

improper to enlarge or curtail the jurisdiction of a court already established. With respect to the first point, it seems generally conceded that there ought to be a district court of some sort. The constitution indeed recognizes such a court, because it speaks of "such inferior courts as the Congress shall establish," and because it gives to the supreme court only appellate jurisdiction in most causes of a federal nature. But some gentlemen are of opinion that the district court should be altogether confined to admiralty causes; while others deem it expedient that it should be intrusted with a more enlarged jurisdiction: and should in addition to admiralty causes, take cognizance of all causes of seizure on land, all breaches of impost laws, of offences committed on the high seas, and causes in which foreigners or citizens of other states are parties. The committee are now to decide between these two opinions: After mature reflection, I am inclined to favour the latter. What are the objections advanced against it? A gentleman from New-Hampshire has observed, that such an establishment will be unnecessary, expensive and disagreeable to our constituents. Justice, he observed, could as well be administered in the state as in the district courts, and should the state courts betray any symptoms of partiality, their adjudications would be subject to revision in the federal supreme court, which in his opinion afforded sufficient security. If the state courts are to take cognizance of those causes which by the constitution are declared to belong to the judicial courts of the United States, an appeal must lie in every case to the latter, otherwise the judicial authority of the Union might be altogether eluded. To deny such an appeal would be to frustrate the most important objects of the federal government, and would obstruct its operations. The necessity of uniformity in the decisions of the federal courts is obvious; to assimilate the principles of national decisions, and collect them, as it were into one focus, appeals from all the state courts to the supreme court would be indispensable; it is however much to be apprehended that this constant controul of the supreme federal court over the adjudication of the state Courts would dissatisfy the people, and weaken the importance and authority of the state judges; nay more, it would lessen their respectability in the eyes of the people, even in causes which properly appertain to the state jurisdictions; because the people being accustomed to see their decrees overhauled and annulled by a superior tribunal, would soon learn to form an irreverent opinion of their importance and abilities. It appears therefore expedient to separate, as much as possible, the state from the federal jurisdiction, to draw a broad line of distinction, to assign clearly to each its precise limits, and to prevent a clashing or interference between them. The expense is suggested as an objection to this system.—It is admitted by the gentleman who makes it, that it is proper to have district courts of admiralty; these courts must of necessity have jurisdiction of offences committed on the high seas. Now the establishment of such a court will induce nearly all the expense that will be requisite; the extension of the system to the length I have stated will occasion a very trifling increase of the expense, and if the latter plan should be found, after due consideration to be more conducive to the happiness and welfare of our constituents than the other, a small increase of the expense ought to be no impediment to the attainment of so valuable an object. There can be no reason why our constituents should be displeased with this arrangement; the district judge will be elected from among the citizens of the state where he is to exercise his functions and will feel every inducement to promote the happiness and protect the liberties of his fellow-citizens—he will be more independent than the state judges, holding his commission during good behaviour, and not being influenced by the fear of a diminution of his salary.—Trial by jury will be secured in all cases, wherein it is provided in the state courts. Should the district judge be under any bias, it is reasonable to suppose it would be rather in favour of his fellow-citizens, than in favour of foreigners or the United States. By restricting the state courts to few causes of federal jurisdiction, the number of appeals will be diminished, because every cause tried in those courts will for the reasons before mentioned be subject to appeal, whereas the jurisdiction of the district court will be final in many cases. In as much, therefore, as those appeals are grievous to the citizens, which lie from a court within their own state to the supreme court at the seat of government, and at a great distance, they will consequently be benefited by an exemption from them. In the bill as sent from the Senate, the jurisdiction of the district courts is not so extensive as to occasion any just alarm; it is in my opinion rather too confined, and does not embrace objects enough. It would be difficult to take from that court any of its jurisdiction without materially injuring the whole judicial system, except the clause relating to consuls and vice consuls, which appears to me to be improperly annexed to the district court, and which I shall move to strike out when we come to that part of the bill. But to what objects does the

district courts extend? To admiralty causes and trials for piracy and offences committed on the high seas: Gentlemen have conceded that the district courts shall have jurisdiction of these cases. To offences against the United States: It is very proper that a court of the United States should try offences committed against the United States.—Every nation on earth punishes by its own courts offences against its laws. To seizures on land for breaches of the revenue laws: This power will not be censured: it would be *de se* to trust the collection of the revenue of the United States to the state judiciaries. The disinclination of the judges to carry the law into effect, their disapprobation of a certain duty, the rules of the court or other obvious causes might delay or frustrate the collection of the revenue, and embarrass the national government. From this view it appears that the district court is not clothed with any authority of which the state courts are stripped, but is barely provided with that authority which arises out of the establishment of a national government; and which is indispensably necessary for its support. Can the state courts at this moment take cognizance of offences committed on the high seas? If they do, it is under an act of Congress, giving them jurisdiction, and in such cases the judge of the admiralty is associated with two common law judges; this tribunal becomes then a federal court for the particular occasion, because it is established by Congress. The state courts have no jurisdiction of causes arising from a national impost law, because no such law has heretofore existed. Where then is the ground of uneasiness suggested by gentlemen? The foregoing observations must persuade them that their alarms have been premature. But it is said there must be court-houses, judges, marshals, clerks, constables, goals and gibbets—that these establishments will induce a heavy and unnecessary burthen, and have a tendency to create disgust in the people. I readily agree with the gentleman that there are in every community some individuals who will see with pain every new institution in the shape of a constable, goal or gibbet: and who think that law and courts are an abridgement of their liberty; but I should be very sorry to concur with him that this is a prevailing opinion: I think better of our constituents, and am persuaded they are sensible that these institutions are necessary for the protection of their lives and property; and grow out of the very nature of a federal government. Care indeed should be taken to prevent their being grievous and oppressive: But as long as there are in the world knaves and rogues, and monsters under the form of men, preying upon the honest and innocent, so long will courts and all their concomitants be wanted to redress the wrongs of the latter, and repress the depredations of the former. But let me ask the gentleman whether a court of admiralty, and a court for the trial of offences on the high seas, which he agrees ought to be established, will not require all these institutions; viz. court-houses, clerks, sheriffs, &c? There can be no doubt of it. The extension of the jurisdiction of the district court as far as I think it necessary will not occasion any one article of expense or any one institution which will not be necessary on the gentleman's plan. To suppose that there will be a clashing of jurisdiction between the state and district courts on all occasions, by having a double set of officers, is to suppose that the states will take a pleasure in thwarting the federal government: It is a supposition not warranted by the disposition of our fellow-citizens, who, finding that these establishments are created for their benefit and protection, will rather promote than obstruct them: It is a supposition equally opposed to the power of direct taxation, and to the establishment of state and county courts, which exist in the several states and are productive of no such inconvenience. These several courts will have their limits defined, and will move within their respective orbits without any danger of deviation. Besides, I am not persuaded that there will be a necessity for having separate court-houses and goals: Those already provided in the several states will be made use of by the district courts. I remember when the court for the trial of piracy under the authority of Congress, was held in Charleston, the judges sat in the court-house, the prisoners were confined in the goal, were under the custody of the constables and were executed by the orders of the sheriff of the district of Charleston. All these were state institutions, and yet the court was a federal court.

There is another important consideration; that is, how far the constitution stands in the way of this motion: It is declared by that instrument that the judicial power of the United States shall be vested in one supreme and in such inferior courts as Congress shall from time to time establish: Here is no discretion then in Congress to vest the judicial power of the United States in any other tribunal than in the supreme court and the inferior courts of the United States: It is further declared that the judicial power of the United States shall extend to all cases of a particular description—How is that power to be administered? Undoubtedly by the tribunals of the United States: If the judicial power of the United States extends to those specified cases, it follows indisputably that the tribunals of the United States must likewise extend to them.—What is the object of the motion? To assign the jurisdiction of some of these very cases to the state courts, to judges, who in many instances hold their places for a limited period, whereas the constitution, for the greater security of the citizen, and to insure the independence of the federal judges, has expressly declared that they shall hold their commissions during good behaviour;—to judges who are exposed every year to a diminution of salary by the state legislatures, whereas the constitution to remove from the federal judges all dependence on the legislative or the executive, has protected them from any diminution of their compensation. Whether the inexpediency or the unconstitutionality of the motion be considered, there are more than sufficient reasons to oppose it. The district court is necessary, if we intend to adhere to the spirit of the constitution, and to carry the government into effect. At the same time, I shall cheerfully assist in organizing this court in that mode which will prevent its being grievous or oppressive, and will render it conducive to the protection and happiness of our constituents.

Mr. JACKSON: I rise, Sir, on what I conceive the most important subject, which has yet come before this house: It is what I have long considered, and with difficulty have decided, but on mature consideration, am impressed with the same sentiments with the gentleman from New-Hampshire. It must be admitted, that society was formed before the rules which governed that society, and therefore the laws and rules were formed merely for the convenience of that society. In fact the convenience of the people is, or ought to be the first privilege of every government; and the people have a right to expect it. Our present constitution has set out with this declaration, "We the People," in its preamble; and therefore in the system before us, every attention of the Legislature ought to be drawn to this point. Sir, I apprehend that the system before us is not framed, or calculated for that purpose; but seems rather intended to destroy some of the most valuable, and important privileges of the citizens. I do not wish to diminish from the powers in the federal judiciary, which may be necessary and commensurate to the carrying the government fully into execution; but I consider the system unnecessary, vexatious, and expensive, and calculated to destroy the harmony and confidence of the people.

The gentleman from South-Carolina has objected to the motion for striking out the clause, for several reasons: The first he brings forward is, "that in several of the States the Judges are limited in their appointments, that inferior jurisdictions are required by the Constitution, and that the State judges are not vested with permanent salaries." Sir, those arguments fall to the ground on referring to the Constitution: The Constitution does not absolutely require inferior jurisdictions: It says, that "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the Congress may from time to time ordain and establish." The word *may* is not positive, and it remains with Congress to determine what inferior jurisdictions are necessary, and what they will ordain and establish, for if they chuse, or think no inferior jurisdictions necessary, there is no obligation to establish them. It then remains with the Legislature of the Union to

examine the necessity or expediency of those courts only. Sir, on the subject of expediency, I for my part, cannot see it, for I am of opinion that the State courts will answer every judiciary purpose.

The gentleman from South-Carolina has again advanced "that if district and circuit courts are not adopted, the harmony of the States and people will be at stake, and that the system will be more vexatious by a series of appeals." Sir, I do not agree with this doctrine. I hold that the harmony of the people, their liberties and properties will be more secure under the legal paths of their ancestors, under their modes of trial, and known methods of decision. They have heretofore been accustomed to receive justice at their own doors in a simple form. The system before the house has a round of courts, appellate from one to the other, and the poor man that is engaged with a rich opponent, will be harassed in the most cruel manner, and although the sum be limited for appeal, yet, Sir, the poor individual may have a legal right to a sum superior to that limit, say above a certain amount of dollars, and not possess fortune sufficient to carry on his law suit: He must sink under the oppression of his richer neighbor. I am clearly of opinion that the people would much rather have but one appeal, and which in my opinion would answer every purpose: I mean from the State courts, immediately to the supreme court of the continent. An admiralty jurisdiction I will grant may be necessary for the trial of maritime affairs, and matters relative to the revenue, to which object I would cheerfully enlarge it, and I think Sir, for the present it will be far more eligible. The gentleman has likewise advanced that the expense would be as great without, as with the inferior jurisdiction. I must beg leave to differ from him, and to declare that it will be in the proportion of three to one: for although the clerk and marshal of the district courts are the officers proposed for the circuit courts, yet, Sir, there will arise a train of inferior officers, consequently attendant on those officers and courts, exclusive of jurors, witnesses, &c. He has likewise advanced that it is necessary to prevent confusion: Sir, the line of distinction will be much easier preserved in the present state of the department, for many of the reasons pointed out by the gentleman from New-Hampshire, exclusive of the difficulty of new rules, &c. But, Sir, we are told it is necessary that every government should have the power of executing its own laws: This argument must likewise tumble when we find that the Constitution, treaties, and laws of the United States, are by the Constitution itself, made the supreme law of the land. Sir, are not the judges of the different States bound by oath to support that supreme law? Will they not recollect those oaths, and be liable to punishment by your act which has obliged them to take that oath, if they do not respect it as such? assuredly they will—it is part of the compact formed with the States; but, Sir, does there not remain the appellate jurisdiction of the supreme court to control them, and bring them to their reason? Can they not reverse, or confirm the State decrees as they may find them right or wrong? Thus then does this last argument fall to the ground.

Sir: That the system is vexatious can be easily proved, and is too obvious. An offender is dragged from his home, his friends, and connections, to a distant spot, where he is deprived of every advantage of former character, of relations, and acquaintance: The right of trial by a jury of the vicinage is done away, and perhaps he is carried to a place where popular clamor for the moment might decide against him; or if allowed a trial by vicinage, or his neighbors, it is equally vexatious to drag them two or three hundred miles from their homes, with evidences to try, and give testimony, at a distant place; every thing is to be dreaded from it. Sir, this is contrary to our wonted customs, and we need not revert to the history of Britain, after the conquest, to view what struggles against innovations of this nature that nation made. The monastic clergy joined with the Kings to oppress the people, establish civil law, and get the legal power into their own hands: The people took the alarm, and with the nobility contested the point, which was never finally settled until the great charter of John, which it was one of the causes of producing, and which fixed the ecclesiastical bounds. I would ask if our modes of trial must not be as dear to our fellow-citizens as to them, and if the same motions may not reasonably be expected? I am afraid, Sir, that they will be found so. Is it proper we should be so suspicious of the State Judges? I cannot for my part consider human nature so depraved, as to suppose that with an oath to observe the supreme law of the land, the State Judges would not obey it. It comes us in my opinion, as a wise legislature, to take up and execute the least exceptionable and milder mode first: there is no requisition—no necessity from the Constitution: If we find on experiment, (and the house generally admit our laws at present experimental) that sufficient attention is not paid, and that our government requires for its existence a more energetic mode, I pledge myself to agree to any inferior jurisdictions which may be thought necessary for that purpose; but I never can consent to oppress my fellow-citizens without experiment and absolute necessity.

Mr. BENSON observed, that if the clause is struck out of the bill, it will involve an abandonment of judicial proceedings on the part of the United States altogether, except in cases of appeals.—The difficulties which may arise in this case, are not justly chargeable to the bill itself, they are owing entirely to the constitution—for that is express, that the general government shall exercise all judicial powers: This Legislature therefore, have it not at their option to establish judicial courts, or not: The words of the system, are plain and full; and the institution of the courts, arise out of the very nature of the government: How far the operation of this power may extend, it is not for us to determine: Whether it will interfere with the State judiciaries is a matter that must be the result of experiment—Some gentlemen suppose it will, and it may be that it will involve the assumption of the whole judicial power; but still the clause does nothing more than take up the letter and spirit of the constitution.

Mr. SEDGWICK observed, that the gentleman will find as great difficulties to arise upon his plan, as upon that proposed in the bill—and this is obvious—we are so circumstanced that two distinct independent powers of judicial proceedings do exist; and I do not see how we shall get rid of the difficulty, if it is one, till there shall be a change in the constitution. I did not suppose that at this day, it was a question whether this government is to exercise all the powers of a government, or not? I did conceive that such an idea had no existence in any gentleman's mind—but Sir, what does the present motion import? Its consequences go to divesting government of a power, without which its authority is but a shadow. It is necessary to the completion of any system of government, that it should possess every power necessary to carry its laws and ordinances into execution. But by the gentleman's idea, it is to be left to the determination of an authority, which acts independently of this legislature, whether the laws of the union shall be executed or no.—Mr. SEDGWICK then touched upon the difficulties that would arise from giving the state courts cognizance of federal questions.—He also adverted to the conduct of the state legislatures, (the creators of state courts and judges) in respect to infractions and violations of contracts, &c. by which the United States had been humbled from the pinnacle of glory, to the lowest state of degradation. Under the impression of these considerations, said he, can it be supposed that this government can exist with any degree of reputation, and dignity without the power of establishing its own tribunals, and instituting its own judicial proceedings? It appears to me as necessary that they should possess this power, as that they should be United in order to their excellence as a nation.

Mr. AMES: The remarks which gentlemen have made on the importance of this question will be of some use in deciding it. The judicial power is in fact highly important to the government, and to the people: To the government because by this means, its laws are peaceably carried into execution. We know by experience what a wretched system that is which is divested of this power. We see the difference between a treaty which independent nations make, and which cannot be enforced without war, and a law which is the will of the society. A refractory individual is made

to feel which much government on the p... equivalent to manu... fore, a... the gove... noration... dinary ex... I shall th... expedien... not amen... the consti... assign... strange... to get... time for... debate is... man from... in expedie... point, and... The bra... admiralty... certain co... statutes of... fiance of... rule of ad... done is ri... whether t... federal co... that righ... his liberty... was a mar... ed States... States wo... substantial... rules of d... In the la... the rules... do not en... the court... is the foun... tain to the... judges as... are employ... be designat... for names... Causes of... nor can the... cied. Th... constitution... many cause... factors will... crime again... Here a juri... this can be... ne before... is disobeye... the person... State judg... common la... not an aut... not enlarge... declaring a... who shall... court had... They may... actions for... respect to... are highly v... ornaments... power of... they act, a... such power... We may co... quire the fe... ly true that... provision b... will not be... they shall b... ly commissi... they will n... one State co... or any, eve... monstrous... offence. Sh... jury tri... not direct... will believe... to pursue th... The nature... without bei... that offence... cognizance... jurisdiction... such as m... for the tri... created. T... must be pro... courts. If... The remain... ly worth tra... ed by our... Several c... coming to...