The 7th sect. of the law provides that the court of the 6th circuit shall be composed of a circuit judge "*and the judges of the district courts* of Kentucky and Tennessee." It is afterwards declared in the same section, "that there shall be appointed in the 6th circuit, a judge of the U. States, to be called a circuit judge, who, together with *the district judge of Tennessee and Kentucky*, shall hold the circuit courts hereby directed to be holden within the same circuit." And finally in the same section it is provided, "*that whenever the office of district judge in the districts of Kentucky and Tennessee respectively shall become vacant*, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit, who, together with the circuit judge first aforesaid, shall compose the circuit court of the said circuit." When the express language of the law affirms the existence of the office and of the officer by providing for the contingency of the officer ceasing to fill the office, with what face can gentlemen contend that the *office* is abolished? They who are not satisfied upon this point, I dispair of convincing upon any other.

Upon the main question, whether the judges hold their offices at the will of the *legislature*, an argument of great weight and according to my humble judgment, of irresistable force, still remains.

The legislative power of the government is not absolute but limited. If it be doubtful whether the legislature can do what the constitution does not explicitly authorise; yet there can be no question, that they cannot do what the constitution expresly prohibits. To maintain, therefore, the constitution, the judges are a check upon the legislature. This doctrine I know is denied, and it is therefore incumbent upon me to show that it is founded.

It was once thought by gentlemen, who now deny the principle, that the safety of the citizens and of the states, rested upon the power of the judges to declare an unconstitutional law void. How vain is a paper restriction, if it confers neither power nor right. Of what importance is it to say, Congress are prohibited from doing certain acts, if no legitimate authority exists in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the consequences which would follow from establishing the principle, that Congress have the exclusive right to decide upon their own powers? This principle admitted, does any constitution remain? Does not the power of the legislature become omnipotent? Can you talk to them of transgressing their powers, when no one has a right to judge of those powers but themselves? They do what is not authorised; they do what is inhibited; nay, at every step they trample the constitution under foot; yet their acts are lawful and binding, and it is treason to resist them. How ill, sir, do the doctrines and professions of these gentlemen agree. They tell us they are friendly to the existence of the states; that they are the friends of federative, but the enemies of a consolidated general government; and yet, sir, to accomplish a paltry object, they are willing to settle a principle which, beyond all doubt, would eventually plant a consolidated government, with unlimited powers, upon the ruins of the state governments.

Nothing can be more absurd than to contend, that there is a practical restraint upon a political body, who are answerable to none but themselves for the violation of the restraint, and who can derive from the very act of violation, undeniable justification of their conduct.

If, Mr. Chairman, you mean to have a constitution, you must discover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the legislature which contravene the instrument.

Does the power reside in the state? Has the legislature of a state a right to declare an act of Congress void? This would be erring upon the opposite extreme. It would be placing the general government at the feet of the state governments. It would be allowing one member of the union to control all the rest. It would inevitably lead to civil dissention and a dissolution of the general government. Will it be pretended that the state courts have the exclusive right of deciding upon the validity of our laws?

I admit they have the right to declare an act of Congress void. But this right they enjoy in practice, and it ever essentially must exist, subject to the revision and control of the courts of the United States. If the state courts definitively possessed the right of declaring the invalidity of the laws of this government, it would bring us in subjection to the states. The judges of those courts, being bound by the laws of the state, if a state declared an act of Congress unconstitutional, the law of the state would oblige its courts to determine the law invalid. This principle would also destroy the uniformity of the obligation upon all the states, which should attend every law of this government. If a law were declared void in one state, it would exempt the citizens of that state from its operation, whilst obedience was yielded to it in other states. I go farther and say, if the states or state courts had a final power of annulling the acts of this government, its miserable and precarious existence would not be worth the trouble of a moment to preserve. It would endure but a short time, as a subject of derision, and wasting into an empty shadow, would quickly vanish from our sight.

Let me now ask if the power to decide upon the validity of our laws resides with the people? Gentlemen cannot deny this right to the sovereign people. I admit they possess it.—But if at the same time it does not belong to the courts of the United States, where does it lead the people? It leads them to the gallows. Let us suppose that Congress, forgetful of the limits of their authority, pass an unconstitutional law. They lay a direct tax upon one state and impose none upon the others. The people of the state taxed, contest the validity of the law. They forcibly resist its execution. They are brought by the executive authority before the courts upon charges of treason. The law is unconstitutional, the people have done right, but the courts are bound by the law and obliged to pronounce upon them the sentence which it inflicts. Deny to the courts of the U. States the power of judging upon the constitutionality of our laws, and it is vain to talk of its existing elsewhere. The infractors of the laws are brought before these courts, and if the courts are implicitly bound, the invalidity of the laws can be no defence. There is however, Mr. Chairman, still a stronger ground of argument upon this subject. I shall select one or two cases to illustrate it. Congress are prohibited from passing a bill of attainder; it is also declared in the constitution that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the party attained." Let us suppose that Congress pass a bill of attainder, or they enact that any one attained of treason shall forfeit to the use of the United States, all the estate which he held in any lands or tenements.

The party attained is seized and brought before a federal court, and an award of execution passed against him. He opens the constitution and points to this line "no bill of attainder, or *ex post facto* law shall be passed." The attorney of the United States reads the bill of attainder.

The court are bound to decide, but they have only the alternative of pronouncing *the law or the constitution invalid*. It is left to them, only to say that the law vacates the constitution, or the constitution avoids the law. So in the other case stated, the heir after the death of his ancestor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law by which it is confiscated is shewn. The constitution gave no power to pass such a law. On the contrary, it expresly denied it to the government. The title of the heir is rested on the constitution, the title of the government on the law. The effect of one destroys the effect of the other; the court must determine which is effectual.

There are many other cases, Mr. Chairman, of a similar nature to which I might allude.—There is the case of the privilege of Habeas Corpus, which cannot be suspended but in times of rebellion or invasion Suppose a law prohibiting the issuing of the writ at the moment of profound peace; if in such case the writ were demanded of a court, could they say, it is true the legislature were restrained from passing the law suspending the privilege of this writ, at such a time as that which now exists; but their mighty power has broken the bonds of the constitution, and fettered the authority of the court. I am not, sir, disposed to vaunt, but standing on this ground I throw the gauntlet to any champion upon the other side. I call upon them to maintain, that in a collision between a law and the constitution, the judges are bound to support the law, and annul the constitution Can the gentlemen relieve themselves from this dilemma? Will they say, though a judge has no power to pronounce a law void, he has a power to declare the constitution invalid.

The doctrine for which I am contending is not only clearly inferable from the plain language of the constitution, but by law has been expresly declared and established in practice since the existence of the government.

The second section of the third article of the constitution expresly extends the judicial power to all cases arising under the constitution, the laws, &c The provision in the second clause of the sixth article leaves nothing to doubt. "The constitution and *the laws of the United States which shall be made in pursuance thereof &c.* shall be the supreme law of the land." The constitution is absolutely the supreme law. Not so of the acts of the legislature—Such only are the law of the land as are made *in pursuance of the constitution*.

I beg the indulgence of the committee one moment, while I read the following provision from the 25th section of the judicial act of the year 1789: "A final judgment or decree in any suit in the highest court of law or equity of a state in which a decision in the suit could be had, *where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States*, and the *decision is against their validity, &c.* may be re examined and reversed or *affirmed* in the supreme court of the United States, upon a writ of error" Thus, as early as the year 1789, among the first acts of the government, the legislature explicitly recognized the right of a state court to declare a treaty, a statute, & an authority exercised under the United States void, subject to the revision of the supreme court of the United States; and it has expresly given the final power to the supreme court to affirm a judgment which is against the validity either of a treaty, statute, or an authority of the government.

I humbly trust Mr. Chairman, that I have given abundant proofs from the nature of our government, from the language of the constitution, and from legislative acknowledgements, that the judges of our courts have the power to judge and determine upon the constitutionality of our laws.

Let me now suppose that in our frame of government the judges are a check upon the legislature; that the constitution is deposited in their keeping. Will you say afterwards their existence depends on the legislature? That the body whom they are to check has the power to destroy them? Will you say that the constitution may be taken out of their hands, by a power the most to be distrusted, because the only power which could violate it with impunity? Can any thing be more absurd than to admit, that the judges are a check upon the legislature, and yet to contend that they exist at the *will* of the legislature? A check must necessarily imply a power commensurate to its end.—The political body designed to check another must be independent of it, otherwise there can be no check.—What check can there be when the power designed to be checked can annihilate the body which it is to restrain?

I go farther, Mr. Chairman, and take a stronger ground. I say, in the nature of things, the dependence of the judges upon the legislature, and their right to declare the acts of the legislature void, are repugnant, and cannot exist together. The doctrine, sir, supposes two rights—first, the right of the legislature to destroy the office of the judge, and the right of the judge to vacate the act of the legislature. You have a right to abolish by law the offices of the judges of the circuit courts. They have a right to declare your law void—It unavoidably follows, in the exercise of these rights either that you destroy their rights, or that they destroy yours. This doctrine is not an harmless absurdity, it is a most dangerous heresy. It is a doctrine which cannot be practised without producing discord only, but bloodshed. If you pass the bill on your table, the judges have a constitutional right to declare it void.—I hope they will have courage to exercise that right; and if, sir, I am called upon to take my side, standing acquitted in my conscience and before my God, of all motives but the support of the constitution of my country, I shall not tremble at the consequences

The constitution may have its enemies, but I know that it has also its friends. I beg gentlemen to pause before they take this rash step. There are many, very many who believe, if you strike this blow, you inflict a mortal wound on the constitution. There are many now willing to spill their blood to defend that constitution. Are gentlemen disposed to risk the consequences? Sir, I mean no threats—I have no expectation of appalling the stout hearts of my adversaries, but if gentlemen are regardless of themselves, let them consider their wives and children, their neighbors and their friends. Will they risk civil dissention; will they hazard the welfare, will they jeopardize the peace of their country, to save a paltry sum of money, less than thirty thousand dollars.

Mr. Chairman, I am confident that the friends of this measure are not apprised of the nature of its operation, nor sensible of the mischievous consequences which are likely to attend it. Sir, the morals of your people, the peace of your country, the stability of the government, rests upon the maintenance of the independence of the judiciary. It is not of half the importance in England, that the judges should be independent of the crown, as it is with us, that they should be independent of the legislature. Am I asked, would you render the judges superior to the legislature? I answer, no; but co ordinate. Would you render them independent of the legislature? I answer yes; independent of every power on earth, while they behave themselves well. The essential interests, the permanent welfare of society, require this independence. Not, sir, on account of the judge; that is a small consideration, but on account of those between whom he is to decide. You calculate on the weakness of human nature, and you suffer the judge to be dependent on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependent judge cannot be impartial. Independence is therefore essential to the purity of our judicial tribunals.

Let it be remembered, that no power is so sensibly felt by society as that of the judiciary. The life and property of every man is liable to be in the hands of the judges. It is not our great interest to place our judges upon such high ground, that no fear can intimidate, no hope can seduce them? The present measure humbles them in the dust, it prostrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate; it is this consequence which I deeply deplore. What does reason, what does argument avail, when party spirit presides? Subject your bench to the influence of this spirit, and justice bids a final adieu to your tribunals. We are asked, sir, if the judges are to be independent of the people? The question presents a false and delusive view. We are all the people. We are, and as long as we enjoy our freedom, we shall be divided into parties. The true question is, shall the judiciary be permanent, or fluctuate with the tide of public opinion? I beg, I implore gentlemen, to consider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the spirit of party. But let their existence depend upon the support of the power of a certain set of men, and they cannot be impartial. Justice will be trodden under foot. Your courts will lose all public confidence and respect.

The judges will be supported by their partizans, who in their turn will expect impunity for the wrongs and violence they commit. The spirit of party will be inflamed to madness, and the moment is not far off when this fair country is to be desolated by civil war.

Do not say, that you render the judges dependent only on the people—you make them dependent on your President. This is his measure. The same tide of public opinion which changes a President will change the majorities in the branches of the legislature. The legislature will be the instrument of his ambition, and he will have the courts as the instruments of his vengeance. He uses the legislature to remove the judges, that he may appoint creatures of his own In effect, the powers of the government will be concentrated in the hands of one man, who will dare to act with more boldness, because he will be sheltered from responsibility. The independence of the judiciary was the felicity of our constitution It was this principle which was to curb the fury of party upon sudden changes. The first moment of power gained by a struggle, are the most vindictive and intemperate. Raised above the storm, it was the judiciary which was to control the fiery zeal, and to quell the fierce passions of a victorious faction.

We are standing on the brink of that revolutionary torrent, which deluged in blood one of the fairest countries of Europe.

France had her national assembly more numerous and equally popular with our own. She had her tribunals of justice and her juries. But the legislature and her courts were but the instruments of her destruction. Acts of proscription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party, and you break down the mounds which defend you from this torrent. I am done. I should have thanked my God for greater powers to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck, we may bid a final adieu to the constitution.