Congreſs of the United States.

SENATE.

THURSDAY, February 3.

Debate in the Senate of the United States on the report of the committee to whom was referred the Memorial of the judges of the Circuit Courts of the United States.

The following is the Report of the Committee, conſiſting of Mr. Morris, Mr. Roſs, and Mr. Ogden.

"That the petitioners were judges of certain courts, inferior to the ſupreme court, conſtituted by an act of the 13th of February, 1801, and duly commiſſioned to hold their offices during good behavior.

"That while holding and exerciſing their offices, an act was paſſed on the 8th of March laſt, to repeal the ſaid act of the 13th February, 1801, and transfer the duties of the ſaid judges from them to others.

"That a queſtion has ariſen, whether, by reaſon of the premiſes, the ſaid petitioners be deprived of their offices.

"That this queſtion depending on the conſtruction of the laws and conſtitution of the United States, is not properly cognizable by the ſenate.

"The committee, therefore, conceive it improper either to give reaſons, or expreſs opinions; but they conſider it as queſtion of high and ſerious important, and believe that a ſpeedy inveſtigation and final deciſion is of great moment to the commonwealth.

"Wherefore, they ſubmit the following reſolution:—

"*Reſolved*, That the preſident of the United States be requeſted to cauſe an information in the nature of a *quo warranto*, to be filled by the attorney-general againſt Richard Baſſett, one of the ſaid petitioners, for the purpoſe of deciding judicially, on their claims."

Mr. Morris—I riſe, Mr. preſident, as chairman of the committee, whoſe report you have juſt had the goodneſs to read, for the purpoſe of explaining their reaſons. If this were a common or an ordinary occaſion, if no heats had been excited, if there were no unpleaſant, no tormenting recollections, a meaſure ſo plain, ſo eaſy, ſo ſimple, would require neither argument nor perſuaſion. It would be adopted for its own interior evidence, and from the general ſenſe of propriety. Unhappily, ſir, this is not the caſe. Serious differences of opinion have exiſted, and ſtill exiſt on the ſubject with which it is connected. From theſe have ariſen diſputes, diviſions, bickerings. There is not, I fear, in the minds of men, that calm impartiality which is needful to fair inveſtigaeion.—There remains much of prejudice, of irritability.

Before I proceed to an explanation, therefore, I find myſelf reduced to the painful neceſſity of praying gentlemen to perform a great duty to this ſenate, to themſelves. I muſt entreat them to hear with patience, cooly to conſider, and then decide according to the dictates of reaſon and juſtice.

Your committee have purſued the courſe which appeared to be proper, not only in itſelf, but according to the exiſting circumſtances. Gentlemen will eaſily ſee that they might have made an elaborate report, containing a long detail of reaſons to eſtabliſh a favorite concluſion. And a ſlight knowledge of the forms of buſineſs, will ſhew that they might have placed that report at length on your journals. But would this have been right? Would it have tended to conciliate? Would it have been a proper return for the unanimity with which your committee was choſen? Surely it would not? And is it not the duty of every good citizen to heal, as far as poſſible, the wounds of ſociety? To calm thoſe irritations which diſturb its repoſe? To remove all things which may alarm, torment, or exacerbate?

We have heard from thoſe who are more in the confidence of our cabinet than we are, for we have no ſuch pretenſions, that there is reaſon to believe that this country is on the eve of war. I hope not. I hope we ſhall not be viſited by ſo great a calamity. But if this be our doom, let us prepare to meet it like men, with boldneſs, with unanimity. Let us baniſh, let us deſtroy every circumſtance that can excite or keep alive a ſpirit of party. Let the proudeſt foe be informed that he will find us firm. Let us march hand in hand, like a band of brothers, in the plain road of duty, and whether it lead to victory or death, we know it is the path to glory.

Mr. Preſident, your committee have no intention, no wiſh to revive a diſcuſſion of points already ſettled. While the act of laſt ſeſſion was in agitation, we oppoſed it ſteadily, pertinaciouſly. But that act has become a law, and to the authority of the law we bow ſubmiſſive. While in ſuſpence, we thought it our duty, as ſenators, to oppoſe. But ſince it has been adopted, according to the forms of the conſtitution, we know that as citizens we are bound to obey.—With theſe deep impreſſions, then, of what is due to the ſupreme law of our land, I ſhall proceed to the report of your committee, and endeavor to explain its ſeveral parts.

Gentlemen will perceive, that the queſtion which the memorialiſts have ſubmitted to our inveſtigation is, whether the law of laſt ſeſſion has deprived them of their office of judge? Your committee conſider this queſtion as not being cognizable by the ſenate. It is not for the ſenate, nor the repreſentatives, nor both combined, to interpret their own acts. We are a part of the legiſlature. A part of the executive power is alſo delegated to us. If the judiciary be added, it will conſtitute a tyranny. It is, indeed, the very definition of tyranny which has been given by thoſe beſt acquainted with the ſubject. This ſenate can have no wiſh to arrogate power. It is too juſt, too wiſe. If a ſenſe of propriety did not prevent, prudence alone would forbid the attempt. This body is too feeble for the exerciſe of ſo much authority. Its form, its conſtitution, the mode and manner of its creation and exiſtence, the ſtrength and ſtructure of its members render it incapable of ſuſtaining a greater weight of power.

The other houſe, indeed, immediate repreſentatives of the people, may do much. Borne on the heady torrent of popular opinion, they may, and they will uſurp all power. This will be the firſt ſtep towards military deſpotiſm. But the ſenate can have no ſuch madneſs. If we can preſerve what the conſtitution has intruſted to our care, it is as much as can reaſonably be expected. Nor can we preſerve it but by our integrity, and by that reſpect which juſtice inſpires; for "*Our cloud of dignity is held from falling by the weakeſt wind.*"

The ſecond propoſition of your committee is indeed a corollary from the firſt. They conſider this queſtion as cognizable by the judiciary alone. It is gone from us forever; and is, in the nature of things, before the judiciary, in common with all other laws. To agitate it again can produce no benefit, can tend to no uſeful object, can accompliſh no deſirable end. Our opinion, whether to affirm or to deny, can be of no avail. The other houſe, indeed, have given an opinion favorable to the claim. This may appear a ſtrange aſſertion to gentlemen who have amuſed themſelves with reading in newſpapers what are ſaid to be the ſpeeches of the members: But it is not from ſuch ſources that we are to derive the opinions of a legiſlative body, nor do they reſt on ſuch frail authority. By recurring to the journals of the houſe, I find, that on the day of they took up a reſolution reported by the committee of the whole, purporting that the memorialiſts, "*late judges of the circuit courts,*" have leave to withdraw their petition: And on this it was moved to ſtrike out the words *late judges,*" &c. which motion was carried by a ſmall majority. Now then, I ſay, that, if not directly, yet by clear implication, by ſtrong and neceſſary inference, the houſe have declared, that theſe gentlemen are ſtill judges. That they *were* judges is a fact unqueſtionable and of public notoriety. To ſay, then, that they are not late judges is to ſay that they ſtill hold their office, that they are *now* judges.

Such, then, is the opinion of the houſe. And they, in the plenitude of their power, may venture to expreſs that opinion. But we may not. It does not become us to prejudge. It is neitheir wiſe to commit our authority, nor juſt to influence the tribunals of our country.

Your committee, ſir, have ventured to expreſs their belief, that the queſtion ſhould be ſpeedily ſettled. I learnt in early youth, from the volumes of profeſſional ſcience, that it is expedient for the commonwealth that a ſpeedy end ſhould be put to litigation. And if it be important that litigation ſhould ceaſe between man and man, how much more important that a litigated point of public right, which intereſts and agitates the whole community, ſhould be laid at reſt? And if this be important in the general courſe of things, it is not, under preſent circumſtances, indiſpenſable? And how is it to be effected? By an exertion of legiſlative might? By force? Remember—Force will excite reſiſtance. Such is the nature of the human heart. Free citizens revolt with diſdain at the exerciſe of force. But judgment commands their prompt, their willing obedience. When the law is known, when it is declared by the proper tribunals, all will bow to its authority. You may then expect a full, and quiet, and general ſubmiſſion. But while it is litigated and uncertain what the law is, differences will exiſt, and diſcord will prevail.

Is it wiſe to embark in great national enterprizes, on the wide ocean of war, with a divided people? Can you hope for ſucceſs while diſcontent ſits brooding in the heart of our country? Theſe judges, indeed, are not numerous; but they do not ſtand alone. They have relatives, friends, adherents, from blood, affection, principle. Why will you wound a claſs of citizens, numerous and reſpectable? Can you, while they are aggrieved, injured, inſulted, expect their cordial aid, ſupport and aſſiſtance? But to this it may be ſaid, that theſe judges are but a feeble band: we can cruſh them and their oppoſition. We have the power. Yes, we have gigantic power; but ſhall we therefore uſe it with the ferocious cruelty of a giant? We *can* cruſh them. Yes—with the vaſt weight of legiſlative force we can *cruſh* them. But is it honorable, is it magnanimous, does it become the brave? Will it give the people a confidence in their rulers? Will it give them a confidence in themſelves, who have choſen ſuch rulers? If by an exerciſe of power we could even prevent an inveſtigation of our conduct, what would be the impreſſion on the public mind?—Suſpicion and diſcontent deep and dangerous.

It is under theſe impreſſions, ſir, that your committee have preſumed to offer the reſolution on your table; and as ſome of the technical terms may not be familiar to every gentleman, it may be proper to ſtate the kind of proceeding which is recommended.

The attorney-general, or, as he is denominated in French idiom, the public accuſer, will inſtitute, before the proper tribunal, an inquiry by what authority theſe men claim to hold and exerciſe the office of judge. It will then be incumbent upon them, either to diſclaim the office, and then there is an end of the queſtion: or elſe (claiming it) to eſtabliſh their right. And to do this they muſt prove two things: Firſt, that the office exiſts; and ſecondly, that of right it belongs to them. Failing of either, their claim is gone.

Now, ſir, it may be well to conſider the deciſions which may be made and their probable effect.

I take it for granted, that theſe gentlemen, who have aſked a judicial deciſion, will not diſclaim, and that whatever judgment may be given in the firſt inſtance, the cauſe will be brought up to the ſupreme court. If the judgment, in the laſt reſort ſhould be (as it probably would be) againſt the claim, all complaint will be quieted, and all oppoſition will ceaſe. Some then, indeed, might triumph. For my own part, I ſhould find in it great conſolation—the conſolation of knowing that, however wrong may have been my own opinions, the ſupreme legiſlature of my country have done right. The pride of opinion might, indeed, be wounded; but God forbid, that from motives of pride, or from any other motive, I ſhould hear, without deep concer, that the legiſlature of my country have violated that ſacred charter from which they derive their authority.

But ſuppoſe an opinion different, contrarient, or the very reverſe (for that alſo is poſſible)—Will the judges rudely declare that you have violated the conſtitution, unmindful of your duty, and regardleſs of your oath? No. With that decency which becomes the judicial character, that decency which upholds national dignity and impreſſes obedience on the public will, that decency, the handmaid of the graces, which more adorns a magiſtrate than ermined, aye, than royal robes, with that decency which ſo peculiarly benefits their ſtate and condition, they will declare what the legiſlature meant. They will never preſume to believe, much leſs to declare, that you meant to violate the conſtitution. There will be no dangerous and hateful claſhing of public authorities. They will never queſtion the exerciſe of that high diſcretion with which you are inveſted. ed. They will not deny full ſupremacy. They will not examine into your motives, nor aſſign improper views. They will reſpect you ſo long as they preſerve a due reſpect for themſelves. They will declare, that in aſſigning duties to one officer, and taking them from another, you have to conſult only your own conviction of what this intereſt or convenience of the people may require. They will modeſtly conclude, that you did not mean to aboliſh the offices which the conſtitution had forbidden you to aboliſh: and, therefore, finding that it was not your intention to aboliſh, they will declare that the offices ſtill exiſt.

Such, ſir, would be the language of your ſupreme judiciary, from the high ſenſe they entertain of their duty. And, if it were decent to ſuggeſt in this ſenate, that they were loſt to a ſenſe of duty, can it be believed, that a few feeble judges will dare oppoſe themſelves to the power of the legiſlature!

Having thus ſtated, in as few words as I could, the conſequences of adopting the propoſed reſolution, I will now take the liberty to inquire the probable reſult of rejecting it.

I pray gentlemen, moſt ſincereley, to conſider the neceſſary conſequence. Will it not be ſaid, that we are afraid to meet this feeble band upon the ground of free enquiry?—That we are afraid to contend with the weapons of reaſon and argument? Will you not be ſtrongly queſtioned? As thus—Are you confident that the judges are wrong—that their claim is unfounded? Hear them—refute them. Are your convinced, or do you only fear they are right? reject their requeſt, and, with the tyrant aſſign as a reaſon your ſovereign will.—Such muſt be the concluſion. From this dilemma it is not poſſible for you to eſcape. If you are right you will court inquiry, and ſhun it if you are wrong.

But what is ſtill worſe you cannot ſhun it. Theſe memorialiſts can be heard, whether you will or no. Spite of your reluctance they can bring on an inveſtigation. You may hide yourſelves beneath the heaps of your privileges and powers; but you will be traced to your lurking place, and the ſtrong arm of juſtice will drag you forth to the day. Yes, thoſe feeble judges can bring on the inquiry, in the very face of your power—will or not will—conſent or not conſent—ſubmit or not ſubmit—the inveſtigation which they aſk can take place. Is it not better, then, to meet them freely, fairly? to come boldly forward like men?

Sir, I will detain you but a few minutes longer.

It appears to me eſſential to the dignity of the ſenate, that you adopt this reſolution. It is more noble to meet than to avoid legal inveſtigation; and it is not a novel practice. There was a time when the American legiſlature ſubmitted their acts to judicial deciſion. At that time WASHINGTON preſided. Will it be ſaid the adminiſtration was then too humble? He, *indeed*, was modeſt and unaſſuming; but he had an inborn dignity of ſoul which taught him intuitively, to avoid vile ſhame and offenſive pride. He, alas! is gone—Yes, he is gone—and Oh Heaven! viperous ſlander purſues him to the ſilent tomb, and preys upon his aſhes. Pardon me, the name of Waſhington has excited recollections which fill my breaſt with anguiſh. Well—let him be forgotten. But let us not forget what he always remembered—Let us not forget what is due to ourſelves, to our country, to poſterity: that poſterity to whoſe judgment we commit our fame, the jewel moſt dear to honorable minds.

Mr. Nicholas roſe for information. He wiſhed to enquire whether, if the reſolution ſhould be adopted, a concurrence of the other houſe would be neceſſary, or whether the adoption by the ſenate would be final.

The vice-preſident ſtated that a concurrence of the other houſe would not be neceſſary. The reſolution was merely a requeſt that the preſident would take certain ſteps for aſcertaining a certain fact.

Mr. Cocke. I riſe, Mr. Preſident, to follow the gentleman from New-York, and not to bring forward any arguments of my own upon this ſubject that is now before you. I ſhall endeavor to follow him ſtep by ſtep, and anſwer all the obſervations that he has made. I ſhall not attempt to imitate his eloquence, and I could not do it if I ſhould try. He has talked about that great man, general Waſhington, and ſaid a great many fine things about him, which I cannot repeat. I hope I reſpect that man as much as the gentleman from New-York, but I ſhall endeavor to lay aſide the feelings that I might otherwiſe have, and keep to the point before the houſe, and leave him in his grave without diſturbing of him. It has nothing to do with the queſtion under conſideration now.

The gentleman has wandered over a great many ſubjects, and he tells us in one breath if we do not adopt this reſolution, we ſhall be ſkulking in ſome places, lurking holds, I believe he ſaid; and in another breath that we ſhall be dragged before the almighty judges of the nation.

Sir, this honorable ſenate is an integral part of the executive, of which the preſident is the head. How then can an inferior and ſubordinate part direct the conduct of the ſuperior part? It is clear therefore that we have no right as a part of the executive, to order or requeſt the preſident to do this. Have we the right then as a part of the legiſlature? Can the legiſlature aſſume upon itſelf the right of directing the executive? What is it that is intended by this reſolution? It is, Mr. Preſident, that the legiſlature ſhall interfere with the executive, and direct the preſident to interfere with the judiciary, for the purpoſe of getting pay for theſe omnipotent judges.

Sir, theſe judges muſt depend on the legiſlative will for their continuance in office, becauſe the legiſlature can make laws and repeal them when they pleaſe, and when a law is repealed and there is nothing for the judges to do and no office for them to hold they cannot exerciſe power or receive pay, and this is according to the conſtitution. How then can this ſenate, by adopting the reſolution aid in procuring pay for theſe judges, when they have nothing to do?—Judges they are called; they are not judges—I 'ſpoſe they have been judges.

The gentleman tells us we are agoing to be engaged in a war—bloody I ſuppoſe—Yes, no doubt very bloody. And before we get into this dreadful ſituation he would do away all oppoſition and party, and unite us like a band of brothers, as he ſo eloquently deſcribed it, and all this he would do by one great and manly exertion, to pay theſe omnipotent judges and thus prevent them from dragging us forth to ſhame and puniſhment.

Sir, my mind has no *accordancy* with ſuch opinions. We have a good right to ſay whether we want the ſervices of theſe judges or not, and if we do not, we don't need to pay them. I remember, ſir, laſt year the gentleman told us the likeneſs of a boat, and ſaid though we would not throw the man out of the boat, we would take away the boat from under him, and ſo he would be drowned. Now, ſir, ſuppoſe I hire a ſeaman to work a boat for me and I tell him that I will give him ſo much during good behavior, and after a while the boat becomes rotten and uſeleſs to me—he knows that I hired him to work that boat and for nothing elſe, can he come forward and ſay, you ſhall pay me for working that boat where there is none to work?—So theſe judges, we found that we had nothing more for them to do, the law was uſeleſs to us, and we repealed it; and now ſhall theſe judges come and demand their pay?

We are alſo alarmed with a *picturation* that the other houſe are agoing to aſſume all the power, unleſs we let the judges come in and keep them back. Sir, I am not afraid of the other houſe aſſuming the power. Does the gentlemen recollect that they are the immedate repreſentatives of the people, and that the people will judge whether they conduct well or not. The people don't want theſe judges as *guardians* to protect them from the other houſe nor from this houſe nor any body elſe, unleſs, as the gentleman ſaid laſt year, from their worſt enemies themſelves. I believe that the people do not ſtand in need of *guardians*, they can take care of themſelves and we need not hire theſe judges to take care of them.

One ſentiment of the gentlemen I highly accord with—and that is what the gentleman ſays that force tends to oppoſition. I believe this is true. The force exerciſed, or attempted to be exerciſed by Richard Baſſett and the others, has highly exerciſed my oppoſition to this reſolution. They have attempted to compaſs by *force or fraud*, I think it is force and fraud both together, the payment of their ſalaries, and the exerciſe of powers which have been taken from them and given to others.

Mr. preſident, I ſhall now make only a ſmall remark on the reſolution itſelf, and ſit down.

The committee ſay in their report that the ſenate cannot decide upon the petition, but the judges muſt decide it. For this purpoſe we muſt go to the common law. Sir, we have heard a great deal about common law, and about *informations*. I wiſh to know where we are to ſtop if we begin to authoriſe our courts to proceed by information. Are there not other kinds of information known to this common law, beſides information in the nature of a *quo warranto?* If we adopt one from the common law may not the courts aſſume more. Has the gentleman never heard of perſons being ſeized and put to death upon information? I wiſh to know where we are to ſtop; and whether we are to follow this common law till it leads us to thoſe ermined and royal robes which the gentleman has ſo finely deſcribed to us. Sir, I believe that we have power without common law or informations to decide upon this petition as well as upon other petitions that are brought before us. The very petitioning us—what does that import? Does it not import that we have the power and the right of deciding upon the petition? If the judges did not think that we had the power and the right what did they petition us for? I conclude then that we have the power and the right to grant or deny their requeſt, and I am therefore free to ſay that it is inexpedient to pay them for rendering no ſervices.

[*United States Gazette.*]

SALEM, February 11.

From a reſpected Correſpondent.

GLOUCESTER, Feb. 8, 1803.

THUNDER. On Thurſday, February 3d, about 5 o'clock, P. M. the clouds ſeemed to be in great agitation, and were driven by a briſk ſouthweſter. They ſeemed to collapſe or fold over each other; in conſequence of which, they thickened and gathered blackneſs, and began to diſtil in gentle ſhowers of rain. Very ſoon I ſaw the lightning play, and brandiſh its forked points, followed by gentle diſtant thunder. Three or four peals, with ſmall intervals between, preceded by crinkling lightning in the clouds, were diſtinctly heard; when a longer interval took place, and, "after a ſolemn pauſe," all at once the whole artillery of the ſkies ſeemed to be diſcharged, with a noiſe more like the wreck of worlds than an ordinary peal of thunder. About one mile and an half diſtant from this harbor, in the back grounds of a paſture, it broke upon a rock about 12 feet diamater, and the height above ground equal to the diamater; and it ſplit off from the rock a ſlab about 12 feet long, 6 feet broad, and 3 feet thick, and rent it all to pieces, and ſome of the fragments of conſiderable weight were thrown 10 or 15 rods from the original rock. The original rock was penetrated to its centre: It entered through ſeams, crevices, or fiſſures, which it either made or found in the rock, and reached the bottom; it broke from thence in three main branches, one in the centre, and the other two at each end; rending the earth three feet deep; throwing out rocks which lay in its way, ſome of them near a ton weight, to the diſtance of ſeveral rods. Theſe three branches took nearly the ſame direction, ſoutheaſterly, and ran in parallel lines about 6 rods to the margin of a meadow, where was ſtanding water, at the edge of which they all terminated abruptly, without leaving any traces of their further progreſs. Another branch broke out from under the ſouth end of the rock, and took a ſoutherly route along the margin of the aforeſaid meadow, for 40 rods, removing every thing which ſtood in its way, till it reached the water alſo. A fifth branch took a northerly direction, marking its way ſuperfically in a ſerpentine manner, gouging out a path, about an inch wide, and half an inch deep: in its way it paſſed over ſome rocks, which were nearly on a level with the ſurface of the earth, marking its path over thoſe rocks with a pale white, and leaving a light duſt of the color of the aſhes of a ſegar. In its way it paſſed over other rocks much in the ſame poſition, without leaving any track at all. This branch continued on in a zigzag manner, till it reached a large rock, judged by ſpectators to be of 30 tons weight; it penetrated under this huge rock, and raiſed it out of its bed 4 inches: it then took a weſterly courſe to another large rock, tearing the ground all round it, and here it ſpent itſelf.

The neareſt houſe to this ſcene of terror was about 200 yards off. In it were ten perſons ſitting in a ſocial circle. The concuſſion of the air was ſo great as to ſtrike them all into ſilent aſtoniſhment: it threw the father of the family involuntarily on his feet; all the reſt kept their ſeats; and he at firſt ſuppoſed them all lifeleſs ſtatues, till the mother broke ſilence and ſaid, "*The end of all things is come!*" others groaned; ſome deeply ſighed; but after a little reflection they found that none of them had received eſſential injury.

NEW-YORK, February 15.

At a meeting of the ſtockholders of the United Inſurance Company, yeſterday, the following gentlemen were choſen directors for the enſuing year:

William Henderſon, William Hill, Cornelius Ray, John Shaw, Richard Varick, Joſhua Waddington, John Murray, John M'Vickar, Thomas Buchanan, Robert Bowne, Daniel M'Cormick, William Edgar, John Watts, Richard Hartſhorne, John I. Glover, Frederick Rhinelander, and Dominick Lynch.

William Henderſon, eſquire, was choſen preſident.

February 17.

Arrived yeſterday, through the Sound, the ſch'r Atlantic, Waring, in 22 days from Barbados to New-London (where ſhe arrived in diſtreſs) and 13 from New-London. Pork at Barbados 28 to 30 dollars, beef 11, and flour 6 50. Left ſch'r Lydia from New-York for Surrinam, put in there with the loſs of her deck load, cables, anchors, foreſail, jib, &c. and had ſprung her bowſprit; ſhip Alfred of Kennebunk, for St. Vincents; ſloop John, Swain, from Cape-de-Verds, bound to leeward; and ſch'r Mary, of Nantucket,