(Continued from last page)

effect the powers vested by the constitution in the government of the United States. It has, notwithstanding been contended that the 1st section of the third article which I have just read, operated imperatively upon Congress, and that they were thereby obliged to establish not only a supreme, but likewise inferior courts. I shall admit that before the government of the United States could exercise higher judicial powers, it became necessary to organize the supreme court; but I contend that when this court was once organized, the constitution was gratified. Contemporaneous exposition has been resorted to, to support doctrines advanced by our adversaries, and I shall beg leave to resort to similar assistance, to shew that this was the opinion of one of the wisest and ablest men our country can boast of. The venerable and highly respected judge Pendleton, a strenuous and learned advocate of the constitution, in debating this article in the convention of Virginia, thus expresses himself: "The first clause contains an arrangement of the courts, one supreme, and such inferior as Congress may ordain and establish. This seems to me to be proper; Congress must be the judges, and may find reasons to *change* and *vary* them as experience shall dictate. It is therefore not only improper, but exceedingly inconvenient, to fix the arrangement in the constitution itself, and not to leave it to laws, which may be *changed* according to circumstances. I think it highly probable that this first experiment will be *to appoint the state courts to have the inferior federal jurisdiction*; because it would be best calculated to give general satisfaction and answer economical purposes, since a small additional salary may in that case suffice instead of a competent provision for the judges. But even this eligible mode experience may furnish powerful reasons for changing, and a power to make such change ought to rest with Congress." It will be found that through the whole of that debate, this idea was not combated, and it clearly proves that no one considered the courts established by the constitution, or that the section was imperative. I might follow the example of my opponents, and rest contented with offering the opinions of that day, as a reason why my own opinions, at this time are correct; but I will endeavour to shew that this idea of judge Pendleton's was entertained by Congress after the government was adopted. It is clear, from the extract I have just read, that the friends of the constitution thought it would be gratified in this particular by organizing a supreme court, and by giving federal jurisdiction to the state courts; and it cannot be doubted that the doctrine was sound, if the constitutionality of the law establishing the judicial courts, in the year 1789 is admitted. For by that law it is provided, "that the circuit courts shall have original cognizance, *concurrent* with the courts of the several states of all suits at common law or in equity, where the matter in dispute exceeds the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another state." By this clause the federal court is vested with a cognizance *concurrent* with the state courts over cases of federal jurisdiction; by which the jurisdiction of the state courts is unimpaired; and it is admitted that they may hold *equal* cognizance with the federal courts, where the sum amounts to five hundred dollars. But in all cases at common law or in equity, where the sum or value in dispute is *under* five hundred dollars, the original cognizance is left *exclusively* with the state courts. Now, sir, it cannot be denied if the state courts were competent to hold *exclusive* jurisdiction over sums not amounting to five hundred dollars, they would have been equally competent to hold jurisdiction over sums to any amount whatever.— Their *concurrent* jurisdiction is admitted, their *exclusive* jurisdiction might have been left to them. In like manner the state courts might have been permitted to hold cognizance of admiralty and maritime cases; for I believe all the states had courts exercising this kind of jurisdiction. I do not contend that this would have been proper, but only wish to shew that it might have been done, and that there was no constitutional necessity for establishing inferior courts. It has too been argued, not I believe in this house, but in another where the subject has undergone discussion, that the necessity for inferior courts arose from the constitution having declared that the supreme court should have *appellate* jurisdiction; and that there can be no appeal unless there were inferior courts from which an appeal might lie. This objection discovers wonderful sagacity indeed, for I presume it could not be conceived that an appeal might lie from, as well as a writ of error be directed to, a state court, as I believe is already provided for by the act of 1789, in certain cases.

These remarks have been made with a view to shew that the language of the first section of the third article is not imperative, but that Congress might have gratified the constitution by organizing the supreme court alone. If their discretion was to be exercised as to the time when these inferior courts should be established, I think it may likewise be proved that the number was to depend upon their discretion also. The gentleman from Connecticut admits that the number may be increased from one to a thousand, but he denies that the number can ever be diminished. Thus, it is in the power of one Congress to encrease the evil to any extent, but it is impossible for any future Congress to correct the errors or repair the mischief of their predecessors. This is a hateful doctrine in a free country, and I hope can be shewn to be unfound. The language of the constitution is, "*such* inferior courts as Congress may from time to time ordain and establish." By the word "*such*" I understand so many both in *kinds* and *numbers* as Congress may, in their judgment, from time to time, and according to circumstances, think necessary. This involves the right of modifying the various kinds of courts, and increasing or diminishing the *number* at pleasure. The constitution does not fix the number of courts, but leaves Congress to determine. It is admitted on all hands that the authority to erect these courts is not derived from this article, but from the 8th section of the first article, in which it is declared that Congress "shall have power to constitute tribunals inferior to the supreme court." The same article likewise declares that Congress "shall have power to lay and collect taxes and to establish post-offices and post-roads." Now the right to reduce the number of taxes, or the number of post-offices and post-roads is not denied, and where, I ask, is the right to reduce the number of inferior tribunals denied? The authority to establish each is vested by the same article and is couched in the same language. We are in the constant habit of diminishing the number of post-roads & post-offices without hearing any objections, and I hope ere long we shall acquire a habit of discontinuing taxes. Our constitutional right to do this, I presume, will not be denied, however gentlemen may think proper to object on other grounds. There is no part of this section imperative; it vests Congress with a discretionary power to lay and collect taxes; to borrow or coin money; to establish post-offices and post-roads; to constitute tribunals inferior to the Supreme Court; to raise armies and to equip a navy; but we find no restriction upon the power of Congress to reduce all these establishments whenever in their opinion they may become useless, or circumstances may arise to justify the reduction. I think this opinion must be universally concurred in as far as it respects any one of those objects; and it must be admitted that we have the power to reduce as well as to establish unless some restriction can be found in other parts of the constitution. This instrument has been scrutinized with an eagle's eye, ever since the question now under consideration has been raised, and no *express* restriction, check or limitation of the repealing power of Congress has been pointed out, because none can be found.

I have searched for this prohibition, but have been unable to discover it. Where the constitution means to restrict, it is clear, explicit and unequivocal. By referring to the *ninth* section of the first article you will find the limitations of the powers of congress are defined with the most accurate precision. The tenth section, in terms equally definite, restricts the authority of the states. Yet among these you will find no restriction similar to that now contended for.

[*Mr. Nicholson—to be continued.*]

For Sale,
OR TO BE RENTED.

THE Subscriber will sell or rent, his buildings on F street, Lot No. 2, square 289; and give possession on the first day of May. Any person desirous of purchasing or renting the same, may know the terms, on application to Mr. Bond, adjoining the premises, or to the subscriber in Colchester, Virginia.

JAMES H. BLAKE.

April 19, 1802. 3t

WANTED,
A Barr and Book Keeper.

A young man, who can come well recommended for the above business, will meet with employ at the Columbian Inn; and generous wages, by

J. H. BARNEY.

April 16, 1802. ep2m

NOTICE.

WITH respect to the caution of the said John Harrison, I will appear on the premises on the day of sale, and exhibit the contract and the award, and all the papers relative thereto; with a sufficient voucher of the compliance of the same; and will also produce gentlemen of respectability and property to warrant the title; or refund the purchase money: Provided the title should ever hereafter be found insufficient.

SAMUEL BAKER.

April 16, 1802.

To be Sold,

A FEW LOTS in Squares No. 902, and 951, near the Barracks; at a moderate price for cash—Apply to Benjamin More, New-Jersey Avenue, who has for sale Rhode-Island Lime, by the cask; and he expects in a few days molasses by the hogshead, to be delivered at any wharf in the city.

April 14, 1802. ep3t

CONGRESS.

HOUSE of REPRESENTATIVES.

FRIDAY, March 23, 1802.

DEBATE

On the passage of the Bill "to revive and continue in force an act entitled an act to augment the salaries of the officers therein mentioned."

MR. DAWSON. I voted against the law of '99, which encreased the salaries of certain officers of our government, and I propose now to vote for that bill which continues the augmentation—I will state to this house the reasons for these my votes, in a concise manner, for, sir, on this and on all occasions, I shall avoid going into arguments which do not bear on the question, and the only effect of which is a waste of our time and of the public money. I will not enquire what is the state in which a gentleman ought to live, and what are the expences attendant thereon—I will not enquire whether all, or any of our officers do live in that state—These, sir, are questions which we are not in duty bound to examine.

The duties of our public officers, and a proper compensation for services, are the only questions, which it belongs to us to examine.

Sir, it must be remembered by you, and by every gentleman of this house, and especially by those who were members in '99, what was our situation at that time; we were constantly told, that we were threatened with a foreign war, and were called on to make exertions to meet that danger—every means within our power were resorted to; armies were raised, and fleets set on float, taxes of various kinds were imposed to meet these expences, and individuals were invited to make sacrifices—loans at 8 per cent were negociated, and voluntary contributions were solicited; at a time like that and under such circumstances I did think it unjust; I did think it impolitic to raise the salaries of any set of men; and it was for this reason, and for this chiefly that I voted against the augmentation; for permit me here to observe, that while I am an advocate for putting down all useless & expensive offices, my decided opinion ever has been, that we should pay well those we do retain—this in my judgment is right—it is just—I believe it to be politic, and I am sure it is sound republicanism.

Our situation is different now from what it was in '99; none of the causes which I have mentioned do now exist, and it is for that reason in part, that I shall vote now differently from what I did at that time.

There are other reasons, Sir, in forming an opinion on the question now before us, the knowledge of facts which every gentleman must possess, and his own experience thereon, must furnish the best data, and assist his judgment more than any observations which can be made on this floor. Every gentleman must know, what are the official duties of our public officers, and every gentleman must feel what are the expenses of living at this place, and from thence what is a proper compensation?

I believe, sir, that most gentlemen will unite with me in saying, that those who inform us that the expences of living are less than they were in '99, that they are less in Washington than they were in Philadelphia are woefully mistaken, experience has taught to me the contrary, and if it has not to other gentlemen, I congratulate them thereon.

Sir, there is one consideration which has not been mentioned, which although not conclusive, I own has some weight with me. When these gentlemen, some of them at least, came into office, these were the salaries then established; they had reason to conclude they would be continued, except there were good reasons to the contrary. None, sir, do exist; and while no attempt is made to raise salaries, according to the constant practice heretofore, while the expences are at least equal to what they ever were, and the inconveniences of living greater, I do think it would be unjust now to diminish.

For these reasons I shall vote for leaving the salaries as they now are, altho' I voted against the increase in '99, under the then situation of the country.

MR. GODDARD. I did not think of rising to day, nor should I now rise but for the remarks made by the gentleman from Virginia. I have no necessity for making an apology to the House for any apparent inconsistency of vote on this occasion, as I have never before voted on the subject, not having had, when the bill alluded to passed, the honor of a seat on this floor. To me, however, the reasons of the honorable gentleman appear very inconclusive. He says, that in 1799 such was the situation of the country, that every citizen was called upon to make a sacrifice of his personal interests. But if the situation of the country was at that period such as called for sacrifices, was it not also such as required the incurring additional expences and new debts; and is not our present situation such as requires a payment of the debts then contracted?

The gentleman has also observed, that those now in office accepted their places under an expectation, that the old salaries would be continued. Strange! Did they not know, that the law fixing those salaries was limited in its duration. They cannot, therefore, with any appearance of justice, say that the good faith of the government is pledged to continue those salaries. I apprehend on the contrary they had good reason to expect they would be discontinued, because those very gentlemen had declared to the nation, that the expences of the government had been profuse, that the salaries of public officers had been too high, and they ought to have calculated, that the system of economy they are for applying to others would also be extended to them.

The other reason, assigned by the gentleman, the present increased expence of living, is not correct. Whatever the present expences may be, it is not probable that the expences for the ensuing two or three years will be so great as those which succeeded the passage of the law proposed to be re-enacted. The greatest part of the European world was then at war—now there is peace; and it may rationally be expected, that there will be a gradual appreciation of money, and that the price of articles of consumption and rents will fall. I do not believe that all the salaries are too high; but do I believe that some are, and that the proportion between them is not correct. For these reasons I am compelled to vote against the whole bill.

Mr. Smilie. The Yeas and Nays are called by gentlemen, and I am glad of it. I have no diffidence to record my opinion. I am happy that in my vote on this occasion, I shall not be obliged to depart from the principle on which I have always acted, viz. that it is beneficial to the community, that the officers of government should be supported in a reputable manner. I never deviated from this principle either in the legislature of Pennsylvania, or in Congress, excepting in one instance, for which I can easily account. Nor have I ever varied my vote in consequence of any particular person being in office; for I have always considered the emoluments allowed as attached to the office, and not to the officer. The case to which I allude is the compensation given to the judges last year. I voted for a smaller one than that which obtained. But as I was adverse to the establishment, and thought it would soon be set aside, I do not think the vote given on that occasion a deviation from the principle.

I believe it is good policy in a republican government so to support your public officers, as to command the first talents in the country. Many of the officers, whose salaries are fixed in this bill, are of this character, and on whose talents depend in a great degree the honor and safety of the government. I believe salaries ought to be neither so high as to make the fortune of the officer, or so low as to disable an individual from living comfortably. This is the golden mean.

I am not a little surprised, Mr. Speaker, to see how the sentiments of gentlemen vary with circumstances. We had some time since before us a bill for reducing the compensations of certain collectors of ports. I know that on that occasion many members were in favour of reducing some of the compensations; but I do not recollect that any member was for reducing the compensation of those collectors who received within 5,000 dollars. And yet now we find gentlemen opposing the same allowance to these high and respectable officers.

I believe this measure will prove perfectly agreeable to the people, and that it will be approved by their good sense. Much has been said about the expences of living, and some gentlemen have said those expences have not increased. But I have only to appeal to themselves to know whether the expences of living here are not greater than in Philadelphia. For my part I have experienced a considerable increase, and I have no reason to infer that other gentlemen have not felt the same increase.

Mr. T. Morris. I shall vote against the bill, not because I object to the greater part of the salaries, but because the bill is so drawn as not to enable us to discriminate respecting the several salaries, being obliged to vote in lump for or against the whole of it; It is not material to me whether the gentleman from Virginia, (Mr. Dawson) has acted consistently or not. Be that as it may, I must act from my own conviction. I am desirous of making a necessary and proper provision for our public officers. I would not even deny to the present Secretary of the Treasury the additional allowance of this bill because, when, on this floor, he denied it to his predecessor. To the salary of the Secretary of the Navy I would be glad to make an addition, because I believe that his duties are as laborious as those of the other secretaries.— As to the expence of living, I do not believe it is comparatively so great to the officers provided for in this bill as to us, as they make arrangements for the whole year.

Mr. Alston. The very reason which will induce the gentleman last up from New-York, (Mr. T. Morris) to give his vote against the passage of the bill upon your table, is the reason which induces me to give it my support and assent. For if the salary of any one of the officers which that bill contemplates the continuing in force, was to be changed or lessened, I would most assuredly vote against the whole bill. I have heard no objection specifically made, to any one of the salaries, except that of the attorney general, and if even an alteration had been made in his salary, from what had been heretofore established by law, I should give my negative to the bill.

The uniform practice of reviving and continuing old laws in force for a longer time ever since the establishment of the present government, has been the very course now pursued by the committee of revisal and unfinished business, who reported this bill.

I can see no reason why the present officers of government should not receive the same compensation that had heretofore been allowed to others. I really believe that if gentlemen were to go into an investigation of the salary of every officer, which it was proposed to continue in force, that they would be satisfied, that a saving could not be made worth the detail of a bill, and that if the alteration which gentlemen contended for, had been made in the form of the bill, and the smallest alteration had been made in the salary of any one of the officers, from that which they had heretofore been accustomed to receive, it would have been in my opinion, a sufficient cause, to justify a rejection of the bill. I therefore hope the bill may be permitted to pass in its present form.

Mr. Tallmage. I am against the passage of the bill, because I think the form of it improper, and because I do not believe that the reasons now exist which formerly induced the legislature to pass the law now proposed to be revived. My first objection arises from the rejection of every amendment that has been offered. Had the amendments prevailed I should have voted for the great outlines of the bill. I am a friend to liberal salaries; but inasmuch as we are prevented from apportioning the salaries, I am against the whole bill.

With respect to my second objection, I must remark that the old salaries were fixed on war prices; and this was the reason why the legislature limited the duration of the old law to three years, expecting that by the removal of the seat of government, and the termination of the war, a reduction in the expences of living would take place. I cannot give into the idea that the expences here are greater than in Philadelphia. But, provisions, and labour, are certainly lower here than there, and the effects of peace will make them still lower. I will not say that I shall be influenced to vote against the bill because one of the officers voted against the augmentation. Such prejudices shall have no weight with me. I have made these remarks, because I am unwilling that my vote should go abroad, without my reasons against the bill. If gentlemen had given us an opportunity to vary the compensation, I will not say that I would not have finally assented to the bill, and if the bill had been detailed, and a majority of the house had agreed to all its parts as it now stands, I might even then have assented to it. But under existing circumstances I cannot.

Mr. Bacon. Having heretofore expressed my own sentiments on the subject of salaries and compensations for public services in general, in a government like ours, I should not have attempted to say any thing further on the question had it not been from a consideration of the manner in which the resolution has been treated, which I had the honor yesterday, to lay before the house. Although that resolution has been committed to a special committee, yet, from the manner in which it has been treated by gentlemen on both sides, and in all parts of the house, it seems to be apparent that there exists almost a unanimous determination not to make any reduction from our own pay.

I conceive it to be highly important, not only that legislative bodies should *act*, but that they should *appear* to act with uniformity. And in nothing is this *uniformity* of conduct more important than in the apportionment of compensations for services among the various descriptions of men who perform them. The appearance of partiality in the legislature, especially in their own favor, is peculiarly odious; and in proportion as it is odious, it is hurtful to the government.

No evidence has yet been adduced to shew that the present apportionment of salaries and compensations is not equal and just. If it is not, who but former majorities were responsible for any inequalities that may exist? The present apportionment is the result of actual experiment, which is said to be the best evidence with respect to propriety of conduct in the management of human affairs.

At the commencement of the government, the pay of the members of congress was set the same as