For such a work it is true he has no nerve. The observations of one honorable gentleman from Virginia (Mr. Giles) being now reiterated by another respecting the course of conduct we pursued at the presidential election shews that time has not abated the resentment of Virginia which we excited by our not voting for the Virginian candidate. Permit me here to declare, sir, that in reviewing all my public conduct I can discover no one act of which I am more satisfied than my having put a blank vote into the ballot box—much has been said on this subject; my friend from Delaware and myself have been denounced by the jacobins of the country; at their civic feasts and in their drunken frolics we have been noticed; European renegadoes who have left their ears on the whipping posts of their respective countries, or who have come to this country to save their ears, have endeavored to hang out terrors to us in the public prints; nay, sir, circular letters have been diffused through the country, charging us with the intention of preventing at one time the election of a president and at another with the design of defeating the vote of the electors and making a president by law. This was all a calumny, and as it relates to the South Carolina delegation, I declare they had no intention of defeating the public will; they never heard of any project for making a president by law; they had but one object in view, which they pursued steadily as long as there was any prospect of attaining it. The gentleman from Virginia and the gentleman from New-York had an equal number of votes; we preferred the latter; we voted for him more than thirty times, but when we found our opponents would not unite with us, and seemed obstinately determined to hazard the loss of the constitution rather than join us; we ceased to vote; we told them we cannot vote with you, but by ceasing to vote, by using blank votes we will give effect to your votes; we will not chuse, but we will suffer you to chuse. Surely, Mr. Chairman, there was nothing in all this which had any aspect towards defeating the public will. Why I did not prefer the gentleman who ultimately was preferred has already been mentioned. This is a subject on which I did not expect to be called upon to explain; but the gentlemen from Virginia have called, and it was necessary to answer. Permit me to state also, that besides the objections common to my friend from Delaware and myself, there was a strong one which I felt with peculiar force. It resulted from a firm belief that the gentleman in question held opinions respecting a certain description of property in my state, which should they obtain generally would endanger it, and indeed lessen the value of every other. Following the example set by his colleague the gentleman from Virginia has bestowed much censure on the past administration, and makes it a serious charge against them, having appointed under this law a gentleman of Maryland who he says was not with us formerly, but unfurled his standard in the service of his king, and fought against his countrymen whom he then deemed rebels. I did not expect, Mr. Chairman, to hear this observation from one of the friends of the executive. Since the fourth of March last I thought philosophy had thrown her mantle over all that had passed; that sins were to be forgotten and forgiven, and to prove the sincerity of this forgiving spirit sinners were to be distinguished by executive favors—one would have thought so in reviewing executive conduct; where persons had been imprisoned and fined under our laws, they, we know, were released; where fines had actually been paid, the officers of government had been ordered to return them, and not only tories had been appointed to office, but old tories, rank old tories who had been banished. The present collector of Philadelphia for the internal revenue has been appointed since the fourth of March last, and although he never, like the gentleman alluded to, shivered lances in the service of his king, yet he was actively employed in the more safe service of giving information to the British generals, and marching before Sir William Howe, and decorated with laurels he conducted him into the metropolis of his native state. Sir, there are many instances of this kind. Have gentlemen forgotten the young Englishman who was so busily employed here last winter during the Presidential election, that in seeing him one would really have supposed him not only a member of this House, but like him of Tennessee holding an entire vote at his command—this youngster was sent out here by some merchants in England to collect debts due to them in this country, and his father whose tory principles carried him from America early in the revolution is now subsisting on a royal pension—and this young man has been appointed our consul at London, and the former consul, a native and staunch American, whose conduct had been approved by our merchants generally, has been turned out to create a vacancy. The gentleman from Virginia has repeated the observation of his colleague, that the people are capable of taking care of their own rights, and do not want a corps of judges to protect them. Human nature is the same every where, and man is precisely the same sort of being in the new world that he is in the old. The citizens of other republics were as wise and valiant and far more powerful than we are. The gentleman from Virginia knows full well, that wherever the Roman standard was unfurled, its motto 'Senatus Populusque Romani' proclaimed to a conquered world, that they were governed by the senate and the people of Rome. But now, sir, the Roman Lazaroni, who crouching at the gates of his prince's palace,

(Continued on last page.)