

hereafter and forever. But let me ask, the members of this honorable house, to reflect seriously before they make this unalterable decision—let me conjure them to reflect calmly—and ask themselves, if it is wise, if it is prudent to embark themselves on an ocean of uncertainty with a nation divided within itself—with a body of men within its bosom disaffected and smarting with a sense of wrong, inflicted upon them in their judgments subversive of constitutional authority and private right. Shall it be said that we are seen joining with the other house to crush a few individuals who have done no wrong, merely because we have the power to crush them? Shall we because we have a giant's power, use it merely to display it, or in the wantonness of power, use it for destruction? Will such conduct give the public an exalted opinion of our honor or of our benignity—will it give the people confidence in themselves or their rulers? No, sir; it will not! If we only consider that the very exercise of power revolts the minds of those on whom it is exercised—that it revolts the minds of their friends and adherents—we will deliberate before we attempt so much to endanger ourselves and to subject our conduct to the resentments and animosity of the community. No such effects can arise from another course before the discreet and temperate tribunal where all the laws are expounded with calmness and a due regard to the solemnity of justice, the subject may be offered for decision and discussed dispassionately—if the decision is in the power of the memorialists it will be given with mildness; if against them, it will be still mild; and the public mind will soon be soothed by the tranquility with which the laws are dispensed from the tribunal which is sacredly devoted to that purpose.

The committee having considered the subject beyond the bounds of authority vested in this house to delegate or decide upon themselves, deemed it their duty to offer a resolution to the consideration of the house, intending in substance that the President of the U. S. should be requested to direct the attorney general to file an information in order to the issuing of a writ in the nature of a *quo warranto* to try the merits of the claim of Richard Bassett, &c. "some gentlemen in that house may not understand the technical character and operation of proceedings of this kind. The process is in the first instance taken up by the attorney general whose office is here much the same as that of the public accuser in France. The writ of *quo warranto* is a common law writ; the practice has varied in applying them to use. The received form now is to proceed by filing an information through the attorney general, and upon that information filed, the question of a right to an office is brought fairly to a trial. The course is speedy, the assertion of a right is brought to a clear issue, and the claimant must support his plea by establishing at first that he has a right to exercise what he claims, failing in the first, or withdrawing from the assertion of his claim after plea has been entered, the question is at an end.

There is a mode of proceeding dignified and concurrent with the most venerated forms; what consequences can result from pursuing it; if the question on trial is lost, by the claimants, as it probably will, the point is settled; there is an end to it; peace and harmony is restored; and it will then be a high gratification to reflect on the discretion with which the subject has been treated. On the other hand, if we lead ourselves to believe that the courts are to be swayed by sinister purposes, or that they will without regard to their own dignity or the dignity of justice itself, wantonly declare the Legislature has violated the constitution—if gentlemen will against all reason and propriety persuade themselves that the judges would lay aside that decorum which is so appropriate to their station, that decency the handmaid of the grades, and which decorates the magistrate more than the ermine or the royal robe, then indeed there is an end to confidence and to hope. But if it shall, it should be left to their solemn deliberation and decision, they will with calmness and with the temperate composure of wisdom determine that, though the Legislature have a plenary power they may have mistaken its extent, they may have surpassed the bounds of that power, in exercising it in the case of the memorialists; that the legislature may have thought they were not so fit as other men, and had thought themselves at liberty to transfer their power to others, and they would point out where those errors had been committed and decide accordingly. Here would be no clashing of jurisdictions—no violence—no disaffection—no ill blood—no hatreds excited—no animosity stirred up. But shall it be said that a few judges would dare array themselves against the le-

gislation, without right or justice, or attempt to violate its rights in the face of the union. Away with so unworthy a suspicion.

Would the house pardon him if he trespassed a few moments longer upon their indulgence to enquire what would be the result of the rejection of this claim? Would it not be said, that the legislature confident of its power denied to the claimants not barely their rights but a hearing; that the government was afraid to bring the question to discussion—that the Senate was afraid of a free enquiry; it will be said that if the senate is confident of right the denial is indiscreet; and that a sense of wrong is indicated by their fears.—But will the Senate reflect, that powerful as you may deem yourselves, your power is impotent—there is a hand that can and will drag you before the bar of justice! They can do it without you. What then is the alternative which you will make—come forward with dignity—be not dragged with shame from your hiding place. It is the call of justice—it is the call of right, it is essential to your own reputation that the Senate pass the resolution now on your table.—There was a time when the serious admonitions of reason and moderation would meet attention! Alas!—Ah!—That time was when Washington presided over the councils of this land!—Alas! there was an inborn dignity, in that great man, which taught him to shun the insolence of pride and power, and to listen with temper and caution to the humblest counsels.—But he is gone!—(Here Mr. Morris hung his head and letting his hand fall with an emphatic weight upon the desk before him—seemed to feel the throbs of sensibility and sorrow, and to mourn.—) As if iron tears had flowed down Pluto's cheek.") Yes! He is gone and his precepts are disregarded, while the vindictive spirit of revenge pursued his sacred ashes to the tomb; but he will live in the gratitude of that posterity before whom the measures of this day will be severely scrutinized and severely judged.

Mr. Nicholson wished the house to say how we could proceed in this case—his mind had not been informed on the point upon which the house had really to decide at present, and which had not been once noticed in the very ardent oration of the gentleman who had just sat down. He wished to know what we had to do with the resolution on the table, was it any part of our duty to notice such a proposition, the thing appeared to him to have as little to do with the duty given to the committee as the introduction of General Washington's name, which appeared to him to have been dragged indeed. The resolution offered by the committee appeared to him to be the only object for present consideration—if we could pass such a resolution would it not be necessary to send it to the other house?—Had we any right in such a case to call upon the President?

Mr. Cocke. If this question had any business with General Washington, or was a question in any way likely to interest the feelings for his name, he would not be backward in shewing his reverence for departed worth. But that venerated name appeared to him to be introduced on this as on so many other occasions without necessity or use—it had nothing to do with the present subject. He did not approve of such abuse of that name, and would therefore pass it over. We are told by the honorable gentleman, that if we do not do as he says we should, that there is a strong hand that will drag us from our hole, from our hiding place. This is a very fine argument to be sure, this is the decency of the ermine and the royal robe. What are we further told? First, that we must bow our necks to the almighty will of the judiciary, and second that we must give directions to the executive to bow their necks also! We are told that the house of representatives by refusing to call those gentlemen late judges, recognize them as judges now! He did not pretend to argue logic with the gentleman from N. York, but in plain homespun language, he could not conceive how a refusal to call a man by any name but his own name was giving him another name; the other house considered them as mere petitioners, simple citizens, and as such they appeared. We are told we are bound to perform a great duty towards ourselves. What does this mean? Does he mean that we are called upon to support the constitution of our country. If that is what he means that is what we mean to do. But does the constitution call upon us to pay these men? For what?—For services!—No!—For no services!—For services not required, for services which they acknowledge they do not perform, and from which they were legally discharged—shall we pay men salaries for offices which do not exist, salaries which are payable only for services and during the existence of the office?

Gentlemen raise giants & spectres & hobgoblins, like conjurers; but this mumbojany, this acting is suited much better for another place; they do not scare us; they make us rather laugh. We are also told that we shall be engaged in a war—and that we are a divided people, but if by one mighty effort we restore those omnipotent but fallen judges, our dangers from wars will cease and we shall be a united people. Nothing will do but the judges, submit to the judges, and restore the judges—the judges like a quick medicine cures every thing and never fails! but if these all potent judges perish (and they are already near a twelve month dead, in law) we must all perish likewise; and yet we have lived the last year tolerably well. Such notions had no effect on him. They did not enter into accordancy with his mind. The legislature has nothing to do with them. The judges of the courts are not superior to the law. They can neither make nor unmake laws. They are amenable for the correct expounding of the laws according to their just and true intention—and if they dare to expound them contrary to their intention, they are punishable, we can try them. What! Gentlemen will say, good heavens, you senators try your superiors the judges! Yes, Mr. President, we will if they misbehave, try them, and if convicted punish them. When the nation wishes for a court to try great culprits, it will constitute judges and pay them for their service, and when their service is ended dismiss them. But no court is wanted to be instituted, the senate is the court before which great criminals are tried, and they are not judges for life, nor do they receive their salaries, however well they behave, longer than their six years, unless the people chuse to make them judges again for their good behaviour.

He had heard a case last session in which a man was said not to be murdered if the boat was taken from under him and he drowned in consequence, and this was comparing the office of the dismissed judges to a boat, a very fine comparison to be sure. He would offer another comparison. He would suppose that he had a boat and that it was found rotten at the bottom, & in the sides, and that it was so leaky and insecure a boat that he would not trust himself to pass a little mill dam in it; and the man who took care of the boat did not care about the lives of the property that came into it—what should he do then? Why pay him what he may have earned, dismiss the boatman and get a better boat—a sound boat and honest boatmen. So with the courts, if they become unsound or useless, if they have rottenness at bottom, correct them; if useless or pernicious, abolish them. But shall it be said by any member of that house that we must pay men for nothing? No! The language of the constitution is, no service no salary. When a judge is in office he is paid for his service; both go together, and the period of the one is the period of the other. The existence of the office is dependant on the will of those whom the people trust to legislate for them. We are told indeed that the house of representatives has assumed improper powers, what are those improper powers, saving the public money from waste upon men who perform no service for it—saving the earnings of the farmer and manufacturer from lavishment upon idleness, or pensioners who have no claims for service past or present. Is this the mode in which the people are to be saved from their worst enemies themselves? This government is a government of the people, it is not a government of placemen. The people require no guardians such as these to watch over them. One sentiment of the gentleman (Mr. Morris) he could not but concur with him in, it was the doctrine of truth and experience, it was the doctrine that dismissed those from power not very long ago who had abused it. He says that the exertion of force and power, naturally tends to excite resistance and opposition. Yet it was right it should when force is unjust and power wantonly used. In the present case it is force that excited him to resistance, those men came into office by power without necessity, by force and perversion of power, and the resistance of that undue exertion of force, put them fairly out. It is the force which their petition has attempted in this house, and the forced measures of the committee which called him to resist Richard Bassett, and to enter my protest against him and his companions; it is a measure of force and of fraud too—for they wish to force from the public treasury money that does not belong to them—money that they never earned—money for which they have performed no service; and it is this attempt at force and fraud that excites me to resistance.

But Mr. President, look at their very petitions, look at that voluntary premeditated act of those men; by

the very act of petitioning they not only acknowledge our power but our right to do as we think ought to be done in their case. Would men whose professional habits teach them more acuteness than plain farmers like himself, would they have come before us if they thought we wanted either the power or the right to grant or not to grant what they request? If then we have the power and the right as they acknowledge, it becomes a simple question of expediency only. In that view then it is improper, wholly improper and inexpedient—it would be absurd under our form of government to sacrifice the public property without service or obligation.

The Vice-President—observed that he wished to recal the attention of the house to the question—the memorialists have prayed the house to define their duties as judges. The committee appointed by the house have reported on their petitions, a resolution that the house request the executive to call upon the attorney general to file an information in the nature of a *quo warranto*; this resolution is now the simple point of debate and supercedes every discussion of a law passed at the last session, which has been already sufficiently debated.

General Jackson wished to remark that there was more in the petition than the Vice-President had mentioned; for besides calling on the house to define duties which had ceased not long since, they claimed those offices by asserting that "their rights have been impaired," and complain that no compensation has been made them for services which they confess they have not performed, and for offices which so far from being impaired have been totally abolished. He could not conceive how it was possible to discuss the merits of the resolution without examining the claim upon which the resolution was founded. If the claim has no existence in right the resolution itself is a nullity.

Mr. Wright. It is the committee, Mr. President, and not the senate who have travelled out of the record, to bring in matter extraneous and compound the merits of the read subject for consideration. This is an application made to the senate in its legislative capacity, to reconsider acts passed by the senate in the same capacity on a former occasion. It is an application founded on a double suspicion—that the legislature has done wrong—that the executive has done wrong, in repealing a former law. The constitution has entrusted to the legislature and to the magistracy particular but distinct powers. The legislature exist directly under the constitution responsible for their conduct at stated periods to the people. The judges exist under the constitution, indirectly under the law, but responsible only to the source from which they derive their immediate existence. The senate holds an intermediate or mixt character partaking of all the functions, legislative, executive and judicial. As legislators they determine the expediency of courts for the administration of the law, as to their number, practice, and duration;—as part of the executive they advise, and as judges in particular cases they determine upon criminal accusations. Here then arises a question, is the case of the memorialists one of those in which we can or ought to interfere? Is it expected that we are to pass sentence of error on our own laws? Is it expected that we will arraign our own acts? Is it expected that as an advisory council to the executive we shall interfere and dictate to him, what he should do in the exercise of functions exclusively his own, and by an officer with whom we have neither connexion nor controul? Is it expected that, if there were any just foundation of complaint, that we should anticipate judgment on a question which might (if there were foundation) come before us in a judicial capacity? In all these views it is evident that we cannot either acquiesce in the claims, nor agree to the resolution offered by the committee. The law of last session has completely decided the merits of the claim—it has not made provision for the officers who were dismissed—it has declared that their offices have ceased, and the emoluments with the offices. Let us see does the constitution authorize us to advise or direct the president as proposed in the resolution. It does not. Are not the circumstances in which we shall advise clearly pointed out, and can we exceed the powers therein given? He would thank that gentleman (Mr. Morris) whose ingenuity he so much admired, to lay his hand on the place wherein any authority of the kind was vested. Do gentlemen forget that it is the duty of the executive to see the laws executed, and that the claim of the memorialists is made in contempt of the law. Have we lost confidence in the executive, or is it meant to insult him in his office. Are we to tell what he should do, and how he should execute his duty. It is a good law maxim

expressio unius expressio alterius, we have passed a law taking away the office, and they call upon us to define the duties of what we have taken away. They acknowledge they have no duties and perform no service, and they call upon us to look to their compensation! We are told we should repeal those laws of last session, no doubt because it has been shewn that we can do without the services of the petitioners. We are asked to bring the question before the courts, though it is acknowledged we have a right to decide upon it. We appointed a committee as legislators to consider a legislative concern, and the committee bring forth a report calling upon us to exceed our powers in an executive capacity, with which the petition has nothing to do. We delegate one power and they lay that aside and take up another which we did not delegate, and they call upon us to act upon it. We are told that whether we act or not there is a power that will do it in contempt of us and to our disgrace. Such contradiction! So much monstrous absurdity he had never heard of. If the judges think they have the power to bring this subject before the courts, let them do so. But be it remembered that the power is denied, and they do it at their peril. He had assented to the passing of that law, bound in conscience, he was called upon now to do an act repugnant thereto. He could not consent. But let us examine, have the supreme court power under the constitution to take cognizance of any such case, or to do what is proposed to be asked by this resolution? No. If the authority is not to be found in the constitution, then where is it to be found? He could find that the supreme court had jurisdiction in all cases arising under treaties, respecting ambassadors, consuls, all cases of maritime jurisdiction. But he could not consider judges either as ambassadors or consuls. If then the constitution does not give the courts jurisdiction, is it to be found in the law? No. God forbid the constitution should be such a nose of wax! Why then did not the committee act upon what is submitted to them—why did they impose upon the house a resolution which had no relation to the duty delegated to them.

Mr. Dayton called to order, and asked if remarks of that kind were orderly.

The Vice-President—Let the gentleman proceed.

IN SENATE OF THE UNITED STATES.

February 25.
The Senate resumed the consideration of the resolutions respecting the indisputable right of the United States to the free navigation of the Mississippi, together with the proposed amendment thereto, and a division was called for & the question was taken on striking out the first resolution offered by Mr. Ross, as follows:

Resolved, That the United States have an indisputable right to the free navigation of the river Mississippi, and to a convenient place of deposit for their produce and merchandise in the island of New-Orleans.

It passed in the affirmative; yeas 15, nays 11.

On the question shall the remaining resolutions be struck out, as follow:

That the late infraction of such their unquestionable right, is an aggression hostile to their honor and interest.

That it does not consist with the dignity or safety of this union, to hold a right so important by a tenure so uncertain.

That it materially concerns such of the American citizens as dwell on the western waters; and is essential to the union, strength and prosperity of these states, that they obtain complete security for the full and peaceable enjoyment of such their absolute right.

That the President be authorized to take immediate possession of such place, or places, in the said island, or the adjacent territories, as he may deem fit and convenient, for the purposes aforesaid; and to adopt such other measures for obtaining that complete security, as to him, in his wisdom, shall seem meet.

That he be authorized to call into actual service, any number of the militia of S. Carolina, Georgia, Ohio, Kentucky, Tennessee, or of the Mississippi territory, which he may think proper, not exceeding fifty thousand, and to employ them, together with the military and naval forces of the union, for effecting the objects above mentioned.

That the sum of five millions of dollars be appropriated to the carrying into effect the foregoing resolutions; and that the whole or any part of that sum be paid or applied on warrants drawn in pursuance of such directions as the President may, from time to time, think proper to give to the secretary of the treasury.

It passed in the affirmative; yeas 15, nays 11.
The questions on the resolution of Mr. Brackenridge was then taken, and