Senate of the United States.

Debate on the petition of William Marbury, Robert Townsend Hooe, and Dennis Ramsay.

[CONTINUED.]

Mr. Wright said he was opposed to the resolution, he could not discover that the applicants had any right to the extract prayed for. The senate had by a specific rule declared the executive records a secret. But he could not conceive what benefit they (the petitioners) could derive from an extract if they obtained it. They ask that the secretary of the senate may be allowed to certify facts from the executive record; but the supreme court, nor no court would admit such a certificate as testimony, because the secretary had no seal. In order to get any benefit from this record, the court should allow the petitioners a subpœna to the secretary of the senate with a *duces tecum*. He challenged all lawyers upon this subject, and all men of common sense, they must all agree with him, that the thing prayed for could do the petitioners no good without a seal. But, Mr. Wright said, he had further objections against passing the resolution. It was well known why this certificate was requested, it was to aid in an audacious attempt to pry into executive secrets, by a tribunal which had no authority to do any such thing, and to enable the supreme court to assume an unheard of and unbounded power, if not despotism. It was to enable the judiciary to exercise an authority over the president, which he could never consent to. It was well known that the persons applying were enemies to the president, and that the court were not friendly to him, and under these circumstances, to interfere in the business, would be making the senate a party. No court on earth could control the legislature, & yet it had been held here on this floor that they could, and this was a part of the same attempt to set the court above the president, and to cast a stigma upon him. The president had a right to withhold the commissions from these justices, because they did not hold their offices *de bene merito*, but *de bene placito*.

Mr. Hillhouse remarked, that he did not discern any thing in the resolution under consideration that had the smallest relation to the character and conduct of the president, nor was there any thing in the application that could lead to such a conclusion. It is said there is a cause pending before the supreme court of the United States, in which it is important to ascertain the fact, that the senate did advise and consent to the appointment of the individuals named in this application to be justices of the peace for this territory, and a copy of the journals of the senate is requested for that purpose—the journals of the senate being the only evidence of the fact, can that evidence with propriety be withheld? The opinion that such copy would not be admitted as evidence cannot be correct, for it is the only mode in which many important facts, in relation to appointments to office, and the ratification of treaties, can be proved. For what purpose are these journals kept (which are the only record of the proceedings of the senate) if they are not to be resorted to as evidence of what is done in senate.

Suppose a question to arise in a court of justice relative to the office of a marshal or judge, and it should be claimed that there had never been a constitutional appointment to such office; for that the nomination had been rejected by the senate, and their advice and consent had never been obtained—or in case of a treaty with a foreign nation the president should by proclamation declare the ratification, and promulge the same as the supreme law of the land, where the senate had refused their advice and consent to such ratification—in neither case would the act of the president be valid without the previous advice and consent of the senate, and how can it be proved that such advice and consent has been had but by resort to the journals of the senate—Surely the commission or proclamation of the president could not be conclusive, because the senate are an independent body, on which the constitution has devolved certain executive duties, of which the president can have no personal knowledge, the performance of which duties are by the constitution made indispensible to the validity of certain acts of the president—in all those cases the president may be deceived, the secretary of the senate may by mistake or fraud certify that the advice and consent of the senate has been had to an appointment to office, or the ratification of a treaty, when the fact is otherwise, and where but to the journals of the senate can we resort to correct the error. It is a possible case that a president may assume the right, in opposition to the opinion of the senate, to make appointments to office, and ratify treaties; and shall it be said his commission or proclamation is to be admitted as conclusive evidence which cannot be questioned, and in that way evade the constitution: This would be giving to the president high prerogative indeed; it would be investing him with the absolute power of appointment—and declaring that his proclamation shall be the supreme law of the land. The commission of the president is undoubtedly high evidence of the appointment to office, and the proclamation of the ratification of a treaty, but cannot be conclusive, because the constitution has made the advice and consent of the senate a pre-requisite and indispensible to the validity of the appointment or ratification, and nothing can come in place of it—A rejection of this resolution will be a denial of right to an individual, and under any government would be considered as an arbitrary tyrannical act. Under these impressions he should give his vote in favor of the resolution.

Mr. Ogden observed, That there was no rule in society better established than the one which denies to an individual the right of withholding his testimony, when required to give it in a court of law, upon the prosecution of a legal suit. That this rule had no exceptions if the honor or interest of the witness would not be compromitted thereby.

That the present was a decent application to the senate, for the evidence of a fact, in their power to give, and upon which a suit at law had been predicated—That the petitioners, by applying for a copy of the executive journal, had pursued the only possible mode of obtaining this evidence—That parol evidence of the contents of this record could not be admitted, neither could a subpœna cause it to travel out of the office to which it belongs.

That although executive business is done with closed doors, yet there is no rule that the journal in question should be kept secret; that it was open to inspection, and that there was nothing to prevent the secretary from giving the copy, but the rule of the senate which requires that leave should be first obtained.

That no reason had been given, which was satisfactory to his mind, why this leave should not be granted.

That he would not delay the senate, by answering such arguments as had been adduced to prove that the evidence would not be admitted, and that if admitted, would not support the suit, because the court, before whom evidence might come, and not the witness, is alone competent to decide such points.

That it was not true, as had been stated, that no case would arise, where such copies as are now required, ought to be allowed; such cases had been put, and the most important rights of the citizen depend upon such testimony. That upon a *quo warranto*, where by the right to officiate as judge, although acting under a commission, might be called in question, such testimony would be allowed to go forth, if it would prove that this senate had never advised or consented to the appointment of such judge.

That a citizen might, in a court of law, deny the proclamation of a treaty to be the supreme law of the land, and prove its nullity by such testimony, if it would shew that such treaty had been negatived by more than one-third of the senate then present.

That if such copies might be allowed for evidence in any case whatever, it followed, that it would be proper to allow it in the present case.

That, no distinction existed between the present case, and the one which had been admitted during the discussion, when it was said, that the house of representatives, when parties to an impeachment, had a right to demand from the senate before whom the cause must be tried, the testimony of this executive journal. That in such case, the senate would sit *as a court*, and such testimony could not be obtained under the rule of the senate, unless leave should be given by the senate in their executive capacity; and that all parties, whose rights were interested, whether individual citizens or house of representatives, stood upon an equal floor, when in a court of justice.

That no danger, as had been apprehended, could arise in regard to the dignity of the president or the honor of the government. That our judges were an independent branch, and no possible presumption could be admitted, that they would do wrong, or transcend their jurisdiction, and that he should therefore with great clearness vote for the resolution on the table.

Mr. Jackson said, the executive journals ought not to be given to any applicants, much less to these.

He considered the whole as an attempt to injure the executive. The applicants had a process before the supreme court, and let them get along with it as well as they could, if they could obtain a decision of court in their favor, let them make the most of it; he hoped the senate would not interfere in it, and become a party to an accusation which might end in an impeachment of which the senate were the constitutional judges. One case he would agree might occur, when the senate must give up their executive records, and every thing else if required by the house of representatives, as evidence to support an impeachment; their call would be omnipotent in his opinion. But he thought the commission of the president was the only evidence of an appointment, and in all cases conclusive. And he would never lend his aid to set the judiciary above the executive. Let the applicants inform the house of representatives, if any officer of the government had injured them, and procure an impeachment if they could, this would be the proper remedy.

Mr. Brenckenridge. He said he had not supposed the question would have been so strongly contended. He thought sufficient reasons had been stated in the beginning for rejecting the resolution. But arguments had been brought in support of it which required some notice. It had been stated that extracts from the executive journal might be necessary to prove the right of an officer to his office. This was unfounded. The commission granted by the president was full and complete evidence of the authority granted to the officer. That it must always be presumed the commission had been granted in the manner prescribed by the constitution. This was a confidence reposed in the president by the theory of our constitution. That it must be presumed the president will do right. That a commission from him constitutes an officer not only *de facto*, but *de jure*, and is in its nature so conclusive that no court could enquire into the validity of it. That the contrary insinuation is derogatory to his dignity which the senate are bound to protect. That the senate should not countenance the judiciary in their attack on the executive power, which is not constitutionally amenable to the judges. That the case which had been relied on as to treaties was in its nature similar. The full evidence was contained in the president's proclamation. It was to be presumed that he had not ratified a treaty without the consent of the senate, and therefore full faith was to be given to his proclamation. That it was dangerous to countenance the pretension set up by the judges to examine into the conduct of other branches of the government: for that if they had a right to *examine*, they must have as a necessary incident the right to *control* the other departments of governmet. That such right was inconsistent with every idea of good government, and must necessarily degrade those branches which the judiciary should thus undertake to direct. The present suit was therefore levelled at the dignity of the first executive magistrate, and as he thought the senate bound to protect that dignity, he should vote against the resolution.

[*To be continued.*]

LONDON, December 4.

In Switzerland the senate has issued a decree, imposing upon all the cantons, in proportion to their resources, a war contribution of 900,000 livres (37,500l.) for the support of the French troops. One of the articles of the decree reserves to the senate the power of the exacting extraordinary contributions from those cantons, communes or individuals, what that body chuses to call the insurrection; upon which subject the executive power is directed to make a report within one month. This decree appears to be intended to throw nearly the whole burden of supporting the French troops upon the unfortunate patriots, under the pretence of imposing a general contribution upon the whole of Switzerland; thus, not content with depriving the brave defenders of their country's cause of their political liberty, and even imprisoning their persons, the oppressors of Switzerland will make them pay for the chains with which they have loaded them. Aloes Reding and Auf der Maur still remain immured in the castle of Arborg. Deputies from the cantons are continually setting out for Paris, but the elections are not yet completed.

Dreadful Fire.

Early on Monday morning the cotton mill, the property of Mr. Denison, and which has been lately worked by Messrs. Oats, Stevens & Co. situated near Pennyfoot Stile, Nottingham, was discovered to be on fire; and notwithstanding the immediate alarm, all assistance was useless, and in two hours this beautiful and extensive building was reduced to a mere shell. No description can do justice to the terrific grandeur of this spectacle; the building, which is nearly 120 feet in front, and six stories high, stands insulated, and was one of the greatest ornaments to the south view of Nottingham. In one hour after it was discovered, the whole of this elegant structure was a prey to this devouring element, ninety windows in front pouring forth columns of flame and combustible matter, so as to endanger hay stacks in the meadows at a quarter of a mile distant; and when the roof and cupola fell in, the effect can only be compared to a volcanic eruption. The contrast of this immense and widely diffused light to the darkness of the night, the illumination of the town, castle, and the surrounding villages, and the visible distinctness of the most distant objects in the landscape, produced such a sublime and vivid effect as it will be as vain for the pencil to delineate as the pen to describe.

Dreadful Shipwreck.

The following letter, respecting the loss of the Dutch Transport the *Vryheid*, is written by a young gentleman, residing at Folkstone, dated November 24:—

"Yesterday I witnessed a most melancholy and distressing sight. About seven o'clock in the morning, I beheld the waves running mountains high.

"About one o'clock I observed many casks floating, and the people running along the beach towards the rock, to procure whatever might fall in their way; before I could get to the point, the body of a fine young woman was driven upon the rock; she was entirely naked except one stocking and a leather garter, which was buckled below her knee.

"About a quarter of an hour after another female came in, with many different articles, such as cartouch boxes, puncheons, canteens, and soldiers' caps. I heard that the wreck was at a place called Brockman's barn, between Hythe and Dimchurch. I rode over there, and beheld such a spectacle as I hope I never shall witness again. The ship had passed Dimchurch about 8 o'clock in the morning, though the sea was dreadful, and appeared to be all well; about half an hour after she was driven on shore upon the sand; where she stuck fast, and almost instantly parted. There were upwards of 400 souls on board, out of which, (dreadful to relate) only nine were saved, one of whom died yesterday evening, and three others were not expected to recover.

"I rode for two miles along the coast from the wreck, towards Sandgate, which was covered with puncheons, musical instruments, muskets, &c. as also dead bodies of fine handsome men; the soldiers appear principally to be marines. There has been a great number of them carried away to Hythe church: in a mile and a half's ride I counted the bodies of 120. The seamen were observed handing seven or eight females up the shrouds, the most probable means of saving them, but shortly after the mast went by the board, and they were all plunged in the devouring element. There were near 100 poor fellows on a piece of the wreck, and very near shore, when a most tremendous sea came and swept every one off. A Mr. Kemp, of Hythe, saved one of them from death, by running into the sea. He was very near an officer, and had just got hold of him, when he perceived an amazing swell approaching, with a large piece of the wreck, and had only time to save himself, for immediately the timber knocked out the brains of the officer. On my return to Folkstone, I found two more women, and two or three infants, had come ashore; I also saw a sweet little girl, this morning, about 8 months old. Not an officer or female is saved. Every person here is busy on the beach picking up what they can; some find watches, money, skins, &c.

"It is astonishing that all the woman who came on shore are quite naked."

Another letter on this melancholy subject, dated Dover, November 25, states as follows:—

"The Dutch Indiaman, Vryheid, formerly the Melville Castle, an old crazy ship, which passed Dover roads in distress on Monday evening, having lost her mainmast, made signals for assistance, but the pilot boat which put off never reached her, as it came on dreadfully thick and tempestuous, so that she was soon lost sight of. In this helpless situation the crew were unable to keep her off the land, and about 1 in the morning she was driven on shore near Hythe, by the fury of the wind. It is supposed that out of the number on board, most of which were troops, and which amounted, with the crew, to above 400, not more than 13 have been saved. Every officer has perished; the floating bodies of the sufferers are as distressing to the eyes as their shrieks during a dark and stormy morning, were to the ear of humanity; and no attempt could be made to save them, that was not certain to involve in a similar fate all who should undertake it. The captain's wife was on board, and perished with her husband.

The following list of the crew is taken from one of the survivors: Soldiers 320—Officers 42—Seamen 61—Women 22—Children 7—Passengers 20. Total 472.

HOUSE OF COMMONS,
December 3.

Mr. Addington said, it was unnecessary for him to state that it was advantageous, and a great accommodation, to keep in circulation a certain quantity of exchequer bills, but it also required attention, to see that the amount was apportioned to the situation of the country, and the state of the money market. The quantity had always varied during the time of peace and the period of war. The sum issued had always varied during the time of peace and the period of war. The sum issued in November, 1801, amounted to 29,000,000l. but they had been since reduced, as the sum outstanding was not more than 15,000,000l. 8,500,000l. of exchequer bills had been funded pursuant to an act of the last session. The actual amount of exchequer bills on the 5th of January, 1802, was 20,588,000l. In 1793, the amount of the navy debt was 1,720,000l. On the 25th of October, 1802, it amounted only to 4,500,000l. so that it was reduced since last year nearly one half. After enumerating the advances made by the bank, on the permanent taxes which could not be considered in the market, and the 900,000l. saved by taking those exchequer bills, bearing an interest of three pence halfpenny per day, out of the circulation, there would remain only 14,000,000l. of exchequer bills outstanding, instead of bills to the amount of 32,000,000l. It was his intention, therefore, to provide additional exchequer bills, to fill up the chasm made by those charged on the aids of 1801. The sum would be 4,200,000l. He therefore proposed to raise 5,000,000l. by loan or exchequer bills, to supply the void, and to accommodate the public with 800,000l. This measure would not injure the market, as at present exchequer bills bore a premium; and though they were accepted as payments for duties or taxes, or were valid tenders for any claims of government, yet the exchequer bills paid into the treasury in these particulars were inconsiderable. At present there was a great demand for them in the market, and the issue he should propose would by no means injure their circulation or depreciate their value. He said it was his intention on this day se'nnight, to state the growing produce of the country to the house and also its financial situation, as far as the annual accounts could be made up. He concluded by moving that towards raising the supply for the year, the sum of 5,000,000l. be raised by loan or exchequer bills, which was agreed to, and the report ordered to be received on Monday next, to which the house adjourned.

[*Courier.*]

PARIS, November 28.

Much discontent prevails among the members of the senate. They in general behold their president with an evil eye, and look upon him as a person placed over them to assure their servitude, and to impress that direction upon their measures which may meet the wishes of their master. The first symptom that has manifested itself of this discontent is, their relaxation in the assiduity of their attention to Cambeceres. They now regard him only as a passive, or secondary agent, a mere impotent instrument of the consulate, to whom they blush to find themselves laid prostrate. The senate pay at the same time the greatest respect to the wishes of the sovereign, while they attempt to evince a kind of constitutional independence, in cases where they imagine his will is not so expressly announced. About a month ago a list was laid before them of 500 emigrants who were to be banished forever from the territory of the republic. This list, after a long debate, was referred to a committee, who would come to no decision upon it. Citizen Lanjuinais insisted particularly on the case of those emigrants who are accused of having betrayed the republic, some of whom were transported by the directory on the 18th Fructidor. To sanction such a proscription, said he, would be becoming accomplices with those who instigated that measure. Even for the honor, he added, of the chief ruler of the state, it was incumbent on them to remonstrate against such a list as that now presented to them. Would they have it said that a base jealousy could animate a noble and generous heart in discarding men who have excited our commiseration, and shall interest our feelings? The discussion continued to be carried on with great warmth for several days, when the counsellor of state, Fourcroy, declared, in the name of the government, that for particular reasons he wished to withdraw the list, and that he should, in the course of the next month, again lay it before the senate. [*Courier de Londres.*]

BOSTON, January 31.

We understand, that the following gentlemen are considered candidates for the office of senator of the United States, for this state, vice, Mr. Mason, viz. honorable Timothy Pickering, honorable Samuel Dexter, honorable J. Q. Adams, honorable John Bacon, honorable T. J. Skinner, and the honorable Joshua B. Varnum.

We are authorized to say, that the hon. J. Mason has declined being considered a candidate at the approaching election of a senator.

ALBANY, February 1.

On Friday last, a committee from the commissioners for auditing the accounts of the treasurer, reported to the house of assembly a large balance due from the treasurer to the state; upon which a joint committee from the senate and assembly was appointed to take into consideration the state of the treasury; consisting of Mr. Hatfield, Mr. Hogeboom, and Mr. L'Hommedieu, on the part of the senate; and Mr. Few, Mr. Lush, Mr. Comstock, Mr. Peck and Mr. James Green, on the part of the Assembly. And yesterday the committee reported that there is due from the treasurer to the state, the sum of 33,680 dollars and 85 cents: And that the committee were therefore of opinion that a new treasurer ought to be immediately appointed.

About the same time this report was made to the house, a communication was received from the treasurer, signifying his resignation of that office, which was accepted by the house.

NEW-YORK, Feb. 5.

Extracts from Lloyd's List, from the 9th to the 30th of November.

November 9. At Leghorn, Amphitrite, Sherman, and Robert, Dalby, from Philadelphia; Henrietta, Jones, from Baltimore; Experiment, Living; Betsy, Seton, from New-York.

November 12. At Helvoet, Two Generals, from Virginia.

November 16. At Portsmouth, Mariner, ——, and Mariner, Huntley, from Virginia. At Deal, Ruby, Wetham, Savannah. At Bordeaux, Anna, Graham, New-Orleans. At Nantz, Bon Menage, Brown, Virginia. The Alexander, an American, M'Intosh, got on shore near the Hotwells, Bristol, on Saturday last, and it is feared will receive much damage. The Catharine, of New York, from Copenhagen, put into Londonderry the 4th instant, with damage.

November 19. Off Liverpool, the Fox, from America. At Bordeaux, Amelia, Alston, Philadelphia.

November 23. At Bristol, Bristol Packet, Philips, from Virginia At Deal, Race Horse, Langley, from Leghorn; Oneida Chief, Kemp, December 21. At Barcelona, Ann, Isquels, from Virginia.

November 26. At Gravesend, 24, Oneida Chief, Kemp, from New-York. At Cowes, Canton, Miner, Charleston; Union, Gemmel, Baltimore. At Plymouth, Lascalles, Hozier, Virginia. At Liverpool, 22d, Ontaria, and Atlantic, New-York; Fame, Lewis; Independence, Wickham, Baltimore. At Hull, Ann, Coit, New-York. At Dover, Jane, Callender, Charleston. At Deal, 25th, Maryland, Webb, New-York. The Ontario, Lye, from New-Orleans for Holland, is lost near Black Harbor Island—only 7 men saved.

November 30. At Gravesend, Pigon, Collet, River Plata; Maryland, Webb, New-York. At Dartmouth, Washington, Liddle, New-York. At Liverpool, David & George, Abeel, New-Orleans; Polly and Sally, Virginia. Passed Goodwin Sands, 27th, Cato, from Amsterdam for Virginia. At Bombay, Juno, from Boston. [Lloyd's Lists mention many wrecks on foreign coasts.]

The Columbia, Watson, from Hamburg for Cadiz, was burnt at sea on the 3d of November.

PHILADELPHIA, February 7.

The schooners Sally, Smith, Portsmouth, (N. H.); Eagle, ——, North-Carolina; Sally, Bunce, Charleston; and sloop Sincerity, Wright, Barbados, are arrived at the Lazaretto.

The Hanna, Graham, of this port, has arrived at Bordeaux, from New-Orleans.

February 8.

The sloop Harmony, captain Elwood, from Alexandria, via Norfolk, is at Marcus Hook.

The schooner ——, Endicott, in 10