NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

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

Five Dollars per annum. MONDAY, JUNE 26th, 1802. Price 3c. a copy.

CONGRESS.

HOUSE OF REPRESENTATIVES

Monday March 1, 1802.

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. Dana continued]

The Petitioners did not pay the expense upon acts of congress. The statutory refuse to advise and confent to an appointment where the prefident has made a nomination. The judiciary may fay, that unconditional acts are not obligatory. But their powers of fuspending departments are fufficient to reach others, are not, which it cannot by the principle of refponfibility. The prefident is refponfible on impeachment and acquittal. The members of congrefs are refponfible at elections, if not on impeachment. The judges in office are not refponfible on impeachment, where they may claim the right of juftifying themfelves against the accufation, as the thing there is no perfonal election. The principle of refponfibility is applicable to here perfons even taken and without the changes which may be made feparately from fitting eftablishments. In this may be done by gentlemen, if they think proper, at eleftions, particularly where fuch proceedings are neceffary; they may now the time and place for hearings, and for checking up all thofe circumftances which may prepare their miftrefs to charge however vigorofly exhibited. In cafes of impeachment, there are formal notices of charges, a regular trial, and ample opportunity for defence. Thus, from the plan of the prefent bill, the judges are to be divefted of their offices, without being either accufed or heard. The juftifiers at the collefiveness, under a vague idea of their being refponfible and yet there is not a fingle charge againft them, and if there were, they have no opportunity of defending themfelves, before the men who made take to decide againft them. There is nothing in the conftitution by which they are refponfible in fuch.

The gentleman from Vermont (Mr. S. Smith), fpoke of the acknowledged power of impeachment as rendering it vain to fay of the independence of the judges. He appeared to confider fuch refponfibility as a fufficient check upon independence. Another advocate of the bill, a gentleman from Virginia (Mr. Randolph), fpoke of the refponfibility of impeachment as alone fufficient to nothing in practice. To enter on a poll contefted, it is by no paper to take in mind, particular county between thefe two extremes of opinion. When we fpeak of an independent judiciary, the correct meaning is, that the department fhould not be perfonally dependent on the fentiments of the executive or on the legifla- tures. Thefe two departments are perfectly confident with the principle of perfonal refponfibility. With refpect to the department of government, the independence of each other is a common fecurity of them all. In the fecond judges individually may be more refponfible on impeachment for illbehaviour. The mere act of impeachment does not deftroy the reputation. A perfon fhould be impeached for party purpofes, officers have been difmiffed on this account; but no man can fay with juftice, that they merit refponsibility for time.

It is a doctrine reafon a fuftifiable the power of the fhould over the judiciary, if they are to judge whether the acts of congrefs are conformable to the conftitution. This, however, has been denied by feveral of the gentlemen who advocate the perfonal bill. It is admitted that this queftion muft be decided by congrefs. And gentlemen would now decide, for the firft time, that the conftitutional validity of the acts of congrefs is to be determined only by the juftifier of elections, and that the judges, in confofing a conftitutional department have nothing to do with fuch queftions. We fay, if congrefs can pafs any acts as greater, and there can be no judicial opinion to the contrary, what validity congrefs might deftroy the fupreme court altogether. As to the power of difmiffing the judges, there is no difference in the principle, between thofe of the fupreme and thofe of inferior courts. The miftrefs of the juftices of the fupreme court have been difmiffed by acts of congrefs. That act may be totally repealed as well as the act now in queftion. The prefent bill, therefore, fo far as it relates to the claim, if power in congrefs to divefl the judges of the fupreme court of their offices. This is a more ferious claim of power than has been advanced before. Whatever may have been fuid of fcrutiny or abolitionifts, they never claimed to fcrutinize the acts and powers of the government through the legiflative body. Whatever might be faid on other topics, it cannot be denied, that the queftion of the conftitutionality of meafures, there was one, principle and fully admitted; and that was, to confider the judges of the United States, while behaving well, as the proper tribunal for the acts of the legifluture and the Prefident. This gave a fecurity to all parts of the community. It is for the fafety of the people, that the judges fhould be independent of the legiflature and executive departments, might in the faithful difcharge of their duty, refuf, to give effect to acts contrary to the conftitution, it was not pretended that congrefs, with the prefident, were authorized at pleafure, to deprive the judges of the means of independence, by abolifhing their offices.

It is for the fafety of the people, to adminifter juftice according to the conftitution and laws. No man can pretend fhould mift, to bafe their decifions by the influence of perfonal hopes and fears.

They are undoubtedly to give effect to acts of congrefs in purfuance of the conftitution, and to fuch treaties, as are granted to congrefs fome legiflative power. Thefe, when fo fanctioned, are judges, from the very nature of the caufe, and pronounce on the validity of acts of congrefs, is compared with the fuperior provifions of the conftitution. Thefe are the principles which I contend, if they find on the one fide an act of congrefs, and on the other fide the conftitution of the United States, they find thefe placed in oppofition to each other, they, when fo decided, they are to obey their oath, and judge accordingly! If fo they neceffarily decide, they muft be fafe, if they are fo, for they are known to fuppofe the conftitution.

It is a doctrine fovral with the eftablifhment of our government, and has been the conftant language of our fteffmen and authorities. The contemporaneous ufe of terms the conftitutional juftice muft eftablifhed, fhow that fuch was the principle. Thefe determine the feafe of the conftitution, by which we fhould now be guided.

Sir, in the laft a few opinion in this country, that the judges have authority to decide fuitors an act of congrefs is unconftitutional. This was the opinion, of Mr. Jay, expreffed upon in refpect 1792. A queftion arofe from the act of the legiflature, which, it was fuppofed, invaded the act has been mentioned above. The judges in the three circuits, fitting in the conftitutional, and communicated their opinion to the Prefident of the United States, who laid the fubject before congrefs.

Into the journals of the houfe is opened, that the Prefident in a meffage on the 18th of April, 1793, with a ftatement of the opinion of the judges at the circuits, and in New-York.

"The ftatement as fent to the houfe by the Prefident, is in the words of the Clerk's office. It is a copy, certified by Thomas Lear, Secretary to the Prefident of the United States.

"At a Circuit court of the United States, held at the city of New-York, on the city of New-York, on Thurfday the 5th day of April, one thousand feven hundred and ninety-two, at ten of the clock and merred as."

Prefent

The honorable John Jay, chief juftice of the United States.

Wm. Cushing, Efq. one of the affociate juftices of the fupreme court of the United States.

Mr. Juftice Wilfon, Efq. judge of the diftrict of New-York.

Mr. Juftice Blair, Efq. judge of the diftrict of Virginia.

Mr. Juftice Iredell, Efq. judge of the diftrict of North-Carolina.

Mr. Juftice Peters, Efq. judge of the diftrict of Pennfylvania.

"The court were thereupon unanimously of opinion, and agreed.

"That by the conftitution of the United States, the government thereof is divided into three diftinct and independent branches; and that it is the duty of each, to abftain from, and oppofe, encroachments on either.

"That under the legiflative use the executive branches are conftitutionally affign to the judicial any duties, fuch fuch are properly judicial, and to be performed in a judicial manner.

"That the duties ftated to the fitting courts, by this act, are not of that defcription, and that the act therefore does appear to contemplate them as fuch; inafmuch as it fubjects the decifions of the courts, to revifal and controul of others, firft to the confideration and difpofition of the fecretary of war, and then, to the revision of the legiflature. Wherefore, by the conftitution, neither the fecretary at war, nor legiflature, cannot exercise, nor cannot be fuppofed, are authorized to fit as a court of revifers on the judicial acts or opinions of this court.

"As therefore the bufinefs affigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be confidered as a penning commiffioners, for the purpofes mentioned in it, by official inftead of perfonal defignations.

"That the judges of this court regard themfelves as bound to execute the duties designated by the act, and therefore have no fufficient to attempt to decline that office.

"That as the objects of this act are conftitutional, and the duties to be performed by the fecretary and juftice of court, and as the judges decline to adminifter, in a proper manner, their high refponfibility, they have refolved to fend a revision the act in the capacity of commiffioners.

"The remainder of the opinion relative to extending the fittings of the court for a fhort time, is not fo ftrongly expreffed, read at this time. The judges agreed, that the legiflature had a right to extend and to abridge the fittings of courts, if fo, as to this particular, ought to be done."

On the 21st of April 1793, the prefident, fent another meffage with the paper, which was nominating commiffioners, opinion of the judges attending, the cite to congrefs in Pennfylvania.

I have a copy and before this houfe. Permit me to read it.

Mr. Sitgreaves.

You will affifitably belonge to take care that the laws of the United States are faithfully executed. It is, therefore, we think it our duty to lay before you, that we find it a very difficult and difficult, fuch as fhould, if it be, be fuch, fuch as fhould, if it be, be fuch, fuch as fhould, if it be, be fuch