It then says that "the House of Representatives shall be composed of members chosen every second year by the people of the several states," &c. In the 3d section it says "the Senate of the United States shall be composed of two Senators from each state," &c. And in the clause respecting amendments, it says "the Congress, whenever two-thirds of both Houses shall deem it necessary shall propose amendments to the constitution," &c. It then results from these provisions that unless the House of Representatives or Senate taken distinctly are bodies composed of less than all their parts or members; and that Congress which is composed of a junction of the two, may be composed of a less number than all the members of each House, that this resolution which is passed only by a majority of two-thirds of the attending members, and not of all its members, is not passed in conformity with the amendatory clause of the constitution.

But we are told that if this be the construction of the constitution we are violating that instrument every day, in passing laws by a majority of the attending members. But, Sir, the gentlemen ought to remember that this is in consequence of a positive grant in another part of the constitution which says that "a majority of each House shall constitute a quorum to do business." What business? Their ordinary legislative business, where a simple majority is only necessary to effect it. But surely no man can suppose that the clause last cited is to be applied to any case except to the legislative power which that clause precedes; or can torture it to have an application to a provision in the latter part of the instrument, wholly unconnected with it, and where two-thirds are necessary to give validity to an act.—For if any doubt could exist on that subject, it will be removed by adverting to the clause respecting the treaty making power and the power of impeachment; where two-thirds must concur and where it is confined to two-thirds of the members *present*. The using of the word present in these clauses proves, that the convention conceived that unless in these cases they had expressly confined it to the attending members, two-thirds of the whole number would be requisite to a decision; and it also proves that having omitted the word present in the important article of amendment, they did not mean in that case, that less than a majority of two-thirds of the whole, should be competent to act. To my mind it is impossible that a stronger implication can arise than what results from these clauses to prove that wherever they spoke of a majority of two-thirds as being necessary to act, they meant what every person would conclude, that it must be a majority of two-thirds of the whole, unless where they expressed themselves to the contrary. Nor is this construction at all affected by any of the precedents cited; for all of them relate to acts of ordinary legislation, except the case cited by a gentleman from N. York (Mr. Thomas) and another by a gentleman from Virginia (Mr. Randolph.) The first proves nothing; because it appears that there were sixteen members present, and no division on the question, and the whole of them may have voted in the affirmative; and as North-Carolina and Rhode-Island had not come into the union at the time the whole number of Senators was but twenty-two; so that sixteen was a majority of two-thirds of the whole. The same answer may be given to the other; for at that time this House consisted of fifty-nine members, and forty-nine were present and voted on the question, upon which no yeas and nays were taken, and all of whom from aught that appears to the contrary, may have voted for it.—From this view of the subject, therefore, I conceive, the resolution before us has not received the support of a sufficient number of the Senators, and I shall vote to discharge the committee of the whole from the further consideration of the subject.

Mr. J. CLAY. The gentleman last up from Maryland and the gentleman from Connecticut, have undertaken to draw a distinction between ordinary legislative business and other business confided to Congress. In the the 3d section of the constitution, the power to try impeachments is given to the Senate, and to the Senate alone. If the construction of the gentleman obtain, it is given only to the whole body, as this power is not conferred upon them in their ordinary legislative capacity. "The Senate shall have the sole power to try impeachments; when sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present." There are a great number of formalities which show the intention of the constitution to draw a distinction between this power and the powers of ordinary legislation. The section concludes by saying, no person shall be convicted without the concurrence of two thirds of the members present. Now, if the word Senate did not in all cases mean the members present, these powers will be exercised in direct contravention of the constitution.

The last article of the constitution is, that "the ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same." These conventions are bodies raised under the constitution, by which no quorum is provided; and under the construction contended for, must mean the whole bodies, by which it has not been ratified. If the construction then be correct, the constitution can be of no effect unless it has been ratified by them unanimously, which has not been done.

When we use such terms as House, people or quorum, we always mean a majority; otherwise we should run into absurdity; and gentlemen will see that in all cases where these terms are not restricted, they mean a majority, and that in other cases where a different meaning is intended, restrictive language is used.

In that part of the constitution respecting the election of President, if the construction of gentlemen be found, the words *whole number* are superfluous, it prescribes "that each state shall appoint in such manner, as the *legislature* thereof shall direct, a number of electors equal to the *whole number* of electors for Senators and Representatives to which the state may be entitled in the Congress." The word state does not here mean all the people, but a majority of them exercising political power through the members of their legislature.

In the case of the President refusing to approve a law, the words are the same as in the present instance. In such a case, I should suppose the legislative bodies were sitting in their legislative capacity, and in such case notwithstanding, according to the ideas of gentlemen, two thirds of the attending members would be insufficient to pass the law.

In the case of the amendments agreed to in the Senate in 1789, sixteen members were present; the gentleman from Maryland (Mr. Dennis) has stated that the whole body consisted at that time of twenty members; but the fact is it consisted of twenty two, two thirds of which are fifteen. Sixteen were present. I find the amendments were opposed by some members; and gentlemen will agree with me, that where members are in the habit of opposing measures, they will not be likely to vote for them. The inference is that some of the sixteen voted against the amendments on their final passage. I ask if the fair inference be, that only one member voted against them, if more than one voted against them, according to the doctrine of gentlemen they were not constitutionally passed, and therefore we are legislating under amendments to the constitution which are not part of the constitution, inasmuch as they were not constitutionally proposed.

MR. R. GRISWOLD. The first objection, made by gentlemen to the motion which I have had the honor to submit, is that this House has no right to enquire into the fact how the Senate passed the resolution on our table. It is said by the gentlemen from Tennessee and Delaware, that we have no right to enquire further than into facts as they appear on the face of the resolution. This doctrine I did not expect. What is the resolution? Is it any thing more than a record of the proceedings of the Senate? Is not the Journal of that House, also a record? And suppose, instead of receiving this resolution, as we have received it without information of the yeas and nays on its passage, the Senate had sent us a record of those yeas and nays, would the gentlemen then say we had not a right to draw an inference for ourselves, whether it was, or was not passed by a constitutional majority? The secretary in this case has only brought us part of the record; when we see the whole we perceive how it has passed, to wit: 22 members voting in the affirmative, and 10 voting in the negative; and whether the whole record is brought by the secretary, or whether we receive it in any other way, is altogether immaterial. For from the whole record we must at last decide. This is a sufficient answer to the comments of gentlemen. We have a right to view the whole record, and to determine from it, whether this resolution has been regularly passed.

The next objection is, that precedent is against us. But the fact is, that when the amendments alluded to by gentlemen, were passed in the Senate and House of Representatives, all the members were not present; and instead of taking the yeas and nays on them, the secretary of the Senate and of the House made a record that they were agreed to by two-thirds of the members present. Gentlemen infer from this fact that they were not passed by two-thirds of the whole members; but I do not perceive how they draw the inference. I admit that it was assumed by those who made up the Journals, that all that was necessary, was the concurrence of two-thirds of the members present; but it does not appear whether two-thirds of the whole members did or did not concur. This precedent therefore concludes nothing.

Hence we are brought back to the constitution to put our own construction on its several provisions; and I submit it to the House, whether its language is not clear, plain, and definite. The 5th article requires the concurrence of two-thirds of each House. What is meant by House? It must mean either a quorum to do business, or the whole members. To determine what it means, we must refer to the constitution, and see how the term is there used. The first expression of it, is in the 3d section, "the Senate shall be composed of two Senators from each state." This is perfectly clear and definite; you cannot compose the Senate in any other form. But gentlemen say, the term Senate is used in a different sense from the term House, and in one the meaning is different from that in the other. If gentlemen will turn to the 5th section of the 1st article they will find this language: "Each *House* shall be the judge of the elections, returns, and qualifications of its own members, and a *majority* of each shall constitute a quorum to do business." What is meant by *a* majority of each House? Barely a majority of a majority? This is nonsense—the term House then means every member; it is clear that such was the meaning of the framers of the constitution. I say, therefore, that when these parts are taken together, we obtain a clear and definite construction of what they meant by the terms House and Senate.

It is true there are some instances in which House means a quorum, such are the cases in which ordinary business is transacted, in which the House adjourns or expels a disorderly member. The words are there synonimous, yet in its strict meaning the word House means the whole members and all cases where it is intended to have a different meaning, are provided for by the constitution. In the 5th section of the 1st article it is said, "the yeas and nays of members of either House on any question, shall, *at the desire of one fifth of those present*, be entered on the Journal." Why introduce this language? For the plain reason that without it one-fifth of the House, that is of the whole number of members, would be required. This construction comports with the just remark of the gentleman from Pennsylvania (Mr Smilie) that every exception to a general rule should be construed rigidly, that is, in the present instance, without an exception, one-fifth of the whole members will be required. So in the case of impeachments and treaties, unless the expression were two-thirds of the members present, the concurrence of two-thirds of the whole would be necessary. Gentlemen will see in all these cases, as the honorable member from Pennsylvania says, the exception proves the thing. Where there is no restriction to two thirds of the members present or to a majority, the constitution must be construed according to the general principle.

It is not my wish to detain the House longer on this subject. I have expressed myself in general terms. I add that it is proper that in an affair of such importance, we should proceed with deliberation and caution. The subject is a new one, and it can do no harm to discharge the committee of the whole, and take it up seriously. Some gentlemen are of opinion that there are precedents which apply to the elucidation of this point; if the committee shall be discharged, they will have time to search for them, the resolution can be referred to a select committee, the journals be examined, and the House enabled to proceed with caution and deliberation.

MR. RODNEY stated two precedents in his opinion in point. One of which took place in May 1802, in the House of Representatives on an amendment to the constitution embracing the same principle with the present. The House then consisted of 106 members, two thirds of whom were 71. By the journals it appeared that an engrossed resolution of an amendment passed—Yeas 47—Nays 14.

Another precedent fresh in the recollection of gentlemen, he said, had been made this session. An amendment, containing the same principle, had passed that House; the whole members of which were 140, of which 95 constituted two thirds; and yet it would be found that it passed by 88 votes for, and 31 against it.

MR. LOWNDES replied that the amendment which had passed this House in 1802, had been agreed to in great haste at the close of a session; the act was inadvertent, and therefore was not entitled to much weight.

The Yeas and Nays were then taken on the motion of Mr. Griswold, to discharge the committee of the whole, as follow:

YEAS.—Messrs. Baldwin, Betton, J. Campbell, Chamberlin, Chittenden, Claggett, Cutler, Dana, Davenport, Dennis, Dwight, Goddard, G. Griswold, R. Griswold, Hastings, Hough, Huger, Hunt, J. Lewis, T. Lewis, Livingston, Lowndes, N. Mitchell, Plater, J. C. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, Wadsworth, R. Williams.—34.

NAYS.—Messrs. Alston, Alexander, Anderson, Archer, Bard, Bedinger, Bishop, Blackledge, Boyle, Brown, Bryan, Butler, G. W. Campbell, Casey, Claiborne, Clay, Clopton, Conrad, Crowningshield, Cutts, Dawson, Dickson, Earle, Early, Elliot, Eppes, Eustis, Findley, Gillespie, Goodwyn, Gray, Gregg, Hammond, Hanna, Hasbrouck, J. Heister, Hoge, Holmes, Jackson, Jones, Kennedy, Knight, Leib, Lucas, Lyon, M'Cord, M'Creery, Merriwether, S. L. Mitchill, N. R. Moore, T. Moore, Morrow, New, Newton, junr. Olin, Palmer, Patterson, J. Randolph, jun. T. M. Randolph, J. Rea, (of Pennsylvania) J. Rea, (of Tennessee) Richards, Rodney, Root, Sammons, Sandford, Seaver, Skinner, Smilie, J. Smith, (of New-York) Stanford, Stanton, Stewart, Thomas, Thompson, A. Trigg, J. Trigg, Van Horne, Varnum, Walton, Whitehill, M. Williams, Winn, Winston, Wynns.—85.

NEW HAMPSHIRE LEGISLATURE.

CONCORD, November 30.

On Wednesday last, the Honorable General Court convened at this place, agreeable to adjournment in June last.—In the afternoon, the Speaker of the House not having arrived, on account of ill health, the Hon. Nahum Parker, was elected Speaker pro-tem. The two Branches informed each other by respective messages, that quorums were formed, and that they were ready to proceed to business. A respectable committee was raised, to wait on his Excellency the Governor, and to inform him that the Legislature were ready to receive any communication he was pleased to make; his Excellency appointed Thursday, at 3 o'clock P. M. to wait on the two Branches in the Representatives chamber, and make his communications.

On Thursday his excellency the Governor sent the following communication to the House of Representatives, by Mr. Pearson the Secretary:

State of New-Hampshire, Nov. 24, 1803.

SIR,

The state of my health preventing me from waiting on the Legislature, as I have usually done at the commencement of a session, you will please to lay the inclosed communication before the Honorable the House of Representatives.

Your humble servant,

J. T. GILMAN.

The Hon. the Speaker of the House of Representatives.

Mr. President and Gentlemen of the Senate,
Mr. Speaker and
Gentlemen of the House of Representatives.

IN meeting you at this time, to which the Legislature was adjourned agreeable to your request, for the purpose of compleating some particular business enjoined by the constitution to be done within the present year, and for attending to such other things as may be found necessary for promoting and preserving the peace, liberty and safety of our fellow-citizens, permit me again to congratulate you on the general tranquility and prosperity, which is apparent throughout this State.

In free governments, constituted as our own, all the citizens have parts to perform in which each should consider his acts not only as relating to himself, but to others equally privileged, and to posterity. If this idea is correct, how much more incumbent is this duty on those who are placed in offices of public trust?—They must not be content with merely doing the duty of private citizens, but ought to be examples to others in all praise-worthy and virtuous conduct; and those who have the power entrusted to them, are under strong obligations to provide the means for and to countenance and encourage, the dissemination of useful knowledge, virtue and morality, as indispensible requisites for the support of a free government.

The subject of establishing a new proportion of taxes among the several towns throughout the state, will claim your attention. As it will necessarily require a considerable time to complete this business, permit me to ask that it may be taken into consideration as early in the session as may be convenient: more especially, as it will be necessary to pass another act for districting the state for the Senators which will be founded on this.

While we ardently desire to avoid the necessity of a standing army, the state of our militia has strong claims to Legislative attention; they are respectable for numbers, and possess a large portion of that spirit which was heretofore exhibited in the just defence of our rights, and which gave our country independence and rank among nations; but they are not as well furnished with arms and other means of defence, as would be desirable: In addition to this, many valuable officers, who have but small estates, finding the expences (which custom seems in some degree to have authorised) too burdensome, are induced to resign; this, with other causes, making resignations very frequent.

Some of the European nations, with whom our country have important commercial connexions and other friendly relations, are again involved in war; and while we view with regret the calamities to which they are exposed, it is presumed the neutral position formerly taken by our government, or the advantages which have resulted therefrom, sufficiently point out the propriety of avoiding all measures which may have a tendency to entangle us in their contest. And while we exhibit a pacific disposition towards other nations, love to our own country should incite to measures calculated for preserving peace and good order among ourselves, maintaining the independence and dignity of government, and preparation for repelling by force, (if necessary,) all aggressions from foreign powers.

In co-operating with you gentlemen, for the purpose of promoting the general welfare, I anticipate great satisfaction.

JOHN TAYLOR GILMAN.
Nov, 24, 1803.

Messrs. Ellis, Hale and Alexander, were appointed a committee by the House, to draft an answer to the governor's communication, who reported the following on Monday last, which was accepted.

May it please your excellency.

The House of Representatives receive with peculiar pleasure your excellency's congratulation on the general prosperity enjoyed by the citizens of this state. We trust that this will be admitted as no slight evidence that the duties of the citizen and the magistrate have in general been discharged with fidelity. The distinction between these several duties pointed out by your excellency, is felt and acknowledged: Those of the former are indeed sacred; but the latter have no other alternative than perjury, or a faithful performance of the reposed trust. A general performance of both these duties is doubtless necessary to the prosperity of every government—but we trust, that a free government constituted like our own, is best calculated to secure it.

The new proportion to be established for the future assessment of taxes, which alone rendered this adjourned session necessary, shall meet our earliest attention.

The importance of a well regulated militia, is too obvious to be questioned by any. It furnishes the means of forming a regular army with a promptitude we trust equal to the exigency of any possible invasion. That our militia possesses those qualities which distinguish and adorn the soldier, in a degree equal at least to that of any country, requires no other evidence than that to which your excellency has drawn our attention. He who can look back on our revolutionary war, and survey the valour and virtue displayed in the atchievment of our Independence, with one remaining doubt of the spirit of his fellow citizens, must found it only on those prejudices which should have been left with his birth-place beyond the Atlantic.—Impressed thus highly with the importance of our Militia, and the justness of its claims to our attention, we dare not pledge ourselves to provide a remedy for every defect in the present system of its laws; past experience forbids the hope that this can be brought to maturity without the aid of time, and the most careful attention; but our exertions shall be uniform for the promotion of so desirable an end.

We participate in the regret with which your excellency beholds the scourge of war again laid on some of the nations of Europe; But while the calamities which the contending parties are inflicting on each other, awaken our sympathy, they can scarcely fail to awaken our fears; of the difficulties to which even an honest neutrality is incident, we have had former experience. It must be guarded not only with caution, but with vigour; the sole security against aggression being an attitude calculated to repel it.

The several subjects, to which our attention has been or may be called, shall receive our most serious consideration: And we trust our exertions will be found in unison with those of your excellency for the promotion of the general welfare.

Five Dollars Reward.

STRAYED from the commons of Washington, about the 10th of November last, a small BAY HORSE, about 14 hands high, 8 or 9 years old, a white blaze face, one of his hind feet white, had on when he went away a lock and chain on one of his fore feet. Any person bringing said horse to the subscriber shall receive the above reward and all reasonable expences.

HUGH DENSLEY.

City of Washington, Dec 21—3t