



CONGRESS.

PHILADELPHIA.

HOUSE OF REPRESENTATIVES,
THURSDAY, FEBRUARY 16.

IN COMMITTEE OF THE WHOLE.
On the Representation Bill.

MR. VINING's proposition under consideration—the first article of which is, that New-Hampshire shall be entitled to 5 Representatives—this being read by the Chairman.

Mr. Livermore rose in support of the general principle of the proposition—which is to apportion the representatives agreeable to the aggregate number of the people of the United States—he urged in brief, the arguments which had before been adduced on the importance of making the representation as equal as possible, and concluded with saying, he hoped that the number proposed for New-Hampshire (five) would be agreed to.

Mr. Baldwin said, that if New-Hampshire should have five members, Georgia, according to its present number, which is about one half of that of New-Hampshire, would be entitled to three—but this is not proposed; nor do the members from that state expect it should be.

Mr. Kittera observed, that apportioning representatives to the state of Virginia, on the principle contended for by the gentleman from New-Hampshire, would give Virginia 24 members.

Mr. Niles supported the proposition.—He urged that the fractions would be diminished on the whole by it—and tho' perfect equality is not attainable, he could not conceive on what gentlemen founded their opposition to that plan which came the nearest to this equality—and as the constitution fully warrants on a liberal, tho' strictly just construction, the apportionment now contemplated, he hoped it would be agreed to.

Mr. Madison repeated the substance of what he had before offered in objection to this proposition. Fractions will exist, said he, on every possible plan—this is to be a permanent law—and in its operation will probably increase those fractions. The constitution refers to the respective numbers of the states, and not to any aggregate number. The proposition breaks down the barriers between the state and general governments, and involves a consolidation.

Mr. Livermore replied to Mr. Kittera.—He observed that if Virginia was represented agreeable to the proposition contemplated for New-Hampshire, that is four members, Virginia would be entitled to only *seventeen*—this would appear on calculation.

Mr. Williamson contended that, by the constitution, whatever ratio was adopted, it is to be applied as a divisor to the number of persons in each state *respectively*. This idea of an aggregate number, looks like a consolidation of the government; not only so, but the supplementary member proposed for those states who had not inhabitants to vote for such supplementary member, would not be elected agreeable to the constitution.

Mr. Seney opposed the proposition.—He observed that it was very extraordinary indeed that those persons who, in the previous discussion, were opposed to the ratio of 30,000, on account of giving so large a representation, should now advocate this proposition, which, in fact, encreases the whole number. He hoped that it would be rejected.

Mr. Vining said a few words to exculpate the friends of the proposition from the charge of inconsistency.

Mr. Venable stated various particulars to shew that the plan of transferring the fractions from one state to another, comparing them with the general ratio, would produce greater inequality than the plan contended for by those who oppose the present motion.

Mr. Livermore justified himself from the charge of inconsistency—he was always in favor of an equal representation—with this he began, and with this he should end—and he was not solicitous which way the vote determined the matter, provided the principle of equality was adhered to—and therefore he should not regret N. Hampshire being restricted to 4 members, provided Virginia had only 17; which is the highest number she will be entitled to, apportioning them agreeable to four for New-Hampshire. He observed that the friends of the proposition might be outvoted by numbers—he wished, if it could be done, that they might be outreasoned as well as outnumbered.

Mr. Lawrance said, having advocated in a former discussion the ratio of 30,000, he hoped he should not be charged with inconsistency if he

gave his assent to the present proposition—as he had explicitly declared that he advocated that number, as giving the largest representation—and this proposition not only preserved that idea, but enhanced the number, and on more equal principles. He then entered into an examination of the clause in the constitution respecting taxes and representatives, which it is expressly declared shall be according to numbers. He reprobated the idea of members considering themselves as representatives merely of particular parts of the Union. The members of this house, said he, are the representatives of America. The states, as states, are represented in the Senate. A member of this house from Georgia, is a representative of the state of New-York, as much as if he came from the latter state. Conceiving the idea of the meaning of the constitution which he had given to be just, he should vote for the proposition.

Mr. Findley said he should vote against the proposition—he did not like the principle of it, if it had any—he rather thought it was destitute of all principle, for it contemplates no ratio at all—it is rather an arbitrary apportionment of the representation.

Adverting to the article respecting taxation, he observed that the proposition does not accord with the idea of the gentlemen who advocate it, for still there will be fractions left—and, said he, are not these fractions to be taxed?

In reply to Mr. Lawrance's remarks respecting local representation, he observed that the gentleman's idea proved too much; for if the idea of representing local interests is destroyed, the essence of representation is done away altogether, and all responsibility is lost.

Mr. Ames.—The Constitution says, that "Representatives and direct taxes shall be apportioned among the several states, which may be included within this union, according to their respective numbers." &c. &c.

"The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative."

Deductions from the above.
1st. You may not exceed one to 30,000.
2d. You may have as many as one to 30,000 of the whole number of the Union.

3d. Supposing the amendment ratified, you must have 100 members, if one to 30,000 will give them.

These principles were not disputed till lately. But it is now pretended that the ratio *may* be applied to each state, and the number of representatives no more than the multiples of 30,000 in each state. Some even go so far as to say that it *must* be so applied, and that Congress may not have as many members as one to 30,000 of the whole Union.

This construction seems to be violent.

1st. The word representatives, first used, can only mean the whole number of representatives—for they are to be apportioned among the several states. The word is used in the same sense afterwards, "The number of representatives shall not exceed one to 30,000," again meaning the whole number of representatives. The whole number of representatives shall not exceed one to 30,000 of the whole people. To avoid this obvious meaning, they say it should read, "shall not exceed one to 30,000 in each state." These words are supplied wholly without authority.

2d. The clause merely restrains the number of representatives, so as not to exceed one to 30,000. The members in Congress might have been increased to any number, had not this restriction existed. It is a restrictive, and not an explanatory clause. It curtails, but cannot be supposed to change the natural import of the preceding power. It is against the fair rules of construction so to change it.

3d. The sense is perfect without the words one to 30,000 in each state. Expressum facit cessare tacitu.

4th. The construction makes tautology. The first clause having directed the manner of apportioning representatives among the several states according to their respective numbers, might have been wholly omitted, one to 30,000 in each state being a final apportionment.

5th. Words must not be supplied by construction repugnant to words expressed. The result of an apportionment according to numbers as first directed by the constitution, differs in terms from a ratio of one to 30,000 in each state. It differs in its operation no less. The members in the next house will be 113—Apportion them according to numbers among the several states, Virginia would have 19—19 being to 113, as 630,000 the numbers of Virginia, to 3,619,000 the whole people of the United States. But by the construction which supplies the words in each state, she will have 21 members.

6th. The words one to 30,000, are merely restrictive of the number in Congress from the whole people, and do not change the sense of the first clause, for taxes and representatives are to be apportioned according to numbers. The construction cannot be extended to taxes with any good sense. Yet as taxes and representatives are to be apportioned similarly, the construction

applying to the one, should apply to the other. Yet the advocates of this construction say, that taxes shall be imposed according to numbers, and not the multiples of 30,000 in each state. Taking it for proved that the sense of the first clause is not changed, but its operation limited by the clause *shall not exceed one to 30,000*. It remains to see what is the sense of the first clause standing alone. "Representatives shall be apportioned among the several states according to their respective numbers." The rule of three will shew the the number of members any state is entitled to—Thus, as the whole number 3,619,000 is to the number of the next house 113—to is the number of persons in a state, say Virginia, which are 630,000, to her quota of members. The result is 19 members. The bill pursuing another rule, obtained as we have seen by a forced construction, gives that state 21 members.

7th. The amendment to the constitution refutes the sense of the construction. The words are "there shall be one for every 30,000 till the number shall amount to 100." Plainly the whole number of the nation is intended. The whole number is to be formed by one for every 30,000. The words contended for are therefore excluded, and no construction will avail in this place to add them.

8th. The ratio of one to 30,000 in each state is inconsistent with this amendment. For according to that, 3,000,000 of persons must have 100 members in Congress. Had the numbers by the census fallen short of a surplus beyond 3 millions sufficient to cover the fractions or lost numbers, this amendment to the constitution could not be carried into execution, according to the principles of the bill. For the amendment requiring 100 members, the numbers being more than 3,000,000, it would appear that 100 members could not be obtained by applying the ratio of 30,000 to the numbers in each state, instead of taking the entire number of the Union. Here then would be a constitutional obligation to have 100 members in Congress, and an absolute impossibility of having them according to the principles of this bill.

10th. The number of representatives is limited not to exceed one for 30,000. Pursue the letter of the constitution and avoid all construction, the number of representatives will be 120. Adopt the construction that you are to have no more than one to 30,000 will give you, and you bring down the number to 113.

But this process, erroneous as it is, only fixes the number—it does not apportion them. That should be done according to numbers, and Virginia would not be found entitled to 21 of 113. According to the principle of the bill; if it may be called a principle, it is defective. The letter and true intention of the constitution will be violated by a forced construction, which gives some states more and others less than their due share of the representatives.

(TO BE CONTINUED.)

WEDNESDAY, MARCH 21.

The petition of the merchants of Rhode-Island, was referred to a committee of the whole on the state of the Union.

The report of the Attorney-General, on the petition of Andrew Jackson, was referred to a select committee.

A message was received from the Senate, informing the House that they had passed a bill for compensating the Doorkeepers of both Houses for extra services, with amendments, to which they request the concurrence of the House.

The message received yesterday from the President, respecting a Brigadier-General, was referred to a select committee to report by bill.

Order of the Day.

The House proceeded in the discussion of the Georgia election—Mr. Giles' motion for declaring General Jackson duly elected, &c. was further debated, and finally decided—

Y E A S.

Messrs. Ashe, Baldwin, Brown, Clark, Findley, Gerry, Giles, Gregg, Griffin, Grove, Heilster, Jacobs, Lee, Macon, Madison, Moore, Niles, Page, Parker, Schoonmaker, Seney, I. Smith, J. Smith, Sterret, Sturges, Sumpter, Treadwell, Venable, Willis—29.

N A Y S.

Messrs. Ames, Barnwell, Benson, Boudinot, B. Bourne, S. Bourne, Fitzsimons, Gilman, Goodhue, Gordon, Hartley, Hillhouse, Huger, Key, Kittera, Kitchell, Lawrance, Learned, Livermore, Muhlenberg, Sedgwick, W. Smith, Steele, Sylvester, Thatcher, Tucker, Wadsworth, Ward, White, 29—It was then determined in the negative by the Speaker's casting vote.

The following resolution was then passed:
"Resolved, that the seat of Anthony Wayne, as a member of this house, is, and the same is hereby declared to be vacant.—Ordered, that the Speaker do transmit a copy of the preceding resolution, and of this order, to the executive of the State of Georgia, to the end that the said executive may issue writs of election to fill the said vacancy."