opinion. and I am convinced experience will prove it, there will, nor can be no ſuit or action brought in any of the State courts but may under this clauſe be reverſed or affirmed by being brought within the cognizance of the ſupreme court. But ſhould there be ſome exceptions for the preſent, yet Sir, the precedent is ſo forcible, for it goes ſo far as even to admit of conſtructions that under ſome conſtruction or other, of ſome of the articles, thoſe articles will in time be totally loſt. Sir, let us look at the court of exchequer in England—Revenue trials at firſt engroſſed its whole attention—from a ſeries of fiction there is now no perſonal action but from conſtruction may be brought with in their cognizance—It is only to ſuggeſt, and very ſeldom true that the plaintiff is a kings debtor and the action is well grounded—Yet there they have counter checks and another reſort—here the ſupreme court is final. Sir, the gentleman from South-Carolina [Mr. BURKE] was right in declaring a reſident on lake Erie might dragged to New-York for trial, as that on the Oconee to Savannah. Nay, Sir, I know not how far in time a man might not be dragged from the Oconee to be tried in North-Carolina; for one part of the bill, without ſpecifying the ſpot, declares that the circuit courts ſhall have power to hold ſpecial ſeſſions for the trial of criminal cauſes at their diſcretion. On thoſe conſiderations I hope the Houſe will not adopt the preſent ſyſtem until the milder one is tried. It is calculated to harraſs and foment the people, without anſwering any eſſential purpoſe.

(N. B. In Mr. Jackſon's ſpeeeh in our laſt, middle column, 14 line inſtead of "the firſt he has brought forward," read the firſt I ſhall notice *and inſtead of "the firſt privilege of every government," read* the firſt principle of every government.)

Mr. SMITH (S. C.) All the difficulties and inconveniences which the gentlemen have ſtarted as ariſing from the eſtabliſhment of a diſtrict court ariſe from the government itſelf. All the objections made to this court apply equally againſt having any national judicature. Indeed if they had any weight they would as forcibly apply againſt the very inſtitution which the gentlemen patronize, viz. a court of admiralty and piracy. If there is to be this perpetual claſhing of juriſdictions between the federal and State courts, this eternal jarring between their reſpective officers, will not theſe embarraſſments exiſt under any judicial ſyſtem which the ingenuity of man can deviſe? Will they not take place under the eſtabliſhment propoſed by the other ſide; and will the mere alteration of the court from a diſtrict to a court of admiralty and piracy remedy the evil? But theſe objections come too late; a national government is eſtabliſhed—the judicial power is a component part of that government, and muſt be commenſurate to it. If we have a government pervading the Union, we muſt have a judicial power of ſimilar magnitude: We muſt eſtabliſh courts in every part of the Union. The only queſtion is, which is the plan beſt calculated to anſwer the great objects we all have in view, the carrying the judicial powers into operation with the leaſt inconvenience to the citizens. This double ſyſtem of juriſprudence is unavoidable; it is as much a part of the Conſtitution as the double ſyſtem of legiſlation; each State has a legiſlative power, and the Congreſs has a legiſlative power, both operating on the ſame perſons, and in many caſes on the ſame objects: It is infinitely more difficult to mark with preciſion the limits of the legiſlative than of the judicial power: No one however diſputed the propriety of veſting Congreſs with a legiſlative power over the Union, and yet that power is perhaps more liable to abuſe than the judicial. It has been indeed contended in ſome of the State Conventions that Congreſs ought not to be intruſted with direct taxation; and it is remarkable that the ſame obſtacles were urged againſt that power which are now ſuggeſted againſt this inſtitution. It was then ſaid that federal and State taxes could not operate at the ſame time without confuſion; it was then facetiouſly aſked, whether the Congreſſional and the State collector who had ſeized a horſe for the payment of taxes were to divide him between them; it is now aſked with equal pleaſantry, whether the marſhal of the diſtrict court and the ſheriff of the State court who have taken the ſame debtor in execution are to cut him in halves.—It was then anſwered, that if the State collector ſeized the horſe firſt, he will have the firſt ſatisfaction: It was alſo ſhewn that there are frequently in the ſame State, State taxes, county taxes, and corporation taxes, and that theſe never occaſioned any claſhing or confuſion: It may now be anſwered that there are at preſent in ſome of the States, State courts, county courts, and corporation courts; and that theſe are found convenient, and unaccompanied with the claſhing ſo much apprehended. They keep within their particular ſpheres, and have their limits aſcertained. But, in anſwer to one ſuppoſition allow me to ſtate another: Suppoſe a State ſheriff and a county ſheriff ſhould ſeize the ſame debtor, would he be parcelled out between them? would not the execution which was firſt ſerved take effect? Is not this the practice at preſent, and will it not be ſo under this ſyſtem? It is very eaſy for gentlemen in the warmth of their imaginations to ſuppoſe a variety of caſes, and to raiſe a multiplicity of objections againſt any ſyſtem of juriſprudence whatever: They will all be more or leſs liable to ſome objection on the ſcore of inconvenience, but they are ſubmitted to by good citizens who are ſenſible that they are the ſureſt means of protecting their property, reputations and lives. After all that has been ſaid, it does not appear that we differ ſo widely as was imagined, for the gentlemen who advocate the motion, concede the neceſſity of ſome inferior federal court in each State: this clauſe does nothing more than eſtabliſh an inferior federal court in each State. What then do gentlemen object to? If it is the name of the court, that may be altered—if it is the frequency of holding them, it will be very eaſy to amend the clauſe in that reſpect; but why move to ſtrike out the clauſe altogether, when it is granted on all hands that there muſt be ſuch a court. The objection to the extent of juriſdiction is premature, and ought to be reſerved for the clauſe which aſcertains the juriſdiction; if upon an inveſtigation of that clauſe, it ſhall appear that it ought to be reſtricted, that will be the ſeaſonable time for moving to ſtrike out the exceptionable part, but really at preſent gentlemen are making objections to one clauſe which, from their own conceſſions, apply altogether to another. As to ſeveral other obſervations, which relate to the time of holding the courts, and the mode of drawing jurors, it is unneceſſary to reply fully to them at preſent, becauſe it would be improper to run into a diſcuſſion of the detail, while the queſtion is on the principle of the ſyſtem. I am no leſs oppoſed to the time of holding the courts and the mode of drawing jurors, provided by the bill, than the gentleman from whom the objection came, and I ſhall add my endeavors to his, to effect an alteration in theſe points; but this is not the proper time, we are now on the principle, whether there ſhall be a diſtrict court; The ſame anſwer will apply to the objection that the juries and witneſſes will be unneceſſarily harraſſed; every care will be taken to accommodate theſe courts to the convenience of the citizens of each State.

Several other difficulties have been urged as growing out of this plan of juriſprudence; a candid diſcuſſion will remove and obviate them. It has been ſaid, that the bill provides a number of appeals from the State to the ſupreme court, through the diſtrict and circuit courts, and that the ſuitors may be perſecuted with appeals carried on from one court to another, through four different courts, An attentive examination of the bill is a ſufficient anſwer to this objection: There is no appeal from the State to the diſtrict court, and only a power of removal in certain caſes of a federal juriſdiction from the State to the circuit court: neither is there any appeal of fact from the diſtrict to the circuit court, but in admiralty cauſes, and theſe cannot be afterwards carried up to the ſupreme court but where the value exceeds 2000 dollars.

It has been ſaid that under the idea of vicinage, a man may be dragged far from his friends to trial from Georgia to North-Carolina; but it muſt be remembered that there is a Conſtitutional proviſion, that the criminal ſhall be tried in the State where the offence is committed, and the bill is conformable to the Conſtitution in this reſpect. It has been obſerved that the Conſtitution is no bar to veſting the State courts with federal powers, for the words "ſuch inferior courts as Congreſs ſhall from time to time eſtabliſh," imply that Congreſs may not inſtitute them, and if they are not inſtituted, theſe powers muſt of courſe remain with the State courts: In reply to this argument it is to be obſerved, that the words, "ſuch inferior courts, &c." apply to the number and quality of the inferior federal courts, and not to the poſſibility of excluding them altogether: It is a latitude of expreſſion empowering Congreſs to inſtitute ſuch a number of inferior courts, of ſuch particular conſtruction, and at ſuch particular places as ſhall be found expedient: In ſhort in the words of the Conſtitution, Congreſs may eſtabliſh ſuch inferior courts as may appear requiſite. But that Congreſs muſt eſtabliſh ſome inferior Courts is beyond a doubt: In the firſt place, the Conſtitution declares that the judicial power of the United States ſhall be veſted in a ſupreme and in inferior courts. The words "ſhall be veſted" have great energy, they are terms of command; they leave no diſcretion to Congreſs to parcel out the judicial powers of the Union to State judicatures, where a diſcretionary power is left to Congreſs by the Conſtitution, the word "may" is employed, where no diſcretion is left, the word "ſhall" is the appropriate term; this diſtinction is cautiouſly obſerved. Again, the Supreme Court in two caſes only has original in all others it has appellate juriſdiction; but where is the appeal to come from? Certainly not from the State courts; it muſt come from a federal tribunal. There is another argument which appears concluſive: The Conſtitution provides that the judges of the Supreme and inferior courts ſhall hold their commiſſions during good behavior and ſhall receive ſalaries not capable of diminution, and it further provides that the judicial power of the Union ſhall be veſted in a Supreme and inferior courts; that is in a Supreme and inferior courts whoſe judges ſhall are to their commiſſions during good behaviour and are to poſſeſs ſalaries not liable to diminution.

Does not then the Conſtitution in the plaineſt and moſt unequivocal language preclude us from allotting any part of the judicial authority of the Union to the State judicatures? The bill, it is ſaid, is then unconſtitutional, for it recognizes the authority of the State courts in that clauſe which empowers the Supreme Court to overturn the deciſions of the State Courts when thoſe deciſions are repugnant to the laws or Conſtitution of the United States. This is no recognition of any ſuch authority, it is a neceſſary proviſion to guard the rights of the Union againſt the invaſion of the States. If a State court ſhould uſurp juriſdiction of federal cauſes, and by its adjudications attempt to ſtrip the federal Government of its Conſtitutional rights, it is neceſſary that the national tribunal ſhould poſſeſs the power of protecting thoſe rights from ſuch invaſion. The committee have been told that this multiplication of courts, and of appeals will diſtreſs the citizens; and the number of appeals in Great Britain have been alluded to. I have always heard that there is no country in the world where juſtice is better adminiſtered than in that country; to its excellent and impartial adminiſtration the proſperity, freedom and civil rights of its citizens have been attributed: Were appeals too much reſtrained in this country, I much queſtion whether a great clamor would not be raiſed againſt ſuch a reſtriction: The citizens of a free country, when they loſe their cauſe in one court, like to try their chance in another: This is a privilege they conſider themſelves juſtly intitled to, and if a litigious man harraſſes his adverſary by vexatious appeals, he is ſufficiently puniſhed for it by having the coſts to pay. By limiting appeals to the Supreme Court to ſums above 1000 dollars, as is propoſed, the poor will be protected from being harraſſed by appeals to the Supreme Court.

There is one more obſervation which requires an anſwer:—It was ſaid that the juries, might be dragged from one end of a State to another; proviſion is expreſsly made againſt this in the bill; it is there enacted that the juries ſhall be ſo drawn as to occaſion the ſmalleſt inconvenience to the citizens. After having very maturely conſidered the ſubject and attentively examined the bill in all its modifications, and heard all that has been alledged on this occaſion, I am perfectly convinced that, whatever defects may be diſcovered in other parts of the bill, the adoption of this motion would tend to the rejection of every ſyſtem of national juriſprudence.

[*The remainder of this debate in our next.*]

WEDNESDAY, SEPTEMBER 2.

A petition from the citizens of Philadelphia reſpecting the permanent and temporary reſidence of Congreſs was read.

The petition of the creditors of the United States reſiding in the city of Philadelphia, was refered to the committee of ways and means.

Mr. VINING then brought forward his motion reſpecting the validity of the Jerſey election, in a new form, viz. "Reſolved, that *James Schureman, Lambert Cadwallader, Elias Boudinot*, and *Thomas Sinnickſon*, were duly elected and properly returned members of this Houſe."

Mr. SHERMAN made a number of obſervations in ſupport of the validity of the election.

Mr. SMITH (S. C.) ſpake on the ſame ſide. The following is the ſubſtance of his argument:

This is a ſubject which requires conſiderable attention. I confeſs I had doubts yeſterday. I have ſince made up my opinion. It appears to me the matter turns on the conſtruction of the law of New-Jerſey. In the firſt place the law admits of a conſtruction that the returns ought to be made, and the election announced on the third of March.

It admits of another conſtruction, that the election ought not to be declared, till all the returns from all the counties in the State were made, We muſt give the law a reaſonable conſtruction. It appears from the preamble, that the election ſhould be declared the third of March, becauſe it mentions that the Conſtitution ſhould begin to operate on the fourth of March, and the preamble implies that the election ſhould be made known at that time. There is no particular time preſcribed when the returns ſhall be made; but it appears that there is a reference to the practice and uſage of the State. Now by the law regulating the election of the repreſentatives in the State Legiſlature, there appears to be no time limited for the returns of the election. It appears alſo that this conſtruction was given by the ſeven counties who made their returns previous to the fourth of March. It appears alſo, that the Governor had this in idea by ſummoning the Council. Theſe obſervations were made yeſterday, and they had weight on my mind. In anſwer to this conſtruction it may be ſaid, that it is done away by the act which declares that the Governor and Council ſhall caſt up the votes from the *whole* of the returns of *all* the counties, and therefore the fourth of March was not the proper time, unleſs the returns were all then made, which it is probable was contemplated at the time of the paſſing of the law. It will appear that abſurdities will follow from either of the conſtructions. If you take the firſt, it might ſo have happened that no county may have made the returns. Would it then have been required that the Governor ſhould declare the election? or that the Governor ſhould decide on the votes of one county, if only one had returned? On the other hand to wait till all the returns had been made would be equally abſurd, becauſe it would be in the power of one county to defeat the election.

The queſtion then is, whether the executive power has not a diſcretion; and whether he ought not to exerciſe that diſcretion to carry the law into execution?—If this is admitted, another queſtion ariſes, whether the executive exerciſed that diſcretion in a juſtifiable manner. It appears that the Governor, previous to the third of March, ſummoned the council and laid before them the returns on that day. But it ſeems alſo that the Governor thought it probable that all the returns would not then be made—As on the third of March, there were only the returns of ſeven counties made: As it was merely matter of conſtruction, it appears to me that the Governor and Council had a right to exerciſe their diſcretion, in poſtponing the determination for ſuch a reaſonable time as would allow the returns to be ſent in; and that this is one of thoſe caſes where the executive may properly interpoſe its author-