

JAN. 26, 1825.] *Internal Trade with Mexico.—Rules for Presidential Election.* [S. & H. of R.]

mounds of earth and sand, and pyramids of stones, to mark out the way. Without a figure, they might be called light-houses; for they were, in point of fact, guides to the passenger. The present measure differed from the act of 1807, authorizing a road to be opened through Florida in two points: that road went through the settlements belonging to the King of Spain, and was a road, properly speaking; this was merely a track, and passed only through the unoccupied parts of the Mexican territory. It was argued that, if this trade were beneficial to the people of Mexico, they would meet us half way; but it was very easy to imagine a trade that was more beneficial to one party than another. We, said Mr. B. are the carriers, and it is we who have need of the road to travel upon; but it is idle to expect that these people will make roads; they are blinded by ignorance. As an instance, he mentioned that the Province of New Mexico has been established for more than 150 years. The commerce between Mexico and Santa Fe is carried on by means of mules; the journey there and back occupies five months; and, during the whole period mentioned, has passed but by one route; yet it is a fact, that, on this whole route, there is not such a thing as a bridge, except such as are composed of poles put side by side, such as only our dogs would cross, and such holes were suffered to exist in them, that our men, and even our dogs, would be in danger of breaking their legs. If, then, for so many years, they have not thought it worth while to make a better road for this valuable branch of commerce, how are we to expect them to cooperate here? We are not to expect any thing more from them than the privilege to mark out the way.

The question was then taken on striking out the second section, and negatived—ages 15, noes 23; and the bill was ordered to a third reading, by the following vote:

YEAS.—Messrs. Barton, Benton, Boulogny, Brown, D'Wolf, Eaton, Edwards, Elliott, Holmes, of Miss. Jackson, Johnson, of Ken. Johnston, of Lou. Kelly, Knight, Lanman, Lloyd, of Mass. Lowrie, McIlvaine, McLean, Noble, Palmer, Parrott, Ruggles, Seymour, Smith, Talbot, Taylor, Thomas, Van Buren, Van Dyke.—30.

NAYS.—Messrs. Branch, Chandler, Clayton, Cobb, Gaillard, Hayne, Holmes, of Maine, King, of Ala. King, of N. Y. Macon, Tazewell, Williams.—12.

HOUSE OF REPRESENTATIVES—SAME DAY.

RULES FOR PRESIDENTIAL ELECTION.

Mr. WRIGHT, from the Select Committee appointed to prepare rules to be observed in case the election of President and Vice President shall devolve on this House, made the following report:

The committee appointed "to prepare and report such rules as, in their opinion, may be proper to be observed by this House, in the choice of the President of the United States, whose term of service is to commence on the fourth day of March next, if, on counting the votes given in the several states, in the manner prescribed in the Constitution of the United States, it shall appear that no person has received a majority of the votes of all the Electors of President and Vice President, appointed in the several states,"

REPORT:

That the following Rules be observed by the House in the choice of a President of the United States, whose term is to commence on the fourth day of March, 1825, if the choice shall constitutionally devolve upon the House:

1st. In the event of its appearing, on opening all the certificates and counting the votes given by the Electors of the several states for President, that no person has a majority of the votes of the whole number of Electors appointed, and the result shall have been declared, the same shall be entered on the Journals of this House.

2d. The roll of the House shall then be called, and, on its appearing that a member or members from two-thirds of the states are present, the House shall immediately proceed, by ballot, to choose a President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President; and in case neither of those persons shall receive the votes of a majority of all the states on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen.

3d. The doors of the Hall shall be closed during the balloting, except against Members of the Senate, and the Officers of the House; and the Galleries shall be cleared on the request of the Delegation of any one state.

4th. From the commencement of the balloting until an election is made, no proposition to adjourn shall be received, unless on the motion of one state, seconded by another state; and the question shall be decided by states. The same rule shall be observed in regard to any motion to change the usual hour for the meeting of the House.

5th. In balloting, the following mode shall be observed, to wit:

The Representatives of each state shall be arranged and seated together, beginning with the seats at the right hand of the Speaker's Chair, with the Members of the state of Maine, thence proceeding with the Members from the states in the order the states are usually named for receiving petitions, around the Hall of the House, until all are seated; A ballot-box shall be provided for each state;

The Representatives of each state shall, in the first instance, ballot among themselves, in order to ascertain the vote of their state, and they may, if necessary, appoint tellers of their ballots;

After the vote of each state is ascertained, duplicates thereof shall be made out, and, in case any one of the persons from whom the choice is to be made, shall receive a majority of the votes given, on any one balloting, by the Representatives of a state, the name of that person shall be written on each of the duplicates; and, in case the votes so given shall be divided, so that neither of said persons shall have a majority of the whole number of votes given by such state on any one balloting, then the word "divided" shall be written on each duplicate;

After the delegation from each state shall have ascertained the vote of their state, the Clerk shall name the states in the order they are usually named for receiving petitions; and, as the name of each state is called, the Sergeant-at-Arms shall present to the Delegation of each, two ballot-boxes, in each of which shall be deposited, by some Representative of the state, one of the duplicates made as aforesaid, of the vote of said state, in the presence, and subject to the examination, of all the members from said state then present; and, where there is more than one Representative from a state, the duplicates shall not both be deposited by the same person;

When the votes of the states are thus all taken in, the Sergeant-at-Arms shall carry one of the said ballot boxes to one table, and the other to a separate and distinct table;

One person from each state, represented in the balloting, shall be appointed by its Representatives to tell off said ballots, but in case the Representatives fail to appoint a teller, the Speaker shall appoint; That said tellers shall divide themselves into two sets, as nearly equal in number as can be, and one of the said sets of tellers shall proceed to count the votes in one of said boxes, and the other set the votes in the other;

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Rules for Presidential Election—United States' Penal Code. [JAN. 26, 1825.]

When the votes are counted by the different sets of tellers, the result shall be reported to the House, and if the reports agree, the same shall be accepted as the true votes of the states; but if the reports disagree, the states shall proceed, in the same manner as before, to a new ballot.

6th. All questions arising after the balloting commences, requiring the decisions of the House, which shall be decided by the House voting per capita, to be incidental to the power of choosing a President, shall be decided by States, without debate; and, in case of an equal division of the votes of states, the question shall be lost.

7th. When either of the persons from whom the choice is to be made, shall have received a majority of all the states, the Speaker shall declare the same, and that that person is elected President of the United States.

8th. The result shall be immediately communicated to the Senate by Message; and a committee of three persons shall be appointed to inform the President of the United States, and the President elect, of said election. The report was read and ordered to lie on the table.

UNITED STATES' PENAL CODE.

The House then proceeded to the unfinished business of yesterday, which was the bill making further provision for the punishment of crimes against the United States.

Mr. LIVINGSTON, of Lou. moved to amend the bill as follows:

[The amendment of Mr. LIVINGSTON proposes to strike out the 18th, 19th, and 20th sections of the present bill, and to insert in lieu thereof several other sections, the object of which were, to define the crime of forgery, and provide for its punishment by confinement at hard labor not less than seven, nor more than fifteen years, and to provide for the punishment of the various modifications of this offence, and guarding against the evasion of punishment by technical exceptions. The general purpose of the bill was to substitute imprisonment at hard labor, in lieu of death, as the punishment for forgery.]

In support of the above amendments, Mr. LIVINGSTON observed, on the general subject, that it had been held by some that forgery was an offence, in England, by the common law. He doubted this, however: since, as early as the reign of Richard II. a statute was passed on the subject, and, before that time, the practice of writing was comparatively rare, and written instruments but few. And, from the reign of Richard II. to that of Henry VI. the statute provision was confined to the forgery of public records. From the days of Elizabeth to the present time, they have been constantly multiplying, till they now amounted to sixty at least. The reason of this multiplicity was, that the statute law, instead of giving a definition of the crime, was occupied in describing the objects forged—and, as these multiplied with the progress of society, the statutes multiplied with them. The United States, he regretted to say, had imitated this bad example, and gone into a similar course of vicious legislation. This course was begun by the statute of 1789, which related to *indents*, and which punished the forgery of them with death. Then came the statute against the forgery of bank notes; and, although this crime was so much more frequent than the forgery of Government securities, and, on that account, so much more dangerous to society, it was punished by imprisonment only. The bill on the table belongs to the same species of legislation. It gives no general definition of the crime, but a long enumeration (made, he acknowledged with great deliberation and care) of the instruments for the forgery of which it provides punishment. But, if, in this enumeration, however careful, a single instrument has been omitted, then a new statute will be needed to punish the forgery

of that instrument; and, if another shall be discovered to have been omitted, then there must be another statute. He objected to this whole course, and thought it far preferable that the crime should be defined and punished by one general law. The amendments had been printed and had laid on the tables of the members for many days. They had been examined and approved by several of his friends, and ought not now, therefore, to be viewed as a mere novelty of his. Mr. L. then went into a particular review and explanation of the amendments he had proposed—insisted that the definition by which they limited the crimes, comprehended all that ought to be punished—was calculated to save many statutes—prevented equivocation—provided for the forgery of patents, sea letters, certificates, and attestations, transfers of stock, transfers of deposits, &c. &c. Having gone very fully into this explanation, (but in a manner which no report can render fully intelligible without a constant reference to the various clauses of the amendments proposed,) he appealed to the House whether a law of this description was not eminently desirable. He then explained that part of the amendments which prescribes the punishment of the offence, and lastly, that part of them which relates to the mode of prosecution; and, under this division of the subject, he took occasion to remark on the wide diffusion of this crime in society—the great temptation which existed to commit it, and its alarming increase in modern times. He insisted on the necessity of rendering its punishment certain: the offender must be made to know that he had no possible escape. An extensive practice had convinced him, that there existed among offenders, more hope of escape in relation to this crime than almost any other. They trust to chicanery and hope to the last, that there will be some flaw in the indictment, or some legal quibble, by means of which they may get free. One great object of the amendment was to remove this hope and utterly annihilate it. It avoided all defects in the legal description of the instrument forged, by simply annexing a copy of the instrument to the indictment, and it required the accused and his counsel to state every technical objection to the form of proceeding, the day before the trial, precluding, at the same time, the pleading of such objections in arrest of execution, after conviction by a jury. Having gone through his observations, explanatory of the several features of the amendments he had proposed, Mr. L. remarked, in conclusion, that, from what had passed yesterday, he was led to doubt whether the House was now prepared to give the amendments that mature consideration to which, in his opinion, they were entitled.

He should not feel the same fear at any other time—for he had been led to observe, that once in about four years, there occurred a singular meteorological phenomenon in the atmosphere of this House, which indisposed gentlemen to every subject which required close and patient investigation. It usually continued from the beginning of January to the latter end of February, and he felt unwilling during that interval, to press the farther consideration of the subject he had brought under the form of an amendment to the present bill. He had thought it was proper to bring the subject forward, and give it the explanation he had done, being convinced, from the experience of not a short life, that truth would always prevail sooner or later. The people of the United States would see the proposition, and would hear something of the reasoning by which it was supported. They would not, he hoped, be altogether without effect. And should the confidence of his constituents be continued to him for two seasons longer, he hoped to bring forward, (and he wished to be considered as pledging himself to that effect,) a general system of penal law for the United States.

Mr. WEBSTER rejoined in the assurance just given by the gentleman from Louisiana, that he intended to

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wanted no instructions; they had them already; for it was a portion of the duty of every public vessel to suppress pirates, wherever they found them, and there was no better way of assisting commerce than to protect it from the depredations of these freebooters.

The question being on Mr. LLOYD'S motion to strike out the words "*specialty designated*," and insert *in conformity with instructions*, was decided in the affirmative—ayes 27.

Mr. BARBOUR then moved the amendment he had just before suggested, (limiting the operation of the section to the West Indies,) and it was agreed to.

Mr. PARROTT moved to strike out the words "or any other articles of freight," because public vessels were seldom or never employed in transporting any thing but specie or bullion.

After some conversation, this motion was lost; and then

The question being taken on the section, it was rejected—ayes 18, noes 20.

Mr. SMITH then moved the amendment which he had suggested some days before, and which is as follows:

"*And be it further enacted*, That the Collectors of the several ports of the United States be, and they are hereby, authorized to pay to the owner or owners of any merchant vessel of the United States, which shall clear out for, and *bona fide* be bound to, any island in the West Indies, north and west of the Island of St. Thomas, or any port in the Gulf of Mexico, north of the state of Colombia, the sum of — dollars, for every gun of a calibre not less than four pounds, which may be mounted on board such vessel: *Provided*, That the owner or owners shall have furnished for each gun, at least thirty rounds of ammunition, ten boarding pikes, and ten muskets, with at least thirty-six cartridges for each musket, and shall have furnished three men at least, for each gun so mounted: *And provided, further*, That such payment shall only be made on the report of the Surveyor of the port being produced to the said Collector, that such armament is actually on board such vessel, and such number of men had been engaged for the voyage.

"*And be it further enacted*, That the President be, and he is hereby, authorized to purchase a steamboat, of the largest size, and arm and man the same in such a manner as he may deem proper; and, also, to cause to be built four barges or launches, each to mount a gun on the bow, of a calibre to carry a shot not less than six pounds, and capable of carrying thirty men."

Mr. S. said, he was aware that the proposition which he had made, was, in some degree, opposed to the opinion expressed by the Secretary of the Navy; but, with all the respect he entertained for that gentleman, he must submit that some information had been given to the House which touched the welfare of the nation. He had generally been of opinion that they were a body instituted by the constitution to afford advice and assistance to the Government—that they were mutually useful in assisting each other. The great object of the bill was to destroy piracy. It was the duty of all to aid in the accomplishing of it, and the most effectual mode of doing it would be to take from the pirates all hope of profit. When they found they were constantly resisted, and they risked their lives with but little chance of plunder, they would seek some more honest mode of employment. But merchant vessels found it too expensive to arm. It consumed the profits of the voyage, which were never great. The object of this amendment was to induce them to arm, by assistance from Government, and he thought, if the insurance offices were to make a distinction between those vessels that were armed and those that were not, it would go far to make them all arm.

Mr. MILLS expressed his approbation of the section that was under consideration. He thought it a matter of economy—because, the more armed merchantmen

there were, the fewer public vessels would be required to be on the station. It was important in the view of humanity—because, merchant vessels being always armed, would be able to defend themselves wherever they were attacked. They would be competent to destroy all those pirates who were in the habit of sallying out in small boats to commit their depredations.

Mr. LLOYD, of Massachusetts, said that this trade occupied a capital of seven millions of dollars, and that an average of two hundred vessels, comprising one hundred thousand tons, were employed in it. Granting a privilege to arm would be of no service to the greater part of these vessels, to the many small traders from the ports of North Carolina, &c. because their profits would not admit of it. If it was meant that they should defend themselves, this bounty was the only means of enabling them to do it; and if that were not extended to them, they must give up the trade, which would become confined to a few wealthy individuals, who could afford to arm.

Mr. SMITH proposed to fill the blank in his amendment with eight hundred dollars, that is, two hundred for each gun.

Mr. EATON observed, that the expense which would be incurred by Government from such a measure, might be greater than they were aware of. The number of ships were two hundred, and if they made only two voyages a year, there would be a drain on the Treasury to the amount of two hundred and forty thousand dollars—a sum almost sufficient to build a handsome frigate. Besides, it might be made a matter of speculation: persons might arm vessels, and when they got their clearance, they would receive the bounty, and were not obliged to go to Cuba. He submitted whether these things were not worthy of some consideration.

The Senate then adjourned.

HOUSE OF REPRESENTATIVES—SAME DAY.

ELECTION OF PRESIDENT.

On motion of Mr. WRIGHT, of Ohio, the House then resolved itself into a committee of the whole on the state of the Union, and took up the report of the Select Committee appointed to prepare rules to be observed by the House in choosing a President of the United States.

The report was read through, and then

The rules were read and considered separately. On the first rule some conversation took place between Mr. BASSET, of Va. and Mr. WRIGHT, the chairman of the Select Committee. No alteration, however, was made in the rule.

The second rule was then read, and no objections were made to it.

The third rule was read, as follows:

3d. The doors of the Hall shall be closed during the balloting, except against members of the Senate and the officers of the House; and the galleries shall be cleared on the request of the delegation of any one state.

Mr. INGHAM, of Pennsylvania, moved to amend this rule by striking out the last clause, viz: "*and the galleries shall be cleared on the request of the delegation of any one State.*" Mr. I. stated that, as a member of the Select Committee who had made the present report, he had, when this rule was brought forward in the committee, objected to that part of it which he now moved to strike out; and he had objected then, as he did now, to the clause in question, because he apprehended that there was no good reason for putting it in the power of the delegation of a single state, (consisting, in some instances, of a single individual,) to clear the galleries of this House. He could not conceive that there was any need to go into conclave in order to conduct the approaching election. It was not a measure involving our relations with foreign nations, but a matter of a purely

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domestic character. Yet this rule enforces secrecy, in regard to the transaction, if required even by a single individual, and that in the most obnoxious form. He had rather have the rule made absolute at once, and say that the galleries, as well as the doors of the House, should be closed, than to give authority to the delegation of one state to have them cleared. He was at a loss to account for such a proposition. He supposed that there must be some special reason for granting such a power, but he could not conceive what it was. Was any distrust entertained of the personal safety of members of this House? Surely, the power of the Speaker over the galleries would be as great on the contemplated occasion, as at the present moment; and the existing rules of the House clothed him with full authority to have the galleries cleared in case of disorder. Believing that no good reason existed for the clause in question, he hoped it would be stricken out.

Mr. McLANE, of Delaware, said, that, when the honorable member from Pennsylvania rose, he had been about to offer an amendment to the rule, in conformity with the opinion he had expressed, when in committee; and he should now acquiesce in the amendment which that gentleman had offered, provided the principle on which he himself wished to go, was adopted by the House. He was for clearing the galleries altogether, without leaving it to the delegation of any state to require that it should be done. In giving his reasons, in favor of this course, he wished it to be distinctly understood, that any remarks he might make, had no reference, whatever, to the peculiar state of things existing at the present moment. He thought the question ought to be treated as involving an important precedent, and ought to be considered on principles that were to govern on this occasion, and all others: not only now, but hereafter. He felt himself called on by his duty, to state these principles. He felt, very fully, the responsibility of his situation, and wished to assert the rights which he conceived to pertain to the members of this House, at the present moment, while the nation was in a state of calmness and quiet; a time peculiarly favorable for the adoption of rules calculated to provide for a season of great party excitement.

Mr. McLANE asked, Why ought the galleries to be open? Why must this balloting be conducted in public? In electing a President, the members of the House were called to act, not as Representatives of the people, but, as umpires, to do that which the people have tried to do, and have not been able to accomplish. The people have tried to elect a President: they have failed to do so. The House of Representatives are then empowered to choose one for them. This power is not delegated to them by their constituents, but by the Constitution: and, in exercising it, they have no peculiar relation to their constituents, and are not responsible to them, further than every honest man is responsible to his conscience and his country for his public acts. He should consider the question now presented as a new one, and should put wholly aside what had at any time been done respecting it. Who (asked Mr. M'L.) has a right to inspect my decision between conflicting claims to the Presidency? In ordinary cases he granted that the people had a right to look to the acts of their Representatives, and exercise a sort of inspection over them. Yet, even this was not always permitted to them by the Constitution. It provides that, in certain cases, the public eye shall be excluded, either when the subject of deliberation is of such a nature that an important public measure must be frustrated, if prematurely disclosed, or when, from the excited state of public feeling, an improper influence is apprehended, as endangering the freedom of debate. No such state of feeling existed now, but it not only might exist, and that in an alarming degree, but to such a degree as to become wholly irresistible. If the principle shall once be established, that

the representatives of this people, standing on this floor to vote or to debate, are improperly to be controlled, it is in those galleries that the object is to be effected. If ever popular tumult, and a general excitement of national feeling, are to jeopardize the freedom, and endanger the purity, of this body, it is in those galleries that they will shew their power.

For his own part, Mr. M'L. said, he thought that, in so important an act as the choice of the Chief Magistrate of this nation, it was fit and becoming that members should be left to act from the cool dictates of their judgment, and that they alone were the judges how they ought to act. With them, the constitution had entrusted the duty, and there it might be safely trusted. Mr. M'L. said, that he made these remarks from the fullest conviction of their truth. He thought that now, in a time of public tranquillity, a precedent might be set that would prove valuable hereafter. He felt great deference, also, for the precedent that had been already established in this respect. At the election of a President in 1801, this subject had been entrusted to able hands, and, after full deliberation, they had thought it expedient to admit no person as a spectator of the election but members of the Senate and officers of this House, and the election was so conducted.

Mr. BUCHANAN said he rose with diffidence to express his opinion upon this subject. Like his friend from Delaware, (Mr. McLANE,) he disclaimed the intention of making any remark which might have an allusion to the peculiar situation of the members of this House, in regard to the approaching election. He considered the present to be a question of great importance, and that its decision would establish a precedent, which, in future times, might have a powerful influence upon the interests of this country. He was sorry to say he had arrived at a conclusion in direct opposition to that of his friend from Delaware, (Mr. McLANE.) The reasons which had led him to that result, he would state to the House.

The American people, said Mr. B. have a right to be present and inspect all the proceedings of their representatives, unless their own interest forbids it. In relation to our concerns with foreign Governments, it may become necessary to close our galleries. Our designs, in such cases, might be frustrated, if secrecy were not, for a time, preserved. Whenever there shall be disorder in the gallery, we have also a right to clear it, and are not bound to suffer our proceedings to be interrupted. Except in these cases, he at present could recollect none which would justify the House in excluding the people.

In electing a President of the United States, said Mr. B. we are, in my opinion, peculiarly the representatives of the people. On that important occasion we shall, emphatically, represent their majesty. We do not make a President for ourselves only, but also for the whole people of the United States. They have a right to insist that it shall be done in public. He, therefore, protested against going into a secret conclave, when the House should decide this all important question. He said that the doctrine of the gentleman from Delaware, (Mr. McLANE,) was altogether new to his mind. That gentleman has alleged that we are called upon to elect a President, not as the representatives of the people, but by virtue of the constitution. Sir, said Mr. B. who created the constitution? Was it not the people of the United States? And did they not, by this very instrument, delegate to us, as representatives, the power of electing a President for them? It is by virtue of this instrument we hold our seats here. And, if there be any case in which we are bound to obey their will, this is peculiarly that one. To them we must be answerable for the proper exercise of this duty.

What are the consequences, said Mr. B. which will result from closing the doors of the gallery? We shall

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impair to the election an air of mystery We shall give exercise to the imaginations of the multitude, in conjecturing what scenes are acting within this Hall. Busy Rumour, with her hundred tongues, will circulate reports of wicked combinations, and of corruption, which have no existence. Let the people see what we are doing; let them know that it is neither more nor less than putting our ballots into the boxes, and they will soon become satisfied with the spectacle, and retire.

The gentleman from Delaware, (Mr. McLANE,) has urged upon us the precedent which now exists on this subject. Mr. B. said, he revered the men of former days, by whom this precedent was established. He had good reason, however, to believe, that the intense excitement which existed at that time among the people, at the Seat of Government, was occasioned, in a considerable degree, by their exclusion from the gallery.—They came in crowds into the House, but were prohibited from entering the Hall. Currents and counter-currents of feeling kept them continually agitated. New conjectures of what was doing within, were constantly spreading among them. Mystery always gives birth to suspicion. If those people had been permitted to enter, much of the excitement which then prevailed would never have existed.

It has been said, that there might, and probably would be disorder, if we admitted the people into the gallery. Mr. B. could scarcely believe this possible. He had too high an opinion of the American people to suffer himself to entertain such an apprehension. Should we, however, be mistaken, where is the power of the Speaker? Where that of the House? We can then turn them out, and we shall then have a sufficient apology for doing so. But, to declare, in the first instance, that they shall be excluded, upon the request of any one out of twenty-four states, would be a libel both upon the people of the United States and the members of this House. Mr. B. asked pardon for this expression, if it were considered too harsh.

Mr. B. said he knew well his friend from Delaware was willing that all his conduct, in regard to the Presidential question, should be exhibited before the public, and that it was principle, and principle alone, which had suggested his remarks.

That which gives this subject its chief importance, Mr. B. said, is the precedent. He was anxious that it should be settled on sure foundations. If the rule, in its present form, should be adopted, it may, and probably will, be dangerous in future times. At present, our Republic is in its infancy. At this time, he entertained no fear of corruption. In the approaching election, it can therefore make but little difference, whether the gallery shall be opened or closed. But the days of darkness may, and, unless we shall escape the fate of all other Republics, will come upon us. Corruption may yet stalk abroad over our happy land. When she aims a blow against the liberties of the people, it will be done in secret. Such deeds always shun the light of day.—They can be perpetrated, with a much greater chance of success, in the secrecy of an electoral conclave, than when the proceedings of the House are fully exposed to the public view. Let us then establish a precedent, which will have a strong tendency to prevent corrupt practices hereafter.

Mr. B. concluded by observing that, whether we regard the precedent to be set, the nature of our government, our own character, or that of the people whom we represent, they all conspire to induce us to adopt the amendment.

Mr. LIVERMORE, of N. H. thought there was no necessity for any further rule in relation to the galleries, than that which now existed. Provision was already made to clear the galleries whenever the House thought proper. This was sufficient. Why should a majority of all the members surrender this power to the delega-

tion of a single state? He saw no reason. Why, asked Mr. L. are gentlemen so much alarmed? He was persuaded that no more disorder was to be apprehended from the gallery, in conducting an election of President of the United States, than in choosing a Sergeant-at-Arms for this House. For himself, he hated all mystery. He considered it a characteristic attendant of tyrannical governments, and he thought that the proposal to conduct this election in secret, was a proof that we were not yet quite divested of certain old notions, which our ancestors brought with them from the other side of the Atlantic. He hoped that all that would be done, on this occasion, would be done in a plain, manly, simple, republican manner.

Mr. WEBSTER, of Massachusetts, would say a few words on the question, premising, that more importance seemed to be attached to it than he thought belonged to it. He presumed no practical inconvenience would arise, whether the motion prevailed or not; and yet, perhaps, it might be well to consider the subject duly, as, hereafter, possibly, the question might be of consequence. He did not see any particular benefit arising from providing that the galleries should, at all events, be open. There could be no debate when the House was proceeding in the election; and the voting must be by ballot. There was nothing to be done or said, but to give the ballots and count them. Something had been said of the superintendence which the people might exercise on this occasion, if the galleries were open.—That was what he did not exactly understand. The people of the United States would hardly be in the gallery. Some hundred or two of the inhabitants of this city, those who should get up earliest, and get seats first, would be accommodated in the gallery, and others could not get in. He believed that he himself, finding some difference of opinion in the committee, upon the former rule, had suggested this modification. He was entirely willing the galleries should be open; and yet he was entirely willing to have them closed, if any state desired it. And, particularly, as it would be very inconvenient to discuss and settle these questions, after the House had begun to act as states, it seemed to him reasonable to make provision, before hand, for this, as for other cases. He regretted both that the gentleman from Pennsylvania wished to expunge the rule altogether, and that the gentleman from Delaware wished to shut the galleries altogether. He thought the rule would do very well as it stood. It should be considered, that in some cases, very many persons were to express the voice of a state; in other cases, a single individual. Now, if either a numerous delegation, or a single individual representing a state, expressed a wish that spectators should not be admitted to the gallery, he was willing to indulge that request—so much the rule provided, and no more. He repeated, however, that he thought a very unsuitable and disproportionate importance might be given to this question, which he should much regret.

Mr. WRIGHT, of Ohio, said, that, individually, he had no objection to the amendment. If it were required to give publicity to the proceedings of the House, upon this subject, he should certainly favor it, because he was generally of opinion the affairs of the Government should be conducted openly in the face of the world, as he considered the Government as resting on the will and information of the people. But, Mr. W. said, in the discharge of the duties now to be undertaken, we ought to look to a future time, when the country shall be in a state of excitement, that shall reach and affect those in the galleries, and thence operate on the House. It will be recollected that the only time at which this House had heretofore exercised the power of electing a President, it had been solemnly decided the doors should be closed, except as to members of the Senate. That determination was not made without deliberation, but upon solemn debate, and by a vote by yeas and nays. Mr. W.

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said he felt, in some measure, the influence of that precedent, and had never heard any objection to the mode of conducting the ballotings on that occasion.

In reply to those who seemed to suppose it impossible that any disturbance should take place in the galleries, Mr. W. said he had an exalted opinion of the virtue and intelligence of the people; but we need not shut our eyes upon the evidence before us, and we need not go further back than one year for a most glaring instance of excitement and disorder in the gallery of a Legislative Hall of one of the states of this Union, while the Legislature were transacting business relating to the very election, the determination of which is now devolved on us by the Constitution; and perhaps, he said, it would not be going too far to say that excitement might be feared now. Gentlemen seemed to suppose that, by closing the doors, an injunction of secrecy was imposed on the members and officers of the House, in regard to the proceedings, and that the whole were to remain secret. That, Mr. W. said, was not the case—the rule proposed no such thing: publicity could easily be given to every thing done. The journals were free for inspection, and it was surely safer to rely on them, than reports from the galleries. It had been well observed by the gentleman from Massachusetts, (Mr. WESTER,) that all the proceedings relating to the election, were to be without debate; that, besides the ballotings, all were conducted by motion, second, and decision. This being the case, the results were all that could be communicated to the people in the galleries, and they would be as well communicated at the doors of the House. All that those in the galleries could see or hear in addition to the results, would be the mechanical operation of dropping the ballots into the boxes and lifting them out again. I, said Mr. W. would vote as readily against the imposition of an injunction of secrecy, on the proceedings relating to the election, as the gentleman from Pennsylvania (Mr. INGHAM,) or any other gentleman on this floor; but I cannot admit that any such proposition is embraced in this rule, as it stands.

Sir, said Mr. W. it is not the people of the United States, the sober, thinking people, that will be found in your galleries on such occasions; no, they are at home, attending to their farms, their merchandise, their various other avocations; they will not assemble in the galleries, or be hereafter affected by the precedent you establish. It will be the artful, intriguing, designing politicians, from various parts of the country, to witness, and if it can be, to exert an improper influence, over your proceedings, and these I am not very solicitous to accommodate.

I hope, sir, the amendment will not prevail, and that we shall not, against the wish of any one state, keep the galleries open for the exertion of undue influence, or to place members in a situation where any one can suppose they are unduly operated on.

Mr. ROSS, of Ohio, observed, that, according to his understanding of the proposed rule, if it was adopted, the proceedings of the House would remain, at least for the time, completely in the dark. The demand of a single state, not even seconded by another state, was to be of itself enough to compel the House to clear the galleries. Why was this rule to be adopted? The only reasons he had heard advanced were, that the House must go into this conclave from a fear of interruption—interruption, not from themselves, but from the people in the gallery; that the people of the United States were not to be expected to be present here, and that those who attended in the gallery would be such as were not entitled to any consideration. This, according to his understanding, was the sum and substance of the reasons adduced in favor of the rule. But, for himself, he believed that the people of this country understood the rules of decorum as well now as they did when the

Constitution was formed, and that there was no more danger of disturbance now than then.

Whether gentlemen sat here as umpires and arbitrators, or as the representatives and organs of the people, was a question on which he certainly had an opinion, but which he did not consider it necessary at present to discuss. But, whether acting in one or the other capacity, he could not see why the gallery should be closed. The House had the power already to remove from it disturbers of the peace, and, if gentlemen meant so to conduct as to meet the approbation of their own consciences, they had no reason to fear those who would be in the gallery. And, if they were not afraid to have their conduct judged, why close the doors? All seemed to agree that no dangerous excitement existed at present. Was it, then, to be got up in two or three days, and to such a height as to threaten the safety or independence of the House? For himself, he could wish not only to have the people present, but that the votes of all the members were to be given *viva voce*. He regretted that there was any ballot at all on the question, and was utterly opposed to all closing of doors.

Mr. HAMILTON, of S. C. observed, that he felt desirous of detaining the committee a few moments in offering a remark or two on the subject before them. It seems to be a well settled conviction that it is a great public misfortune that the election of a Chief Magistrate should devolve on this House; and he would go further and say, that, in so devolving, it was perhaps a still greater misfortune that the choice should be made by secret balloting in the several and separate states, which, by its nature, precluded the public knowledge, which the people ought to have, of the votes of their representatives, on a question so vitally interesting to them, and under sanctions so solemn and imposing. For one, he was free to confess, as the people were precluded by the very form of election, from this species of knowledge, he was disposed to let them in as spectators to whatever might pass in relation to the exercise of this great trust; and in making this remark, he concurred cordially with the gentleman from Ohio, in wishing that, in spreading all our acts and doings before the public eye, during the approaching contest, we could likewise subject each delegate to the direct responsibility of a *viva voce* suffrage. This being impossible, he was disposed to consider the assembly of such citizens as thought proper to come into our galleries, as curing, in a slight degree, the defect of which he had spoken, in the mode of election. They would have a contemporary opportunity of witnessing the vote of each state, and, thus, information, which it was right and proper that the people should have, would be promptly disseminated, in a form, he thought, better to keep the public mind quiet, than those thousand rumors and suspicions which naturally belong to mystery and concealment.

The gentleman from Delaware, however, meets this subject at its threshold, by asking "what right any man has to go into the galleries to see what is doing in regard to the election of a President?" I answer, because that man happens to be one of the people, for whom we are acting, and for whom we are choosing a Chief Magistrate; and because he has precisely as much right to witness the election in question as any act of ordinary legislation; and according to the theory of this democracy, it is infinitely more expedient that he should witness the one ceremony than the other. Mr. H. said, that he thought the popular eye would have a salutary influence in repressing any indecorum and violence, to which, in moments of peculiar agitation, the House, constituted as it was, was perhaps even more liable than the spectators in our galleries. They are fortunately exempt from many of those strong bias of favor and antipathy which may lamentably exert an influence within this bar.

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The gentleman from Delaware does not affirm that there is any danger at this time, in admitting our fellow citizens into the galleries; but he contends that, at a future period, this House might be subject to intimidation from the violence of a mob, who would assemble to witness the scene, to which we are shortly to be summoned. Sir, when that day of profligate violence arrives, the atrocity of which cannot be put down by the force of public opinion—when a corps of such desperadoes are permitted, for an instant, to exercise such an influence, all spirit will have departed from this House, and all purity and moral worth from the People; and the forms we may cherish here, will be but a solemn mockery. When a few hundred persons, scarcely equal to our own numbers, convened in those seats, can successfully exercise acts of intimidation on the representatives of ten or twenty millions of people, to an absolute reversal of their sovereign will, it may be well imagined that the energy of the Government, and public virtue, are buried in a common grave. The argument, if it is worth any thing, could be urged, to show that it is expedient that we should even legislate in the conclave of a Turkish divan. The truth is, that many subjects of ordinary discussion, and common legislation, are better calculated to produce popular excitement, than the election of a President by this House. During the former, popular prejudices, and, I may say, the feelings of public vengeance, may be addressed, by the arts and electricity of popular eloquence. In the latter, our business is confined to one act, that is, in placing for ourselves, or having it placed for us, a small strip of paper on which the name of an individual shall be written. The ceremony precludes the possibility of debate, and almost the only motion, which can be put, is, one that will have relation to the period when the act of balloting is to be renewed, on the contingency of continued failures to elect. It is impossible to conceive, in the forms of the transaction itself, fewer circumstances, calculated to provoke popular violence and commotion. Besides, said Mr. HAMILTON, I think the very habits of our people forbid any apprehensions, either present or future; and, however little consoling it may be, to the pride of some, he thought there was as much honesty outside of the walls of our House, as there was within them. He supposed that the individuals who would at present, and in times to come, occupy the seats in our gallery, would, a majority of them, be citizens of this District, whom he believed were as exempt from the character of corrupt intriguers, and noisy brawlers, as the people of any section of our country, although the gentleman from Ohio, (Mr. WRIGHT,) seemed to think that our spectators, whenever we have a President to elect, must consist of the very worst and most abandoned species of our population. For myself, said Mr. H. satisfied that no precedent we shall now establish, will be binding, and that posterity will have the same right that we have, to take care of themselves, and being equally satisfied that the ordinary power possessed by the Speaker, to clear the galleries, in the event of occasional disorder, meets all the exigencies of the present crisis, I hope that every citizen of this land, let him come from where he will, may be allowed to witness an event, in which he has precisely as great an interest as we have ourselves: more particularly, when his presence can, in no degree, impair a sound and efficient exercise of the agency we have to exert.

Mr. H. said he would, before he took his seat, notice one or two remarks which fell from the gentleman from Delaware, (Mr. M'LANE.) This gentleman, in a very manly declaration of the course which he intended to pursue in the approaching election, has thought proper, as furnishing the best illustration of the principles which should govern him in that course, to affirm that he does not feel himself bound, by the wishes, either expressed or implied, of the people whom he represents on this

floor, and that he was in no greater degree responsible to them, than to the rest of the country, for the selection which he should make of the person for whom he should vote to fill the Presidency. It is not my business, said Mr. H. to quarrel with the principles or the opinions of the gentleman from Delaware, for whom I have personally great respect, but, nevertheless, I hope I may be pardoned for venturing to express my own. The first obligation which a human being owes, is to his own conscience. If this monitor tells him that a candidate for office is dishonest and unworthy, no human power ought to compel us to vote for him. But, whilst I lay down this primary principle thus broadly, I am as equally satisfied, that, in the present election, which belongs peculiarly to the people, which has come to us on a forelorn and disastrous contingency, that, if we have no moral objections to the person whom, among the candidates, is preferred by the particular people we represent here, we are bound to surrender our mere personal preferences and prejudices, and to endeavor to carry into effect their honest, reasonable wishes. This position harmonizes with the whole theory of our representative democracy; and, to suppose that an agent of the people is absolved from all deference, (and he might almost say obedience,) to their obvious wishes, by the mere circumstance of our being organized into states for this exclusive purpose, is at once to sap those great foundations of responsibility and control on which our entire system rests. In a word, he thought the true rule was in a very narrow circle, which was, that, after satisfying our own consciences, the next best thing was to gratify the reasonable and honest purposes of those who send us here.

Mr. H. said, that the gentleman from Delaware, in urging the House to adopt the rule for the exclusion of spectators from the gallery, during the election, had relied, with no ordinary emphasis, on the precedent which had been established by the Congress of 1801, in the celebrated, he could not say *nefarious*, contest between Mr. Jefferson and Mr. Burr. As this part of the gentleman's argument he puts on the ground of *authority*, and not *reason*, he would venture to hint that he, (Mr. H.) had some serious misgivings that people would not look to those times as furnishing the instructive examples of public freedom; for, he believed, it would be susceptible of proof, by referring to the journals, that most of those who voted then for the proposed exclusion from the galleries, were those who had most strenuously supported the Alien and Sedition Law. He did not make this allusion for the purpose of throwing a fire brand into the House, but he appealed to it as an historical fact.

In conclusion, Mr. H. said, that he really hoped that no groundless apprehensions would induce the House to retain a rule, which, by the mystery which would be incident to its enforcement, would beget a thousand times more excitement than if our galleries were thrown open to the whole world.

Mr. M'LANE again rose, not for the purpose of entering at large into the debate, but merely to correct some misapprehensions which appeared to exist, in relation to the remarks which he had first submitted. It was certainly far from his intention either to stir up old embers, or to brighten any existing flame. Far less was it his intention to advocate any rule which had for its object the concealment of his own course of conduct, in regard to the election of President. He neither had nor could have any concealment on that point. His opinions at all times, and in all circumstances, had been openly known, and he meant that they always should be. If he even desired concealment, he could not effect it—he stood here with no colleagues. The vote he was about to give must be publicly known, and, whenever it was given, it should be given with a single eye to the interests of our common country. Could there, indeed, be

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any concealment in the matter? Did not every member of this House know how his own colleagues intended to vote? And would he not disclose that knowledge? But to whom? To the persons in the gallery? Could they discover, while the act of balloting was going forward, for whom those ballots were given? Certainly not. He should not, for his part, denounce the arrangement made by the constitution on this subject. *Viva Voce* might be a very good mode of voting for President, but, whether good or bad, was not now the question. It was not the mode which the constitution had prescribed. He again repeated, that his object was not to effect any concealment, for himself or for others. The course which each member would pursue, would be well known to this House, and it would be known to the country in time to correct it, if erroneous.

But his object, Mr. M'L. said, was to prevent the exertion of an influence which, at some period hereafter, might operate to warp and swerve members from the conscientious discharge of their duty. It was wholly on the ground of precedent that Mr. M'L. was desirous to record his vote in favor of this rule. Surely, no gentleman who knew any thing of history, could need any arguments to convince him how tremendous such influence as that which he deprecated, might easily become. Nor was it hard to say how it might be got up. A county meeting is held; votes are passed, approving or disapproving the anticipated conduct of a representative in this House, and directing him what course to pursue. And if the affair stopped here, there would be no danger. But it might go further; constituents may be brought to the scene of action, with the intent of intimidating and overawing the members of this House. The time might come when this would happen, though it may not now; and, if the gentleman from South Carolina shall then live, and cast his eyes on such a scene, Mr. M'L. was persuaded that he would do justice to himself and to his motives on this occasion. That gentleman says that the people have a right to know what is done in this House. Sir, said Mr. M'L. I agree with him that they have. He says further, that he cannot go with me in the doctrine that our constituents have no right to control us in the vote we are about to give for President. But, for myself, I am free to say, that, however I respect the opinions of my constituents in all cases of ordinary legislation, in this case I do not know them; I act as a judge and an umpire. I know perfectly that great respect is due to public opinion, when fairly expressed. But even public opinion, if, in my conscientious belief, it has run wild or gone astray, shall not govern me.

The Constitution has imposed it on us as a duty, to choose a President, when the election by the people fails. Now, if my constituents have a right to instruct me, in this respect, the constituents of the gentleman from South Carolina have an equal right to instruct him, and so have the constituents of each member of this House. And, if gentlemen are bound to obey, and the country remains divided, the result will be, that this House cannot choose a President, any more than the people can. The last remedy provided by the Constitution fails, and all those evils rush upon the country at once, which are the obvious result of such failure. It is expressly to guard against this, that the Constitution provides, in the resort to this House, a tribunal which shall be perfectly independent, and above popular control.

When up before, Mr. M'L. said, he had referred to the precedent of 1801, as bearing upon the present case. In answer to the argument drawn from it, the gentleman from South Carolina had denied any weight to the precedent, because it was derived from the administration of the Government by the federal party. Mr. M'L. expressed his regret that any thing should have fallen from that gentleman, which might have a tendency to revive animosities which, for the happiness of the coun-

try, ought never to be disturbed. But, he said, if this subject was to be introduced, he was willing to meet the gentleman from South Carolina. The precedent he had referred to, was a precedent set in party times, and of the federal party. But, said Mr. M'L. it does not, because it is a precedent of the federal party, come to me with less title to respect. Is this the only precedent of that party? It is the precedent of a party, says the gentleman, capable of enacting the alien and sedition laws. True, it is: and it is the precedent of a party which organized this Government— which put it in motion, after building it up, and established the policy which, wisely cherished, had made this nation, at this day, prosperous at home, and respected abroad. It is the precedent of that administration, to the wisdom of which, time, which tries all things, was fixing its seal. It is a precedent of the same party that established the judiciary, built up the navy, created an army, and laid the foundations of the system of national defence, which has afforded to us security at home and protection abroad. After copying from that party all these measures of national glory and prosperity, why will not the honorable gentleman receive from it also this precedent, which has the same motives, and the same great objects in view? In all other cases, the federal party consulted the true interests of the country; and their measures were calculated to subserve them, or it has been folly to adopt them. In the case now brought into precedent, they had the same objects in view; and the gentleman will find, if he adopt their policy in this respect also, he will reap the fruits of this, as he has done of other precedents set by them.

Mr. FLOYD, of Virginia, said he had no disposition to say much on this subject; but, holding the opinion, which he did, of the most deliberate character, that, not only on this subject, but on all others, there should be no secrecy whatever in the proceedings of the Government, he was not disposed to vote on this question now, without saying a few words. He was not disposed to set a precedent now, to be governed by hereafter in a state of excitement. Is there any excitement now? The opinion of every member of the House, in regard to the Presidential Election, is made up decidedly and distinctly, and can be expressed in open sitting, as well, and no doubt as honestly, as if our doors were closed; and I was sorry to hear the gentleman from Delaware say, that the presence of persons in the galleries could have no effect on his vote: for I am sure there is not a man in the United States who would suppose such a declaration from him necessary.

In reply to the argument that but a few persons, who were industrious enough to get up soon, would be able to obtain admission into the gallery—Mr. F. asked, if so, why should any gentleman wish to close the gallery? Let them indulge their curiosity in this particular—he saw no objection to it. Nor could he agree with the gentleman from Ohio, that intriguers would be always up in the galleries—for that was not the place for them. The gentleman had also reference to a late occasion, not more than a year ago, growing out of this very election, in which there were some symptoms of dissatisfaction in the galleries. [Mr. F. here was going to remark on this illustration, supposing it had reference to the meeting at the Capitol on the night of the 14th February last, but Mr. WARE intimated that that was not the incident to which he referred.] Mr. F. continued. Poor King Caucus having been so much abused and spoken of, sir, I thought the gentleman might have referred to that occasion, where I was myself present—for, sir, I was one of that respectable body, and I am yet proud of it. If, however, he meant not to refer to that case, I will refer to a case, the excitement of which, probably in this House, and in the galleries, and out of the House, never was, and never can be, exceeded. I allude to the Missouri question—during the arduous and protracted discussions

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of which, no disturbance proceeded from the galleries. I am not, therefore, for setting a precedent now, in anticipation of what has never yet happened. If, sir, the Representatives of the People, in their capacity of individuals, or acting by states, are capable of being operated upon by disorders in the galleries, it is high time for us to go home. But I apprehend no disturbance. In all the trying circumstances of the Missouri question, as respectful conduct, at least, was exhibited by the galleries, as by the the House itself. A year or two ago, we were three or four days balloting for a Speaker of this House. Was the election of President more important than the election of a Speaker of this House? For himself, since the amendment of the Constitution, he thought the office of Speaker second in the Government. If we can elect a Speaker without any trouble from the galleries, can we not also elect a President? I would not suffer the belief to go abroad among the People, from our over-precautions, that we cannot. It had been sometimes said, in reference to the movements of this Government, that the eye of Europe is upon us. Now, Mr. F. said, he would not, in the eye of this People, or of Europe, have this House look like the Conclave of Cardinals, the Council of Ten at Venice, or even the Star Chamber of England. He would have the election of a President as public as possible, and let all the People, and all the world, see all that is done. There would not, perhaps, be much to see; the ballot-box would be placed on the Clerk's table, he presumed, and the States would deposit their votes in it as called over—that was the mode of proceeding in the Caucus last winter, and a more respectable and honorable body of men, he must say, he had never known, and he had no objection to the whole world being spectators of the ceremony. It seemed that it was what happened on a late occasion at New York, that the gentleman from Ohio had referred to. Of that State, Mr. F. said—for she was a great State—he would avoid saying any thing; but, if what happened there had happened in Virginia, he should have said as little as possible of it: for the occurrence of the disturbance in the galleries of the Legislative body, argued as little in favor of the body which did not suppress and punish the authors of it, as of those who disgraced themselves by making it. As he could not see any reason for secrecy, in conducting the affairs of Government generally, he was not willing to sanction it in this instance. If the Government was, as the gentleman from Delaware had suggested, strong enough for the purpose of security at home, and protection abroad, it had nothing to apprehend from disorder in the galleries of this House, its power being sufficient to enforce due respect to it.

Mr. F. said he was rather sorry, for several reasons, that the gentleman from S. Carolina should have alluded to the old federal party. He had no doubt that, in every thing the federal party had done, not involving its construction of the Constitution, things were as well done as they are now. The error of that party was in not apportioning its legislation and expenditure to the true condition of the country. As to the elder John Adams and Timothy Pickering, he did not at all approve their constitutional opinions, and no one had been more decidedly opposed to them: but a state of things might occur, and he did not know but it had occurred, in which he believed he would take the old ones in preference to it. If the doctrines of the old federal party were obnoxious, he did not see that those of the present day were any better. They undertook to do every thing under the clause of the Constitution to provide for the general welfare; and so, said Mr. F. do we, at the present day.

One thing, Mr. F. thought his friend from Delaware had overlooked. He had said that the federal party built a Navy. So they did, said Mr. F.—and they sold it, too—at least, they provided for the sale of it. The next administration carried the provision into effect, for

they were a law-abiding people. I cannot say as much for the present; for I read in the paper of to-day, that there is a seventy-four gun ship, built under an act expressly providing for such vessels, which is pierced to carry a *hundred and two guns*—the same which the President and a number of other persons have been lately on a trip of some seventy miles, to look at and admire. On another point, also, the gentleman from Delaware was somewhat defective in his statement: the federal administration did raise an army—but they also disbanded it. If that administration was to be reproached for any thing beyond an erroneous construction of the Constitution, it was merely for the extent of their expenditure, &c. and in that extent, the latter days of this halcyon administration were as far in advance of the federal administration, as that administration was in advance of public opinion. Mr. F. concluded by saying, that, as he was against secrecy of every description in the affairs of Government, he should vote in favor of this amendment.

Mr. HAMILTON again rose, and said, that he felt it due to himself to make a very brief reply to the gentleman from Delaware, if it was merely for the purpose of assuring him that, in the allusion which he had made to the Alien and Sedition Law, that it was neither his intention or desire to arouse from their mouldering ashes those embers of party distractions which, he thanked God, had long since passed by. Much less was it his object to fling imputations on a party, (among whom had been embraced some of the most valued and cherished friends he had on earth,) which, on a variety of occasions, had rendered services of signal and inestimable value to the country. But he would put it to the candor of the gentleman himself, to say, when he urged a measure for our adoption, on the mere ground of *authority*, whether it was not admissible for him to show, that the authority, according to the popular *understanding* of the country, came rather in a questionable shape.

Mr. H. said, that he should not deny, (for it would be unjust for him to do so,) that the Federal party, (the very party which passed the Alien and Sedition Law,) had contributed to the formation of those great and valuable institutions to which the gentleman had referred. But he believed that they were, most of them, the work of joint counsels, and a confederate patriotism, when parties scarcely had a controlling influence on public measures; and whilst he admitted that several distinguished members of the Federal party had left a large debt on our gratitude, he could not be unmindful of what such men as Jefferson, Madison, and Gallatin, had done, in giving efficiency and popularity to the form of our Government, by fixing the principles of a wise, economical, and prudent administration. He thought it, however, not a little caustic and unkind in the gentleman from Delaware, to appropriate all that had been done for the country, as the trophies of his party; if, however, these were consolations furnished after the loss of power, he surely would not deprive his friend of their enjoyment. But, after all, he had risen merely and distinctly to disclaim any intention to wound the feelings of a single gentleman on that floor, by an allusion which he thought had laid fairly in his view.

Mr. MERCER, of Virginia, then observed, that he was very happy that the gentleman from South Carolina had made the explanation he had just given; and he expressed a hope that all party divisions and party feeling would be banished on the present occasion. He thought that the observations of the gentleman from Delaware, himself, had shown that no great injury was likely to result from the admission of spectators. If it was really true, that the sentiments of members were not concealed from each other, the mere closing of the gallery would not operate to conceal them from the public, or materially prevent any influence from out of doors.—Members were not under any injunction of secrecy, and whatever was done within, would almost immediately be

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known without. There was then no end to be accomplished by the rule, but solely the prevention of disorder; and the only question to be settled was, whether the rule was necessary for this purpose. Mr. M. believed it was not: he could conceive no reason to apprehend the smallest danger of it. He thought that, under the protection which they enjoyed on all other days, the House would be as free from disturbance on this, as on other occasions. As to the precedent which had been referred to, Mr. M. made some remarks, which, from his position in the House, the reporter but imperfectly heard.

Mr. WEBSTER said, he was afraid that an observation by the honorable member from Ohio, apparently made in allusion to his remarks, might lead to misapprehension. He had not intimated that the gallery might be filled by persons not entitled to consideration; no such thing. He only spoke of its size, and then only in consequence of the argument that the People of the United States might, from the galleries, superintend the votes of their Representatives. Superintend, he believed, was the word. His honorable friend from Virginia, (Mr. FLOYD,) seemed, in like manner, to have misapprehended him in this particular.

Even if the galleries should be cleared during the proceedings, at the request of a state, there would still be no propriety in speaking of the proceeding as done in conclave, or as kept secret from the people. The journal would be published daily, as usual. There would be no injunction of secrecy. It was a mere question about the orderly and decorous proceeding—the police, as it were—of the House. As to the supposition that any gentleman wished to conceal his vote, or to act secretly, there was no one who supposed such a wish to exist any where. He was willing, every member was willing, that his vote should be known to every body, He had known questions which he thought as important as this. He might again. The occasion, however, might attract a multitude, and the object was to secure order, and freedom from restraint.

The gentleman from Virginia had objected to voting, on questions of adjournment, &c. by states. But it would be seen at once, that, as the election was to be made by states, every question fairly and really incident to the choice, ought to be decided also by states. The constitution said the House should immediately elect a President. On the former occasion, the rule was, that the House should proceed, without interruption from other business, and without adjournment to choose a President. But the latter part of the rule was found impracticable, in fact, and avoided afterwards, by voting on one day, that the next balloting should not take place till the next day. So that all the members were, in fact, quietly sleeping in their beds, while the House, according to the journal and the rule, was all the time sitting. The vote to postpone the balloting, from time to time, was, on that occasion, taken by states. The committee had thought proper, on this occasion, to recommend that the House might adjourn on the vote of a majority of states.

He again hoped that too much importance might not be attached to this question. He had no fear of any great inconvenience either way. He saw no question of principle in it. It was a question of expediency; and he remained of opinion, that the rule prescribed a fit course, upon the whole, to be followed. He certainly was not likely to request the gallery to be cleared; but if any gentleman, or gentlemen, representing another state, should make such a request, he thought it ought to be granted. And, therefore, he approved the rule, in its present state. He would state again, and would particularly request the House to consider it, that there might be inconvenience and embarrassment, if this question were left to be decided, and should arise, after the House had commenced the proceeding, when it must

act by states and without debate. To prevent such possible inconvenience and embarrassment was one object of the rule.

Mr. WRIGHT said, that, before the question was taken, he wished to correct the misapprehension of the gentleman from South Carolina, (Mr. HAMILTON,) as to the remarks he formerly made in relation to the kind of people that would crowd the galleries on occasions like the one contemplated. If I understood him right, (said Mr. W.) he supposed me to assert that none but the profligate and worthless people of this District would be found in the galleries, and that I considered none of them worthy a place there. Sir, I am not aware that I said any thing of the people of this District or City; and if I did, I never could have uttered sentiments so entirely foreign from my feelings as those imputed. I did say, however, that those who would crowd the galleries on such occasions, would be the unprincipled and profligate politicians of the country, ready for the exertion of any influence, however improper and desperate, to effect their object. In this sir, the people of this City or District were in no way implicated, and I protest against the gentleman's carrying these declarations into any account against them. Among my acquaintance in the City and District, I am proud to rank many for whom I entertain a respect not surpassed by any felt by the gentleman himself, for them, or any other persons whatever.

The gentleman from Virginia, (Mr. FLOYD,) has said, in allusion to what fell from me, that the intriguers will not make the galleries the theatre of their operations. No, sir, not altogether. I concur with the gentleman in part; but when they have exerted their influence out of doors, and accomplished all within their power there, they will then take possession of the galleries, to observe its effect and operation here.

A word, sir, as to the motion. It is to take from the delegation of a state the power to clear the galleries. In ordinary cases, the Speaker, or any member of the House, can do it. When we assemble to ballot for President, we lose our individual character, and proceed as the representatives of states, acting only as states; and I can see no danger in giving to the representatives of one sovereignty the power to clear the galleries. It is but a mark of respect to him, and, in my opinion, it is peculiarly fit and proper that he should have the power to exercise, if the occasion called for it.

Mr. M'DUFFIE, of S. C. observed, that as, in the course of the debate, principles had been advanced, against which he must protest, and against which he intended to vote, he was desirous of giving the subject some discussion, which the lateness of the hour would not, at present, admit him to do. He therefore moved that the committee rise.

The question on rising was put accordingly, and carried, yeas 89—noes 71. So the committee rose, and obtained leave to sit again.

IN SENATE—THURSDAY, FEBRUARY 3, 1825.

SUPPRESSION OF PIRACY.

The Senate resumed the consideration of the bill to suppress Piracy in the West Indies—the amendment proposed by Mr. SMITH (granting aid to merchantmen to arm) being still pending.

On this amendment, and various propositions to modify it, in regard to the kind and quantity of armament required, the amount of premium, &c. a discussion took place, which continued about two hours. In this discussion, Messrs. SMITH, HOLMES, of Maine, EATON, MILLS, LLOYD, of Mass., D'WOLF, LLOYD, of Md., HAYNE, VAN BUREN, and FINDLAY, took part.

Finally the Senate refused to fill the blank for the premium with \$100, with \$75, and with \$50. On the latter sum, the question was decided by yeas and nays, as follows:

YEAS—Messrs. Barbour, D'Wolf, Edwards, Hayne,

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mittee of the whole on the state of the Union, and again took up the report of the committee appointed to prepare rules to be observed, by the House, in the election of a President of the United States. The question recurring, from yesterday, on the motion of Mr. INGHAM, to strike out the last clause of the third rule, which directs that the galleries shall be cleared on the demand of the delegation of any one State—

Mr. M'DUFFIE rose, and addressed the House as follows:

Mr. Speaker: If I could agree with the honorable member from Massachusetts, (Mr. WEBSTER,) that this is a proposition of inconsiderable importance, I certainly should not ask the committee to bestow any portion of its attention upon any remarks of mine. It is true, that the proposition immediately under consideration, is, apparently, of but little moment; but when we advert to the principles involved in it, and the consequences which may flow from it, I consider it a subject of very great importance. We have been correctly told by the gentleman from Delaware, (Mr. M'LANE,) that this question derives its importance, principally from the consideration, that our decision will constitute a precedent for future times; and we are distinctly called upon to adopt the proposition now, not in reference to existing circumstances—not with a view to obviate any anticipated disturbances in the gallery during the approaching election—but for the disinterested purpose of providing a precedent, for the security of those who are to come after us. A little consideration, I think, will satisfy the committee, that the strongest objection to this measure grows out of the fact, that it will be regarded as a precedent. If, indeed, it be a matter of small importance, if we have no cause to apprehend immediate danger; if no fears are entertained that our proceedings will be disturbed or overawed by any injudicious exhibition of excitement or violence, on the part of those who may behold them from the galleries, why should we adopt the proposition? Whence this extraordinary providence for the security of our successors? Why should we thus gratuitously provide for dangers that may never occur? Will not those who shall occupy our places in future time, be capable of providing for the tranquillity and safety of their own deliberations? If in any future emergency there should be indications that our successors will not be permitted to exercise the most unbiassed freedom of deliberation, in performing the important function of electing a President, will the precedent we are called upon to establish be necessary to enable them to guard against the danger? Will they not have the same power then, that we have now? But let us look at the other side of the question. What will be the effect of the adoption of this rule? It is one of those propositions which can only be correctly appreciated, by taking into consideration principles which may seem to be remotely and almost imperceptibly connected with it. What, then, are those principles? Sir, we can be at no loss for an answer to this question. The honorable member from Delaware, with that candor and independence which always characterize his department here, comes out boldly and manfully, with a distinct avowal of the principles upon which he rests the defence of the proposition to clear the galleries.—We are told by that gentleman, that the people have no right to inspect our conduct here, in regard to this great subject, the election of a President of the United States; that we owe them no responsibility for our conduct in the discharge of that duty, and that they have no right to—

[Mr. M'LANE here rose, by leave, to explain. If, said he, I understand the gentleman as referring to any remark made by me, he has certainly misapprehended my argument. I disclaim any intention of withholding from the people of the United States a knowledge of our proceedings here. The people have a right to know, and they shall know them. The argument for which I con-

tended was this: That the immediate constituents of a member of Congress have no right to instruct him in relation to his vote in the election of a President: that he is wholly independent of his constituents in giving that vote, further than the responsibility which a high-minded and conscientious man feels in discharging a solemn duty devolved upon him, and his ultimate responsibility. I freely admitted, that the will of a majority of the people of the United States, was entitled to great respect, not to be easily put by, but not of imperative authority, on this question.]

Mr. M'DUFFIE resumed. I gave way, with great pleasure, to allow the gentleman from Delaware an opportunity of explaining; but I do not perceive that his explanation has materially varied the doctrines I have ascribed to him. It is certain, however, that I have not misrepresented the argument used by that gentleman yesterday, for I have before me his very words, taken down as he uttered them, to which I now call the attention of the committee. "We are called upon," said he, "to act here, in voting for a President, not as the representatives of the people." "We are not responsible to the people;" and he asked, "Who has a right to come here, and superintend or inspect our proceedings?" These are the precise words used by the gentleman from Delaware; and, construe them as he may, they convey doctrines against which I feel bound to enter my protest. This rule, supported by these arguments, involves the idea that, in the election of a Chief Magistrate of the nation, we act here wholly independent of the people, and are under no obligation to regard their will, however solemnly expressed and certainly ascertained. What would be the impression carried down to future times, by the adoption of this rule, under the existing circumstances? If the question had been taken without argument, and the rule adopted, various opinions would be hereafter entertained as to its principle and its objects. It might be regarded as a mere matter of police. But, after what has occurred, if it were now to be adopted without some protest against the principles upon which it has been vindicated, what would be the consequence? It would become a precedent for times less pure, perhaps, than the present, and would be expounded by the argument of the gentleman from Delaware. We should thus contribute to consecrate principles, which I am sure this body would never intentionally sanction. Are we not bound, therefore, by the highest considerations, not only to reject the rule, but to set the seal of our solemn reprobation upon the arguments by which we have been urged to adopt it?

But, let us for a moment inquire into the pernicious uses to which this rule may be applied, as a precedent; the only view in which its advocates regard it as of any importance. Whatever confidence I may have in the purity of the present House of Representatives, I cannot close my eyes upon the probability that its members will not always be elevated above the reach of corruption. Suppose, then, that some future House of Representatives should resolve to elect a President from corrupt motives, such as would certainly expose them to the execrations of an indignant people: How would they proceed? Their first step would be to close the galleries, and exclude the public eye from an immediate view of their proceedings. But would they stop here? No, sir; they would have it in their power to cover their conduct with a veil of impenetrable and eternal mystery, by laying upon the House an injunction of secrecy. Nor would the temptation to adopt such a measure, be greater than the facility of its adoption. By the rules reported, the House acts by states on all questions incidental to the election. There are six or seven states represented here, upon an average, by little more than a member each, and thirty or forty members, representing a majority of states, could, by co-operation, decide any question. And thus would you place it in the pow-

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er of a small and corrupt minority, to screen their conduct for ever from the view of those to whom they are responsible. If, as we have been told, we are to establish a precedent for times less pure than the present, let us not put an instrument into the hands of the unprincipled and ambitious, by which they can most effectually consummate their corrupt and nefarious purposes.

Let me now solicit the serious attention of the committee, to the extraordinary doctrine avowed by the gentleman from Delaware. Are we, indeed, independent of the people of the United States, in the exercise of the high trust of electing a President? Do we cease to be their representatives, when we resolve ourselves into an electoral college, to perform that function? Are we to make a selection without reference to their will, however solemnly and constitutionally expressed? Are we to assume the character of independent judges, acting for ourselves, and not for the people? I will attempt to establish the negative of these questions. There are many of our public men, who stand high in the estimation of the country, and who have made a distinguished figure in the service of the republic, who maintain that, even in our legislative capacity, we are bound to yield implicit obedience to the known will of our constituents, however ascertained. A signal instance of the practical recognition of this principle, was exhibited some six or eight years ago, in relation to the celebrated compensation law. That measure, by which the members of Congress provided for the increase of their own pay, produced a degree of popular excitement and dissatisfaction, which no question, of the same apparent magnitude, had ever produced before. And what was the consequence? The same Congress, at the very next session, almost before the members were warm in their seats, took steps to repeal the obnoxious law; and a majority of those who voted for its repeal, avowedly did so, against their own deliberate convictions, because it was the known wish of their constituents. But, sir, there is a plain and striking distinction between the relation we bear to our constituents in discharging the ordinary functions of legislation, and that which we bear to them, in performing the extraordinary electoral function of choosing a President.

My own opinion always has been, (and I should be unworthy the seat I occupy, if, entertaining that opinion, I were now to conceal or suppress it,) that, in matters of general legislation, the representative is not absolutely bound by the will of his constituents, because he is bound by the still higher and paramount obligation of the constitution itself. By that instrument, "all legislative power is vested in Congress." Now, what is legislative power? What does the term "legislation" necessarily involve? Inquiry, investigation, argument, deliberation, are its essential elements. The delegation, therefore, of the power to legislate, is, from the very nature of the function, the delegation of a discretionary power. If we are sent here to inquire, to investigate, to argue, and to deliberate; the laws we pass should, of course, be the result of these mental operations. But what is the nature of the trust which we are about to perform with closed doors, under the idea that we are under no responsibility at all to the people, for the manner in which we may discharge it? Is it a power which, like that of legislation, the constitution supposes the people to be incapable of performing? Precisely the reverse, sir. The Constitution of the United States, both in theory and practice, distinctly involves the idea, that the people of the United States are *not* capable of making laws, but that they *are* capable of making a President. That constitution provides that the President shall be elected, if possible, by the people. The primary effort to make a choice, is made by the people. This, then, is obviously the favorite mode of the constitution, for the election of the President. As, therefore, the constitution assumes that the people are capable of making

this election, and prescribes the mode in which their will shall be expressed; their preference, whatever it may be, and to the extent at least that it is indicated by the electoral vote, reaches us through the regular channel ordained by the constitution,—and is not, as must generally be the case with instructions on matters of legislation, the mere ebullition of popular meetings, roused into action by some temporary excitement. So that the will of the people, on this subject, comes to us, consecrated and enforced by the constitution itself. What, then, is the argument of the advocates of the proposed rule? That we are bound by instructions on matters of legislation, which the constitution supposes the people to be incapable of performing; and yet, in the performance of an act, which the constitution supposes, and justly supposes, the people to be more capable, because more worthy of performing, than ourselves, and which devolves upon us by an unavoidable contingency only, we are under no obligation to regard their opinion, nor subject to any responsibility for the manner in which we treat it!

Never was there a more paradoxical argument advanced, in a grave deliberation. What does it amount to? Neither more nor less, than that the people know how to make laws better than we do; and that we are more worthy of the trust of making a President, than the people. This is palpably inverting the principles of the constitution. Upon what principle is it, that the people of the United States have retained in their own hands the power of electing a President, and have not retained a single vestige of the power of legislation, on the general concerns of the republic? A single glance at the subject, will satisfy any one who comprehends the terms of the proposition, that acts of legislation cannot, in the nature of things, be performed by a multitude of people, dispersed over a vast territory, like that of the United States. If every citizen were a statesman, still would they be incapable of legislation; because they could not have those preliminary consultations, and that mutual interchange of ideas, which must necessarily precede every intelligent act of general legislation. They have, therefore, delegated that power entirely and exclusively to Congress. But have they the same obstacles to surmount, in electing a President? Are any preliminary consultations and interchanges of ideas, necessary to enable them to perform that act? On the contrary, every citizen gives his suffrage with more coolness, deliberation, and wisdom, in the ballot box of his own vicinity, than he would if all the people of the United States were collected together. The people, therefore, have retained the power of electing the President, under the idea that they are a safer depository of that power, than any which human wisdom could possibly devise. This, sir, is the principle of the constitution; and it is the principle of eternal truth. All experience has sanctified and confirmed it. The history of every people capable of freedom, demonstrates, that, in selecting officers, even of the highest grade, they are fully competent to form a correct judgment of the peculiar qualifications demanded by any emergency, or required for any office. Look into the history of those republics that have gone before us. Where do you find, illustrating either the civil or military departments of any nation, statesmen or generals of more elevated characters and splendid endowments, than those that were elected, even by the wild democracy of Athens, or the conflicting compound of aristocracy and democracy, that swayed the destinies of Rome? All the distinguished patriots and statesmen, who reflected so much glory upon those ages, and left such noble examples to re-animate the slumbering genius of succeeding generations, were elevated to office by the choice of the people. Sir, if there be any function which, in the organic operations of civil society, the people are peculiarly qualified to perform, it is, by a sort of instinctive perception, which seems almost to rise

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above reason, the selection of men best calculated to represent them in important political stations. If public men are distinguished by the ascendancy of their talents, the elevation of their characters, or by disinterested devotion to their country, my life upon it, these exalted qualities will neither escape the attention of the people, nor fail to make the appropriate, corresponding impression. They have no selfish purposes, no ambitious aspirations, no secret and sinister designs, to prevent or pervert the free and impartial exercise of their judgments. It is, in the nature of things, impossible that they should have. All their feelings are essentially patriotic. They rejoice only in the glory and prosperity of the republic, and are proud of the opportunity of elevating to power, those who are best qualified to promote these great ends. Sir, the glory and prosperity of the country is their glory and prosperity; and what other possible object can they have, in electing a President? After all, the quality most essential in the election of that great officer, wielding, as he does, the vast patronage of a great and growing country, is an honest purpose. This you will always find with the people; but man is not man, if you always find it any where else.

But, sir, there is another ground which distinguishes the election of a President by this House, from an act of legislation; and shows that the obligation which the popular will imposes upon the representative, should be much stronger in the former case than in the latter. In the ordinary case of legislation, we are, in most instances, called upon to act upon emergencies, of sudden and unexpected occurrence. The current of events is in a perpetual fluctuation; circumstances are continually presenting themselves in new combinations, which no one could anticipate, and which must, nevertheless, constitute the basis of legislation. For example, before we came here, none of us knew that we should be called upon to give a vote respecting the Cumberland Road, the Delaware and Chesapeake Canal, or the Suppression of Piracy. Topics like these, are continually springing up, which we must decide, before they have even been the subject of deliberation among the people. But what is the nature of that question, which we shall be called upon to decide on Wednesday next? And what are the circumstances under which we shall decide it? It is a question which has been distinctly presented to the people, for consideration, by the constitution; and has been, for the last four years, fully and freely discussed before the people, with an immediate view to the exercise of the highest power, and most sacred privilege, they possess—the actual choice of the man who is to preside over their destinies. It is a question, therefore, which, from the very mode of its recurrence, must always be presented to us, after it has undergone the deliberate examination, and, to a certain extent, the decision of the people.

But there is another view of the constitution on this subject, which leads us still more clearly to the conclusion, that, in the selection of a President from the candidates presented to us by the people, we are bound to regard their will as the rule of our conduct. I will illustrate it by putting a case, to which I request the particular attention of the gentleman from Delaware, that he may obviate the inference which I shall deduce from it, if he can. Suppose that one of the candidates should receive one hundred and thirty electoral votes; the majority requisite to a choice being one hundred and thirty-one—Is that candidate chosen President? You say, assuredly he is not. Why is he not chosen? Because he has not conclusive evidence that a majority of the people of the United States prefer him to any other candidate. Even the largest plurality, short of a majority, does not complete the election. For what purpose, then, is it sent here? That we may elect a man who unites only a small minority of the people of the United States in his favor? This would be absurd. The reason why the elec-

tion devolves upon us, demonstrates the *object* for which it is sent here. It devolves upon us, simply because the constitution will not place the sceptre of power in the hands of any man who is not preferred to any other, by a majority of the people; and, therefore, I infer, as a necessary consequence, that the three highest candidates are sent to us, in order that we may select the one, who is preferred by a majority of the people. The doctrine of the gentleman from Delaware, therefore, is in direct violation of the very principle of the constitution which imposes upon us the duty of electing a President.

There is yet another reason which operates with great force on my mind, in favor of considering the members of this House the mere organs of the popular will, on this question. It is this. If, in the discharge of our legislative duty, we pass a law which is unwise, and in its operation injurious to the country—the remedy is easy and obvious. The people raise their voices against it; they discard the offending representatives, and the obnoxious law is repealed. But if it should happen on this, or any future occasion, that this House should elect a President from selfish and corrupt motives, where is the remedy? There can be none. The deed is done. It is irreclaimable. Even the perpetrators may repent, in sackcloth and ashes, but there is no power that can do away the iniquity. It is evident, therefore, that if we do not recognize the right of the people to control our votes by instructions, we act wholly without responsibility. It is in vain that they have the right to dismiss the unfaithful representatives from their service. Though the example might operate as a terror to future transgressors, yet the work of corruption would still remain, and the administration, though detested and execrated by an indignant people, would maintain its odious and distracted rule, during the whole constitutional period. The very circumstance that the act is in its nature irrevocable, makes the denial of the right of instruction, equivalent to an absolute denial of all responsibility whatever, on the part of the representative.

There is another view of the subject, involving considerations of great delicacy, to which I feel bound, by a sense of duty, to call the attention of the committee. What, sir, is the peculiar nature of the power we are about to exercise, as it respects our own honor and reputation? When I am called upon to give my opinion upon any measure of general policy, or to co-operate in the passage of a law, in which my constituents and myself are equally interested; if I discharge that duty according to my own best ability and judgment, though my conduct should expose me to disapprobation and censure, yet I can elevate my head, not only with a consciousness of my own purity, but with the still prouder consciousness that no man *suspects* me of dishonor. But what must be the feelings of every high-minded and honorable man, when called upon to perform that duty which will soon, (and, I trust in God, for the last time,) devolve upon this House? Though his heart might be as pure as the principles of our holy religion, and his conduct as disinterested as patriotism itself, yet, should he act in opposition to the will of his constituents, to what ungenerous imputations must he not unavoidably subject himself? Acting, as he does, in the midst of temptations, which even the most virtuous find it more easy to avoid than to resist, how many will be ready to point at him the finger of scorn, exclaiming, as he passes, "There goes the man who abandoned his constituents, and sold his country!" In vain does his conscience acquit him; in vain does he seek for consolation in the consciousness of his own integrity. To a mind of nice sensibility, there is something both mortifying and degrading in the idea of being the object, even of unmerited suspicion. When called upon to act, under such embarrassing circumstances, should we not, therefore, anxiously adopt, for the regulation of our conduct, a

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sound and steady principle, upon which our honor may securely repose, free from the breath of suspicion? If we take the will of our constituents as our guide, we shall come to the discharge of the important trust in question, with our powers of attorney in our pockets, and our principles inscribed on our foreheads. No speculations will be then indulged, as to the motives of our preference; and we shall act under the cheering and consolatory conviction, that even malignity cannot insinuate that any secret hope, or latent expectation of reward, has induced us to disregard the will, and sacrifice the interests, of our constituents. Sir, I do solemnly declare, in the presence of my God, that if the election of a President were a duty of frequent recurrence, and I were called upon to discharge it upon principles, or under circumstances, that would expose me to such imputations, I would resign my seat, and abandon public life for ever, rather than put it in the power of malice to assail my reputation, by charges so plausible.

I will call the attention of the gentleman from Delaware, to a view of this question, which I request him to consider, as (what I know him to be) a judicious, a practical statesman. We have thus far looked at the theory and philosophy of the constitution; let us now advert, for a moment, to the practical operation of the Government.

The gentleman has told us, that we should select the man whom our own judgment—"our independent judgment," shall indicate, as *best qualified* to fill the Presidential office, without respect to the opinions or wishes of the people. Sir, the first qualification of the Chief Magistrate of a Republic, is *the confidence of the people*; and no man, who has not that confidence, can be either entitled or qualified to exercise the powers that belong to that exalted station. Suppose we were perfectly certain that the man whom our independent judgment would select, as best qualified, would be opposed by the deliberate will of four-fifths of the people. Would we have a right to elect him? Oh, yes, says the gentleman, "The constitution gives us the right." I know we have the physical, and if you will, the constitutional power; but that is not the question. Have we the moral right? Is it consistent with our duty, as representatives of the people? Gentlemen may talk as much as they please about our prerogative, as "independent judges," and utter specious and imposing dissertations upon the rights of conscience; but, if we elect a President in direct contradiction to the known will of the people, what will be the inevitable consequence? You clothe him with the emblems of power, without the substance; you impose upon him the highest of all responsibilities, without the power of fulfilling the obligations growing out of that responsibility. In a word, sir, you put the sceptre into his hand, and, in the very act of placing it there, you paralyze the arm that is to wield it.

Let us look a little more minutely into the nature and operation of public opinion, as connected with this subject.

If the people of the United States had never been called upon to examine this question, and express their will in relation to it; if it were a principle of the constitution that the Chief Magistrate of the Republic should be elevated by lot; and if chance were to cast the office upon a man who was not their choice, and who had not their confidence; I believe they would patiently acquiesce, although their will should be defeated. But, when the constitution has made it their right and their duty to examine the question, and express their will upon it; and when they see that will defeated by human agency, the agency too of their own representatives; is it in the nature of things that they should not feel deeply indignant at the authors of so glaring an outrage upon their most sacred rights? Is it to be expected that they would calmly and quietly submit, when their constitutional will has been contemned by their representatives?

Are they, indeed, the mere stocks and stones, which such insensibility would imply? Sir, I sincerely hope, as I confidently believe, that they are not. It would be a fearful omen if they were. It would go far to prove, what the arguments of the gentleman from Delaware seem to imply, that they are incapable of exercising this high attribute of self-government. But the supposition is a libel upon the people. If you were to elect a President, upon the principles and under the circumstances I have supposed; you would elevate him only to be a more conspicuous object of public reprobation; a miserable effigy of power; a common target, at which a high-minded people would level their just indignation. Sir, a lofty and generous ambition would disdain to accept power under such circumstances.

I presume I shall not expose myself to the imputation of flattering the people of the United States, (and God knows I have never been a flatterer, either of the people or their rulers,) when I ascribe to them as much virtue and intelligence, as has ever fallen to the lot of any people on earth. Nor shall I be considered as advancing an extraordinary proposition, when I affirm, that our Government is constructed, and ought to be administered, with as much regard to the will of the people, as that of Great Britain—or, to put a clearer case, that of France in the days of the Emperor Napoleon. Yet, in neither of these Governments were the principles of the gentleman from Delaware ever carried into effect. They never were carried into practical operation by any civilized Government, holding jurisdiction over an intelligent population, nor, until the nature of man is changed, will they ever be. As respects Great Britain, where time and experience have adjusted the operation of the political system, certain principles, recognizing the controlling influence of popular opinion, have been so long settled by the practice of the Executive Government, that they are now considered fundamental. No administration ever thinks of retaining power, with a majority of the people against them. How often have we seen the King, in obedience to the voice of the nation, discard from his service ministers in whom he still reposed the most undiminished confidence, and select others, not in conformity with the dictates of his own "independent judgment," but in compliance with the will of the people. Their confidence, and not his, is the point upon which the existence of an administration depends. Sir, there never has been a minister in England, not excepting the late Lord Castlereagh, who would have nerve enough to take the seals of office upon the principles maintained by the gentleman from Delaware. If, then, in a country where the authority of the Executive Government, in addition to its mighty patronage, is invested with the sanctity which naturally results from its hereditary character, it is practically demonstrated by the experience of a century, that no administration can maintain itself against the will of the nation—how desperate would be the experiment of electing a President against the popular will, in this country, where the people are more generally intelligent, the Government more popular in its organization, and the Executive Department destitute of the adventitious influence which belongs to an hereditary monarchy! Even Bonaparte himself, when supported by two hundred thousand bayonets, and wielding the whole military power of France, was compelled at all times to acknowledge the supremacy of the national will. Such was his own declaration, after he had fallen from power, when viewing the retrospect of his eventful life, with the eye rather of a philosopher than a monarch. If this mighty sovereign was compelled to admit the omnipotence of public opinion, what a wretched spectacle of debility and distraction should we have, if it should be disregarded in the election of a Republican President! Sir, a President elected upon such principles, would be an object rather to be despised than dreaded; for he would soon find,

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that he had very little power, either for good or for evil. I will now say a few words in answer to an imposing, but, in my opinion, deceptive argument, urged by the gentleman from Delaware. He asks—If we are bound to obey the will of our constituents, how can we ever make an election, since that obligation would constrain the friends of each candidate to adhere to him throughout the contest? Now, there may be many difficulties connected with a doctrine or a duty, which neither destroys the truth of the one, nor absolves from the obligation of the other. If the mere existence of such difficulties would absolve us from any duty, there would be an end to the obligation of almost every duty. I see a very easy and obvious mode of surmounting the difficulty suggested by the gentleman; but, before I state it, I will take the liberty of asking him how he can get over the very same difficulty, upon his own principles? The principle of preference, whatever it is, that induces a member here to vote for a particular candidate, imposes upon him a moral obligation to vote for that candidate. I say we should vote in conformity with the will of our constituents. The gentleman says we should vote in conformity with the dictates of conscience. There is my principle, and here is his. They are of equal obligation. Is it not evident, therefore, that both would equally produce the difficulty under consideration? If we adhere, without departure, to the candidate selected upon either principle, there can be no election. But, sir, the difficulty is imaginary. The plain and practical rule, is, to endeavor, if possible, to carry into effect the will of our constituents. We must make this effort honestly, without any skulking behind pretexes, or forms. If it be found that their favorite cannot prevail; that the candidate who received their electoral vote unites but a small minority of the people of the United States in his favor, and that the two others are more prominent; we must then choose between them, still conforming to the will of our constituents, in making that choice, if their will be known to us. If we cannot succeed in electing their first choice, we should endeavor to elect the person next in their confidence. By this process, the final control will be found, where it ought to be, in the general voice of the people of the United States.

I find myself called upon, to do what? Not to elect a President, but to complete an election which the people have left in an inchoate state, merely because they cannot meet together to complete it themselves. The framers of the constitution supposed that the popular branch of Congress would be the best means of concentrating the national will, and thereby consummating the work commenced by the people. The principles in which it originated, are not changed by the accidental circumstances which have cast upon us the duty of adding the finishing stroke to it. All agree that it is a misfortune that a majority of the people have not united in favor of one man; and that it was the very end of the constitution, the "consummation most devoutly to be wished," that such a majority should have been obtained in the first instance. Why, then, is it not equally desirable now? What is it that has suddenly produced this magical change in the principles which regulate this great national operation, of choosing a President? Sir, these principles are eternal, and circumstances do not affect them. If, as it must be admitted, it was the primary object of the constitution to elevate to the Executive chair, the man who should be the choice of a majority of the people, that does not cease to be the object of the constitution when the election devolves upon this House. The election of a President must be regarded as a continued operation, carried on upon the same principles throughout. It would be a miserable and incongruous piece of patch-work, to commence with one set of principles, and end with another.

But, says the gentleman from Delaware, the power we exercise in electing a President is not conferred

upon us by the people, but by the constitution. Were I to take this proposition simply in the terms in which he has expressed it, I should regard it as either absurd or unintelligible. But I know the gentleman's meaning, and will not affect to misunderstand him. His proposition is, that the election does not devolve upon this House by any act of the people, expressiva of their wish that it should come here, but by a mere contingency, for which, as it must unavoidably occur sometimes, the constitution has made provision. But how does this strengthen the gentleman's argument? Are we to be told that, because it is the "necessity and not the will" of the people, that "consents" to our having any thing to do with this question; we are, therefore, absolved from all responsibility? The very reverse should be the inference.

Sir, I will now suppose a case, suggested by this argument of the gentleman from Delaware, which, from its peculiar application to myself, is better calculated than any thing I could select, to illustrate the sincerity of my attachment to the principles I have avowed. The constitution, providing for another contingency, declares, that if this House fails to elect a President, the duties and powers of that office shall devolve upon the Vice-President. Now, if individual preference, without regard to the public will, were to decide this question, I need scarcely declare, in this place, that there is no man in this country whom I would prefer to the individual designated by the people for the office of Vice-President.

But, sir, if, under the influence of this feeling, I were to give my vote in this House, for the indirect purpose of defeating the election, and throwing upon the Vice-President elect powers which the people never intended to confer; though my vote and my motive should be concealed from every human eye, I should never be able to make peace with my own conscience. I should regard myself as guilty of the most infamous dereliction of duty; and every honorable feeling of my nature would rise up to reproach me. In passing this sentence of deep reprobation upon my own supposed conduct, I trust I shall not be understood as speaking harshly of the possible conduct of others. The sentence I should pass upon myself, would result from my own peculiar notions of duty. Other gentlemen, entertaining different views of this subject, might pursue the course I should condemn in myself, without incurring the reproach of their own consciences, or deserving the reproach of others.

I now invite the attention of the committee, for a few moments, to a topic which has been drawn into this debate, whether fortunately or unfortunately, it is not for me to determine. We are told that we have a precedent, on this subject, set by the Congress of 1801; and we are called upon to yield to that precedent the deference due to the acts of our predecessors. For my own part, sir, I wish it to be distinctly understood, that I do not consider that precedent entitled to the slightest possible respect, upon this question. With me it has not the weight of a feather. And why do I reject it? Not because it is a federal precedent, for mere words have no weight with me; but because it was established by men who had deliberately resolved to violate their duty to their constituents and to the constitution, by attempting an act of usurpation, which, for boldness and desperation, would not have discredited a Cromwell or a Bonaparte. They knew, perfectly well, that what they had in contemplation would excite the indignation of the people, and this rule was consequently provided to veil their proceedings from the public eye. But, sir, I resolve the Federal party from the sin of that transaction. God forbid that the weight of that sin should rest upon any party now in existence. It was the deed, to be sure, of Federalists; but the Federal party—I mean the people of the United States, known by that denomination—never gave it their sanction. What,

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then, was it, that doomed to political infamy and proscription, Aaron Burr and his associates? Looking at the strict constitutional power of this House, that pretender was as fairly entitled to be chosen by it, as Mr. Jefferson. He had an equal number of electoral votes, making no discrimination. Whence, then, the popular odium incurred by those who voted for Burr? Simply, sir, from the attempt to carry into practical effect the principle that this House has a right to elect a President without regard to the popular will. This was the sin, sir. "The very head and front of their offending, had this extent no more." A combination of politicians, some fifty or sixty in number, who had been accustomed to wield the political power of the country, seeing the sceptre about to pass from their hands, screwed up their courage to the sticking point, and boldly set at defiance the will of the nation, by attempting to elect a man President, who was known not to be the choice of the people. Under the influence—the maddening influence, of party feelings, they attempted, as a party, what none of them would have attempted, and perhaps few of them approved, as individuals. They were actuated by a principle, similar to that which stimulates and sustains a mob in the commission of depredations, which every individual composing it, when left to himself, would shudder to contemplate. They confirmed the wavering, and quieted the apprehensions of the timid, by crying out, "The party will sustain us; the party will sustain us." Sir, it was a fatal delusion. It was the last act of their political life; it put a final end to the ascendancy of the Federal party. I agree with the gentleman from Delaware, that the policy pursued by the Federal party, with the exception of two or three measures, which nobody now attempts to justify, was a wise policy. They organized the Executive Government, and a system of national defence. They erected many monuments of their wisdom. But, in this closing scene of their power, what did they do? An act which alienated the confidence of the country, struck down the fabric of their power, and, by the re-action produced, swept away all the memorials of their glory, of which the gentleman from Delaware has spoken. Measures were confounded with men, and both involved in one common prostration. And hence the feeble and debilitating policy pursued by the Republican party, during the first years of its ascendancy. Without pretending to question, therefore, the general wisdom of the Congress of 1801, I must protest against yielding to their precedent on the subject before us.

There are some other topics which I intended to touch, but which I will waive, as I have too long trespassed upon the attention of the committee already. There is a single remark, however, which I must be permitted to make, before I sit down. We are called upon to close the galleries; and upon what grounds? Have we any evidence that they will be disturbed? Have we any reason to believe that they will be more disorderly then, than they are now? Our tongues will be silent on the approaching occasion, and it would be a reflection upon the people of the United States to suppose they could be spectators of such a scene, and not be hushed into silent attention by the moral grandeur of so simple and sublime a spectacle. Sir, who are they that will fill the galleries? They will be an epitome of the people of the United States, respectable and intelligent gentlemen from a distance, who, for aught I know, may be as capable of deciding this great question, with a view to the tranquillity of the Union, (I say it without intending to derogate from the dignity of the House,) as our honorable selves.

Mr. MANGUM, of North Carolina, then rose, and said, that he felt great repugnance to obtrude his remarks upon the notice of the House at any time—a repugnance which, upon this occasion, was certainly not diminished by the state of indisposition in which he found himself.

That he felt it his duty to make a few remarks in reply to those he had just heard—not so much with the view of affording either interest or instruction to the House, as with the view of publicly avowing those principles, which he deemed sound, and by which he had determined that his conduct on the approaching occasion should be regulated.

The question, said Mr. M. immediately under consideration, is intrinsically of but slight and trivial import, but it derives much consequence from other and more important questions that have been drawn into discussion. What, asked Mr. M. is the nature of the question before the House? It is one exclusively of police. But, from the manner in which it had been treated, he should have inferred, but for the gentleman's disclaimer, that his object was not so much to discuss *this* question, as to issue a sort of manifesto to the people of the United States, to justify those who yield to a strong current, and to damn those who resist it. It is a question not of open galleries or closed galleries. Gentlemen had, therefore, been engaged in combating shadows; and much of what had been said, had been addressed to a motion which no one had made.

The question, as he understood it, was simply this:—Whether the galleries should be thrown open, subject to be closed at the motion of the Speaker, or, whether they should be thrown open, subject to be closed at the request of the delegation from any one state. For his own part, he should have thought that the latter arrangement would have been conceded as a matter of courtesy, to those gentlemen who stand singly and unsustained by colleagues, as representatives from the weaker states. For himself, he had not the remotest idea that those galleries, let them be occupied by whom they might, were about to overawe the House, or exert any improper influence upon it whatever. His reliance was placed upon the deep moral feeling that pervades this nation. On this he relied to sustain gentlemen in the discharge of their duty; and on this he relied more than on all the bayonets and cannon that military despotism ever wielded.

This is a mere question of order. The admission of strangers was an act of courtesy, granted, as such acts are always understood to be, upon an implied obligation of good behaviour. It was not to be presumed beforehand, that those who were admitted, would violate the laws of decorum: but, if they did, there could be no doubt that the Speaker was competent to exclude them: and as little doubt that he would do it at the suggestion of the delegation from any one state, that a free exercise of their rights required their exclusion.

He would again repeat, that he felt no fears from any attempt to overawe the House; and still less had he fears of the intriguers who had been spoken of, whether posted in the galleries, or operating in this hall. His position was peculiar; it was that of an armed neutrality, he had but little to hope, and nothing to fear.

He knew that he stood upon a narrow isthmus, lashed upon either side by the most angry surges, from which neither numbers nor denunciations should be able to drive him. Calling to his aid the little lights of his understanding, and with a heart bent upon the best interests of his country, he should firmly and fearlessly endeavor to perform his duty.

He should not, however, have troubled the House at this time with a single remark, but for the principles he had heard advanced; and against which he felt it his duty to enter his solemn protest. He had always listened to the gentleman from South Carolina with great pleasure, and he must confess that he had heard him on this occasion with the more pleasure, because he thought he had perceived that his talent, his ingenuity, and his fertility of resource, had proved insufficient to sustain him under the weight of the cause he advocated. Whom, asked Mr. M. are we bound to obey, in giving our votes on the approaching occasion? We, I mean, who are in

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the minority? If I understand the gentleman, we are bound to obey the will of those whose candidate shall have the highest number of votes. I would be glad to know whether we are bound to do this by a moral obligation, or only by reason of the *philosophy* of the Constitution, to which the gentleman alluded. If by a moral obligation, that obligation addresses itself to every honest mind with the force of a perfect obligation; it must be obeyed, and why then has the Constitution been so silly as to allow us a choice between three candidates, when we are *morally*, and of course *perfectly* bound to elect the candidate who has the largest number of votes in the electoral colleges?

[Here Mr. M. yielded the floor to Mr. McDUFFIE, who wished to explain. He had not said that gentlemen were bound to elect the candidate who had the highest number of votes; on the contrary, he had said distinctly, that a plurality of votes did not make an election.]

Mr. M. resumed. He was then to understand the gentleman, that we are not constitutionally, but only morally bound; or, in other words, that we have no right to disregard the will of the people, as expressed in a plurality of votes by the electoral colleges. But, if so, was not the argument the same?—the conclusion the same? Was not that obligation as binding, as an obligation emanating immediately from the Constitution?—Must not every honest man regard it in that light? And must not every man who was not base enough to barter away his birth right for a mess of pottage—to sell himself for loaves and fishes—feel its binding power? If the obligation was a moral one, it was a perfect one, and, as such, commanded perfect obedience. He must, therefore, most emphatically repeat, that it was extreme folly, if not worse, in the framers of the Constitution, to give to this House the power of selection between three candidates, when, at the same time, the hands of members are tied up from the exercise of that power by the strongest obligations. The Constitution, then, holds out to us bread, and gives us a stone.

But this never was the design of the framers of the Constitution. And the very fact that they have given us the power to choose, is enough to prove that the principle, as stated, does not furnish the rule by which we are to be governed.

If, then, we are not bound by the gentleman's *moral obligation*, to elect that candidate who happens to have a plurality of votes in the electoral colleges, what is the rule by which we are to be governed? Is it by the vote of our respective states? That cannot be the rule: for the Constitution has not prescribed any uniform mode for the election of electors, but has left that power in the Legislatures of the States. And it may happen in those States in which they elect electors by districts, that there may be a tie; that the votes for two contending candidates may be equal. How will gentlemen extricate themselves from this dilemma—the dilemma of a tie? Will they resort to their *principle*? It will fail them—it is not principle—it is, in my humble judgment, absurdity. The gentleman from South Carolina has asked the gentleman from Delaware, with a sort of triumph, to answer the case which he put, to wit: that if 130 votes should be given for one candidate, falling one vote short of the number required for an election, whether that gentleman would *dare* to resist such a majority? I would answer, that great respect is due to the opinions of the people. That it would be great impolicy, in ordinary cases, to resist so full an expression of the public will. But reasons might exist, which would render it the imperious duty of the representative, as an honest man, to resist it. There is no *principle* concerned, as, I trust, I have shown. It is mere matter of *expediency*.—But let me suppose a case, predicated upon the alleged principle, that we are bound to give our votes in accordance with the votes of our respective states, and ask the gentleman to answer it. There are twenty-four states

and three candidates for the Presidency. Suppose eight states should vote for each candidate; if we are bound to vote as our respective states do, no election can be made. And what will be the result? It is obvious.—By adhering to the *principle*, of which the gentleman speaks, you postpone three candidates, upon whom the people of the United States had fixed their eyes, as fit persons for the Chief Magistracy, and each of whom had received the votes of one-third of the people of the United States for that office. You set aside all these, and let the Vice President into that office; a man who had not received a single vote in the United States for the Presidency. What will the people's men say to this doctrine? and yet it is *principle*, sacred principle, according to the views of some gentlemen. But, says the gentleman, we are first to try to elect the people's man, and if we cannot effect that object, then, and then only, take up some other candidate. We must yield to the necessity of the case. Mark me, it is moral principle, says the gentleman, by which we are bound. A principle is surely a very bad one, which will not wear longer than one day, and which must be abandoned as soon as it is put into practice. But we must yield to the necessity of the case! I had thought that that which yields to any necessity whatever was not moral principle, for moral obligation admits of no compromise. It is said that, if on trial we cannot succeed in electing a President, to prevent the Vice President's coming into that office, we must give way. But here are eight states in favor of each candidate—who is to give way first? If I give way first, may not my constituents reproach me with an abandonment of principle? If the gentleman gives way first, does he not abandon principle? Sir, such a principle as must be abandoned on one day's trial, is not a principle which I will ever recognize.

If, then, sir, we are under no moral obligation to vote for the candidate who has the highest number of votes, nor to obey the votes of our respective states; what, I again ask, is to be the rule which must govern us? Sir, it appears to me that the whole fallacy, which pervades the arguments of the gentlemen whose views I am opposing, consists in this—they are comparing the votes of the people, taken *per capita*, with the votes of twenty-four distinct and independent sovereigns. They are comparing things which have no points of resemblance, nor have they any assignable relation to each other.—The states, as sovereigns, are all equal. The people, who make up those sovereignties, numerically considered, are totally unequal, and, in that respect, bear towards each other various and diversified proportions. Are we then to be bound by the votes of our respective districts? (This is the doctrine of the *people's men*, and all are *people's men* now-a-days, from the much reprobated caucus man, down to the humblest political professors.) Here, I trust, I may be permitted to say, that I shall, for once in my life, at least, in the honest discharge of my duties, fall in with the doctrines of the *people's men*—I expect to represent the plurality of my district.

But are we bound by the votes of our districts? I mean, in point of principle? Did the framers of the Constitution design that we should be so bound? If they did, wherefore does not the Constitution prescribe an uniform mode of electing representatives by districts? And yet the power of prescribing the mode, is left with the legislatures of the respective states. Some states elect their representatives by general ticket, as does Georgia, for example. How will gentlemen ascertain the votes of their districts, under the general ticket system? How will gentlemen extricate themselves from this dilemma? Will they do it by resorting to the statement, that the state, in that case, is each member's district? If so, then each member is bound to represent the vote of his state. This brings the question back to the ground on which I have already considered it; and the doctrine is subject to all the objections to which I

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have already adverted. It is true, that the gentleman from South Carolina cannot be mistaken as to the vote of the people: for in that state they elect members by districts. Should he recognize the principle of perfect obedience to the voice of his district, then should also every other member. If this is principle, what would be the consequence of adherence to it, in the most of cases—indeed, in the actual posture of affairs at present? It is plain—no President could be made, and the Vice President would come in. If it is principle, we are bound to adhere, but if we may give way, and are not bound to adhere, then it should no longer be dignified with the name of *principle*, but it is a mere question of *expediency*. Again, if we are not bound by the votes of our districts, (as is clearly the case, in some of the states), for the simple reason, that they have no districts,) but are bound by the votes of our respective states, then this dilemma might arise—A member might be obliged to vote for a candidate, who was opposed by every man in his district. Here he gives up the wishes of all his constituents, the only people upon earth to whom he is politically responsible, and for what? To fall in with the vote of the state—and by adhering to that vote, no President is elected and the Vice President comes in, after all these fearless and patriotic sacrifices.

Again: If our states were all of equal size, that is, equal in point of population, and the people fail to make an election in the electoral colleges, it is clear that no election could ever be made by the House of Representatives, should the members recognize as correct, and adhere to the principle, that they are bound to vote in accordance with the votes of their respective states.—In the present unequal size of the states, under any ordinary circumstances of combination, the operation of that principle would defeat an election nine times out of ten; and in no solitary case can an election be made in the House of Representatives by adhering to the principle, except by enforcing the odious doctrine, that the minority shall prevail over the majority—that is, by making thirteen or more of the smaller states, that had voted for one candidate in the electoral colleges, *without effect*, come into the House and do the same, with *complete effect*. What they were unable to do, by reason of inequality of population, they are made to effect by the equality of their sovereignty. Sir, if these are *people's principles*, I, for one, beg to be delivered from them.

It is said that, in matters of *legislation*, it is a vexed question, whether the representative is not bound to obey the will of his constituents, and that many great and wise men have held the affirmative. Sir, I would not give a button for the doctrine, either the one way or the other, so far as regards its *practical utility*. As to the mere theory, I concede it to gentlemen—they may delight themselves with whatever theories they please, whether ingeniously or inartificially constructed. But, though the question, as to legislation, may be vexed, gentlemen tell us, that, in the business of electing a President by the House of Representatives, there can be no doubt—the case is a plain one. Sir, I argue directly the reverse. In the business of legislation, the people, in primary assemblies, cannot act—it is constitutionally, it is physically impossible. There is, therefore, a propriety, in a representative government like ours, that the legislative body should respond to the voice of the people; that, as a reflector, it should give back the true image of the people's wishes. But, in the election of a chief magistrate, the people *can* act in primary assemblies. Those assemblies present the proper and the best mode in which the election can be made. But the people, having attempted an election in this mode, and having failed of success, the consultation brings the election to this House: this House is the *umpire*, the judge on whom devolves the settlement of that momentous question, which the people have been unable to settle themselves, for want of greater unanimity.

Sir, I hope I have now succeeded in showing the fallacy of the gentleman's—pardon me—the *people's doctrines*, of instruction. What, then, is our duty, in the present crisis, and on the approaching occasion? Is it to fall into the ranks of the candidate, who may happen to be the strongest? (A very comfortable doctrine, indeed, particularly, to those who happen to be in the minority; our understandings and conscience approving, we should like to be wafted with you gentlemen, on the strong currents.)—Is it to obey the voice of our states? or, is it to obey the voice of our districts? It is, in my judgment, neither more nor less than this—To do what is right, according to the best dictates of our own understandings, and leave the consequences to God, and to our country.

It has been asked, how can we hold up our heads when we return home, if we have gone against the will of our constituents? Sir, we can hold our heads as erect as an angel. The man who has honestly done, what he understood, after deep and anxious reflection, to be his duty, may meet the eyes of his constituents, aye, the eyes of the world, and neither blench nor quail, though none should smile upon him. It has, also, been said, (and the remark, though it can have none here, may be calculated to have an effect abroad,) that, whenever a man has done deeds of renown, the people delight to honor him, and will, with great certainty, elevate him to the highest offices. Sir, this is a mere truism; every body here, knows that this is true. It is what the people will always do; it is what they have done, in a thousand instances; but, sir, it is *exactly* what, in the present case, they have not done. Else, why does the election come to this House? Sir, a majority of the people have distinctly told you, that not even the most favored candidate is the man of their wishes. Neither is elected, though all may have been honored. It is we who must elect.

We have also been told, that, upon grounds of expediency, the sceptre ought not to be placed in the hands of any man who has not a majority of the votes of his countrymen; and that, if we do place it in the hands of such a one, we only place it there to lop off his arm. Sir, this but ill agrees with what is a fundamental principle in the system of the *people's men*. What, sir! are the intelligent and enlightened people of these states, who are so much flattered in one breath, to be represented in the next as ferocious as tigers! Are they to rise in their wrath, and hurl the full weight of their indignant vengeance at an individual who has done no harm? Who has done no one act to excite their displeasure? Suppose three candidates should come before us with an unequal number of votes, I admit we should very properly feel inclined to elect him "*ceteris paribus*," who had the largest number, (for I would not willingly deprive gentlemen of the smallest comfort.) But, suppose the candidate who had the smallest number should, in the result, be chosen President, is it maintained that the people of the United States would rise in vengeance against that man? Surely, sir, whatever phials of wrath might be exhausted on the heads of their guilty representatives, the people would pour out none upon the innocent head of a man who had done no one offensive deed, and whose only crime had been to be constitutionally presented for choice, and constitutionally chosen. We have heard, further, and much to my astonishment, that the doctrine of the gentleman from Delaware would not flourish in old England—nay, that it is too strong even for the military despotism of Napoleon. I scorn to flatter any man, and am sure that, on this occasion, I shall be exempt from the imputation of such design, when I say I was an attentive listener to the gentleman from Delaware, and did think, and still think, that sounder doctrines, or doctrines delivered with more pellucid clearness, never fell from the lips of any man, than from those of that distinguished member; and I did consider the

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demonstration by which they were maintained, precluded reply; and I am happy to find my own opinion bolstered and corroborated by an opinion that comes to me with so much weight and authority.

I have not heard why his doctrines would not flourish in old England; the gentleman from South Carolina did not condescend to favor us with any thing more on that point than mere assertion. As to what was said in regard to the iron reign of Napoleon, and the declarations that he made, it is indeed true, that that despotic ruler *professed* to be governed by the will of the people, (Bonaparte, it seems, too, was also a "people's man.") But, sir, while he *professed* this, he was supported by 250,000 bayonets; and, in such circumstances, what was the "people's will?" It was the will of their tyrant.

Here Mr. M., not having concluded his remarks, gave way for a motion for the committee to rise.

IN SENATE—FRIDAY, FEBRUARY 4, 1825.

SUPPRESSION OF PIRACY

The Senate resumed the consideration of the bill "for the suppression of piracy in the West Indies"

The motion of Mr. SMITH to amend the 4th section, (which Mr. MACON had proposed to strike out,) being the question pending—

Mr. TALBOT hoped the Senate would not go on debating for days, motions to amend parts of the bill which were then, after all the time spent on their details, struck out; he therefore suggested to Mr. SMITH the propriety of withdrawing his motion to amend, that the question might be taken on the principle itself contained in the fourth and remaining sections of the bill.

Mr. SMITH yielded to this suggestion, to save time, and withdrew his motion.

Mr. TALBOT then moved to strike out the 4th, 5th, 6th, 7th, 8th, 9th, and 10th sections of the bill, (all relating to armed merchant vessels,) which authorize the recapture of vessels from the pirates, taken on the coast of Cuba, &c. allow salvage therefor of one-eighth to one-half, apportion among the crews and owners of merchant vessels, the property of captured piratical vessels, requiring bond of armed merchant vessels, for lawful conduct—authorizing the President of the United States to establish instructions for them, providing for a fund out of the vessels captured from pirates, from which pensions are to be allowed to sailors disabled in action with pirates, and to their families if killed, &c. &c.

On the motion to strike out these sections, a wide debate took place, in which Messrs. TALBOT, BARBOUR, SMITH, HOLMES, of Maine, and MILLS, engaged.

The question being taken on striking out the sections, it was decided in the negative by yeas and nays, as follows:

YEAS—Messrs. Barton, Bell, Boulogny, Branch, Brown, Chandler, Clayton, Cobb, D'Wolf, Dickerson, Findlay Gaillard, Lowrie, Macon, Noble, Ruggles, Talbot, Taylor, Tazewell, Thomas, and Van Dyke—21.

NAYS—Messrs. Barbour, Benton, Eaton, Edwards, Hayne, Jackson, Johnson, of Ky., Johnston, of Lou., Kelly, King, of N. Y., Knight, Lloyd, of Md., Lloyd, of Mass., McIlvaine, McLean, Mills, Palmer, Parrott, Seymour, Smith, Van Buren, and Williams—22.

Mr. LOWRIE then moved to strike out the second section of the bill, which is as follows:

Sec. 2. *And be it further enacted*, That the commanders and crews of the armed vessels of the United States shall be, and they are hereby, authorized, under such instructions as may be given them by the President of the United States, in the fresh pursuit of pirates on the Island of Cuba, or any other of the Islands of Spain in the West Indies, to land whenever it may be necessary to secure the capture of the said pirates, and there to subdue, vanquish, and capture them, to deliver them

up to the authority of the Island where captured, or to bring them to the United States for trial and adjudication, as the said instructions of the President of the United States may prescribe.

This motion was decided without debate, by yeas and nays, in the negative, as follows.

YEAS.—Messrs. Bell, Branch, Brown, Chandler, Clayton, Cobb, D'Wolf, Dickerson, Findlay, Gaillard, Lowrie, Macon, Ruggles, Talbot, Taylor, Van Dyke—16.

NAYS.—Messrs. Barbour, Barton, Benton, Boulogny, Eaton, Edwards, Hayne, Jackson, Johnson, of Ky., Johnston, of Lou., Kelly, King, of Alab., King, of N. Y., Knight, Lloyd, of Md., Lloyd, of Mass., McIlvaine, McLean, Mills, Noble, Palmer, Parrott, Seymour, Smith, Tazewell, Thomas, Van Buren, Williams—28.

On motion of Mr. MILLS, some minor amendments were adopted; and

On motion of Mr. BARBOUR, (who wished to accommodate those who objected to the clause as it stood) the limitation of salvage for recaptures, was stricken out, and the amount to be allowed, left to the discretion of the Courts.

The bill was then reported to the Senate as amended, and the amendments made in committee of the whole concurred in.

Mr. LLOYD, of Mass., moved the adoption of the following section, which he had some days ago intimated an intention to offer, viz:

And be it further enacted, That for every pirate, who shall be captured by the officers, or crews, or any part of them, of vessels belonging to the United States, and brought into the United States; and who shall be convicted of the crime of piracy, by any competent tribunal, the Secretary of the Treasury be, and he hereby is, authorized and required to pay, or cause to be paid, to the owners, officers, and crews, of the vessels capturing such pirates, or to their agents, the sum of one hundred dollars for each and every pirate captured, and condemned as aforesaid; to be divided among the parties receiving the same, in like manner as is provided in the fifth section of this act, for the distribution of the property captured from pirates; and that the sum of ten thousand dollars, from any money in the Treasury, not otherwise appropriated, be, and the same is hereby, appropriated, for the object aforesaid.

After some debate on this amendment, between Messrs. LLOYD, of Mass., HOLMES, of Maine, MILLS, VAN BUREN, and JOHNSTON, of Louisiana, and the adoption of a verbal amendment, proposed by Mr. MACON,

The question was put on the section offered by Mr. LLOYD, and negatived—16 rising in its favor, and 21 against it.

Mr. VAN BUREN then renewed the motion he had unsuccessfully made in committee of the whole, to recommit the bill to a select committee, with instructions "to report amendments thereto, giving power to the President, on its being satisfactorily proved to him that any of the pirates, mentioned in the said act, find refuge in any of the cities or ports of the said Island of Cuba, or other Islands mentioned in the said bill, and that the local governments of the said Islands, on being requested so to do, neglect, or refuse, to aid in the apprehension, prosecution, and conviction, of such pirates, to give authority to the crews of the armed vessels of the United States, under such instructions as may be given them, to land on the said Islands, in search of pirates, and there to subdue, vanquish, and capture them, and bring them to the United States for trial and adjudication, as the said instructions of the President of the United States may prescribe: and further, to authorize reprisals on the commerce and property of the inhabitants of the said Islands."

Mr. VAN BUREN supported his motion with some remarks; and,

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tention, at the present moment, of going into an argument to show, that Spain exercises only nominal jurisdiction over Cuba; but, if the House would indulge him by referring them to a committee, he pledged himself to prove that Spain does not, nor has not for many years past, exercised complete jurisdiction over that Island. He would mention only one fact. In the autumn of 1822, an English squadron anchored in the port of Havana, bringing an order to the Captain General to co-operate with the British force in suppressing piracy.—After a long delay, the Captain General informed the British commander that he could not comply with the order, as he had no disposable force. At that time there were three corvettes, a gun brig, and four schooners, in the port of Havana, armed and equipped, and ready for sea, and 5,000 men in garrison.

A single remark, sir, in relation to the second resolution. After long and anxious reflection on this subject, Mr. P. said, he had brought his mind to the most perfect conviction, that there is but one remedy for this enormous evil; and that is, the establishment of a different government in the Island of Cuba. If the power were lodged in the hands of the Creoles, of the *Americans* of Cuba, my life for it, you would hear no more of the piracies of that Island, than of piracies being committed along the coast of the United States. There are many reasons why this government cannot take any measures having that tendency, without exciting the jealousy and fears of other powers. Whatever is done ought to be done in concert with them. He was aware that, by a proper application of our naval means, the pirates may be held in check, and our commerce be protected.—But, sir, a measure of this sort, to be continued for any length of time, will be attended with great waste of life in that fatal climate. In order to give the House some idea of the incessant vigilance this service requires, he would state, very briefly, the manner of conducting these piratical expeditions. A coasting vessel leaves the harbor of Havana or Matanzas, having on board not more than four or five men, and, by that means, eludes suspicion. On the coast she receives her complement of men, who put off in small boats and canoes. They require no other arms than those they carry always about them. The dagger is the only arm of the pirate. Thus equipped, they attack the first American, English, or French vessel they meet—take possession of her, take out the goods, and scuttle or set fire to her, after murdering her crew. The pirates then return to the shore in their boats, and instantly proceed to Havana and Matanzas, where notice of the prize is given to the merchants—vessels are immediately cleared out coastwise, with a *guia*, or permit, specifying the articles taken—they proceed to that part of the coast where the pirates have their hiding places, receive the goods on board, and proceed on their voyage. This is done with the connivance of some of the officers of the customs at both ports—the goods are transferred to the shops, and are publicly sold. All this may be prevented by the steady employment of a large naval force, and with the exertion of great vigilance and activity on the part of the officers engaged in that service. But the instant our squadrons are withdrawn, the piracies will be renewed. He would not detain the House any longer at this time. He hoped when the Presidential election was over, time would be accorded to act on this most important subject. He was induced most earnestly to desire it, from an account he

had seen yesterday, published in a Charleston paper, of the murder of the crew of a vessel, that had been wrecked on the Keys, near Matanzas.* They had escaped a watery grave, and, when within reach of what ought to have been a friendly shore, they were overtaken by pirates, who, without any hope of plunder, murdered these men in cold blood, to wreak their vengeance on the enemies of Spain.

In speaking of these atrocities, it ought to be understood, that the Creoles, the *Americans* of the Island of Cuba, have nothing to do with them. Their hands are not stained with the blood of our citizens. They are not polluted with the bribes of pirates. They derive no profit from this most infamous traffic.

Mr. P. moved to refer the resolutions to the same committee to which had been referred a bill from the Committee on Naval Affairs for the Suppression of Piracy.

Mr. FORSYTH remarked, that the resolutions submitted by the gentleman from South Carolina, (Mr. POINSETT,) referred to a subject respecting which this House, as long ago as the 20th of December last, had called on the President of the United States to communicate, so far as might be consistent with the public good, the correspondence which had been held with Spain, and with the Governors of the Spanish possessions in America. No answer to this call had yet been laid before the House. It was, therefore, useless, he had almost said idle, to make a reference of these resolutions, until that answer should be received. The first resolution recommends to the House to say to the Chief Magistrate, You ought to hold a communication with the Governor of Cuba. Why, sir, is it possible that any man in his sober senses can suppose that the Executive can have been so lost to all sense of duty as not to have made this communication long ago? The documents which are already before us, (said Mr. FORSYTH,) are sufficient to refute such an idea. They shew, conclusively, that some correspondence has been held with the Governor of Cuba. Sir, I object to the resolutions, for another reason. They go on the principle, that, by a correspondence with the Governor of Cuba, you can make Spain or the Spanish dominions, accountable.—This is not correct. The Governor can only answer that correspondence, according to the subordinate authority he possesses, and the result will be, that he will refer to the Spanish Government. Let me, on this subject, put a case to the gentleman from South Carolina. Suppose a foreign power—

At this point, Mr. FORSYTH was interrupted by the Speaker, who pronounced that the discussion was, in the present stage of the business, not in order.

Mr. FORSYTH then moved that the resolutions lie on the table; which was agreed to, and they were ordered to be printed.

Mr. R. H. WILDE, a member elect from Georgia, appeared, was sworn, and took his seat.

ELECTION OF PRESIDENT.

On motion of Mr. WRIGHT, the House then went into committee of the whole on the state of the Union, Mr. TAYLOR, of New York, in the chair, and resumed the consideration of the rules (reported by a committee) to be observed by the House in conducting the election of the President.

And, the question being on striking out the last clause

* Extract of a letter from Matanzas, dated 13th January.

“We have accounts here of a horrid deed being committed by the Pirates. It appears that the brig *BETSEY*, Hilton, from Wiscasset, for Matanzas, was wrecked on the Double Headed Shot Keys, about 10 days ago. The Captain and crew fortunately saved their lives by landing on one of the Keys. They had got as far as Santa Cruz in a fishing boat, when they were fallen in with by a piratical boat, and all murdered, excepting one man, who fortunately was knocked overboard, and reached the shore. It is reported the piratical boat and crew were afterwards captured by a British vessel of war. There is much excitement here on the subject.”

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of the third rule, which provides that the galleries may be cleared at the request of the delegation of any one state—

Mr. MANGUM said, that, when the committee rose the other day, as he presumed for his personal accommodation, he had well nigh concluded the remarks which it was his intention to submit on this subject.—He felt deeply sensible of the polite attention of the committee, and the best return in his power to make for their kindness was to refrain from trespassing again too far on their patience.

This subject having already occupied a disproportionate space of the time of this House, he should not again take up the argument, but only submit a few general observations, which he had designed to offer on the former occasion. He knew full well the immense advantages which gentlemen have when they address themselves not to the understanding and the judgment, but make ardent appeals to the prejudices and passions of the people. The people's rights, and the sovereignty of the people!—the very finest and most popular themes for declamation! He felt the great difficulty of being heard, coolly and dispassionately, at the bar of reason, at the moment when the passions are stimulated into tumult, and worked up to a pitch of phrenzy.

In this country, as we have seen from the foundation of the government, whenever a new party was about to organize itself, or a new faction to spring into existence, its very first breath was breathed in a holy and fervent *love for the people*; its ardor and its devotion to the public weal, transcended only by the purity and disinterestedness of motives. I confess, sir, that I have lived long enough to distrust these ardors. When I see the frosts of age dissolving under the warm glowings incident to youth, and the *patriot* of sixty entering the lists with the very flower and chivalry of the land, endeavoring to outstrip them in demonstrations of love and devotion to the people, I begin to look about me; for I fear mischief, or suspect treachery. I need not refer you only to our own history, but the history of other countries, and other ages, discloses the fact, that many of the bloodiest tyrants that ever disgraced humanity, began their career by fawning on the people, and sedulously and assiduously courting their favor.

It has been remarked by the gentleman from South Carolina, that all sovereign power resides in the people, and that every agent in authority must act in obedience to that will. The abstract proposition is evidently true; but the difficulty arises in the application of it to the case in hand. How is the will of the people to be ascertained? Is it to be derived from the county meetings, town meetings, publications, and rumors? Are we to resort to these loose, unsatisfactory, and contradictory indications of the public will? Or, shall we resort to the constitutional indication—to that expression which has been made through legitimate organs? If the latter, it is apparent that a large majority have voted against either of the candidates. What, then, is our duty? I would again answer, to select according to the best dictates of our understandings. And yet, says the gentleman, this doctrine is too strong for Revolutionary France, it would have been repudiated under the reign of Napoleon. Mr. M. said it was a little curious to remark the striking coincidence between the early professions of Bonaparte, and those with which we are now daily saluted. He could hope that a coincidence should never be made to exist in this country, in any other respect. For what was the sequel in the case of Napoleon? Though his first love was the love of the People, and though he bowed with the profoundest respect to their will, yet he flattered, he coaxed, and he courted them, until he placed his foot upon their necks, and crushed their liberties with the most frightful military despotism that the world ever saw.

This is the natural order of things in a free govern-

ment, to begin a jacobin and end a tyrant. We are told we must bow to the will of the people. I grant it. But I shall look for the indications of that will to a source which is unerring—to the constitutional indication of it. It is curious to remark how defective this *poor, tattered* constitution of ours is, according to gentlemen's notions of responsibility. They say we must vote with the people, (what people?) and yet the constitution guaranties to us the mode of voting by *ballot*, in the exercise of which, the vote of each delegation may be profoundly locked up in their own bosoms, and no human eye, not even the Argus eye of jealousy itself, can detect for whom that delegation voted. There are four states in the Union, represented, in this House, each, by one member. Those gentlemen, according to the rules established on a former occasion, and according to the rules reported on this, may hide their secret from all the world, if they choose. They have nothing to do but to make duplicate ballots, and drop one into each box, among twenty-three other votes, and how are their ballots to be known, to be identified? How does this comport with gentlemen's notions? How defective is the constitution according to their views! Instead of requiring members to vote in a manner to prevent the practice of fraud and deceit, that same constitution becomes "*particeps criminis*," by throwing the mantle over deeds of darkness and crime, by shielding them from exposure to the vengeance of disappointed ambition, or the scorn and hatred of a betrayed country.

There have been some politicians silly enough to imagine that the framers of the constitution looked afar off, and either dreamed or believed that occasions might arise when this provision would be found most salutary, that the safety of the republic might depend upon the ignorance of the tyrant where to direct his blows.

For myself, however, I hope, said Mr. M. that I may be permitted to say, that I hate mystery—I hate all concealments in the discharge of a public duty; and shall be one of the last to shrink from the severest scrutiny into the manner in which I may have discharged it. I would scorn the use of the mantle.

I advert to these considerations with a view of showing with how many difficulties this subject is beset, and how arduous would be the task of framing a theory, according to gentlemen's views, that would harmonize in its practical operations with constitutional provisions on the subject.

Sir, it seems to me that the true conception of the framers of the constitution is this: that the representatives in this House would come immediately from the people—they are part of the people—presumed to be men of some character, connected with the community from which they emanate by a thousand ties; character, respect, family, children, a common interest, a common destiny. In a word, identified with that community in habits, feelings, sentiments, &c.; and, that when the result, so much to be deprecated, of the Presidential election being cast upon this House, shall happen, that all these ties and considerations form a sufficient guarantee that a wise, honest, and judicious selection will be made. This view, I think, said Mr. M. is conformable with the theory of the constitution.

What are the cotemporaneous expositions of the constitution on this subject? In the work entitled the *Federalist*—a work written by some of the ablest men who were in the convention, and which is resorted to by the ablest constitutional lawyers, as high and grave authority, I find the following opinion:

"But as a majority of votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided, that in such case, the House of Representatives shall select out of the candidates, who shall have the five (now changed to "three,") highest numbers of votes, *the man who, in their opinions, may be best qualified.*"

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And yet, it is said, that these doctrines would be odious in revolutionary France—they are too strong for the reign of Napoleon.

Such are some of the difficulties into which gentlemen are deluded and bewildered by an overweening attachment to their new-born theories—theories that have sprung into life from a brain highly excited by political contests—theories that are cherished with all the love that the mother bestows on her rickety bantling.

But, sir, if these theories may not be deduced from the letter of the constitution, may they not result from the *philosophy* of the constitution of which we have heard in this debate? Yes, sir, the *philosophy* of the constitution! That philosophy which, I fear, is to arm this great Government with that stupendous power which is to sink our state sovereignties into mere corporations—That power which has prostrated some of these barriers that the wise men of both the old parties recognized—That power which is incessantly, most fearfully, and alarmingly increasing. Yes, sir, the philosophy of the constitution! That philosophy which was reserved for the ingenuity and astuteness of modern times to discover; and of which that great and wise man, Patrick Henry—and a wise man he was—in all his awful vaticinations never dreamed of. Yes, sir, it is by courting these sovereign people sedulously and arduously, that all jacobins begin their career.

The people are sovereigns—but they are sovereigns in minority: they never have, nor will they ever come to the *crown*, whatever some of their *flatterers* may do—and yet they have in full enjoyment one of the brightest and most undoubted attributes of sovereignty—the *placidity of their courtiers*.

I trust I may say, and truly too, that I have as profound respect for the will of the people, fairly expressed, as any man; and would preserve those interests committed to my charge as I would the apple of my eye. I would not look to the shouts of the multitude for the opinions of the people, but I look to their opinion as fairly and constitutionally expressed. To this I respond, to this I am obedient.

I regret that I have detained the committee so long on this subject. As regards the question immediately under discussion, I would not turn upon my heel for a decision of it, either one way or the other.

Mr. J. S. BARBOUR, of Virginia, said, that a sense of duty made it necessary for him to offer to the committee a few remarks; and in doing so, he should but express an entire concurrence in opinion with the gentleman from North Carolina, (Mr. MANGUM,) that a new zeal had infused itself into our deliberations, resulting from the excitement at this moment pervading both this House and the country. He trusted that the fervor of this excitement would not warp the judgment of the committee, or divert it from the duty of calm inquiry, so imperatively enjoined on it. The first question presented to us I take to be this: Is it right to indulge the intense anxiety now felt by the public, in permitting an inspection of the proceedings of this House, when constitutionally employed in selecting a Chief Magistrate? The history of that country whose precedents have supplied most of the forms of our deliberations, discloses to us the existence of controversies between the parliament and the people, on questions of giving publicity to the transactions of the former. It was deemed, and accordingly punished, as a breach of privilege, to publish the speeches or votes of members, and that, too, on the ground that those proceedings were matter of which the public had no right to be conversant. At the period of forming our constitution these demands from the people, and their denial by the parliament of England, had made an appropriate impression in this country. To secure this right beyond the reach of cavil, and to supply the people with this safe-guard for the responsibility of their Representatives, claimed the attention of

the wise framers of our political fabric. To secure this right, it is provided that the people have a just claim to know what Congress is doing, and that a journal of their proceedings shall, from time to time, be published, together with the Yeas and Nays, upon the demand of one fifth of the members present. The usage of Congress supplies us with the best commentary upon this constitutional text. Its deliberations have been open to public inspection, with the exception of proceedings where high national considerations forbade immediate disclosure, and the precedent of 1801, which I think has been clearly demonstrated to merit but little attention. Is there any thing, then, in the duty now cast upon the House by the happening of the contingency provided for in the constitution, to distinguish it from ordinary acts of legislation, and to demand an unusual measure of safety or precaution. Can gentlemen imagine, for a moment, that our deliberations will be overawed? or, that any intimidation, whatever, will influence members in discharging this high function? It is a suspicion fraught with injustice to ourselves, as well as to the people. Throw over your acts the veil of mystery, and what is the result? All within is pure, and the members are engaged in the fearless fulfilment of the trusts reposed in them. Will it be so, sir, without? I apprehend not. Distrust will fill the public mind, and jealousy will fire its passions; and when these overtake us, it will be in vain for us to rely upon the conscious rectitude of our actions, and the dignity of silent deliberation, to shield us from disrespect, or the suspicion of ignoble conduct and unworthy motives. But I understand, from the argument of the gentleman from Delaware, (Mr. M'LANE,) that, in making the selection, we act independently of the people, and, as a necessary deduction, that they have no right to witness it. I can never yield my assent to such a proposition. It has been successfully combated, I think, by the gentleman from South Carolina, (Mr. M'DUFFIE.) With his opinions in relation to the rights of the people over our ordinary legislation, I must also express my dissent. He informs us that the constitution has vested the legislative powers of the United States in Congress—and asks, "What are the ingredients of legislation? Argument, inquiry, and deliberation." Sir, when the gentleman presented so forcible an argument in another branch of this question, upon the influence of popular will, could he not suppose that this, too, would necessarily enter into our acts of legislation? If tyrants, as he clearly shewed, armed with power, are constrained to regard the will of the people, how much more forcibly should that argument apply to national legislation in a Government whose very basis is public sentiment? The will of the people is in this country, most especially, the main spring of all political institution. This, alone, can with us give impulse to permanent legislation.

I cannot agree with the gentleman from North Carolina, that the wise men who gave form to the constitution, are against me. The journals of that day reveal a singular incident relating to this question, which may seem to array against me a most distinguished authority. When the constitution was in progress, amid the jealousies of its enemies and the anxieties of its friends, numerous amendments were proposed by the several State conventions. Among these, Virginia sought to engraff upon it a provision, that would secure, at all times, the right to instruct Representatives. In the first Congress that subsequently assembled, an illustrious man, then representing that state, and who has since thrown a lustre over our character in the various acts of his public life, proposed this amendment, with an omission of so much as claimed this right of instruction. I am not prepared to receive this as evidence of his own enlightened view of the subject. The constitution, with all its amendments, is the offspring of a spirit of compromise. This alteration, (by his proposition,) of the expressed wishes

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of a convention in whose deliberations he was himself a clear and steady light, owes its birth, in all rational probability, to the same parent. A plain refutation may readily be given, (in my humble judgment,) of all doubts that cluster round this question.

In whose hands is the sovereignty of this Union reposed? The Constitution supplies the answer: In those of the people. And what is the legislative power? It is but a seminal principle which fructifies in those enactments, denominated *law*. Sir, the writers upon jurisprudence, inform us, that Law is a rule of action emanating from a sovereign power, commanding what is right, and forbidding what is wrong. If, then, the people who make the constituent body, are admitted to be sovereign, and each Representative expresses the sense of his constituents upon every vote he may give, in the passage of any law, do you not obtain a rule of action emanating from the sovereign power of the United States, and filling up the measure of the definition I have just recited?

The gentleman from South Carolina asserts for the people a controlling influence, in performing the duty required of this House, when the contingency presents itself, in which a *selection* is to be made here of the Chief Magistrate, because the Constitution recognizes in the people the power and the capacity to make the election. There is a vice in this argument which I think is but apparent, or which may be easily resolved into our difference in the application of terms. The Constitution contemplated an election by the people. But, that it was dangerous to give a power of such magnitude, to less than a majority of the whole who voted. And what is the remedy provided for a failure so to choose? The people are scattered over a vast extent of country; to assemble them together is impossible. The theory of the Constitution then requires, as the most practicable mode, if a popular majority cannot be obtained, that a federative majority shall determine, combining with it the popular influence, by requiring a selection from the highest on the people's list. This is not the only security provided by the system, to give effect to public will. Had it designed to make your President a federative officer, the choice, in the second instance, might have been given the States in their corporate capacities. Not so, sir. The choice is to be made by the House of Representatives, the direct and immediate dependants of the people, but that, in selecting, they shall vote by states. It was always intended that he should be the President of the People, not of the states, nor the creature of this House, and all the securities which the Constitution could furnish to assure this end, seems, in my view, to point that way. It is true, they may be inadequate to the purpose, but that it was designed, cannot admit of doubt. This House, in its several state delegations, cannot be considered as the depository of the sovereignty of the States, but as the Representatives of the people, not responsible to the States, but to the Districts which they severally represent. Would it not then be a departure from all the checks and principles of the Constitution, designed to secure the responsibility of public agents, to look upon members here as representing the States, in this contingency, to whom they owe no obligation, and as not representing the people to whom all accountability is secured by the forms of the Constitution. If this conclusion be a just derivative from the view taken, what is the pending obligation in making the choice? A sense of political duty will give the immediate reply. The President is designed to be the Chief Magistrate of the nation; the appointing body is chosen by the people, and the public will points to the path of safety when it points to the path of duty.

It is your duty, because you are chosen by those who have the inceptive right of making the election, and this course justifies and responds to the high trusts con-

fided. Safety results from it, because the magistrate so appointed reflects the wishes of the whole mass of the people, and will be the faithful guardian of their rights, their honor, and their independence. Elect upon these principles, and you constitute a President who unites public confidence and respect. He is clothed with a shield for your protect on at home, and armed with the sword of retributive justice to punish foreign aggression. Choose him upon the other principle, he is the creature of the Legislature, and not the servant of the people; dependent upon you, and responsible to you, what security is left for the preservation of our popular system? Can he combine the affections of the people when his appointment is in pursuance, not of their will, but in manifest contravention of it? You may, indeed, have given him shape and form, and encircled him with the trappings of power and office, but he is not touched with the vital element which alone can give him being. Is he surrounded with the affections of a grateful and confiding people, which makes him the servant "of the people for the people's sake?" No, sir; he is pursued by their fears and trammelled with their jealousy. The wishes of the nation driven contemptuously before him, while all the calamities of misrule follow in the rear.

Nor does the evil stop here. Whoever the individual may be, he can be but man. Filled with the frailties that belong to his condition, will he not seek to convert his pillow of thorns into a bed of roses, and meliorate his condition by seeking to ensure a re-appointment? All the purposes of corruption will be essayed. The creature of this House, deriving being from it, amenable by impeachment to the Senate, who, with him, hold the appointing power of the Government, throughout the extended sphere of patronage, what, in some coming age, may not occur, when corruption, which grows with our years, shall have sapped the foundation on which all our purity rests! The purse of the nation in the hands of this House, may be made to act upon the Senate, and they, in return, to distribute among the Representatives or their instruments, all the offices, lucrative or honorable. What is the responsibility of such a President? Not in the impeaching power of the Senate—for this House, in which it must originate, and there, where he is to be tried, are his co-partners in guilt. Sir, to use the language of an eloquent gentleman on this floor, it was contemplated some years past, "to set up a pageant under color of law," in the chair of our Chief Magistrate. He would have been the President of the Legislature, not of the People. And does any man believe, for a moment, that such a thing could have administered the Government? He would either have fallen a victim to the popular rage, which such an act would have lifted into tempest, or, had he weight enough to sustain himself, the liberties of his country would have been crushed, under his influence. And yet the gentleman from North Carolina considers such principles as these, jacobinical doctrines.

[Mr. MANGUM here observed, in explanation, that he had never said that these were the doctrines of jacobins. What he had said was this—that all jacobins began their course with very ardent professions of love to the people.]

How does the explanation of the gentleman affect the principle. These doctrines were professed by jacobins, and with them Bonaparte became the despot of France. Are such principles the less just among our sober reflecting people, because jacobins and Napoleon professed them? We are told that "hypocrisy is the homage which vice pays to virtue," and it is as true in politics as in morals. If others have lost their freedom by being duped with such a deceptive avowal of just opinions, shall we abandon them, when they have already proved the sheet anchor of our safety? It would be easy to retort, by saying that, if jacobins have professed these principles, the doctrines of the gentleman are

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those upon which despotism has acted. If you view this body as one in which is a lodgment, a trust, of the powers of ten millions of people, it is an august Representative Assembly. If a body exercising such high prerogatives independent on the people, they are either so many members clothed with arbitrary power, or they dwindle into individuality. By such results, it may happen that the public passions are kindled; the forms of the constitution unable to restrain the turbulence of faction, jacobins spring up, and tyranny follows. It was not these doctrines that gave a Bonaparte to France, but an abandonment of all rational love of liberty. Her Revolution burst out as a volcano—its crater was the birth-place of Napoleon—its lava the food of his ambition. He was mistakenly hailed as the champion of freedom, until his bloody banners floated in triumph over the fairest portions of continental Europe. When his followers awoke from the delusions into which he had lulled them, the iron power of despotism had fixed its dark dominion. Both he and his precursive jacobin horde, are alike swept from the earth, and I ask, is the condition of humanity meliorated by the change?

Whenever, Mr. Chairman, a struggle shall arise between this country and this House for the choice of President, we may shudder for the continued existence of our political institutions. Either the Representative body will sink in public estimation, or, if they triumph, it is a victory which subverts the basement of our free institutions.

The wise and jealous men who gave being to our form of Government, were deeply read in the history of past times, and they scanned, with prophetic eye, the coming events of futurity. The mournful lot of all the Governments instituted for the professed purpose of ensuring the liberty and happiness of man, filled them with apprehensions of danger to our new experiment. The opinion was received, that a republican form of Government was suited only to a small extent of country; and in the examples of past times, they found that intrigue, faction, and corruption, were the most deadly enemies of democracy. Against their assaults they sought to plant round the pillars of this new and experimental system, every possible guard. They contended that, when the popular will was to be gathered from a widely extended territory, faction and intrigue, always limited in their theatre of action, would not be able to expand their scope over this vast confederacy. Corruption, usually secret in its operations, could not show itself in the face of day, and spread its influence over the same expanse.

In securing the power of electing a Chief Magistrate to the great body of the people, scattered over so vast a territory, it was believed that such only would be chosen who possessed those commanding talents, and those sublime virtues, that are the subjects of universal admiration. By adopting the principle of the gentleman from Delaware, and vesting in this body an irresponsible power of selection, you banish this great safe-guard of the constitution. You force the election into that small space upon which full scope is furnished for the operation of these baneful enemies of our free institutions. Upon the theory I have sought to advocate, in which members are the mere organs through which public sentiment is disclosed upon this floor, this great conservative principle is maintained in all its purity. The honorable gentleman from North Carolina says that, by this course, no election could possibly be made. I think differently. If each representative shall here speak the sense of his constituents, and that should not disclose on the ballot a majority of the whole, I take it that his duty would require of him by all exertions to give effect to their will. Should this be unattainable, and the last ray of expectation be extinguished in the gloom of despair, he should cast from him the expired hope, and yielding to the greater principle, which

makes the safety of the nation the supreme law, he should make a President of one who, upon the best evidence before him, operating upon his honest judgment, appeared to combine the largest share of public affection and national support. The predilections of a part must, in the end, yield to the wishes of the whole. The gentleman from North Carolina tells you that, according to the argument of the gentleman from South Carolina, you would fail to make a Chief Magistrate; and yet, in the course he speaks of pursuing himself, he would be conducted to the same result. He tells you that, for himself, he stands on an isthmus where the waves may lash in vain; unawed by fear, and unflattered by hope, he will not depart from his ground. What is to be the consequence, but the same catastrophe which he humbly thought was ascribed to the principles of the gentleman from South Carolina.

We are further asked, how are we to ascertain the will of the people? The forms of the constitution, framed in the wisdom of departed patriots, must be taken as the surest indications. If these are wrong, then is the constitution; resting on a vicious principle. It is somewhat difficult, in this country, amid both the freedom and the licentiousness of the press, to mistake the signs of the times. He would not seek to propagate theoretical principles, to which he would not in practice conform. Those who sent him here knew that he would have preferred two other candidates to the one who is their choice. He had no time to hesitate, with his limited intelligence. He could not presume to put his judgment in resistance to the mass of intelligence in the forty thousand electing him. It had been in vain for him to tell them of his predilections and high estimate of others. They presented him their candidate, of whom they said, his genius was his fortune, and his virtues his arts, his past service a pledge for the future, and by their sense required him to give that candidate his support. Their will was to him a law. Not a cold and dubious support should follow it, but one that would falter with the last hope.

Mr. M'LANE, of Delaware, rose, and said, that he had been the unintentional cause of a debate, which he regretted now to be obliged further to prolong. If he could have foreseen the range the debate would have taken, when he briefly stated the grounds which would influence his course, he would have contented himself with a silent vote; but, unprofitable as the discussion was likely to be, he felt bound to make some reply to the observations of the gentleman from South Carolina, (Mr. M'DUFFIE.) That gentleman had seized upon one or two general positions, which he (Mr. M'L.) had originally advanced, to deliver, with his usual talent and adroitness, a popular harangue upon the Presidential question, which, though certainly eloquent, was any thing but an answer to the argument which Mr. M'L. had submitted. Mr. M'LANE said, he felt under no obligation to follow the gentleman through all the topics to which he had adverted, and he could but remark, that the observations of the gentleman would have been much more pertinent, if he had been making a new constitution, than in interpreting the present. Mr. M'LANE said, it was no part of his business to inquire, whether better and more expedient provisions might have been made, or whether the will of the people could be more readily attained. It was enough for him to consider his own rights and duties under the constitution as it exists at present.

The points between the gentleman from South Carolina and myself, said Mr. M'L. are few, and confined to a small compass. I contend that the immediate constituents of a member of the House of Representatives have no right to instruct him in his vote for a President, and that, though the opinion of the people of this Union, when fairly ascertained, would be entitled to great weight, it would not be absolutely imperative, but that

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the Representative should, in all cases, exercise a sound and honest judgment, acknowledging only his ulterior responsibility. This is denied by the gentleman from South Carolina, who asserts the right of instruction, in this instance, to the fullest extent. To these points Mr. M'L. said he should confine his argument, leaving the mass of the gentleman's remarks to produce an effect wheresoever they might.

I distinguish our duty, said Mr. M'LANE, in the election of a President from that in cases of ordinary legislation, though not admitting the right of instruction in either, because, in the former, our duties are not legislative but rather judicial, or a part of the electoral franchise, which, in its very character, implies freedom of thought and action.

The gentleman also distinguishes these duties, but reaches the opposite conclusion. He denies the right of instruction in matters of ordinary legislation, yet contends for it in our electoral duties! His theory is, to my mind, fallacious and unsatisfactory. He says the people have no right to make, are incapable of making laws, and therefore delegate that power to us, and cannot control us; but the people have a right to elect a President, and therefore can instruct us in our choice! If the premises were sound, a precisely opposite conclusion would clearly follow; for, in the first instance, not being able to make laws, the people might well be supposed to constitute us their agents to act for them, and therefore, to a certain extent, retaining the right to exercise a reasonable influence over our conduct; but, in the other case, having the right to make a President for themselves, and failing to do so, they could not claim to direct us, who are not acting for them, but for ourselves and the nation at large. The argument, however, is not well founded.

The theory of our Government, it is true, is, that all power is in the people, and derived from the people—but they never act themselves, excepting in their electoral franchise. They act through the different organs and functionaries of the Government, appointed by the constitution and the laws, and they have no proper right to act in any other way. These functionaries are always responsible for a wise and faithful discharge of their various duties, but cannot be instructed in their exercise. The Congress are authorized to pass laws; and the judicial power to execute them—the people give the power to both, but they cannot properly instruct either.

The gentleman is in error in denying to the people the right of making laws. They have precisely the same right, in this respect, that they have to elect a President. If they had not, how do we get such right, deriving, as we do, all our powers from them? It is, after all, a mere matter of convenience. The people have the right to make laws, but finding it inconvenient, or impracticable to exercise it, delegate the trust to both Houses of Congress. They have the same right, and no more, to elect a President; being more practical in its exercise, they retain it in the first instance, but, foreseeing that this also might prove inconvenient or impracticable, they have delegated that power, in a certain extent, to the House of Representatives. In both instances the power is parted with for similar reasons, and therefore, so far as the original capability of the people is concerned, there is no ground of distinction.

The choice of a President is both a power and a duty devolved upon the House of Representatives. It is devolved here, to be sure, by the people, under the provisions of the constitution, but differing, therefore, from any other delegated authority, only that, being an electoral, and not a legislative franchise, it is not liable to be controlled, at least by a power less than that conferring it. But, said Mr. M'L. let us apply the gentleman's own distinction to the case before us. He says the people have no right to instruct their representatives in a case of ordinary legislation, because they are incapable

of passing laws. Well, sir, in the case before us they have proved to be incapable of electing a President; not in theory, but in fact; they have made the attempt, and failed; and for that reason, the duty falls upon us; how, then, upon the gentleman's principles, can the right of instruction be claimed?

But, said Mr. M'L. the gentleman from South Carolina further argued, that the will of the people is the paramount law, according to what he was pleased to term the philosophy of the constitution—to this the representative is bound to yield his judgment and conscience; and shame, and disgrace, and infamy, are denounced as the portion of him who shall venture to obey his own sense of right in opposition to this will! Before he could recognise a power so absolute, Mr. M'L. said, he was disposed to examine its source and character. He would make no lofty professions of regard for the will of the people, according to the phrase of the day. Nothing was more easy, however—nothing more common—it was the ordinary theme of all political declamation. It is the common price of power, and paid most liberally by those who most covet it. We scarcely read of a tyrant, the first page in whose history is not filled with hal-lalujahs to the people's will. Sir, said he, ambition seeks not to be governed, but to govern; to govern the people; and it flatters the people to put more power over them. But, it is the wild tumultuous will that is thus courted; that which springs from sudden excitements, irregular ebullitions, stirred up by practical causes, and confined to particular districts. Of this false image of the people's will he was no worshipper: while, for the real will of the people, he sincerely felt a profound reverence. I mean, said he, the will of a majority of the people, constitutionally expressed, in the mode prescribed by the laws. It is this will which is the great moral and political power on which the Government reposes. It is this will which comes in the panoply of the constitution, and should be a law to all. He would recognize no other will of the people, than that so made manifest; every thing else was but its counterfeit. For this constitutional will, we manifest our respect, by cherishing and sustaining the institutions of its creation. And of his respect, he said, he would give a practical proof, by yielding a generous support to the man on whom the constitutional manifestation of this will should rest, supporting him when right, and opposing him when wrong.

Now, sir, said Mr. M'LANE, the rights, and duties we are so soon to exercise, never can devolve upon us, if this will be so expressed; and we are obliged to act because it was impossible it could be. No one of the three candidates before the House of Representatives has obtained this constitutional majority, and it is impossible for any of us to say, which of them, or whether either could do so, if the matter were again referred to the people. We should involve ourselves in infinite confusion and embarrassment, to embark on such a sea of speculation. The people have no right to expect us to do so. We have rights as well as they, and both are equally bound by the forms of the constitution. We cannot be ignorant of the speculations which are pouring in upon us from all quarters, and the zeal with which each class of politicians builds up plausible arguments to prove that its own favorite candidate has either obtained, or would obtain, a majority of the people in his favor. In the midst of all these conjectures, however, it is certain that neither has, constitutionally, the majority. In this state of things, it is the right and duty of the House of Representatives to choose one of the three to be President, and the question is, Whether less than a majority of the people have the right, in a loose, unconstitutional manner, to control that choice? If the constitution requires a majority, it would be unwise in us to be swayed by less, and it would be usurpation in others to attempt it. I am bound to presume that the distribution of powers, under this Government, was for wise

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purposes. I will neither encroach upon the rights of others, nor surrender my own. The moment different functionaries, under this Government, conflict with each other, the powers of each will be in jeopardy. The people are empowered, in the first instance, to elect a President in their own way, if they can. With their franchise, in this respect, we have no business to interfere. But, if they fail, the same constitution has created a new electoral power, over whose independent deliberations they have as little control. The opposite doctrine would array the people against their own institutions, and involve both in a common ruin. Our duty is not less important—not less responsible than that which the people have vainly attempted to discharge; and to suppose ourselves less independent than they, would be to impeach the wisdom of the constitution.

The gentleman from South Carolina says, the election of the President, by the people, is the best mode which human wisdom can devise. I may admit the position, but what follows? The constitution supposes it the best, and, therefore, resorts to it in the first instance; but it also supposes it may fail in its object. It requires a majority of the people in favor of some one candidate, to make an election; it supposes this majority unattainable, and, in such an event, which has now happened, directs a new mode of election, and by a different power. I ask gentlemen to look into the constitution, and see what restrictions are imposed upon the exercise of this power. There is none but the number to which the choice is limited. Within this number it is in vain to shackle our discretion.

The constitution meant, and for wise purposes, that the direct agency of the people, in this election, should cease after the result of the electoral votes, and that, in the new and further election, the federative principle of the Government should operate—rejecting all influence from numbers and the weight of population. It became absolutely necessary to resort to such principle, to promote and ensure an election, by disregarding the causes which had prevented it in the electoral colleges. It designed to remove us from that very influence which had defeated the will of the majority. By giving each state a vote, without regard to its population, the electoral combinations or disagreements are broken up, and a new principle established. But the doctrine contended for, by the gentleman from South Carolina, brings the force of the population, in the worst and most irregular form, to operate on the election here, and disappoint the great object of the change.

Sir, said Mr. McLANE, it is plain, that, if the constitution had deemed the further agency of the people essential, or even proper, it would not have devolved the election upon us, where the largest and smallest state is upon an equality, but would have sent it back to the people for a new effort. It would have remitted the choice to them with the same restriction as to the number of candidates, or it would have sent the election to us, to be made in proportion to the numbers of each state on this floor.

If it were deemed inexpedient to send the choice back to the people, for a constitutional expression of their preference, it cannot be wise to control it here by a loose manifestation, or by vague and speculative conjectures.

The gentleman from South Carolina, said Mr. McL. has spoken of an "inchoate election." He says the people have commenced the choice, and that we are only to complete what they have begun. He did not, he said, entirely comprehend the force of these remarks. If they were designed to argue that we should begin where the people had left off, pushing the highest by preference to the others, he could not assent to the proposition. Such an idea was as impracticable as it would be to add states to individual votes. But the act of the people, he contended, was complete, and their

power at an end. Their act was to ballot for a choice—if any one received a majority, the election was complete. If such a majority did not appear, the failure was as complete. He contended that the people were done with the matter; it was no longer in their hands; it had passed into ours, accompanied with a deep responsibility, which we could not otherwise discharge than by an honest, conscientious performance of our duty, according to our own honest judgment.

What then, said Mr. McLANE, are our rights and duties in this matter? The constitution, by which they are prescribed, provides, that, if no person shall have a majority, then, from the persons having the highest numbers, not exceeding three, the House of Representatives shall choose, immediately, by ballot, the President. The time of making this choice, does, of itself, exclude the idea of any interference of the people by instructions. The House are to proceed immediately to the performance of their duty, making it impossible to procure any concerted or regular movement by the people to express their wish. Any other than such, would be worse than folly—it would be delusive and dangerous.

But the House of Representatives are to choose a President. This is both a right and a duty. The right of choosing, implies the right of selection—it implies, also, discretion; the exercise of an unbiassed judgment, the duty of considering the fitness and qualifications of the respective candidates, their comparative merits, their capacity to sustain the institutions of the country, to promote the safety and happiness of the people at home, and the honor and glory of the nation abroad; in short, sir, it necessarily implies the right of considering every thing which fairly appertains to the preference to be ultimately declared. It is our duty to examine and deliberate upon every thing connected with the subject, in reference to the object to be attained. Are gentlemen willing to have this great duty resolved into a simple inquiry into personal popularity? of which of the three our particular constituents might prefer? or which would be most popular in a given district or state? Such an inquiry would divert us entirely from the merits of the candidates, and lead us into a field where every thing is doubt and conjecture. What, said he, are the powers of the people, when they are making the election, and by what motives are they to be supposed to be influenced in their choice? There are no limits to their power; they may even indulge in whim and caprice; but a wise, and virtuous, and intelligent, and patriotic people, must be presumed to be guided in their choice by the character and fitness of the candidate. They look for a Chief Magistrate capable of presiding with safety and honor over the destinies of the country, and less power than they possess over the subject, would be inadequate to the object—would impair their elective franchise! Have we not the same duties to perform, the same objects to attain, and are we clothed with less power and fewer means for their attainment? Could it have been the design of this Constitution to commit this high trust to our hands, and leave us dependent upon the will or caprice of others for its execution? It is our duty and our right to "choose;" but, if we are liable to be instructed, nay, commanded in our choice, the choice is not ours, but theirs who instruct us; it is not a free and independent selection, but obedience to the commands of a superior.

I admit, said Mr. McLANE, that the preference of the people is worthy of consideration, accompanied by an inquiry into the grounds and motives of the preference, and we should fairly endeavor to elect the man who would, or ought to be, acceptable to the people; but, in determining this, we should rather consider the fitness of the man, and the character of the people, than any wild or irregular ebullitions of the popular will. The gentleman from South Carolina has argued, that a great man, of

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distinguished virtues, will always command the approbation of the people. In the progress of things, there is much truth in the observation; and, if we take care to select a man of real merit, who is, in all respects, fitted to promote the great objects of good government, we may confidently expect such a selection to be ultimately acceptable to the people.

It is made our duty to select from *three* candidates; and I contend (said he,) that, as it respects the state of their vote out of this House, they are upon an equal footing—they are all equally nominated for our support, each resting his claims upon his own individual qualifications. Why was this scope given to our selection, if their relative strength be obligatory upon our judgment? Neither the Constitution, or the principles of our Government, pay respect to less than a majority; and, as neither candidate before us possesses this advantage, what other guide have we? The gentleman has argued with great confidence, as if the plurality in vote, were to control our choice. If this were so, the discretion secured by the Constitution would be mere mockery; it must be supposed to authorize us to choose from three, and yet to confine us to one; our duty would be simply to elect the man highest in vote, without regard to fitness. But, sir, said Mr. McLANE, this is not the principle of our Government. In the primary election, a majority of the people is to govern; *here*, a majority of the states. The plurality principle is in opposition to both. The majority of the people are certainly opposed to such a candidate—a majority of the states may be. The state of the vote in the colleges is the result of a state of things which no longer exists. It may have been produced by the number of candidates, and without reference to a preference between the three persons from whom a choice is here to be made. It is our high privilege to weigh and consider all these things; to deliberate upon the qualification of the candidates, and to consider who would best serve the people, and whom they ought to, not less than whom they do, prefer.

The gentleman from S. C. has emphatically desired me to suppose that one man should receive 130 electoral votes, and asks if I should dare put by his claims. Sir, the case is by no means puzzling. I should dare to do so, if in my conscience I believed such a candidate unfit to be the ruler of this nation. I should consider the case as still one of expediency. I admit that so strong a vote ought to have, and could not fail to have, great weight; but still there would be 131 electoral votes opposed to him, being a majority of the people; and there would be quite as much propriety in supposing that that majority would prefer another, more especially, if, in reality, he should be better qualified for the station.

This doctrine of the plurality preference and of instruction, would naturally lead to the most dangerous consequences, and defeat one great object of confiding the choice to us. It holds all our information and experience for naught, and deprives the people of all advantage from the very qualities for which they have selected us for this duty. It can rarely happen that the people of these states can have a full knowledge of the character and principles of men who may be presented for their suffrages. They judge from the representations of others, or from some single glaring or striking act.

The preference is no doubt founded upon his supposed fitness and capacity. They believe him to be a wise, enlightened, and virtuous Statesman, sound and practical in his views, and deserving their confidence. But, is it not possible for all these calculations to prove unfounded? Let me suppose, sir, said he, that we, who may be better acquainted with the individual, when we came to inspect his character and test his fitness, find that he is in reality distinguished for no one virtue, for which the people preferred him; that, in our conscien-

ces, we should be persuaded he was wholly incapable of administering the Government—what would the gentleman from S. C. do in such case? Would he surrender his judgment and conscience to the mistaken preference of his constituents, or fearlessly consult his higher duty to his country?

It was no stretch of the imagination, said Mr. McLANE, for him to suppose further, that some one candidate, returned to the House of Representatives, should be discovered in the use of improper means to promote his elevation: the patronage of his office may have been held out in anticipation, and indications of a policy and administration injurious to the great interests of the nation. In such a case, who could hesitate between the mandate of his instruction, and his duty to the nation?

Sir, said Mr. McLANE, the only true and safe course, is to treat this body as an independent tribunal, bound to elect the man best qualified, in their judgment, to administer the affairs of the nation.

If we are bound by instructions, who have the right to instruct us? It has been already shown, that the election here is *federative*, and not by *numbers*; the votes are by *States* and not by the *People*. We are called to perform this duty for the whole nation, not for any part of it; for all the states, and not for any one in particular. When we enter upon this duty, we lose our relation to our immediate constituents, and are charged with a duty for the whole Union. We become the judges and umpires of the *whole*; we are to act for the interests of the *whole*.

It is in this way only, that the equality of the votes of states here, can be reconciled with the general theory of the Government. If I act here under the instruction and dominion of Delaware, the population of that state controls tenfold its numbers elsewhere. But, if I act here, under no more particular responsibility to my immediate constituents in Delaware, than to the rest of the Union, and consulting the interests of the whole, this disparity, which has been so much complained of, disappears.

If in this election I preserve my ordinary relation to the people of Delaware, then to them only am I responsible, and upon me *their* instructions only, are obligatory. What then becomes of the plurality vote, if their instructions command me to disregard and disobey it?

I ask again, said Mr. McLANE, Where is the power from whence these instructions can constitutionally emanate? From the people they cannot, for there is no mode by which their will can be ascertained. For I desire to protest against all partial or local assemblages as indicating the will of the majority. From the Legislatures they cannot, for these bodies are charged with no such duties, and can have no better means of ascertaining the public will than we, who spring from the same source. Sir, said Mr. McLANE, if we are called, in the discharge of this duty, to act for the whole people of this Union, and are bound to consult the interests of the whole; and if, in the performance of our duty, the plurality of the votes of the whole people, expressed in their elections, can have no obligatory force with us, how can it be said, that the opinions or instructions of our particular county or district, or even a state, can be more imperative?

Mr. McLANE said, when he was up a few days ago, he had ventured to argue, that if we were bound to regard the will or instruction of our particular districts, we should be constantly in danger of making no election at all. If each state have the right to instruct its Representatives, there can be no change until the one or other give way. The gentleman from South Carolina has taken occasion to express the utmost apprehension of the consequences of no election, and would conceive himself an object of just reprobation if he could be instrumental in producing such an alternative. But if he

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be bound by the instructions of his constituents, and they direct him not to give way, he is no longer responsible; he yields to the power of others, and takes no blame to himself. Is there no danger to be apprehended from this quarter? Does excitement prevail no where but in this Hall? Are there no sectional jealousies, and local prejudices to be stirred up in such a contest? Does not every one know the height to which the public excitement may be carried by political contests, and the zeal and obstinacy with which angry partisans maintain their point? Suppose, under such a state of excitement, that three candidates come to this House, with the states equally divided; how could we hope to make an election? Each state instructs its Representation to hold out, to nail their flag to the mast, and go down with their ship; and all the evils of contending passions and jealousies immediately ensue. My word for it, said Mr. M'LANE, let the popular fervor be once fully roused, and the tumults will rage as wildly without as within these walls. We cannot avoid these difficulties, until we learn to value our own freedom and independence: to be responsible only, in the discharge of our duty, to our own consciences, to the interests of a common country, and our ultimate dependence upon the will of a constitutional majority.

No responsibility could be weightier, and the doctrine of instruction and obedience, this counterfeit image of the people's will, could not fail to weaken it. It would do more—it would subvert the independence of the Representative, and seriously disturb the public tranquillity. As long as we are held to an honest, conscientious discharge of our duties here, we shall act with greater judgment and circumspection—we shall measure our obligations by the scale of the Union, and act under views worthy of so high a trust. But we should no sooner cast off this independence, and yield our judgments and consciences to the dictates of any authority whatsoever, than we should cease to exert our own faculties, and be driven about, the sport of every popular breeze. We should escape from our duty to the whole, and seek refuge under the local or narrow and capricious views of a particular part. A high national responsibility, involving loftiness of character and virtuous fame, would give way to considerations of place and power; we should soon learn to value a seat on this floor more than the higher concerns of a great nation; and, instead of consulting the interests of the American people, we should obey only the commands of a single Congressional district.

According to the theory for which he contended, said Mr. M'LANE, the duty of a member of this House is that of a great moral agent, looking, with a single eye, to the welfare of a common country, and guided by considerations of a similar kind. He acts fearlessly and independently to the attainment of that end: if he fail, from weakness of character, or through corrupt means, and give just offence, or produce injury to the people, the remedy is found in the elective power of the people. It is the ultimate remedy for all evils and abuses in the Government, and will never prove inefficacious as long as each public functionary shall be kept within its appropriate sphere. There is force enough in it to secure an honest discharge of our duty—it is terrible only to evil doers. If it be rashly or vindictively applied, it deprives us of the honor of a seat here; but it leaves us in possession of that which is of far more value, and well calculated to alleviate the loss of place. I do not say that the honor of a seat in this House is to be lightly esteemed, or that he who could not surrender it without regret, would be unworthy of its occupation; but I will say, that it is not likely to be honored by him who would be incapable of performing its duties with an honest independence. Mr. M'LANE said he was not ambitious of figuring in an opposition to the popular clamor, nor was he at all disposed to court responsibility; but he would not shrink from it, when it came upon him, and he could

imagine it to be sometimes a virtue to oppose even the wildest tumult. It behoved every man placed in such a station to meet the crisis with calmness and fortitude; to throw his eyes abroad over the whole scene, and do the best for the safety and happiness of the whole. It would ill become us, he said, in such a crisis, to be found timid and wavering, infirm of purpose, bending to the storm, or yielding our judgments to the commands of others.

Our great duty, upon such an occasion as the present, was to compose difficulties, not to heighten them with others, or to be agitated by them ourselves. The supposition is, when the election of a President devolves upon this House, that the public voice has been distrusted and distracted by serious and unavoidable difficulties: by the number of candidates, personal predilections, and hostility: local views and sectional jealousy; party feelings and factious excitement. By these and other causes, the public mind may have been thrown into the most bitter and violent commotion, alarming to both social and public tranquillity. The Constitution erects this House into a high and sacred tribunal, to compose and quiet these angry elements—to allow time for their fury to subside—to bring order out of confusion. We should be false to ourselves and to the country, if, instead of doing so, we should launch forth upon this wild ocean, and fret and vex it afresh. It is not for me to say how surely this would be done by bringing public excitement to operate upon our deliberations in such an election.

Then, sir, said Mr. M'LANE, if I be correct in the views I have taken of the rights and duties of the House of Representatives in this election, does it not follow, that all attempts to control, or sway, or intimidate the free exercise of our sober, independent judgment, are indecorous and improper? He would not now detain the House, after the time he had already consumed, in detailing the various means which might be employed, and the different kinds of influence which might be brought to control the independence of members. It was unnecessary for him, he said, to describe the effects of all those popular engines which a state of high public excitement always puts in motion, and which, from the seeds sown in county meetings, to the fruits appearing in the persons of self-constituted committees, which may daily surround this Hall, were constantly operating. We guard the election by the people, said he, from all tumult and disorder, and carefully banish all illegitimate influence at a distance. Why are we fearful of surrounding our own liberties with equal security? The character of all these influences is progressive; and the most fearful apprehensions entertained, by able commentators upon our constitution, of an election by the House of Representatives, have been from the effect of these extraneous influences, both civil and military, which may easily be put in motion. Mr. M'L. said he had no apprehension of such evils at the present day; but he repeated, that now, when every thing was comparatively tranquil and secure, was the most suitable time to make provision for the day, when the tempers of gentlemen would be less calculated for cool deliberation. If the people had no power to interfere with our conduct, they could claim no right to superintend our deliberations. He had as little at stake as others, however, and should submit, with as good a grace, to the decision of the House.

Mr. M'LANE said he could not conclude his remarks without some notice of another topic of the gentleman of South Carolina, (Mr. M'DUFFIE,) to which he wished he could have been spared the duty of adverting. It was the reply which that gentleman had given to the precedent of 1801, which he Mr. M'L. had, on a former occasion, called to the attention of the House. It had been summarily and violently denounced, because it had emanated from the old federal party. Mr. M'LANE

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remarked, that what he said on a former occasion on this subject, would make it unnecessary for him to say much more now. He was not so weak as to enter, at this time of day, upon a grave and argumentative defence of the federal party. He well knew it was not to be defended by speeches in or out of this House. It would have to rely for its defence upon the wisdom and propriety of its works, to which the general state of our national happiness and the cool judgment of posterity were fast affixing their seal. To the survivors of that party, it must be a source of proud satisfaction to witness the wisdom of its policy daily triumphing over the bitterest prejudices, while those who had disappeared from the stage, had passed to a higher reward. He could but lament, however, the disposition occasionally manifested to keep alive those old animosities. It was sufficient to satisfy him that the Monster Party was not dead, but sleeping, and not so sound but that now and then it would rouse up and shake his grisly mane. He had not altogether distrusted the promise, that, in the present day, some *Hercules* would appear to rid us of this Monster with more heads than the Lernaean of old, and he sincerely hoped, that, after this labor should be achieved, he should not continue to be wounded by the arrows of the conquerer, more fatal than even those dipped in the gall of the ancient Hydra.

The honorable gentleman from South Carolina, (Mr. M'DUFFIE,) however, had declined considering this as a precedent of the federal party; but had pronounced it the act of a party who had deliberately determined to violate the Constitution of their country; and the gentleman had further said, their reward had been *political infamy*! Sir, said Mr. M'LANE, I hope this was rather spoken in the heat of debate, than with a dispassionate foresight of the extent of such a denunciation. He knew the gentleman was too chivalrous to carry it out seriously to its consequences, and yet his remarks were liable to such an interpretation. However this may be, said Mr. M'L. it is but declamation; nothing was attempted upon that occasion that the Constitution at least did not warrant, and men as pure as any this nation has produced, embarked in the enterprise. Sir, the *political infamy*, of which the gentleman has spoken, exists only in his own imagination. It has not tainted the life of scarcely an individual who was concerned in that famous election. If the gentleman will cast his eye over the Journal of that period, he will see the names of many whose fame and virtues are much more to be envied than shunned. One, and by no means the least eminent, was then an able Representative of the same State which the gentleman now represents upon this floor. From that period his life was marked by the exhibition of great probity and talents, commanding public and private admiration; sharing, in his life, the confidence of his fellow-citizens, and, in his death, but the other day, wrapping a neighboring city into mourning.

Sir, said Mr. M'LANE, my own state had the honor to claim as her Representative an able and conspicuous statesman of that Congress. Deservedly distinguished as he was for the noblest private and public virtues, the luster of an illustrious life shone with new light upon the public eye after the scenes of that day. He lived only to give stronger proofs of his patriotism, and to fasten his hold upon public confidence and admiration. He was even selected, at a most critical period of public affairs, by a Republican administration, for a highly important trust, and bore a conspicuous share in that memorable negotiation which restored peace to a bleeding country. Sir, I have a high respect for the gentleman from South Carolina, and would rather smooth than obstruct the path of his fame; but, were my feelings for him much warmer than they are, I could not wish him a more enviable lot than the same portion of private and political character, which rewarded the virtues of the distinguished individual to whom I have alluded, who

was the pride of his state and the ornament of his country.

Mr. WEBSTER then rose, and said, that the precise question before the committee, as he understood it, was on expunging that part of the third rule to be observed in conducting the approaching election, which prescribes that the galleries of this House, which at first are to be open to the public, may be cleared at any time pending the election, at the request of the delegation of any one state. If the motion obtains, the standing rule of the House on this subject will then be in order, which is, that the Speaker, as a matter of duty, and a matter of course, may cause the galleries to be cleared whenever any disorder, on the part of those who attend there, shall, in his opinion, render it expedient and proper. So that, in fact, the question before the committee, which has been, he would not say, the subject, but which has been the occasion of such an extended discussion, is simply this, whether the power of clearing the galleries, in case of disorder, shall rest with the Speaker of the House, or with the delegation from a state. This is the precise question, which the committee have to decide. A very broad discussion had been gone into, as to the effect of those various considerations which ought to influence a member of this House in giving his vote. As constituting, either in whole or in part, the delegation of a state, he would not say that the arguments which had been brought forward had not any relation to each other. But he must say, that their relation to the question before the committee, was but slight. The question had been treated with a view to national considerations, but it must be extremely evident, that the House could not prescribe how much relative consideration ought to be given to one, and how much to another of these considerations. And in such a case each member must judge for himself, what degree of respect is due to this or that mode of expressing public opinion. Whether he shall have regard to public opinion as it now is, or as it will soon be; on every question of this kind, each man must decide for himself. A course of remark has been gone into, historical allusions had been made, and not very slight denunciations had been uttered, in relation to a former precedent, to all which it might be expected that he should make some reply; and he certainly felt, as was natural in his circumstances, a strong desire to do so; but he was restrained from indulging this desire, by what he considered to be his duty to the House. It must be, by this time, perfectly evident, that no valuable result could be obtained by the most protracted discussion; and he would submit to the candor of gentlemen the propriety of making some disposition of the subject before them, without further delay. He hoped that the motion he was about to make, would be received in the spirit in which it was made. The House was on the eve of a great and interesting duty. It was indispensable that some rules of proceeding should previously be adopted. With respect to the particular rule now in discussion, he considered it as very unimportant in itself. If important at all, it had only been made so by the discussion of which it had been made the subject. Rather than spend ten minutes more of the time of the House, he would, for himself, willingly consent, that the power in question should remain with the Speaker, or should be given to the delegation of a state. He, therefore, moved that the committee do now rise, and that the residue of the rules should be determined on in the House.

The motion was agreed to, and the committee then rose, reported progress, and were refused leave to sit again: and the committee was discharged from the further consideration of the subject.

On motion of Mr. COCKE, the Committee of the whole on the State of the Union were discharged from the further consideration of the rules referred to it; and they were laid on the table. They were then taken up and read in order. The first rule is in the following words:

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"1st, In the event of its appearing, on opening all the certificates, and counting the votes given by the electors of the several states for President, that no person has a majority of the votes of the whole number of the electors appointed, and the result shall have been declared, the same shall be entered on the journals of this House."

This rule, having been read, was agreed to.

The second rule, on motion of Mr. BASSETT, was amended, by inserting, after the word "called", the words "by states;" and, thus amended, it reads as follows:

"2d, The roll of the House, shall then be called, by states, and, on its appearing that a member or members from two-thirds of the states are present, the House shall immediately proceed, by ballot, to choose a President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President; and in case neither of those persons shall receive the votes of a majority of all the states on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen."

And, thus amended, it was agreed to.

The third rule having been read, a motion was made to strike out the last clause, which orders the galleries to be cleared at the request of the delegation of any one state.

On this question, Mr. M'DUFFIE rose, and observed, that he left it to the House to determine on whom the responsibility rested, of giving to the present discussion the extensive range which it had taken. For himself, he had adopted as a constant rule, not to consume the time of the House by any remarks which had not a direct reference to the subject before it, or, which were not drawn out, by topics brought into the discussion by other gentlemen. As to the present discussion, he had considered the gentleman from Delaware as assuming, at the commencement of it, as the ground on which he thought it wise policy to clear the galleries, that members of this House, when engaged in electing a President, did not act as the delegates of the people, and were not responsible to them. The reply which he himself had made, was directed only to this principle. It went no further. In replying to his remark, the gentleman from North Carolina and the gentleman from Delaware, had extended the discussion still further, and had made a theoretical discussion of the powers of the House to bear on the question immediately before it. And now, at the close of one of the most eloquent and imposing arguments ever delivered in this House, a member rises in his place and suggests the impolicy of continuing the argument. He felt very great respect for that member, but he considered the matter to be discussed as of the greatest importance. The principle laid down had a very wide and extensive bearing, and he felt it his duty to submit to the dictates of his own judgment, and give the principle that discussion which he considered it entitled to receive. The responsibility rested upon him, and he well knew the impatience of the House, and was aware of the lateness of the hour; but he was compelled, notwithstanding these disadvantages, to go into the argument, and to reply both to the gentleman from North Carolina and the gentleman from Delaware.

Both of those gentlemen had put cases, urged with a great deal of ingenuity, to show that the doctrine for which he contended, viz.: that, in electing a President, the people have a right to instruct their delegates, would operate, in practice, to defeat the election. Sir, said Mr. M'D. if that consequence can be shown to be fairly deducible from the principle I advocate, I will abandon it. But I think, that, so far from this being the case, the danger exists only in the imagination of the gentlemen who urge it. What is the case supposed by the gentleman from North Carolina? That there are three candidates; and that eight states vote for each of them. Well, take that case. The gentlemen say, if the people

have a right to instruct their delegates, then, instructions once given, cannot be resisted, and so the delegate must go on voting to the end, for the candidate designated by his own state, and thus the election will be prevented altogether. But this statement arises from an entire misapprehension of the ground I take. I did not contend that the delegate must go on voting to the end as he began, and so defeat the election. I only contended that the popular will of the state is as binding on me, as they say the dictate of conscience is binding on them.

I will, therefore, turn the gentlemen's case upon themselves. Suppose there are three candidates, and the members from eight states hold themselves bound in conscience to vote each of them, can there be an election in this case? No, sir. They say, that if the popular will is to bind me, I must continue to submit to it. Well, sir, if conscience is to bind them, they must continue to submit to it. I do not say that the people have a legal right to instruct their delegates, but—

[Here, Mr. WEBSTER observed, that he rose with great pain. He hoped the gentleman from South Carolina would do him the justice to believe, that nothing but an imperious conviction of duty induced him to interrupt an argument which he knew it would give him pleasure to hear, but he submitted whether it was in order to go into an argument in the House in reply to an argument urged in committee of the whole, any more than if it had been urged in a select committee.]

THE SPEAKER decided that the observations of Mr. M'DUFFIE were not in order, on the ground stated, and that they were not in order for another reason, viz. that the whole scope of the debate was irrelevant to the question actually before the House.

Mr. M'DUFFIE, upon the latter ground, submitted to the decision of the Chair.

The question was then put on the amendment, and carried.

Mr. WRIGHT moved further to amend the rule, by inserting, after the words "Senators," the words "Stenographers;" which was carried.

And the rule, as amended, was adopted, and read, as follows:

"3d, The doors of the Hall shall be closed during the balloting, except against members of the Senate, Stenographers, and the Officers of the House."

The fourth rule was then read, and adopted as follows:

"4th, From the commencement of the balloting, until an election is made, no proposition to adjourn shall be received, unless on the motion of one state, seconded by another state; and the question shall be decided by states. The same rule shall be observed in regard to any motion to change the usual hour for the meeting of the House."

The fifth rule was then read, in the words following:

"5th, In balloting, the following mode shall be observed, to wit:

The Representatives of each state shall be arranged and seated together, beginning with the seat at the right hand of the Speaker's chair, with the members from the state of Maine; thence, proceeding with the members from the states in the order the states are usually named for receiving petitions, around the Hall of the House, until all are seated;

A ballot box shall be provided for each state;

The Representatives of each state shall, in the first instance, ballot among themselves, in order to ascertain the vote of their state, and they may, if necessary, appoint tellers of their ballots;

After the vote of each state is ascertained, duplicates thereof shall be made out, and, in case any one of the persons from whom the choice is to be made, shall receive a majority of the votes given, on any one balloting, by the Representatives of a state, the name of that person shall be written on each of the duplicates; and, in case the votes so given shall be divided, so that neither

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of said persons shall have a majority of the whole number of votes given by such state on any one balloting, then the word "divided," shall be written on each duplicate;

After the delegation from each state shall have ascertained the vote of their state, the Clerk shall name the states in the order they are usually named for receiving petitions; and, as the name of each is called, the Sergeant-at-Arms shall present to the delegation of each two ballot boxes, in each of which shall be deposited, by some Representative of the state, one of the duplicates made as aforesaid, of the vote of said state, in the presence, and subject to the examination, of all the members from said state then present; and, where there is more than one Representative from a state, the duplicates shall not both be deposited by the same person.

When the votes of the states are thus all taken in, the Sergeant-at-Arms shall carry one of the said ballot boxes to one table, and the other to a separate and distinct table;

One person from each state, represented in the balloting, shall be appointed by its Representative to tell off said ballots; but, in case the Representatives fail to appoint a teller, the Speaker shall appoint;

The said Tellers shall divide themselves into two sets, as nearly equal in number as can be, and one of the said sets of Tellers shall proceed to count the votes in one of said boxes, and the other set the votes in the other box;

When the votes are counted by the different sets of Tellers, the result shall be reported to the House, and if the reports agree, the same shall be accepted as the true votes of the states: but, if the reports disagree, the states shall proceed, in the same manner as before, to a new ballot."

Mr. HAMILTON, of S. C. then moved to amend this rule, by striking out what follows the words, "a ballot box shall be provided for each state," and inserting the following:

"Labelled, with the name of the state, placed in front of the Speaker's chair, on the Clerk's table—placed in the order of the states. The Clerk shall then proceed to call each delegation in the order in which petitions are called, and the member of each delegation shall place his ballot in the box labelled with the name of the state. After all the states have thus voted, then the members of each delegation shall nominate a member of their delegation to act as Teller, who shall proceed, with the rest of the Tellers appointed by the several delegations, to count the votes of each state, commencing in the order in which they are called; at the close of which count, the separate vote of each state shall be declared by the senior member of the Committee of Tellers, as well as the result of the aggregate ballot. Should the delegation of any state fail to appoint a Teller, then the Speaker shall nominate one, and where there is but one member of a state, he shall act as Teller. These rules shall be observed in each successive ballot, until a choice is produced, in conformity with the provisions of the constitution of the United States."

Mr. HAMILTON rose, and observed that, in offering this amendment, he disclaimed any intention to provoke a debate on a subject which might be susceptible of extended and various considerations. My object, (said Mr H.) is to endeavor to adopt, within the provisions of the constitution, some mode by which the vote of each state, (not the members of the several states,) may be ascertained. To the members composing the delegations I know that the privilege of a secret ballot is secured. This I do not propose to violate: but I do propose that some mode should be adopted, by which the vote of the state, when given, should be put on record on the journals of this House, and the people be enabled, in an authentic form, to know how their Representatives have given the vote of the states which they represent.

Now, by the mode reported by the committee, there are to be twenty-four distinct and secret colleges, each state acting under its own discretion, and the strange result might occur, that, in one delegation, blank votes would be counted, and, in another, rejected, and by this clashing it might, in effect, arise, that an election should be produced, which was not the result of a majority of the states.

The amendment he had submitted, provided that the vote of each state should be in a separate ballot box, and be thus told and declared. He felt satisfied that, although it seemed in its operation to disclose the vote of a member, when that person represented alone a whole state, yet this was an accident either of good fortune or bad, according to the pride and regret with which such gentlemen might view their situation. Besides, he did not suppose that any gentleman on that floor would desire to have any result, produced by his acts, attributed to another, which, in the portentous darkness which was about to veil their proceedings in relation to the mode of balloting, might occur.

In conclusion, he would say, that we were bound, as far as it was admissible, within the secret ballot, accorded to each member, to allow the people to understand, at least in our condescension, how the vote of their different states have been given, in a shape more authentic than rumor, or even a newspaper report. He defied any man, in the odious contest of 1801, to determine how the states had voted, from the journals of this House; and he thought such a mysterious mode of choice suited rather the muffled secrecy of a Venetian Senate, than an assembly representing a free people. Let us have no approach, even in appearance, in our transactions on this eventful occasion, to that terrible image of jealousy, secrecy, and prostration of public freedom, exhibited by the brazen lion of Venice, which, with his gaping mouth, receives a vote which comes whence nobody knows, and for which nobody is responsible.

Mr. WEBSTER requested leave to make a single remark, which might save further discussion. The rule, as proposed by the gentleman from South Carolina, would be in direct violation of the constitution. The constitution says, that the states shall vote by ballot. But the proposed amendment would defeat that intention. Some of the states are represented only by a single delegate; and, if the proposed amendment prevailed, each of these gentlemen is compelled to declare in what way he has voted.

Mr. HAMILTON observed, in reply to the gentleman from Massachusetts, that, on a question involving a construction of the constitution, he would advance his own opinions with some deference, in opposition to the opinions of that gentleman. But he contended that, substantially, by his mode, the vote was given by states, which was all the constitution renders necessary; that, so long as the mode by which the sense and vote of each state were ascertained was by ballot, all the requisitions of the constitution were complied with. His amendment, in fact, merely provided for a separate ballot box for each state, rather than a general one, by which the vote of the several states would be wholly unknown. Mr. H. then dwelt very briefly on several public considerations, which rendered such knowledge important, and concluded by saying, that, from the lateness of the hour, and the short time which was allowed them now for the passage of the rules, he would not press the discussion further.

Mr. WRIGHT, of Ohio, observed, that if gentlemen would examine the rule reported by the committee, and the amendment proposed by the gentleman from South Carolina, (Mr. HAMILTON,) with the constitution, they would find the rule *was*, and the amendment *was not*, consistent with it. The constitution requires the choice to be made by ballot; the votes to be taken by states, each state having *one vote*. The amendment goes upon

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the principle, that you must present to the House one vote for each member from a state, instead of one vote for each state, without regard to the number of members. The difference must be obvious. The rule prescribes the manner in which each state shall ascertain its vote, and when ascertained, how that vote shall be presented to the House, and be told off; the amendment seeks to deprive the states of a vote by ballot, and to confer power on the Tellers, who shall ascertain, by counting the ballots of the members, how the state would vote, to give that vote *viva voce*, not by ballot. The House, constitutionally, has little to do in determining the vote of the states. Its main power on the subject commences when that vote has been determined.

The amendment is objectionable in another point of view. It leaves to the Tellers to settle the disputed question, (without the control of the delegation or the House,) whether the vote or ballot of a state shall result from a bare *plurality*, or depend on a *majority*, of the ballots in each delegation. This is a question, sir, of too much importance to leave for adjustment in such a way. It should be settled by the House, voting *per capita*, and before any result is known, calculated to influence the decision—it should be settled now. For himself, Mr. W. said, having carefully examined the provisions of the constitution relating to the election of President, with a view to understand its literal meaning, as well as to discover its spirit, he entertained no doubt, but a majority of the delegation of any one state was necessary to determine its vote, and that nothing short of it would do. He felt confident the House would so determine.

Mr. HAMILTON spoke in reply, and made some observations to show that his proposal was in conformity with the constitution. He hoped that at least so much of it as provides twenty-four separate ballot boxes would be adopted. He insisted, that it ought to be known publicly and officially, how each state had voted, and regretted the want of this knowledge touching the election of 1801.

Mr. M'DUFFIE advocated the amendment of the gentleman from South Carolina. The question now was, whether the constitution was to be so interpreted as to throw an impenetrable veil over the proceedings of this House, in so important an act as the choice of a Chief Magistrate. He felt bound to protect the honor of his state, and his own honor; but the rule, as it at present stood, rendered it impossible for him to show that he had been faithful to his constituents. Mr. M'D. quoted the constitution, and insisted that the amendment was not inconsistent with it—that the constitution did not require that the vote of the states should be concealed; nor did it ever mean to screen the votes of the delegates themselves from the public scrutiny. In declaring that the votes should be by states, it meant no more than that all the states should have an equal voice. It directed not that they should vote by states, but that they should be counted by states. If it happened that some of the states had only one delegate, that did not alter the requirements of the constitution, nor the propriety of the plan proposed by his colleague. The constitution would still be obeyed. He had no suspicion that the gentleman from Delaware, or any other of those gentlemen who stood alone in representing states, had any wish to conceal the vote that they should give, and he expressed a hope that they would support the amendment.

Mr. COOK, of Illinois, disclaiming all wish to have his vote concealed, was yet opposed to the adoption of the amendment now proposed, which he considered as striking a deadly blow at the constitution. A fundamental principle of that instrument was, that the Legislative and Executive Departments should be kept entirely separate. While, on the one hand, the President was protected from having an improper influence exerted over him by members of this body, it was proper, on the

other hand, that the members of this House should be protected from his resentment, arising from a knowledge that any particular portion of them were opposed to his election. It was not proper that the President should know officially from whence his power was derived. He should receive it from the whole people, and exercise it alike for the good of every portion of them. When the constitution was revised in 1801, this great fundamental principle was preserved untouched. The rule proposed by the gentleman from South Carolina was calculated to render the Chief Magistrate the President of a party, not the President of the nation. The practical tendency was to array some of the states against the President, and the President against them, to cherish the seeds of faction, and to give to party spirit still greater bitterness. It was the duty of the House to be umpires, not agitators—to pacify the nation, not to irritate it.

Mr. WRIGHT again spoke in opposition to the amendment. He had supposed, he said, that no one could have doubted that the constitution required only one vote for each state, instead of one for each member of the House—in the present case twenty-four ballots instead of two hundred and thirteen; and he had supposed it equally clear, the framers of the constitution never contemplated that the proceeding should stop the moment you had ascertained whether the state intended to vote, before the ballot or vote was prepared and deposited; but in this he found himself mistaken. He should despair of removing those doubts, and would forbear further argument as to it. It is urged that the plan proposed by the rule makes the proceedings among the members of the states secret, and that you have no way to find out how each man voted. Why should that be known? What good could result from it? Does the constitution authorize you to require publicity in this proceeding? I think not. Individually, I have no desire to keep my vote secret—I am willing to proclaim it to the world. The gentleman from Illinois (Mr. Cook,) has presented to you, much better than I could do, some of the principles which govern elections by ballot, and urged some forcible reasons why the votes should be secret. I agree with the gentleman in the views he has submitted. The requisition upon a voter by ballot, to endorse his name on the ballot, or to rise when about to vote, and proclaim for whom he voted, would entirely defeat the object of voting by ballot, and break down all the guards the constitution has established to protect the elector in the free enjoyment of his right.

Mr. STEWART, of Pennsylvania, regretted that time was not allowed more maturely to examine so important a proposition as that now before the House, before it was voted on. From the short consideration he had been able to give it, he could not perceive that it was inconsistent with the constitution, and he should vote for it because he perceived that its object was to remove every thing like secrecy from the transaction which was approaching. It was well known that the proceedings of this House on that occasion would be regarded by the people with suspicion. Was it a likely way of removing this to throw a mantle of secrecy over its proceedings? Was not this the way to set the tongue of slander in motion? When an allegation was made, affecting the purity of any individual, would they be removed by his skulking and shrinking from observation? Would not this rather rivet the suspicion? If a man was charged with theft, was it a way to remove the charge, if he shut his door, and refused all admittance and observation? But, if he threw open the suspected place, invited observation, and displayed a frank, open, and candid deportment, the report would be disbelieved. So long as shadows, clouds, and darkness, were suffered to rest on any of the doings of this House, the suspicions of the people would only be fixed and confirmed. With a view, however, to the further examination of the amendment, he moved that the House adjourn.

Sen. & H. of R.]

Election of President.—Chesapeake and Ohio Canal.

[FEB. 8, 1825.]

This motion was negated by a large majority.

Mr. STEWART then demanded, that, when the question was taken on the amendment, it should be taken by yeas and nays. The House refused to order them.

The question was then put on Mr. HAMILTON'S amendment, and decided in the negative. Ayes 52—Noes 115.

And the rule, as above stated, was agreed to.

The remaining rules were then successively read, and adopted, as follows:

“6th, All questions arising after the balloting commences, requiring the decision of the House, which shall be decided by the House voting per capita, to be incidental to the power of choosing a President, shall be decided by states, without debate; and, in case of an equal division of the votes of states, the question shall be lost.

7th, When either of the persons from whom the choice is to be made, shall have received a majority of all the states, the Speaker shall declare the same, and that that person is elected President of the United States.

8th, The result shall be immediately communicated to the Senate by Message; and a committee of three persons shall be appointed to inform the President of the United States, and the President elect, of said election.”

And then the House adjourned.

IN SENATE—TUESDAY, FEBRUARY 8, 1825.

ELECTION OF PRESIDENT, &c.

The committee on the part of the Senate, appointed to join such committee as might be appointed on the part of the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice President of the United States, and of notifying the persons elected of their election, report, in part, the agreement of the Joint Committee to the following resolution:

“Resolved, That the two Houses shall assemble in the Chamber of the House of Representatives on Wednesday, the 9th day of February, 1825, at 12 o'clock; that one person be appointed teller on the part of the Senate, and two persons be appointed tellers on the part of the House, to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce to the two Houses, assembled as aforesaid, the state of the vote, and the person or persons elected, if it shall appear that a choice hath been made agreeably to the Constitution of the United States, which announcement shall be deemed a sufficient declaration of the person or persons elected, and, together with a list of the votes, shall be entered on the Journals of the two Houses.

[The committee which made this report consisted, on the part of the Senate, of Mr. TAZEWELL, Mr. VAN DYKE, Mr. KING, of Alab.

On the part of the House of Representatives, Mr. TAYLOR, Mr. ARCHER, Mr. THOMPSON, of Pa.]

Mr. TALBOT suggested some difficulty in the order of proceeding recommended by the committee, and Mr. HOLMES, of Maine, proposed some amendment, but which he subsequently withdrew. These suggestions gave rise to some discussion of the subject, in which Messrs. HOLMES, of Maine, TALBOT, TAZEWELL, LOWRIE, BARBOUR, JOHNSON, of Ky. KING, of Alab. and VAN DYKE, participated.

Mr. TAZEWELL went, at some length, into an explanation and justification of the course adopted by the committee. In some points, in which the committee on the part of the Senate would have preferred a different arrangement, they were overruled by the committee on the part of the other House, which had its rights as well as the Senate. The mode reported by the committee

was precisely, however, the same as that adopted by the Senate, and agreed on by the two Houses, on similar occasions, from the year 1805 to 1817, inclusive.

Mr. EATON then moved to add the following as an amendment:

“If any objection shall arise to the vote or votes of any state, it shall be filed in writing and entered on the Journals of the Senate and House of Representatives; but the two Houses shall not separate until the entire votes are counted and reported, which report shall be liable to be controlled and altered by the decision to be made by the two Houses, after their separation, relative to any objections that may be made, and entered on the journals, provided no objection taken shall be considered valid unless concurred in by the two Houses.”

This amendment was opposed by Mr. HAYNE and Mr. VAN BUREN, on the ground that it was now too late to attempt to provide in anticipation for such an occurrence; that the Senate had, at the last session, passed a bill providing for every possible contingency for which the Constitution prescribed no rule, which bill the House of Representatives had not acted on; that, therefore, if any difficulty should arise on the present occasion, the Senate could not be reproached for it; that as it was now too late to expect the two Houses to concur in any regulations of the kind, in time for the government of the proceedings to take place to-morrow, it was better to leave the remedy to be provided for in any case of difficulty that might unexpectedly arise, &c. &c.

Mr. EATON replied, and urged the necessity of making an effort to provide for possible difficulty before hand, &c.

The question was then taken on his amendment, and negated without a division; and

The report of the committee was concurred in.

Mr. TAZEWELL was appointed teller on the part of the Senate.

HOUSE OF REPRESENTATIVES.—SAME DAY.

Mr. TAYLOR, from the Joint Committee, appointed to consider the mode of counting the votes for President and Vice President of the United States, made a report, in part; which was read.

[The report is the same as that stated above in the Senate proceedings.]

The House agreed to the resolutions reported, and Mr. P. P. BARBOUR and Mr. TAYLOR were appointed tellers according thereto.

CHE-APPEAKE AND OHIO CANAL.

Mr. MERCER moved that the bill to confirm an act of the General Assembly of Maryland, confirming an act of the General Assembly of Virginia to incorporate the Chesapeake and Ohio Canal Company, be taken up.

The motion prevailed—and the bill was taken up.

Mr. COCKE observed, that he considered it dangerous to take up a bill of such importance, and pass it at once to a third reading, without due consideration, and intimated his belief that the passage of the bill would, without doubt, be the precursor of a demand for a large appropriation of money for the object embraced by it. Mr. C. concluded, by moving to refer the bill to a committee of the whole for further consideration.

After a few observations from Mr. MERCER, denying that this bill was of any more importance in principle than other acts which had been passed as matter of course, such as those authorizing Turnpikes to be continued within the District, after passing the line from Maryland and Virginia, &c.

The question was taken on committing the bill to a committee of the whole, and decided in the negative.

After a few words between Mr. MERCER, Mr. LATHROP, and Mr. McKIM, as to the phraseology of the section—

FEB. 9, 1825.]

Election of President.

[H. of R.]

their investigation. If such be the obligations of duty in extraordinary cases, the mere dictates of prudence will, in many instances, compel him to abstain from presenting to the House, for investigation, facts which might implicate the conduct or motives of any of its members, when they ought to be freely communicated to his constituents.

In the present case, although I feel myself justified, as the writer of the letter, I feel myself bound, both by prudence and duty, not to appear in the character of an accuser of the Speaker upon charges not my own, but those which he has requested to be investigated. I need not advert to circumstances which render it peculiarly improper at the present time. The deep excitement which the important crisis has produced, the unequal contest between an humble member on the floor, and the Speaker of the House, are themselves circumstances which cannot be overlooked in coming to the conclusion that the issue should be left before the American people, or the ordinary tribunals of the country; and I therefore protest against the proceedings in this view, as well as against the power of the House to exercise jurisdiction over me, as being equally calculated to restrain the exercise of my just rights, in an unconstitutional manner.

I have the honor to be, with great respect,

Your obedient servant,

GEO. KREMER.

Washington, Feb. 8th, 1825.

The report and letter were read, and, on motion of Mr. BARBOUR, were ordered to lie on the table, with the accompanying papers, and to be printed.

On motion of Mr. TAYLOR, it was

Ordered, That a message be sent to the Senate, that this House is now ready to receive them in pursuance of the resolution of the two Houses, of yesterday, to the end that the President of the Senate, in the presence of the Senate and House of Representatives, may open the certificates of the votes of the electors of the several states in the choice of a President and Vice President of the United States, and that the same may be counted; and that the Clerk do go with said message.

ELECTION OF PRESIDENT.

At twelve o'clock, precisely, the Members of the Senate entered the Hall, preceded by their Sergeant-at-Arms, and having the PRESIDENT of the Senate at their head, who was invited to a seat on the right hand of the SPEAKER of the House.

Seats were then assigned the Senators, who took their seats together, in front of the Speaker's chair, and toward the right hand of the entrance.

The President of the Senate, (Mr. GALLARD,) then rose, and stated that the certificates, forwarded by the Electors from each State, would be delivered to the Tellers.

Mr. TAZEWELL, of the Senate, and Messrs. JOHN W. TAYLOR and PHILIP P. BARBOUR, on the part of the House, took their places, as Tellers, at the Clerk's table. The President of the Senate then opened two packets, one received by messenger, and the other by mail, containing the certificates of the votes of the State of New Hampshire. One of these was then read by Mr. TAZEWELL, while the other was compared with it by Messrs. TAYLOR and BARBOUR. The whole having been read, and the votes of New Hampshire declared, they were set down by the Clerks of the Senate and of the House of Representatives, seated at different tables. Thus the certificates from all the States were gone through with.

The Tellers then left the Clerk's table, and presenting themselves in front of the Speaker, Mr. TAZEWELL delivered their report of the votes given; which was then handed to the President of the Senate, who again read it to the two Houses, as follows:

	For President.				For Vice President.					
	John Quincy Adams.	William H. Crawford.	Andrew Jackson.	Henry Clay.	John C. Calhoun.	Nathaniel Macon.	Andrew Jackson.	Nathan Sanford.	Henry Clay.	Martin Van Buren.
Maine,	9	0	0	0	9	0	0	0	0	0
N. Hampshire,	8	0	0	0	7	0	1	0	0	0
Massachusetts,	15	0	0	0	15	0	0	0	0	0
Rhode Island,	4	0	0	0	3	0	0	0	0	0
Connecticut,	8	0	0	0	0	0	8	0	0	0
Vermont,	7	0	0	0	7	0	0	0	0	0
New York,	26	5	1	4	29	0	0	7	0	0
New Jersey,	0	0	8	0	8	0	0	0	0	0
Pennsylvania,	0	0	28	0	28	0	0	0	0	0
Delaware,	1	2	0	0	1	0	0	0	2	0
Maryland,	3	1	7	0	10	0	1	0	0	0
Virginia,	0	24	0	0	0	24	0	0	0	0
North Carolina,	0	0	15	0	15	0	0	0	0	0
South Carolina,	0	0	11	0	11	0	0	0	0	0
Georgia,	0	9	0	0	0	0	0	0	0	9
Kentucky,	0	0	0	14	7	0	0	7	0	0
Tennessee,	0	0	11	0	11	0	0	0	0	0
Ohio,	0	0	0	16	0	0	0	16	0	0
Louisiana,	2	0	3	0	5	0	0	0	0	0
Mississippi,	0	0	3	0	3	0	0	0	0	0
Indiana,	0	0	5	0	5	0	0	0	0	0
Illinois,	1	0	2	0	3	0	0	0	0	0
Alabama,	0	0	5	0	5	0	0	0	0	0
Missouri,	0	0	0	3	0	0	3	0	0	0
Total,	84	41	99	37	182	24	13	30	2	9

The President of the Senate then rose, and declared that no person had received a majority of the votes given for President of the United States; that ANDREW JACKSON, JOHN QUINCY ADAMS, and WILLIAM H. CRAWFORD, were the three persons who had received the highest number of votes, and that the remaining duties in the choice of a President now devolved on the House of Representatives. He further declared, that JOHN C. CALHOUN, of South Carolina, having received 182 votes, was duly elected VICE PRESIDENT of the UNITED STATES, to serve for four years from the 4th day of March next.

The members of the Senate then retired.

The SPEAKER directed the roll of the House to be called by States, and the members of the respective delegations to take their seats in the order in which the States should be called, beginning at the right hand of the Speaker.

The roll was called accordingly, when it appeared that every member of the House was present, with the exception of Mr. GARNETT, of Va., who was known to be indisposed at his lodgings, in this city.

The delegations took their places accordingly, ballot boxes were distributed to each delegation, by the Sergeant-at-Arms, and the Speaker directed that the balloting should proceed.

The ballots having all been deposited in the boxes, the following Tellers were named by the respective delegations, being one from each State in the Union:

Mr. Cushman,	Mr. Hooks,
Livermore,	Campbell,
Webster,	Forsyth,
Eddy,	Trimble,
Tomlinson,	Allen, of Tenn.
Back,	Sloane,
Taylor,	Livingston,
Condict,	Rankin,
Ingham,	Jennings,

H. of R. & Sen.]

Election of President.—On the Judiciary.

[FEB. 10, 1825.]

Mr. McLane,
Kent,
Randolph,

Mr. Cook,
Owen,
Scott.

Mr. WEBSTER, of Massachusetts, was appointed by those Tellers who sat at one table, and Mr. RANDOLPH, of Virginia, by those at the other, to announce the result of the balloting. After the ballots were counted out, Mr. WEBSTER rose, and said—

“Mr. Speaker. The Tellers of the votes at this table have proceeded to count the ballots contained in the box set before them. The result they find to be, that there are—

FOR JOHN QUINCY ADAMS, of Massachusetts, 13 votes,
FOR ANDREW JACKSON, of Tennessee, 7 votes,
FOR WILLIAM H. CRAWFORD, of Georgia, 4 votes.”

Mr. RANDOLPH, from the other table, made a statement corresponding with that of Mr. WEBSTER, in the facts, but varying in the phraseology, so as to say that Mr. Adams, Mr. Jackson, and Mr. Crawford, had received the votes of so many states, instead of so many votes.

The SPEAKER then stated this result to the House, and announced that JOHN QUINCY ADAMS, having a majority of the votes of these United States, was duly elected President of the same, for four years, commencing with the 4th day of March next.

On motion of Mr. TAYLOR, of New York, a committee was ordered to be appointed, to notify the President of the United States, and the President elect, of the result of the ballot.

And then the House adjourned.

[When the fact of Mr. Adams having 13 votes was announced by the Tellers, some clapping and exultation took place in the galleries, and some slight hissing followed. The House suspended its proceedings until the galleries were cleared.]

IN SENATE—THURSDAY, FEBRUARY 10.

The Senate proceeded, as in committee of the whole, to the consideration of the bill “to amend the Judicial system of the United States, and to provide for three additional Circuit Courts.”

Mr. R. M. JOHNSON, of Kentucky, began by saying he should be as brief as it should be in his power, in the remarks he had to offer, on the explanation of the bill, and in support of the measure which it proposed. The object of the bill, said Mr. J. embraces the creation of three additional Circuits and the appointment of three additional Circuit Judges, to be members of the Supreme Court of the United States. Should the bill pass into a law, it will, of course, increase the number of the Judges of that court, from seven to ten. The present judicial arrangement leaves six Western states without a representative in the Supreme Court, and without an atom of advantage from the circuit system. As to the seventh circuit, embracing Ohio, Kentucky, and Tennessee, this may be viewed as in a similar condition, since the duties of the Circuit Judge, requiring him to perform the annual round of more than 3,000 miles, leaves to him very little leisure for the investigation and reflection which are essential to correctness and despatch in judicial proceedings. The nine Western states have a deep interest in the present question. They may be considered as equally, I might say unrighteously, deprived of those immunities which every other section of our confederacy has the felicity to share.

Sir, said Mr. J. the present proposition rests not alone on considerations of expediency, but upon the principles of equal rights and impartial justice. The circumstances of the nine Western states demand the unhesitating interposition of Congress. What room can be left for equivocation and doubt, when nothing is solicited but what is enjoyed by other portions of the community? It will be recollected, that under the present unequal system, in all causes decided in the District Courts, the

opinion of a single Judge is final, where the sum involved, inclusive of costs, amounts to no more than two thousand dollars. A decision of this nature is conclusive in most cases in which the great mass of the community are interested. Whatever may be the virtue or talents of an individual Judge, we possess no sufficient guarantee for the satisfactory administration of justice, without which a free, a gallant, and enlightened public can never be content. No person, sir, is less disposed than I am to detract from the merits of our Judiciary; but other plans are contemplated. A radical change in our judicial system, proposed by some members of the Senate, is urged as a good reason for delay.

This radical change, I believe, sir, has been contemplated for many years, and yet we discover no rational prospect of success; it is intolerable that nine states in our Union are to be disfranchised, laboring under the inequality and disadvantages of having a system confined only to a portion of our vast and growing population. The change spoken of is designed to render the Supreme Court independent of circuit duties, and to locate its officers within a range of ten miles square. Three years ago, I submitted a proposition, that the Judges of this Court be requested to communicate to us a full report relative to the merits and disadvantages of the present system. This request was denied me. Fears were entertained, lest the views of this distinguished tribunal might influence the course of Congress. I entertained no such apprehensions. I had sufficient confidence in my own judgment to believe that I should discharge the duty I owe to my country, and I possessed equal confidence in the talents, integrity, and experience of the venerated judges themselves. I introduced this self-same bill, the last session; and yet, it was impossible to procure its being acted upon, although the Senate was in session nearly six months. We were told that there was safety in delay. The contemplated change was again pressed upon us as a reason why this system should not be adopted. I had always been of opinion that delay in the operation of justice was not only unnecessary, but dangerous. At a very early period, during the present session, I presented the subject for the serious consideration of the Senate, and we are still informed that a little delay will not materially affect the question. It must be put off until the next session. Thus we dance round the circle of the year—session after session succeeds, and the Western States utter the voice of discontent, and call for their reasonable rights, unheard or unregarded. Sir, I contend that it is time, high time, that something should be done.

The measure proposed plainly involves the comparative merits of the two plans that are suggested. My wish, and it is the result of the most deliberate consideration, is to increase the judicial circuits so as to embrace the whole of our Union, and to give to the West their due representation in the Supreme Court of the United States; this will augment the number of the supreme judges to ten. The other plan is, to separate circuit duties from those of the Judges of the Supreme Court, and to concentrate the latter in their chamber in the Capitol. Provided the jurisdiction of the Supreme Court, and that of the inferior courts of the Union, were confined to objects purely national, I should realize much less difficulty, in the plan of having a few judges to constitute a Supreme Court, and to restrict them exclusively to the discharge of such high duties as become an appellate tribunal, except where the constitution itself has invested them with original jurisdiction. Perhaps I should concur in it. I refer in this remark to such cases as arise out of the Laws of Nations, as relate to treaties with foreign powers, the revenue laws, the concerns of the admiralty, maritime causes, and all controversies of a similar character. But so long as the jurisdiction of the Federal Courts extends to cases—innumerable cases of a municipal character, involving state-laws, state-constitutions, and, in fact the control