CONGRESS
OF THE UNITED STATES.
HOUSE OF REPRESENTATIVES.
Tuesday, Feb. 16.

Debate on the bill received from the Senate, entitled "An act to repeal certain acts respecting the organization of the courts of the U. States."

MR. HENDERSON——

I should not rise to offer my opinion on the great queſtion now before the committee, were I not placed in a ſituation different from that in which I have been ſince I have had the honor of a ſeat in this houſe. The legiſlature of the ſtate of North-Carolina, one of whoſe repreſentatives I am on the floor, have ſeen proper to inſtruct their ſenators, and to recommend to their repreſentatives in congreſs, to uſe their exertions to procure a repeal of the law paſſed the laſt ſeſſion of congreſs for the more convenient organization of the courts of the United States; and as the bill on your table has for its object the repeal of this law, and as I ſhall probably vote againſt its paſſage, a decent reſpect for the opinion of thoſe who have framed and ſent forward thoſe reſolutions, demand that I ſhould give the reaſons which influence my conduct.

And here, Sir, I cannot forbear lamenting extremely, that I ſhould unfortunately be placed in a ſituation, where the higheſt obligations of duty compel me to act in oppoſition to the wiſhes of that community to which I immediately belong. It is certainly of great importance that as public functionaries we ſhould not only diſcharge thoſe truſts committed to us with fidelity, and for the general good, but in ſuch a manner as to give ſatisfaction to thoſe for whom we are acting.

And if I know the feelings of my own heart, I declare, that next to the conſciouſneſs of having performed my duty with uprightneſs, is the knowledge that in the diſcharge of this duty I meet the approbation of my fellow-men. But, Sir, if this approbation is only to be obtained by the unconditional ſurrender of my underſtanding, and the violation of my oath, I hope I ſhall be excuſed if I do not make this ſacrifice at the altar of public opinion. Indeed, Sir, were I diſpoſed to forego my own opinion and adopt that of the legiſlature of my ſtate—were I inclined to ſay thy will be done and not mine, I ſhould firſt demand of them an abſolution from the oath which I have lately taken to ſupport the conſtitution of the United States. As long as that oath is binding on me, I ſee an inſuperable objection to my acting in conformity to their wiſhes.

I will further remark, Sir, that I am not a little ſurpriſed that that auguſt body ſhould have undertaken to decide on a queſtion not neceſſarily before them, without having an opportunity of hearing the arguments which may be uſed here either on one ſide or the other. I will not permit myſelf for a moment to believe the meaſure originated in a want of confidence in thoſe who repreſent the ſtate and the people in this aſſembly. And yet, if that confidence exiſts, the reaſons for this procedure do not immediately preſent themſelves to the mind.

I hope, Sir, it will not be underſtood that I mean to caſt the moſt diſtant ſhade of diſreſpect on that body. I feel too great a reſpect for the legiſlature of my native ſtate to be guilty of ſuch an attempt. No doubt but they were influenced by the pureſt and the moſt correct underſtanding. It does not follow by any means, that becauſe my weak and feeble mind cannot diſcover perfect propriety in the conduct of men, that therefore it does not exiſt. Having premiſed thus much Mr. Chairman, I will proceed to an examination of the queſtion under conſideration. It has been uſual to divide it into two parts: firſt, the expediency; and ſecondly, the authority of congreſs to paſs the bill on the table. This is a natural and correct diviſion; but I ſhall invert the order of conſidering the queſtion, and firſt examine our power to act, before we conſider the expediency of action. And if after a calm and candid review of the conſtitution, it ſhould be found that we are prohibited from paſſing the bill, there will be no neceſſity for inquiring into the expediency of repealing the law paſſed laſt ſeſſion of congreſs for organizing our courts of juſtice. The relative merits of the old and new judiciary ſyſtem will be entirely out of view. For I am confident that there is not a member of this body who would wiſh to paſs the bill on your table, if in doing it we muſt violate the ſacred charter under which we are now aſſembled.

The people of America have ordained and eſtabliſhed that the powers of government ſhall be veſted in three great departments—the Legiſlative, the Executive, and the Judicial. They have ſaid that there ſhall be a houſe of repreſentatives, the members of which ſhall be choſen by the people of the ſeveral ſtates, every ſecond year. Though this houſe is compoſed of members choſen by the people immediately; though they can have no other intereſt than the great community from which they were ſent; though they muſt return to the common maſs in the ſhort period of two years, yet enlightened America did not ſee proper to entruſt the power of making laws to this body alone; they knew that the hiſtory of man and the experience of ages bore teſtimony againſt the ſafety of committing this high power to any one aſſembly not checked by ſome other body.

They have therefore erected another branch of the legiſlature, called the Senate, the members of which are not to be elected by the people immediately, but by the ſovereignties of the ſeveral States: they are to be choſen for ſix years and not for two, and the qualification requiſite to intitle thoſe to a ſeat is different from that of a member of this Houſe. To theſe bodies are given the powers of initiating all laws, but after a bill has paſſed both of theſe Houſes before it becomes of binding obligation on the nation it muſt be approved of by the Preſident, it is a dead letter until life is given by the executive. The Preſident is elected not by the people, not by the legiſlatures of the ſeveral ſtates, not by either houſe of congreſs, but by electors choſen by the people. He is to hold his office during four years: this is the ſecond great department of the government. It will be eaſily diſcovered from this curſory view of our conſtitution, the caution and jealouſy with which the people have conferred the power of making laws, of commanding what is right, and prohibiting what is wrong. But, Sir, after this law was made, after its authoritative mandate was acknowledged by the nation, it became neceſſary to eſtabliſh ſome tribunal to judge of the extent and obligation of this law. The people did not ſee proper to entruſt this power of judging of the meaning of their laws either to the legiſlative, or to the executive, becauſe, they all participated in the making of thoſe laws; and experience had ſhewn, that it is eſſential for the preſervation of liberty, that the judicial and legiſlative authorities ſhould be kept ſeparate and diſtinct. They therefore, erected a third department, called the judicial, and ſaid that "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 both of the ſupreme and inferior courts, ſhall hold their offices during good behaviour, and ſhall at ſtated times receive for their ſervices, a compenſation which ſhall not be diminiſhed during their continuance in office." It is admitted, I underſtand by all parties, by every deſcription of perſons, that theſe words, "ſhall hold their office during good behaviour," are intended as a limitation of power. The queſtion is; what power is thus to be limited and checked? I anſwer, that all and every power which would have had the authority of impairing the tenure by which the judges hold their offices, (if theſe words were not inſerted) is checked and limited by theſe words; whether that power would be found to reſide in congreſs, or in the executive. The words are broad and exteuſive in their ſignication, and can only be ſatisfied by being conſtrued to control the legiſlative as well as the executive power. But gentlemen contend, that they muſt be confined to limiting the power of the Preſident. I aſk gentlemen, what is there in the conſtitution to prove their ſignification to this end alone? When you erect a court and fill it with a judge, and tell him in plain and ſimple language, that he ſhall hold his office during good behavtour, or as long as he ſhall behave well: what I beſeech you, ſir, will any man whoſe mind is not bewildered in the maze of modern metaphyſics infer from the declaration? Certainly that the office will not be taken from him until he miſbehaves; nor that he will be taken from the office during good behaviour. Under this impreſſion he enters upon his duty, performing it with the moſt perfect ſatisfaction to all perſons who have buſineſs before him; and the legiſlature without whiſpering a complaint, abolitheſ the office and thereby turns out the judge. The judge is told this is no violation of the compact, although you have behaved well, although we have promiſed, that as long as you did behave well, you ſhould continue in office; yet, there is now no further neceſſity for your ſervices, and you may retire. Theſe words, 'during good behaviour,' are intended to prevent the Preſident from diſmiſſing you from office, and not the legiſlature from deſtroying your office. Do you ſuppoſe, ſir, that there is a man of common underſtanding in the nation whoſe mind is not alive to the influence of party ſpirit, that would yield his aſſent to this reaſoning? I hope and believe, there is not. But, ſir, how is it proved that the Preſident would have had the power of removing the judges from their offices, if theſe words 'during good behaviour' had not been inſerted in the conſtitution? Is there any words in that inſtrument which give the Preſident expreſſly the power of removing any officer at pleaſure? If here are—I call upon gentlemen to point them out—It does not reſult from the faſhionable axiom, that the power which can create, can deſtroy. The Preſident can nominate, but he can not appoint to office only by the advice and conſent of the ſenate. Therefore, it would follow, if the power of diſplacing reſults from that of creating; that the ſenate ſhould participate in diſplacing as well as creating officers. But however this may be, it is certainly a mere conſtructive power which he has exerciſed, becauſe the legiſlature have from motives of expediency acknowledged, that he had it. If the conſtitution does not neceſſarily give the Preſident the right of removing officers at pleaſure, and if that right depend upon legiſlative act or conſtructions, where would have been the neceſſity for inſerting theſe emphatic words as a check and limitation of executive power, where without them the Preſident has no ſuch power. You are taking great pains to control a power which does not exiſt. The perſons that framed our conſtitution knew that a power of removal in ordinary caſes muſt exiſt ſomewhere. They took care therefore, that in whatever hands it might fall, the language of the conſtitution reſpecting the tenure of the office of a judge, ſhould be co-extenſive with the whole power of removal, whether it ſhould reſide in one or in more hands.

But, ſir, theſe words, during good behaviour, are familiar to the American people; when the political bands, which united us with Great-Britain were burſt aſunder, and we aſſumed among the nations of the earth an independent ſtation, moſt if not all the ſtates introduced theſe words into their conſtitutions. They were deemed eſſential, and a meaning has been ſtamped upon them which it is not in the power of this houſe to change. Let us for a moment examine ſome of the ſtate conſtitutions and ſee what ſignification muſt of neceſſity be given to theſe words. I will firſt advert to the conſtitution of North-Carolina, as being one with which I am beſt acquainted. In that inſtrument it is ſaid "that the General Aſſembly ſhall, by joint ballot of both houſes, appoint judges of the ſupreme court of law and equity, judges of admiralty and an attorney-general, who ſhall be commiſſioned by the Governor, and hold their offices during good behaviour. I aſk gentlemen what power is intended here to be limited and checked by the words "ſhall hold their offices during good behaviour?" Not the executive, for it is well known that the Governor of that ſtate cannot appoint even a conſtable. It could not be the meaning of that conſtitution to check his power of removal, for that of appointment is not any where given to him.—Then theſe words muſt mean that the legiſlature ſhould not have the power of removing the judges from office as long as they behaved well. If you do not give this ſignification to the words, they are of no importance, & might as well have been left out of the inſtrument. I hope the feelings of the people of North-Carolina will not be hurt, and their underſtands inſulted by telling us that the meaning of the words may be ſatisfied by conſtruing them to extend to a prohibition of the legiſlature diſplacing the judges and proceeding to the election of others without thoſe diſplaced being guilty of miſbehaviour. If this is correct, what ſecurity, ſir, have the people then for the independence of their judges? The conſtitution has told them that they ſhould be judged by men who, during the time they behaved well ſhould continue in office, or what is the ſame thing, ſhould hold them during good behaviour. But they are now informed that this was intended to operate as a check upon the legiſlature's diſplacing them by ſelecting others to fill their offices when they had not miſbehaved, but not to prevent their paſſing a law repealing that act by which the appointment to office was made; or in other words, our aſſembly are expreſſly forbidden to impair the tenure by which our judges hold their offices, as long as they behave well; but they can repeal the law, and the judges are out of office, though they may be the moſt virtuous, upright and able men in the country, and have diſcharged their duties faithfully. Are the gentlemen on this floor from North Carolina prepared to give this conſtruction to that conſtitution? Are they prepared to tell their conſtituents that the proviſions of their conſtitution may be thus evaded, and the whole power of government, legiſlative, executive & judicial may be concentrated in the general aſſembly, and abſolute deſpotiſm impoſed upon them? If they are not I conjure them to pauſe before they give their vote for the paſſage of the bill on the table. I will further obſerve, Mr. Chairman, that words of the ſame import with thoſe I have quoted from the conſtitution of North-Carolina, are to be found in the Virginia and South Carolina conſtitutions, in neither of which ſtates hath the Governor the right of appointing judges. In Virginia, ſir, the judges of the ſupreme court, in 1792, declared that the aſſembly of that ſtate had not the power of impoſing chancery duties on the diſtrict judge, and in delivering their opinions, deſcanted at large on the independence of the judiciary, and ſaid that the aſſembly could not annihilate the office of a judge, which was ſecured to him by the conſtitution. If this is a true expoſition of the conſtitution of that ſtate, I aſk gentlemen by what authority they now attempt to impoſe a different meaning on the ſame words when found in the conſtitution of the United States? Are we to ſuppoſe that the whole people of America were leſs regardful of their rights, leſs ſolicitous for independent judges, than the people of a particular ſtate? And unleſs this is conceded the doctrine of gentlemen who advocate the paſſage of this bill muſt be incorrect.

But it has been ſaid that the powers of each congreſs are equal, and that a ſubſequent legiſlature can repeal the acts of a former. And as this law was paſſed by the congreſs, we have the ſame power to repeal it which they had to enact it. This objection is more plauſible than ſolid. It is not contended by us that legiſlatures who are not united in their powers, have not the ſame authority. The queſtion is not what omnipotent aſſemblies can do, but what we can do under a conſtitution defining and limiting with accuracy, the extent and boundaries of our authority. The very ſection in the conſtitution, ſect 3, art. 1, which I have read, is a proof againſt the power of every congreſs to repeal the acts of their predeceſſors. In the latter part of the 8th ſection it is provided that the judges ſhall receive for their ſervices a compenſation which ſhall not be diminiſhed during their continuance in office. I ſuppoſe that it will not be contended that we can diminiſh this compenſation during the continuance of the office, & yet the ſalary was fixed & aſcertained by a former congreſs; the ſame obſervations may be made with reſpect to compenſation to the Preſident, which can neither be increaſed nor diminiſhed during the period for which he ſhall have been elected. It is not competent for this congreſs to vary the compenſation to him which has been fixed by a prior legiſlature. It is clearly ſeen upon a little inveſtigation that the poſition which gentlemen take is too extenſive, and leads immediately to a deſtruction of the conſtitution. It does away all check and makes the legiſlature omnipotent. It has been aſked that if a corrupt and unprincipled congreſs ſhould make an army of judges, have not a ſubſequent congreſs the right of repealing the law eſtabliſhing this monſtrous judicial ſyſtem. I anſwer, that they have not, the ſame mode of reaſoning which attempts to prove this right from an abuſe of power, will alſo prove that you may leſſen the compenſation of your judges. May not equal oppreſſion be impoſed upon the people, by giving your judges exhorbitant ſalaries, as by increaſing their numbers? May not the ſame corrupt and unprincipled motive which would lead men to the raiſing an army of judges, lead them to ſquander the public money; and may they not inſtead of giving their judges 2000 dollars a year, give them 100,000? And yet, ſir, if theſe were to take place, I know of no authority under the conſtitution to leſſen this exorbitant compenſation. The government of our country is predicated upon a reaſonable confidence in thoſe who adminiſter our public affairs. They muſt have the power of acting for the public welfare, and this would never have been given them if the poſſible abuſe of this power were a ſufficient reaſon for withholding it. I will take the liberty of obſerving further, that this part of the conſtitution, which forbids leſſening the compenſation to the judges during their continuance in office, furniſhes a ſtrong argument that it was the intention of the people to place their judges out of the control of the legiſlature as long as they behaved well; that they did mean to render them independent of the legiſlature to a certain extent is obvious; inaſmuch as they inhibit the power of reducing their ſalaries.—For it is evident that if they could take from them their compenſation; they might drive them from office, and the conſequence would have been that our judges would have felt all that dependence which reſults from a conſciouſneſs that another power has the power of diminiſhing their comforts. I aſk gentlemen if the framers of this conſtitution intended to give Congreſs the power of abolitheſ the office of a judge, by repealing the law which created the office, and thereby diſplacing the judge?—Where could have been the propriety of forbidding his ſalary to be diminiſhed during his continuance in office?

Is it poſſible to ſuppoſe that they were more anxious to ſecure that independence which reſults from permanency of compenſation, than that which reſults from permanency of the office itſelf—That they ſhould have been altogether regardleſs of the power which Congreſs was to have over the office, but limit with the utmoſt ſtrictneſs their power of diminiſhing the ſalary, when the office itſelf upon which the ſalary depends was to be at the mercy of Congreſs. I believe that ſuch folly cannot with juſtice be attributed to thoſe great men who gave exiſtence to this inſtrument.

Again, Sir, the conſtruction which gentlemen on the other ſide of the houſe contend for, tends to the concentration of legiſlative and executive powers in the ſame hands.—If Congreſs, who have the power of making laws, can alſo diſplace their judges by repealing that which creates the offices they fill, the irreſiſtible conſequence is, that whatever law is paſſed the judges muſt carry into execution, or they will be turned out of office. It is of little importance to the people of this country whether Congreſs ſit in judgment upon their laws themſelves, or whether they ſit in judgment upon thoſe who are appointed for that purpoſe. It amounts to the ſame deſpotiſm—they muſt judge the extent and obligations of their own ſtatutes, by having thoſe in their power who are placed on the ſacred ſeat of juſtice. Whatever the legiſlature declares to be law muſt be obeyed. The conſtitutional check which the judges were to be on the legiſlature is completely done away. They may paſs expoſt facto laws, bills of attainder, ſuſpend the habeas corpus in time of peace; and the judge who dares to queſtion their authority is to be hurled from his ſeat. All the ramparts which the conſtitution has erected around the liberties of the people, are proſtrated at one blow by the paſſage of this law.—The monſtrous ſyſtem of doctrine which has been lately advanced, that the judges have not the right of declaring unconſtitutional laws void, will be put into practice by the adoption of this meaſure. New offences may be created by law. Aſſociations and combinations may be declared treaſon, & the affrighted and expoſed citizen may in vain ſeek refuge in the independence of courts. In vain may he hold out the conſtitution and deny the authority of Congreſs to paſs a law of ſuch undefined ſignification, and call upon the judges to protect him; he will be told that the opinion of Congreſs is now in, that we have no right to judge of their authority; this will be the conſequence of concentrating judicial and legiſlative power in the ſame hands. It is the very definition of tyranny and whatever you term it the people are ſlaves, whether they call their government monarchy, republic or democracy.

Mr. Chairman, I ſee, or think I ſee, in this attempt, that ſpirit of innovation which has proſtrated before it a great part of the old world—Every inſtitution which the wiſdom and experience of ages has reared up for the benefit of man. A ſpirit which has rode in the whirlwind, and directed the ſtorm to the deſtruction of the faireſt portion of the earth, which has ſwept before it every veſtige of law, religion, morality, and rational government, which has brought twenty millions of people at the feet of one man, and compelled them to ſeek refuge from their complicated miſeries in the calm of deſpotiſm. It is againſt the influence of this tremendous ſpirit that I wiſh to raiſe my voice, and exert my powers, weak and feeble as they are. I fear, Sir, on the 4th of December, it made its appearance within the walls of the Capitol in a gigantic body, impatient for action. I fear it has already begun to exert its devouring energy. Have you a judiciary ſyſtem extending over this immenſe country, matured by the wiſdom of your ableſt & beſt men? It muſt be deſtroyed. Have you taxes which have been laid ſince the commencement of the government, and a diminution conſequent upon the laying of taxes taken off? Are they paid excluſively by the wealthy and the luxurious part of the community; and are they pledged for the payment of the public debt? They muſt be aboliſhed. Have you a military eſtabliſhment which is not only eſſentially neceſſary to protect your country againſt the influx of baſe foreign metals, but is a ſplendid attribute of ſovereignty? It muſt be aboliſhed. Have you laws which require foreigners coming to your country to go through a probationary ſtate, by which their habits, their moral propenſities may be known, before they are admitted to all the rights of native Americans? They muſt be repealed and our ſhores crowded with outcaſts of ſociety, left oppreſſed humanity ſhould find no aſylum on this globe!

Mr. Chairman, if the doctrine contended for by gentlemen on the other ſide of the houſe, ſhall become the ſettled conſtruction of the conſtitution of enlightened America, acquieſce with that concluſion, I declare for myſelf, and for my children, that I would not heave a ſigh nor ſhed a tear, over the fatal deſolation. The wound you are about to give will be mortal; it may languiſh out a miſerable exiſtence for a few years, but it will ſurely die; it will neither ſerve to protect its friends nor defend itſelf from the omnipotent energies of its enemies. Better at once to bury it, and with it all our hopes.

The Houſe of Repreſentatives of the United States have been occupied almoſt entirely with the diſcuſſion of the bill from the Senate on the Judiciary. On the 23d ult. Huger ſpoke againſt, and Mr Macon for the bill; when at 3 o'clock, a motion was made that the committee riſe, and aſk leave to ſit again. Mr. Gregg ſaid he hoped the committee would not riſe. He ſaid it muſt be evident to every gentleman that the ſubject was not exhauſted; and other buſineſs of importance claimed the attention of the houſe. Messrs. Goddard, Bacon and Nicholſon ſupported the riſing of the committee. The motion to riſe was carried yeas 60.

On the 24th, Mr Goddard firſt took the floor, and ſpoke againſt the repealing act. He was followed by Mr. Iſrael Smith, who ſpoke in favor of it. Mr. Huger moved that the committee ſhould riſe—loſt, ayes, 53, noes 51. Mr. Rutledge roſe at half paſt 3 o'clock, and ſpoke againſt the repealing act, and continued on the floor till half paſt 4 o'clock, when concluding his remarks.

On the 25th Mr. Rutledge finiſhed his remarks, after ſpeaking from 11 till 2 o'clock. He was followed by Mr. Dawſon, who ſpoke in favor of the repealing act. Mr. Griſwold ſpoke againſt it till 4 o'clock without finiſhing his remarks.

On the 27th Mr Nicholſon (who it ſeems followed Mr. Griſwold the day before, which our account does not mention) concluded his ſpeech in favor of repealing the judiciary act of the laſt ſeſſion, about half paſt two o'clock. He was followed by Mr. Dennis, on the other ſide, who ſpoke till 4 o'clock, when General Smith ſpoke till half paſt ſeven in favour of the repealing act. A motion was then made that the committee ſhould riſe, which was ſupported by Mr. Hill, Huger, Dana, Bayard, Macon, Maryland, Griſwold, Bacon, Claiborne and others, and oppoſed by Meſſrs. Alſton, Gregg, Smilie. At eight o'clock the queſtion was taken, yeas 46, nays 43. The committee roſe & aſked leave to ſit again: on granting which there was a deviſion, yeas 48, nays 37.

On the 26th ult. a meſſage was received from the houſe from the Preſident, recommending additional to thoſe already preſented, the number of ſuits inſtituted or depending in the Circuit courts of the United States, and the correction of errors in the proceedings of the judgment, ariſing in part from a want of attendance in the returning officers, and in part from the haſty analyſis made at the cloſe of the Congreſs. The meſſage concludes with recommending a capitulation, whereby the following apportionment may be the rule of cauſes inſtituted and depending.

	Inſtituted.	Diſpoſed of.
Corrected ſtatement,	8,353	1
Former ſtatement,	8,179	1
Difference,	88	9

CHARLESTON, Feb. 22

Extract of a letter, dated May [illegible] February 13.

"I juſt now received the diſmal news, that a Mr. Dupont, from Antigoa to this parish, by land, has been murdered by the Indians, and his ſervants, then with him, are carried away captives into the Indian nation