Congress of the United States.

HOUSE OF REPRESENTATIVES.

Tuesday, November 21.

On Mr. Griswold's motion to discharge the committee of the whole from the resolution of the senate for AMENDING the CONSTITUTION.

Mr. Dennis. This, sir, is a motion to discharge the committee of the whole from the resolution of the senate, on the ground that that resolution comes to this house unsupported by such a constitutional majority of two thirds of that body, as is requisite to amend the constitution. It therefore becomes necessary incidentally to discuss the point, whether a majority of two-thirds of the attending members, or of the whole number of senators be necessary, to give validity to the proposed amendment; for if this resolution is not supported by the constitutional majority, it is a nullity in itself, and the sooner we are discharged from it the better.

But here we are met in the outset by an objection from the gentleman from Delaware, which ties up our hands and precludes us from this investigation. I incline to think that gentleman hazarded the position without that deliberation and caution, to which he is accustomed; for his argument would go to the extent, that if this resolution had passed by a bare majority of the senate and was reported by their secretary as passed by the constitutional majority, it would be so conclusive upon us, that we should not have a right to assert the negative. Whatever is done by the competent authority ought to be presumed to be rightfully done, but this presumption ceases when the negative appears. According to our construction of the constitution, the negative does expressly appear, for we know the resolution was passed by a less number than a majority of two-thirds of the members of that body. Notwithstanding the objections made to the evidence, independently of the personal knowledge of the members of this house, we have a transcript from the journal of the senate under the official signature of their secretary; which I had thought was as good evidence as could reasonably be required.

In relation to the constitutional question, perhaps little can be added to the remarks of the gentleman from Connecticut (Mr. Griswold;) because I think the passages cited from the constitution by that gentleman, and the deductions drawn from those passages, demonstrate the proposition which he contends for; which is, not that every member of the legislature should be present as some gentlemen suppose, but that there shall be a sufficient number present voting in the affirmative to amount to a majority of two-thirds of all the members. If we look into the constitution we shall find in the first section it declares all legislative power shall be vested in a congress, consisting of a senate and house of representatives. 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 New-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 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 U. 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 shew 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 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 sound, 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 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 parts 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, viz. 22 members voting in the affirmative, and 10 voting in the negative; and whether the whole record is bro't 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 third 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 first 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 one hundred and six 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 83 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 inadvertant, 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. Griswould, 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 Tenessee), Richards, Rodney, Root, Sammons, Standford, 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.

Wednesday, December 21.

Mr. Dennis observed that he was one of those who had long been of the opinion that the existing duties paid on certain imported articles ought to be either taken off or reduced. He considered the situation of the country such as would now justify a reduction. He, therefore, moved a resolution, declaring it expedient to reduce the duty on brown sugar to one cent per lb. and enjoining it on the committee of ways and means to bring in a bill for that purpose.

Ordered to lie on the table.

The house went into committee of the whole, Mr. Tenney in the chair, on the bill for the relief of Paul Coulon.

The committee reported the bill without amendment, and the house ordered it to a third reading to-morrow.

The house went into a committee of the whole, Mr. Varnum in the chair, on the bill to incorporate the directors of the Columbian Library company.

Mr. J. Clay moved an amendment to limit the term of incorporation to fourteen years.

Motion lost. Ayes 25.

After making a few verbal amendments, the committee rose, and reported the bill, and the house ordered it to be engrossed for a third reading to-morrow.

The house took up the resolution of Mr. Claiborne, made yesterday, for the appointment of a committee to enquire whether any, and if any, what description of claims against the United States are barred by statutes of limitation, which in reason and justice ought to be provided for by law, with leave to report by bill or otherwise.

Resolution agreed to without a division, and referred to a committee of seventeen.

Mr. Stanford moved an instruction to the post-office committee to enquire into the most convenient route, designating the same, for the mail from Washington to New-Orleans.

Agreed to without a division.

Thursday, December 22.

A message was received from the senate, advising the house that they insisted on their amendments to the salary bill, and had appointed a committee of conference.

The house went into a committee of the whole—Mr. Varnum in the chair—on the report of the committee of claims, in the case of the Danish brigantine Henrique.

After a debate which occupied the day, the committee rose, without coming to a decision, and the report of the committee of claims was recommitted.

NEW-BEDFORD, December 16.

Arrived, ship Wareham, Baxter, from the Isle of May. Left there, October 26, ships Mars, Barney, of Nantucket; and Uncle Toby, Swain, of New-York, to sail in four days for the South Seas; Victory, Becknal, of Marblehead, for Boston; brig Union, Smith, of Alexandria; schooner Four Brothers, Rich, of Boston, for Alexandria; ship Hunter, Butler, of New-Bedford; and sch'r Ajax, Hussey, of New-York, sailed 25th September for the South Seas; ship Herald, Hathaway, of New-Bedford, 30th September; ships Henry, Myrick, and Renown, Coffin, of Nantucket, had also touched at the Isle of May, and sailed for S. Ocean; the former obtained 110, and the latter 50 barrels oil, on their passage off; brig Lucy, Ceely, of New-Bedford, was at Bonavista 25th September; ship Commerce, Extine, from Liverpool, on a skinning voyage, and armed in order to take French whaling ships, had been 3 months out of port, and cruized 2 months for the above object, without taking any thing. Capt. Baxter spoke, Nov. 22, lat. 28, long. 64, 30, brig Mars, Cushing, 34 days from the isle of May, for Boston; brig Sussex, Joseph Addington, master, 48 days from Bristol, England, of and for Norfolk, put in here in distress, having lost her main-mast, sprung a leak, and received other material damages. Left at Bristol, brig Industry, Stanley, of and for Norfolk, to sail in three days; brig Minerva, of Baltimore, loading for Lisbon; ship Mary, of Boston; brig Diana, of New-York; brig Hannah, Rian, from New-York, bound to Havre-de-Grace, sent in by the True Blue privateer, had been cleared, and was discharging. Spoke Nov. 24, lat. 34, long. 47, 30, brig Salem, Dickson, 28 days from Amsterdam for Boston.

Ship Walker, New-York; sloop Rosetta, Howland, do. sch'r Columbia, Howland, Boston; sloop Fame, Atkins, New-York.

At Holmes's Hole, 12th inst. a black-sided schooner, capt. Harrison, from St. Bartholomews for Salem, 32 days past lost both masts. None of the crew were lost.

NEW-YORK, December 23.

Mr. Dawson, who arrived here on Wednesday, in the brig Aurora, from Port-au-prince, has furnished us with the following information, in addition to that given in the last number of the Mercantile Advertiser:

"Agreeably to advices received at Port-au Prince from gen. Dessalines, he had on the 22d ult. attacked the Cape with all the active force he could raise, said to amount to from 20 to 25,000 men. The descent was effected from Morne du Cap. After having passed the outlines and several of the block houses, an action ensued between the troops of Dessalines and Rochambeau, which continued eleven hours with the greatest obstinacy, when general Rochambeau was under the necessity of capitulating for the evacuation of the Cape on the 1st instant. All the troops posted at the block-houses between the barrier and Haut-du-Cap (the out posts) were massacred, as all possibility of escape to the town was cut off. Agreeably to the capitulation, Rochambeau with the army under his command were to be embarked under the protection of the British cruizing fleet. When Dessalines left Port-au-Prince, he nominated Petion (a mulatto) general of brigade and commandant of the place in his absence.

"The people of color, particularly the women, experienced the most cruel treatment, having been put to labor on the public works, with negro women to superintend them. The American vessels with provisions were compelled to part with them to the government, and were promised payment in coffee at 3 and 4 months.

"Dessalines had given assurances of respect and protection to the American merchants residing at Port-au-Prince, which he had partially observed while Mr. Dawson was there. His officers, however, acted as they thought proper.

"Dessalines is proclaimed captain-general of the colony; Clairveaux, Christophe, Petion, and several other mulattoes, are ranked as generals of division and brigade."

By a letter received from Copenhagen of the 14th September, it is said, that at that time it was a common talk, that the island of Porto Rico would be ceded to Denmark.

"Letters of the 24th ult. just received from Natchez, contain the information that Dr. Frederick Zerbon, a gentleman originally of Philadelphia, who has been for some years resident at New-Orleans, was a few evenings previous attacked by assassins, as he was riding along the opposite side of the river Natchez, and shot with a brace of balls through the body. His life was considered in danger when the letter was written."

FROM PORTUGAL.

Captain Woodbury, arrived at Newburyport, sailed from Oporto the 1st of November, at which time the news was received there from Lisbon, that affairs had been so adjusted between the first consul and the Portuguese government, that the latter had submitted to become tributary, on Bonaparte's own terms, in order to preserve their neutrality or rather to observe a forced partiality to the French, for it seems they are to exclude British ships of war from their ports.

There had been two English packets taken by the French, from Lisbon, one of them containing 30 millions sterling, in bills and specie.

The markets at Oporto, were very good.

Arrived, (homewise,) the sloop President, Skidmore, from Richmond, and 5 days from Norfolk. Spoke, in Hampton Roads, the ship Janus, from New-York, for Virginia. Sailed in co. from the Roads, the ship Eliza, Bisset, 45 days from Cadiz, for Philadelphia, having put into Norfolk, in distress, on the 15th instant.

Same day, the sch'r Araminta, Smith, in 6 days from Washington, N. C.

Same day, the schooner Lavater, Dudley, in 9 days Washington, N. C.

Same day, the schooner Little Edward, Crowell, in 12 days from Charleston.

Same day, the sch'r Lætitia, Brown, in 7 days from Edenton, N. C.

Same day, the schooner Paragon, Jackson, from Richmond, and 6 days from Norfolk.

Arrived yesterday, the ship Young Factor, Gardner, 58 days from Amsterdam. Left ship Betsy, Jay, of Boston; Java, Cunningham, Baltimore; Ardent, Williams, do. President, Gallop, do. ——, Westcott, do. Sailed in company ship Commerce, Layton, of Newport; Rebecca, Butman, Portland; Anthony Mangin, Taylor, for Madeira; Merchant, Curtis, of Portland, for St. Ubes; brig ——, Salem; Nicholson, Boston. Spoke October 27, off Dunkirk, the ship Hannah, of Salisbury, from Norfolk, for Havre, endeavoring to get into Dunkirk.

Same day, the brig Triton, Burchmore, in 70 days from Norway, via Newport.

Same day, the schooner Mechanic, Sturges, in 10 days from Alexandria.

Same day, the brig Cyrus, Johnston, in 11 days from Alexandria.