Wilmington Gazette.

PUBLISHED WEEKLY BY ALLMAND HALL.

Three Dollars per Annum.] THURSDAY, MARCH 18, 1802. [Vol. VI.—No. 271.

SENATE of the UNITED STATES.

Friday, jan. 15.

JUDICIARY BILL

Mr. WRIGHT of Maryland, obſe ved, that he had b en called forth ear'y in this debate rather to defend he ſta e he had the honor to repreſent, from the unkind imputation of 'a violation of her conſti ution,' (in which he flattered himſelf he had ſucceeded even to the ſatisfaction of the honorable gen leman himſelf, who, he preſumed from miſinformation, had been induced to make it,) than from any de ſire at that time, to enter into the diſcuſſion of the merits of the reſolution before them, and al hough it had already occupied ſo much of the time of the ſena e, and had been ſo ably and ſo fully diſcuſſed, by honorable gentlemen of great abilities and experience on both ſide, yet he ſhould preſume to call their attention to ſuch prominent features of the caſe as had been impreſſive on his own mind.

This ſubject has been brough before us in the impoſing ſhape of a recom mendation of the Preſident of the United States, the national the conſtitutional organ of the government, in his official meſſage to congreſs on the ſtate of the Union; a duty impoſed on him by the expreſs letter of the conſtitution, a duty he was bound by the moſt ſolemn obligations conſti tutionally to diſcharge, a duty that renovated and enlightened America had too recently ſelected him to diſcharge, to readily to believe he would unconſtitutiona ly abuſe

Sir, this ſubject has been ſu mitted to the conſideration of the congreſs of the Uni ed States, a body ſelected for their patriotiſm, their wiſdom, and their virtues, the conſtitutional organ of the legiſlative will of the nation, in order to inform their minds, and point their attention o the grea and important ſubjects on which they were convened to d libe rate, on the honeſt diſcharge of which every thing valuable o America depends. This ſubject had not been brough before them in a manner to coerce a haſty or an immature deciſion on the ſubject, nor had i been left on the vague foundation of ſuggeſtion or conjecture, bu it had been brough before them in a manner that impoſed deliberation, and had been ſupported by documen s tha had paraliized and a moſt ſealed the lips of oppoſi ion on the point of its expediency.

But, however impoſing the manner, or how ever incontrover ible the matter on which the reſolution was predicated, ye , honorable gentlemen are found on this floor to oppoſe it as a meaſure of that adminiſtration hey feel indiſpoſed to ſuppor t, particularly as it impli cates the po icy of the la e adminiſtration, and indeed a meaſure which was the work of their own hands, which mankind at all times have been prone to admire, and however convinced of ther erro s, have with g eat reluctance been brought to confeſs them.

Sir, it would ſeem by the courſe of the arguments on the preſen queſtion, that we had it in con'emplation to break down the federal judicia y al ogether, and to ſubvert ancient foundation, and as if the agents or perpe ra tors (as the gen leman from Connecticu has poli ely called them,) with polluted hands, intended to deſtroy that conſtitution, they had ſworn to ſupport, and to leave the commuiity without a judiciary to enforce obedience to the laws, whereby he ſtrong might give law to the weak, the rich oppreſs the poor, and the artful and the wicked impoſe on he weak and uninformed; and all with impunity; and indeed would induce a belief, that they alone had either life, liberty, or property to be protected But the fact is, that the old judiciary ſyſtem, that has anſwered every neceſſary purpoſe f om the commencement of the government, remains inviolate. It is the new ſyſtem eſtabliſhed at the laſt period of the laſt ſeſſion of cong eſs, a ſyſtem whereby ſixteen new judges were introduced as circuit judges, ſeveral of whom had been promo ed to be circuit judges from diſtrict judges to make room in the diſtrict courts, for gen lemen of congreſs who aſſiſted to eſtabliſh this new ſyſtem, and who therefore were by the conſtitution diſqualified to accept hat office, created during the time for which they were elected to ſerve in congreſs, and as he had ſaid before, thereby, indirectly minted offices for themſelves and the favorites of an expiring adminiſtration—a meaſure reſiſted by the republicans in both b anches of the na ional legiſlature, a meaſure which was carried into operation by thoſe from whom he people have revoke their confidence at the moment the powe was paſſing away, a a time when the buſineſs in the federal courts had declined nearly one half, and when the ſedition law had ceaſed to be an engine to reſtrain the liberty of the preſs, and to puniſh men for the expreſſion of their honeſt political opinions—was a'l that was intended to be repealed

Here let me call your atten ion to the letter of the reſolution, which on reading it will be found to ex end no fur her than to the repeal of the act of congreſs of the laſt ſeſſion, by which ſixteen new federal judges had been created, and a ſyſtem eſtabliſhed at the annual expence of 130,000 dollars. We are now called on as the repreſenta ives of the nation, the organ of their legiſla ive will, to determine whether th's law, which has been ever odious in the ſight of the people, and whoſe birth was not entirely legitima e, ſhall be repealed.—We are informed by the Preſident himſelf, that it is unneceſſary, and that fact has been eſtabliſhed by the document ſubmi ted to us on the ſubject of he judiciary courts of the United S ates. We are informed alſo, that on the repeal of this law, and the making ſome retrenchments, in he naval and mi itary eſtabliſhmen s, which have been already progreſſed in, is predicated the repeal of the odious internal taxes; and in this manner and to effect this deſirable purpoſe, this ſubject is brough before us. Can we then heſitate to relie ve our people from the burthen of their odious internal taxes, by the repeal of this unneceſſary law? I ſhould preſume not if governed ſingly by a regard to he public welfare; but we have notwithſtanding been told by honorable gen lemen, on the o her ſide of the houſe, that this law ought not to be repealed.

1. Becauſe it is inexpedient.
2 Becauſe it is unconſtitutional.

Upon the firſt point, that of i s expediency, he ſhould not de ain the ſenate longer than to obſerve, that the document on our able ſhews that the old judiciary ſyſtem, which had been coeval with our government, and had been in operation from its commencement, has been at a l times ſufficient fo he tranſaction of all the judicial buſineſs of the Union; that the buſineſs in the cour s had already declined nearly one half under the old ſyſtem, even at the momen of he eſtabliſhment of the new o e; alſo that it was conte plated to repeal he odious in ernal taxes, a conſid rable ſource of litigation; and ha the more odious ſedition law had expired, which they all knew had been a ſource of conſiderable litigation, and he was ſorry to add, had no placed he judiciary ab ve the reach of abuſe; but whether deſervedly or no , he dared not to affirm: and that the peace we had lately eſtabliſhed wi h France had put an end to ano. ther ſource of litiga ion, that of admiralty cauſes on the prize ide of the court of admiralty. From this view of the ſubject he himſelf was entire'y ſatisfied of the expediency of the repeal, and had little doubt that every gentleman was equally ſo, that any evidence could convince.

As to the point of its being unconſtitutional—It will be recollected that the Preſident himſelf has recommended the repeal of this law; an evidence of its conſtitutionality of ſo high autho ity with the enlightened people of America, that if it ſtood ſingly on that, it would requi e a federal hoſt to ſtake it, but we know the e are honorable gentlemen on this floor no diſpoſed to conſeſs their reſpect for that authori y on this occaſion.—Thoſe gentlemen I will refer to the conſtitution itſelf, from whence I preſume it will appear that the power now propoſed to be exerciſed is clearly delegated.

In the 8th ſection, 9th article, Congreſs ſhall have power to c nſtitute tribunals inferior to the ſupreme court.—In the 7th article Congreſs ſhall have power to eſtabliſh poſt-offices and poſt-roads. Theſe are the preciſe expreſſions by which Congreſs acquire the power over the ſubjects of the inferior courts and of the poſt-offices; there is no other authority given them but by theſe articles; there is no expreſs authority to aboliſh either courts or poſt-offices, but the ſubjects are reſpectively given to Congreſs to exerciſe their legiſlative will upon, in ſuch manner as ſhould beſt promote the public good.—I would aſk gentlemen, if Congreſs have not eſtabliſhed poſt-offices without number, & aboliſhed them at their will and pleaſure, by virtue of their authority under the 7th artic e, above ſtated; and I ſhould be glad to hear from whence the authority to aboliſh poſt-offices is derived unleſs from the ar icle that only expreſsly authorizes their eſtabliſhment, and whether the authority given over the ſubject has not in all paſt times been held ſufficient to juſtify the aboliſhing as well as eſtabliſhment of poſt-offices.—He then called on the gentlemen in the oppoſition to point out a difference between the powers of Congreſs over the inferior courts and the poſt-offices, and to ſhew how it was that Congreſs could aboliſh the poſt offices under an authori y to eſtabliſh them, and no to aboliſh the inferior courts under the like authori y to eſtabliſh them, & how the ſame phraſeology that is uſed in veſting the power in Congreſs over the poſt-offices & inferior courts, can be to ured ſo as to authorize the aboliſhing poſt-offices & not to au horize the abo iſhing the inferior courts — But we have been told that by the 1ſt ſection of the 3d article this buſineſs is to be explained; let us examine it.—The judicial power of the United States ſhall be veſted in one ſupreme court, and in ſuch inferior courts as Congreſs may from time to time ordain and eſtabliſh. The judges of the ſupreme and inferior courts ſhall hold their offices during good behaviour. By this it has been inſiſted, that he judges of the inferior, as well as the ſuperior courts hold their offices during good behaviour, and that we have no power to paſs this repealing law, becauſe it would operate to diſmiſs the judges.

He ſaid that Congreſs by an extraordinary legiſlative act with the concu rence of two thirds of the ſtates, had a power to aboliſh even the ſupreme court. He aſked in ſuch caſe what would become of the judges? Would they be entitled to hold their offices as judges, when in the eye of the conſti u ion there was no ſuch office? No cer ainly! The conſtitution meant, and cou d mean no hing e'ſe than a judge under the conſtitution, and the momen the conſtitution diſcon inued the office, the judge under the conſtitution ceaſed to ha e a political exiſtence, & would not be known to the conſtitution as a judge. So he concluded by an ordinary act of legiſlation, the Congreſs might repeal he law erecting the inferior cour s, and on the repeal of the law from whence the legal exiſtence had been derived conſtituting them judges, he ſhould be glad to hear how they could be judges; that being created by the law, they derived their exiſtence from the law, and could not as judges ſur vive it; the conſtitution means a judge known to he law, and not the man who had been a judge, after his political diſſo u tion. He inſiſted hat Congreſs can eſtabliſh legiſlatively, a court, and thereby create a judge; ſo they can legiſlatively aboliſh the cour and eventually annihila e the officer, that the inferior courts are creatures of the legiſlature, and that the creature muſt always be in the power of the creator; that he who creates can deſtroy.—But we are aſked by the honorable gentleman from New-York, in anſwer to this, "has a man a right to deſtroy his own children." Mr Wright ſaid he had been taught to believe that man had not been his own creator, but he happy inſtrument of creation—But this power that is now denied to us, had been exerciſed by the gen lemen themſelves, in the very law that is now intended to be repealed. You will ſee by adverting to that law, the diſtrict courts of Tenneſſee and Kentuckey annihilated. But we are told by honorable gentlemen, that there was a circuit court eſtabliſhed, conſiſting of theſe two ſtates and another ſtate, and that the judges of the diſtrict courts were appointed judges of the circuit courts, and accepted their commiſſions as ſuch, and therefo e they ſay that they did not deſtroy the office of the diſtrict judges of Tenneſſee and Ken uckey—He aſked if each other ſtate had not diſtrict courts; he aſked if there had not been circuit courts eſtabliſhed in all the ſtates by that law, and if the diſtrict courts of the other ſta es had not been continued; and can it be ſaid that a diſtrict court compoſed of a ſing'e ſtate as in the caſe of Tenneſſee and Kentuckey, is not aboliſhed, and the office of a diſtrict judge deſtroyed, becauſe in the ſame law a circuit court is eſtabliſhed, and the diſtrict judges appointed circuit judges? Can it be ſaid in fact that it is the ſame office, when the duties are extended to three ſtates, to ſit in three places, as it was when limited to one ſtate and one place; or will gentlemen tell us that if the judges of the diſtrict cour s had refuſed to act as judges of the circuit cour s, whether they would have been ſtill judges of the diſtrict courts after they had been aboliſhed? or will they ſay, that by a commiſſion of a diſtrict judge limiting his juriſdiction to a ſtate, is the ſame as that of a circuit judge extending it over three ſtates? And whether the law authorizing the commiſſion over three ſtates ought not to precede the commiſſion veſting that authority

Mr. Wright aſked if Congreſs, when exerciſing their au hority in the firſt inſtance to eſtabliſh inferior courts, had not the right to limit their continuance to any period, and that at the end of that period, if the law was not continued, what would be the ſituation of the judge appointed under the law; would his authority continue? Certainly no'. And will any gentleman contend on this floor that if a former congreſs had a right to give li mi a ion to the continuance of a law, that the preſent Congreſs have not the ſame au hority to limit or diſcontinue. Honorable gentlemen, however ingenious, will find themſelves, he preſumed, unable to ſolve theſe difficulties, or to reconcile theſe inconſiſtencies: for his part the authori y by which this ſubject had been brought before them, the recommendation of the Preſiden', had been powerful.—The let er and ſpirit of the conſtitution, when recurred to, had eſtabliſhed him in hat opinion, tha they were juſtified in the meaſure now propoſed, and the practice of Congreſs in aboliſhing the diſtrict courts of Tenneſſee and Kentuckey, ſatisfied him that it was no new idea, no new exerciſe of power, and further that nothing in the form of a conſti ution can be drawn ſo guardedly that gentlemen may no be found to differ on i s true conſt uc ion, and even, as in the preſent caſe, at different times and on different occaſions, differ themſelves in the conſtruction of the ſame inſtrumen . If all theſe conſiderations were not ſufficient to ſatisfy gentlemen, and we were obliged to recur to the principles on which this inſtrument muſt have been eſtabliſhed, we ſhall find that we do not in any degree violate them, by the conſtruction we put on them. If the Britiſh government is recurred to, from whence the ſtate governmen s borrowed their principles, or if the ſtate conſtitutions are reſorted to, we ſhall find thoroughly incorporated, the principles for which we contend, that the judges a e ind pendent only of the Executive, bu never above the law giving them their political exiſtence. He admitted with the g n leman from New-York, that judges ought to be the guardians of the conſtitu ion; ſo far as queſtions were conſtitutionally ſubmitted to them; bu he held the legiſlative executive, & judiciary, each ſeverally the guardians of the conſtitu ion, ſo far as they were cal ed on in their ſeveral departments to act; & he had ſuppoſed the judges were intended to decide queſtions not judicia ly ſubmitted to them, or to lead the public minds, in legiſlative or executive queſtions; and he confeſſed he had g eater confidence in the ſecurity of his liberty in the trial by jury, which had in all times been conſidered as the palladium of liber y, than in the deciſion of judges, who had at ſome time been cor up . For his par he did not wiſh to break down the judiciary or the judges, or o violate the conſtitution, though he confeſſed he ſhould feel as ſecure in he deciſion of he ſta e judges in even federa queſtions, with an appeal to the ſupreme federal court, as in the preſent judges, and indeed the conſtitution in the 4 h ar . 2d, ſec. which impoſes on all ſtate judges the oa h to obſerve the conſtitution and laws of the United S a es, always ſeemed to him to conſider the ſtate cour s in a certain degree judges of federal queſtions. Nor had he ever been able to raiſe a doubt in his own mind, as to the propri ty of truſting ſtate judges to decide federal queſtions, with an appeal to a federal court; when he conſidered that ſtate juries had always been truſted to decide all queſtions, from whoſe deciſion there was no appeal; and indeed the ſta e courts at all times had been the on y judicial guardians of our rights, whoſe integri y had never been impeached. The gentleman from New-York is ſo careful of the conſtitution, that he wiſhed it ſecured by walls of braſs. Does he apprehend others wiſh to violate it, and himſelf its excluſive guardian, and that other gentlemen do no hold themſelves equally bound to pro ect it, or have nothing wo th protecting. For his part he had ſworn to ſupport it; but he believed that no human invention could make it more ſecure than it was, depoſited in that hallowed temple, & locked y the key of our holy religion.

WHEREAS my ſon CHARLES, a youth in his 17th year, abſconded or was inveagled away from my houſe on Rockey Point, on the 13th inſt. in company with a young man about 20 years of age named JESSE MOLPASS. All perſons are hereby forwarned from harboring or carrying the ſaid Charles away at their peril. I will give ten dollars to any perſon who will bring him home, or twenty dollars for any information of his being harboured or inticed away.

WILLIAM WILLIAMSON.

Rockey-Point, Feb. 25th—3w.