NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

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

Five Dolls. per ann. | MONDAY, APRIL 12th, 1802. | *Paid In Advance.*

National Intelligencer.

CONGRESS OF THE UNITED STATES,

House of Representatives.

Saturday, February 26

DEBATE

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

[Mr. Nicholson —Continued]

Another powerful objection with the gentleman from Delaware to the old system, is, that the supreme court was formed by the judges who held the circuit courts. By this organization the whole advantage derived from the right of appeal he says is destroyed; because when an appeal comes up, each judge will be afraid to decide against the opinions of his brother, inasmuch as tomorrow that brother will have to decide upon a judgment given by himself. In God's name, sir, what kind of objection is this? Will one of these venerable characters, selected for his wisdom & virtue, be induced by the pride of opinion, to forget the sacred obligation of his oath? Can it be possible that a man who has passed the meridian of life, and enriched his mind with the lucubrations of twenty years, will sacrifice the correctness of his judgment, and the integrity of his heart to the vain pride of a boy, or the ostentatious folly of a coxcomb?—God forbid that our bench should be filled by men of this description. The citizen is no longer secure in his liberty and his life. The depravity which could feel such an influence would know no limits. Avarice and ambition would not be outdone by pride, and each in its turn would rule him. But sir, I trust our country is not yet so lost. I hope experience has not yet taught us to believe that our judges are to be influenced by any but the purest motives. If we cannot confide in them to revise the opinions of each other, they ought not to be entrusted with the administration of justice, even in the lowest grade. I cannot agree with the gentleman that the sense of appeal is the great check upon the conscience of the inferior judge. I trust to his integrity as a man, to the high obligation of his oath. When these are surrendered or forgotten he is under the influence of no other check. If these are not our great security, our situation is deplorable indeed. Our laws and constitution must be changed; for let it be remembered, that in criminal cases there is no appeal. In cases affecting the life or liberty of the citizen, the judge has no check of this kind upon his conscience; and if we cannot rely upon his integrity and his oath, our constitution and our laws afford us no security. If the constitution and the laws will not bind him, if he is lost to every sense of honor and virtue, if he will sacrifice the faith which he has pledged in the presence of his God, to the vain pride of opinion, he can never be relied on, and is unfit to be a judge. To argue, therefore, from this supposed depravity of our nature, is to argue from a principle which no power on earth can controul.

For my own part, I have always believed that a court of appeals, thus organized, was of the most valuable kind. I consider it the most effectual method to secure a uniformity of decision. By appointing one supreme tribunal for the purpose of hearing appeals, with a limited original jurisdiction, a very small portion of their time as a court of appeals will be occupied.—They will diverge into different parts of the union, where they will be engaged in deciding controversies, and will have an opportunity of hearing all the arguments of council; when they again assemble at the seat of government with their brethren, they will bring with them the principles upon which all decisions have been made below, and though not authorized to decide upon appeals from judgments rendered by themselves, yet by offering the reasons which influenced them below, will either have an opportunity of convincing their brethren, or of having their own errors corrected. A comparison of opinion upon great and leading points, will enable them to carry out into their federal circuits, the opinions of the whole, with the arguments upon which they are founded, and the same decision upon the same or similar points will, of consequence, be made in every part of the union. By these means a perfect uniformity of decision will be established, and permit me to say, that this will be the only method of securing this uniformity until professional gentlemen engage in reporting cases. At this time I believe there is but one reporter of cases decided in the supreme court, and he, I readily admit, is a most valuable one; but it is impossible to say whether he is now continuing his labours, and will favor us with another volume. When your court of appeals is constituted entirely distinct from your inferior courts, and is attended by only a small proportion of the gentlemen of the bar, residing either at the seat of government, or coming from the middle states, I do not know how the decisions of the supreme court are to be known in the eastern and southern country. But by sending your supreme judges to ride the circuits, you send out with them the decisions of the supreme court and establish the most perfect uniformity throughout all your inferior courts.

To shew, however, that this uniformity did not prevail, the gentleman from Delaware advanced two instances where successive judges differed from each other. The first on the law of attachments, the other in relation to chancery proceedings. That these inconveniencies may have been felt I shall not pretend to deny; but permit me to say that they neither arose from the defects of the old system, nor were they provided against by the new one. They arose from the circumstance of Congress not having legislated on these subjects. I differ with the gentleman, when he says, that these are mere matters of practice. Sir, they involve important principles of law. The one goes to the seizure of a man's goods and chattels, the other authorizes your judges to sign a decree against him upon an *ex parte* hearing, by taking the bill of the complainant *pro confesso*.—Rules of practice may be settled by the judges themselves; but these are principles that ought to be settled by the legislature alone, as all others ought to be, wherein the laws of the states differ so very materially. In Maryland they are regulated and defined by express statute, and the equity jurisdiction of your courts will not be worth pursuing unless you point out their modes of proceeding. In those states where they have no chancery courts, as is the case in Pennsylvania, and I believe all the New-England states, I can readily conceive that a judge would be at a loss, for I cannot imagine what rules of proceeding he would be guided by. If there is any state in the union, in which a judge would feel himself bound to pursue the practice in England, of issuing first the *subpoena*, then the *attachment*, afterwards the *attachment with proclamations*, to be followed up by the *commission of rebellion*, and finally the *sequestration*, the process would be so extremely tedious that it would almost discourage a suitor from going into your courts. Give me leave again to say, that if these are evils arising from the defects of the old system, they were not remedied by the new one. They never can be remedied until Congress legislate on the subject. By enacting the law of last session you did not provide against them; by repealing that law you will not revive them.

I hope I may be allowed to pay some attention to another observation of the gentleman from Delaware, which seems to have been produced, not by any thing said on this side of the house, but by a phantom which he himself has raised.—He tells us if we "trust the execution of the federal laws to state courts, in ten years we shall have neither law nor constitution." I believe, sir, an idea of this kind has never been expressed by any one. Matters of high importance, properly belonging to the federal judiciary, we wish to leave to them; but if federal jurisdiction is to be extended to all cases, I would venture to affirm that in ten years your state laws and constitutions would be entirely swallowed up. Nothing would have so strong a tendency to consolidate the union, as nothing could more effectually destroy the state sovereignties. By confining both to their proper orbits, the safety and harmony of both will be preserved. For myself, however, I have no hesitation in declaring that if all judicial power is to be *exclusively* vested in the one or the other, I would give the preference to the state courts, inasmuch as I prefer a government truly federal to a consolidation of the union. The gentleman likewise thought there were some who would willingly restrict the jurisdiction of the federal courts for the purpose of extending the powers and influence of the state courts. If he means by this that there are some who would like to see a part of the business now transacted in the federal courts, translated to the state courts, I unite with him in opinion and avow myself one of those. I think much of the business may be done with equal safety and much less expence in the state courts; and for my own part should like to see the jurisdiction of the federal courts more restricted. Instead of giving them cognizance over sums of five hundred dollars, for instance, I would limit their jurisdiction to a thousand.—And where I ask would be the evil? I know it has been heretofore fashionable to say, and the gentleman from Connecticut (Mr. Griswold) has repeated it, that prejudices might exist in the state courts, and that a foreigner, or a citizen of a different state might not have justice impartially dealt out to him. Sir, this is an odious objection. It is an objection not founded on experience. It contains a charge against the character of the states, totally without foundation, and ought to be repelled. I know very little of judicial decisions in other states, but in the state which I represent, I aver there is no ground for such an objection; and I speak it with pride and boasting as a native of Maryland, that justice has never been more purely administered in any country on the face of the earth. If ever there was a time when prejudices against foreigners might probably exist, that time has gone by, and I trust never will return. That time was at the close of our revolutionary war, after an arduous struggle for our liberties, when scarcely a man in Maryland could look around him without seeing a vacancy which had been once filled by a brother or a friend. It was impossible to forget the enmity which had subsisted between Great Britain and this country; it was impossible to forget that Great Britain had armed our brethren, and had let loose the savages of the wilderness against us. The oppressions that had been practised, the cruelties we had endured were yet fresh in our minds. The feelings, which had been roused by a strong sense of injury, were not yet subdued—but their feelings never found their way into our courts of justice. An Englishman and an American stood upon the same ground. Justice was blind to every thing but their respective merits. She never enquired into the birth place of a suitor, but listened to his claim with an attentive ear, and pronounced her decree with an impartial voice. At the commencement of the war, British merchants had claims to an immense amount against the citizens of Maryland; our citizens were likewise largely involved with each other. The distresses of the war need not be recounted, but payment was impossible. To prevent an accumulation of distress by compelling a dreadful sacrifice of property, our courts of justice were closed. In the year 1779, however, an expedient was adopted, the wisdom of which I cannot, I dare not question. A paper currency was issued, which creditors were compelled to receive from their debtors in full discharge of their debts at an equal value with gold and silver; and if they refused to receive it, proof of the tender operated as a discharge. This currency had not the confidence of the people, and consequently depreciated till it became worth almost nothing. Still it was a tender, and creditors were compelled to receive it. Those who were indebted to British merchants and had debts due to them in the country, saw ruin staring them in the face—they complained, and complained with justice. The legislature interfered and declared by law that British debts might be discharged by the debtor paying into the state treasury for the use of the British creditor, the amount in paper money, if he would make oath he had received it in discharge of debts due to himself. This was a great relief, and numbers took advantage of it. They flattered themselves it would prevent their ruin; but sir, the ruin was only postponed; for the treaty of peace came, declaring that creditors on either side should meet with no lawful impediments in the recovery of their debts, and by an act of Maryland this treaty was declared the supreme law of the land. Suits were brought in the courts of the state by the British creditors to recover those very debts which had been discharged under the solemn sanction of a law, and our courts felt themselves bound to decide that the treaty operated as a nullification of the state law. By this decision those men who had been compelled to receive from their debtors, paper money in discharge of debts due to them, and had under the authority of a law paid the debts due from them to British creditors, were now under the necessity of paying a second time in gold and silver. Here was an occasion, if one ever existed, upon which prejudice might well discover itself; for on this occasion a foreigner was placed in a situation infinitely more eligible than a citizen. But the state courts did their duty.

They disdained to be governed by a narrow minded prejudice, and decreed to the Englishman what the laws of our country had declared to be justly his due. No local considerations, no attachments to the suffering individuals of their own state had any influence upon their minds; they undeviatingly pursued the path which justice pointed out to them. Who then could dread the future existence of a prejudice which will deny justice to a foreigner? Let it not be doubted, for there is no ground for the suspicion.—Nor can there be any reason to apprehend that the state courts will discover an unwillingness to execute your federal laws; for in the year 1792, you gave them cognizance of offences against your revenue laws, and as far as my information goes they have been faithfully and promptly administered.

But give me leave to say that it is not so much in the court as it is in the jury that this prejudice (if any) is to be apprehended. The jury have a latitude in giving their verdict, and may if they think proper undertake, by giving a general verdict, to decide both law and fact. This is a power more transcendent than that of the court, and may be equally directed by prejudice. Yet no organization of your federal courts that has ever been made can possibly reach the evil, if indeed any such evil exists; for both in the state and federal courts a jury of the state must decide. But, sir, I am free to declare that I dread no such prejudice either in court or jury. I trust to the integrity of the American character, and estimate the virtues of a state judge as highly as those of a federal judge.

In relation to the expence of the system proposed to be repealed, various opinions have been expressed, some gentlemen estimating the saving at forty thousand dollars a year, others at twenty eight thousand five hundred. I think it totally unnecessary to descend into the minutiæ of the expence, because the same principle which would impel us to a saving of forty thousand dollars a year would impel us likewise to the saving of twenty eight thousand five hundred. If the money is thrown away upon a useless object, it is our duty to save it. The utility of the object has not been proved sufficiently to authorise an annual expenditure even of the lowest of these two sums, and for one, I feel myself bound, by repealing the law, to make the saving.

The gentleman from Delaware made another remark in relation to the expence, which I must beg leave to notice. He says that federal justice, as he is pleased to term it, does not cost one fifth as much as state justice. This is a position equally indefensible with most others which he has attempted to maintain. I do not know by what scale the gentleman graduated the relative expence; whether by the number of suits decided, or the supposed value of property depending upon the decision. As to the latter it would be a difficult matter to determine, because the data, we have, are not sufficient to form an opinion upon; but I must him must readily upon the former. I must necessarily again refer to my own state, for which I hope to be pardoned. In Maryland, there is a general court with unlimited jurisdiction, which sits four times a year; twice on the Western and twice on the Eastern shore. And I think I speak within bounds when I say, that in these courts at least three thousand suits are annually brought. The salaries of the three judges amount to six thousand dollars per year. The jurymen attending these courts are paid out of the public treasury, and I believe receive a sum which including their itinerant charges amounts to not more than 5,500 dollars; however to make it a round sum and to defray some other small incidental charges, it may be fixed at 6000 dollars. Thus then the trial or decision of these 3000 suits costs, with the salary of the judges and the payment of the jurors, 12,000 dollars, or just four dollars for each action. It is agreed on all hands that the federal judiciary costs the United States in the aggregate 137,000; the proportion of Maryland, (as one-fifteenth part of the Union, which is the proportion she bears in population, in taxation and representation,) will be equal to rather more than nine thousand dollars. From the document number 3, which has been laid before us as corrected by the message of yesterday, it appears that in the circuit court of Maryland for the twelve years past there have been 260 suits instituted, or about twenty two suits per year, to these may be added cases of admiralty and maritime jurisdiction, which go before the district court, and a very few cases of appeals that may be carried to the supreme court, making perhaps in the whole about two hundred per year; but let it be taken on a larger calculation and say, that the whole number of suits, in which the citizens of Maryland are immediately concerned, amount to four hundred in each year; for which we pay nine thousand dollars; it follows that each suit costs rather more than twenty two dollars, or better than five times as much as each suit brought in the state court of Maryland. Thus instead of state justice costing five times more than federal justice; in reality federal justice costs five times more than state justice. If a calculation is made of all the business transacted in all the courts of Maryland, from the highest to the lowest, I believe it will be found that the ratio will be the same.

The document from which we have acquired our information, as to the number of suits which have been instituted and are now depending in the circuit courts, has been severely commented on. A gentleman from Connecticut, (Mr. Griswold) says, it is incorrect because it does not exhibit the names of the suitors, and declares the President had no right to procure it. These are objections to be sure of a most important nature. Objections which are made for the purpose of inducing us to reject the testimony it affords. Let me ask the honorable member, where was the necessity for shewing us the names of the suitors? Truly, says the gentleman, for the purpose of shewing the class of citizens from which the President had lately made some appointments in Connecticut. And I would again ask, what these appointments have to do with the question now before us? Suppose the fact had appeared as the gentleman insinuates, that all those people who have lately received appointments in Connecticut, were defendants on the docket of the circuit court in that state, would it have proved the necessity of keeping up the system?—Sir, the objection is an absurd one. If it could prove any thing, it would be that the President had given appointments to poor men, and God forbid that there should be any thing criminal in this. But 'the President had no right to obtain this information for the purpose of laying it before congress.' Is it not his constitutional right? Nay, is it not his constitutional duty to give such information to congress relative to the affairs of the union as in his judgment will throw light on subjects likely to attract their attention? Is he not the constitutional organ through which we are to acquire information? Is it not declared by the constitution, 'that the President shall from time to time, give us information on the state of the Union, and recommend to our consideration such measures as he shall deem necessary or expedient?' And yet when he exercises this constitutional privilege, when he performs this constitutional duty, these gentlemen, whose tender consciences are upon some occasions so alive to the constitution, think proper to reproach him for it. Nay the gentleman from Delaware has vauntingly declared, that for the performance of this constitutional duty, *he 'holds him responsible.'* For this he trusts he will be brought to account, and that the day will come, when we shall hear the honorable member and his friends speaking more effectually on the subject.' What idle declamation, what empty sounds are these! Yes, sir; he is responsible; and not to the gentleman from Delaware more than to the meanest man in the community; he is responsible to the American people. He is responsible to the great body of the nation whose voices have done justice to his virtues; and on this responsibility he cheerfully rests himself and all his actions. The day of account will come; the day on which the people of this country will again have to determine whether he merits their confidence or not; and when this day shall arrive, if his conduct will not stand the test of free and impartial enquiry, I trust he will be dismissed, as those have been, who have gone before him. But if he shall be found to have been faithful in the discharge of his duty, he will receive the most grateful reward that can be bestowed on a public servant, the approbation of his country.

This appeal too is called a measure of the President's, and the gentleman from Delaware has said, it is in the power of the President now to arrest its progress. What is meant by this? What is the dark insinuation covered under this language? Does any man within these walls dare to insinuate that I am under executive influence? Does any man assert that I am governed by any other motive than my own sense of right, and my own opinion of the con-

(*Continued on last page.*)