WEDNESDAY, JULY 18, 1787.

JOURNAL

Wednesday July 18. 1787.

[To reconsider the clause which makes the Executive reeligible Ayes — 8; noes — 0.

To reconsider immediately Ayes — 6; noes — 2.

To reconsider the clause to-morrow Ayes — 8; noes —0.][1]

It was moved and seconded to postpone the consideration of the following clause in the 9th resolution reported from the Committee of the whole House namely

for the term of seven years"

which passed unanimously in ye affirmative

It was moved and seconded to postpone the consideration of the remaining clause of the 9th and the 10th resolution in order to take up the 11th resolution.

which passed in the affirmative [Ayes — 4; noes — 3; divided — 1.]

On the question to agree to the following clause of the 11th resolution namely

"That a national Judiciary be established"

it passed unanimously in the affirmative

On the question to agree to the following clause of the 11th resolution namely

"To consist of One supreme Tribunal

it passed unanimously in the affirmative

It was moved and seconded to strike out the words

"second branch of the national Legislature" and to insert the words "national executive" in the 11. resolution

which passed in the negative. [Ayes — 2; noes — 6.]

[1] Votes 171–173, Detail of Ayes and Noes. It required a unanimous vote to reconsider immediately. Upon the assignment of these questions to this day, see July 17 note 4.

It was moved and seconded to alter the 3rd cause of the 11th resolution so as to read as follows, namely,

The Judges of which shall be nominated and appointed by the Executive by and with the advice and consent of the second Branch of the Legislature of the United States — and every such nomination shall be made at least days prior to such appointment

which passed in the negative [Ayes — 4; noes — 4.]

It was moved and seconded to alter the 3rd clause of the 11th resolution so as to read as follows namely

That the Judges shall be nominated by the Executive and such nomination shall become an appointment if not disagreed to within days by two thirds of the second branch of the Legislature.

It was moved and seconded to postpone the consideration of the last amendment

which was unanimously agreed to

On the question to agree to the following clause of the 11th resolution namely "to hold their Offices during good behaviour"

it passed unanimously in the affirmative

On the question to agree to the following clause of the eleventh resolution namely

"to receive, punctually, at stated times a fixed compensa-
"tion for their services"

it passed unanimously in the affirmative

It was moved and seconded to strike the words

"Encrease or" out of the eleventh resolution

which passed in the affirmative [Ayes—6; noes—2.]

On the question to agree to the clause as amended namely "to receive, punctually, at stated times, a fixed compensation "for their services in which no diminution shall be made so "as to affect the Persons actually in Office at the time of such "diminution"

it passed unanimously in the affirmative

On the question to agree to the 12th resolution namely

"That the national Legislature be empowered to appoint "inferior Tribunals"

it passed unanimously in the affirmative [Ayes—9; noes—0.]

It was moved and seconded to strike the words

"impeachments of national Officers" out of the 13th resolution

which passed unanimously in the affirmative

It was moved and seconded to alter the 13th resolution so as to read as follows namely

That the jurisdiction of the national Judiciary shall extend to cases arising under laws passed by the general Legislature, and to such other questions as involve the National peace and harmony

which passed unanimously in the affirmative

On the question to agree to the 14 resolution namely

Resolved That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise with the consent of a number of voices in the national Legislature less than the whole.

it passed unanimously in the affirmative

On the question to agree to the first clause of the 15th resolution reported from the Committee of the whole House

it passed in the negative [Ayes — 2; noes — 7.]

On the question to agree to the last clause of the 15th resolution

it passed unanimously in the negative

It was moved and seconded to alter the sixteenth resolution so as to read as follows namely

That a republican form of Government shall be guaranteed to each State — and that each State shall be protected against foreign and domestic violence

which passed in the affirmative

[To agree to the 16th resolution as amended Ayes — 9; noes — 0.] [2]

And then the House adjourned till to-morrow at 11 o'Clock A. M.

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[2] Vote 180, Detail of Ayes and Noes.

DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	North Carolina	South Carolina	Georgia	Questions	Ayes	Noes	Divided
[171]		aye		aye			aye	aye	aye	aye	aye	aye		To reconsider the clause which makes the Executive reeligible	8		
[172]		aye		aye			no	aye	aye	no	aye	aye		To reconsider immediately	6	2	
[173]		aye		aye			aye	aye	aye	aye	aye	aye		To reconsider the clause to-morrow	8		
[174]		aye		aye			no	aye	aye	no	dd	no		To postpone the considn of the remaining clauses of the 9 resolution, and the 10 resolution to take up ye 11th	4	3	1
[175]		aye		no			aye	no	no	no	no	no		That the Judges shall be appointed by the National Executive	2	6	
[176]		aye		no			aye	no	aye	aye	no	no		That the Judges shall be nominated and appointed by the Executive by & wt the advice and consent of ye 2 branch	4	4	
[177]		aye		aye			aye	aye	aye	no	no	aye		To strike out the words "encrease or"	6	2	
[178]		aye		aye			aye	aye	aye	aye	aye	aye	aye	That the National Legislature be empowered to appoint inferior Tribunals	9		
[179]		no		no			no	no	no	aye	aye	no	no	To agree to the first clause of the 15 resolution	2	7	
[180]		aye		aye			aye	aye	aye	aye	aye	aye	aye	To agree to the 16th resolution as amended	9		

MADISON

Wednesday July 18. in Convention

On motion of Mr. L. Martin ⟨to fix tomorrow⟩ for reconsidering the vote concerning "eligibility of Exective. a 2d time" ⟨it passed in the affirmative.⟩[3]

Mas. ay. Cont. ay. N. J. absent. Pa. ay. Del. ay. Md. ay.

[3] Revised from *Journal*, where questions and votes are given in greater detail.

Va. ay. N. C. ay. S. C ay. Geo absent. [Ayes — 8; noes — 0; absent — 2.]

The residue of Resol. 9. concerning the Executive was postpd. till tomorrow.[4]

Resol. 10. that Executive shl. have a right to negative legislative acts not afterwards passed by $\frac{2}{3}$ of each branch. Agreed to nem. con.[5]

Resol. 11. "that a Natl. Judiciary be estabd. to consist of one supreme tribunal." agd. to nem. con.

"The Judges of which to be appointd. by the 2d. branch of the Natl. Legislature."

Mr. Ghorum, wd. prefer an appointment by the 2d branch to an appointmt. by the whole Legislature; but he thought even that branch too numerous, and too little personally responsible, to ensure a good choice. He suggested that the Judges be appointed by the Execuve. with the advice & consent of the 2d branch, in the mode prescribed by the constitution of Masts. This mode had been long practised in that country, & was found to answer perfectly well.

Mr. Wilson, still wd. prefer an an appointmt. by the Executive; but if that could not be attained, wd. prefer in the next place, the mode suggested by Mr. Ghorum. He thought it his duty however to move in the first instance "that the Judges be appointed by the Executive." Mr. Govr. Morris 2ded. the motion.

Mr. L. Martin was strenuous for an appt. by the 2d. branch. Being taken from all the States it wd. be best informed of characters & most capable of making a fit choice.

Mr. Sherman concurred in the observations of Mr. Martin, adding that the Judges ought to be diffused, which would be more likely to be attended to by the 2d. branch, than by the Executive.

Mr Mason. The mode of appointing the Judges may

[4] Madison originally added "nem con." but apparently in view of Vote 174 printed in *Journal* struck this out.

[5] Madison is evidently wrong in stating that Resolution 10 was "agreed to nem. con." According to the Journal it was *postponed*. It was passed July 21 (see *Records* of that date).

depend in some degree on the mode of trying impeachments, of the Executive. If the Judges were to form a tribunal for that purpose, they surely ought not to be appointed by the Executive. There were insuperable objections besides agst. referring the appointment to the Executive. He mentioned as one, that as the seat of Govt. must be in some one State, and the Executive would remain in office for a considerable time, for 4, 5, or 6 years at least he would insensibly form local & personal attachments within the particular State that would deprive equal merit elsewhere, of an equal chance of promotion.

Mr. Ghorum. As the Executive will be responsible in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the States for proper characters. — The Senators will be as likely to form their attachments at the seat of Govt where they reside, as the Executive. If they can not get the man of the particular State to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibly and give full play to intrigue & cabal. Rh. Island is a full illustration of the insensibility to character produced by a participation of numbers, in dishonorable measures, and of the length to which a public body may carry wickedness & cabal.

Mr. Govr. Morris supposed it would be improper for an impeachmt. of the Executive to be tried before the Judges. The latter would in such case be drawn into intrigues with the Legislature and an impartial trial would be frustrated. As they wd. be much about the seat of Govt they might even be previously consulted & arrangements might be made for a prosecution of the Executive. He thought therefore that no argument could be drawn from the probability of such a plan of impeachments agst. the motion before the House.

Mr. M⟨adison⟩, suggested that the Judges might be appointed by the Executives with the concurrence of ⟨⅓ at least⟩ [6] of the 2d. branch. This would unite the advantage of respon-

[6] Madison originally recorded this as "3/6".

sibility in the Executive with the security afforded in the 2d. branch agst. any incautious or corrupt nomination by the Executive.

Mr. Sherman, was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the Executive.

Mr. Randolph. It is true that when the appt. of the Judges was vested in the 2d. branch an equality of votes had not been given to it. Yet he had rather leave the appointmt. there than give it to the Executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members to be entered on the Journal. He thought too that the hope of ⟨receiving⟩ appts. would be more diffusive if they depended on the Senate, the members of which wd. be diffusively known, than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the System, would be so far weakened

Mr. Bedford thought there were solid reasons agst. leaving the appointment to the Executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger States, by gratifying them with a preference of their Citizens. The responsibility of the Executive so much talked of was chimerical. He could not be punished for mistakes.

Mr. Ghorum remarked that the Senate could have no better information than the Executive They must like him, trust to information from the members belonging to the particular State where the Candidate resided. The Executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

On the question for referring the appointment of the Judges to the Executive, ⟨instead of the 2d. branch⟩ [7]

Mas. ay. Cont. no. Pa. ay. Del. no. Md. no Va. no. N. C. no. S. C. no — ⟨Geo. absent.⟩ [Ayes — 2; noes — 6; absent — 1.]

Mr. Ghorum moved "that the Judges be ⟨nominated and appointed⟩ by the Executive, by & with the advice & consent of the 2d branch ⟨& every such nomination shall be made at least days prior to such appointment"⟩ [7]. This mode he said had been ratified by the experience of 140 years in Massachussts. If the appt. should be left to either branch of the Legislature, it will be a mere piece of jobbing.

Mr. Govr. Morris 2ded. & supported the motion.

Mr. Sherman thought it less objectionable than an absolute appointment by the Executive; but disliked it as too much fettering the Senate.

Question on Mr. Ghorum's motion

Mas. ay. Con. no. Pa ay. Del. no. Md. ay. Va. ay. N. C. no. S. C. no. Geo. ⟨absent.⟩ [Ayes — 4; noes — 4; absent — 1.]

⟨Mr.⟩ Mr⟨adison⟩ moved that the Judges should be nominated by the Executive, & such nomination should become an appointment ⟨if not⟩[8] disagreed to within days by ⅔ of the 2d. branch. Mr. Govr. ⟨Morris⟩ 2ded. the motion. By common consent the consideration of it was postponed till tomorrow.

"⟨To hold their offices during good behavior" & "to receive fixed salaries" agreed to nem: con:⟩ [9]

"In which (salaries of Judges) no increase or diminution shall be made, ⟨so as to affect the persons at the time in office."⟩

Mr. Govr. Morris moved to strike out " or increase". He thought the Legislature ought to be at liberty to increase salaries as circumstances might require, and that this would not create any improper dependence in the Judges.

Docr. Franklin ⟨was in favor of the motion⟩, Money may not

[7] Revised from *Journal.*

[8] Revised from *Journal*, originally Madison recorded "unless".

[9] Taken from *Journal.*

only become plentier, but the business of the department may increase as the Country becomes more populous.

Mr. ⟨Madison.⟩ The dependence will be less if the *increase alone* should be permitted, but it will be improper even so far to permit a dependence Whenever an increase is wished by the Judges, or may be in agitation in the legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in Court suits to which leading members of the Legislature may be parties, the Judges will be in a situation which ought not to suffered, if it can be prevented. The variations in the value of money, may be guarded agst. by taking for a standard wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may be easily so contrived as not to effect persons in office.[10]

Mr. Govr. Morris. The value of money may not only alter but the State of Society may alter. In this event the same quantity of wheat, the same value would not be the same compensation. The Amount of salaries must always be regulated by the manners & the style of living in a Country. The increase of business can not be provided for in the supreme tribunal in the way that has been mentioned. All the business of a certain description whether more or less must be done in that single tribunal — Additional labor alone in the Judges can provide for additional business. Additional compensation therefore ought not to be prohibited.

On the question for striking out "or increase" [11]

Mas. ay. Cont. ay. Pa. ay. Del. ay. Md. ay. Va. no. N. C. no. S. C. ay. Geo. ⟨absent⟩ [Ayes — 6; noes — 2; absent —1.] ⟨The whole clause as amended was then agreed to nem: con:⟩[12]

12. Resol: "that Natl. ⟨Legislature⟩ be empowered to appoint inferior tribunals"

Mr. Butler could see no necessity for such tribunals. The State Tribunals might do the business.

Mr. L. Martin concurred. They will create jealousies &

[10] Stricken out "and [illegible words] plea during the life of Judges."

[11] See Appendix A, CCXV.

[12] Taken from *Journal.*

oppositions in the State tribunals, with the jurisdiction of which they will interfere.

Mr. Ghorum. There are in the States already ⟨federal⟩ Courts with jurisdiction for trial of piracies &c. committed on the Seas. no complaints have been made by the States or the Courts of the States. Inferior tribunals are essential to render the authority of the Natl. Legislature effectual

Mr. Randolph observed that the Courts of the States can not be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the General & local policy at variance.

Mr. Govr. Morris urged also the necessity of such a provision

Mr. Sherman was willing to give the power to the Legislature but wished them to make use of the State Tribunals whenever it could be done. with safety to the general interest.

Col. Mason thought many circumstances might arise not now to be foreseen, which might render such a power absolutely necessary.[13]

On question for agreeing to 12. Resol: ⟨empowering the National Legislature to appoint⟩[14] "inferior tribunals". Agd. to nem. con.

13. Resol: ⟨"Impeachments of national officers" were struck out "on motion for the purpose.⟩[14] "The jurisdiction of Natl. Judiciary". Several criticisms having been made on the definition; it was proposed by Mr ⟨Madison⟩ so to alter as to read thus — "that the jurisdiction shall extend to all cases arising under the Natl. laws: And to such other questions as may involve the Natl. peace & harmony." which was agreed to nem. con.

Resol. 14. ⟨providing for the admission of new States⟩[14] Agreed to nem. con.

Resol. 15. that provision ought to be made for the continuance of Congs. &c. & for the completion of their engagements."

Mr. Govr. Morris thought the assumption of their engage-

[13] See also Appendix A, CLVIII (50).

[14] Taken from *Journal.*

ments might as well be omitted; and that Congs. ought not to be continued till all the States should adopt the reform; since it may become expedient to give effect to it whenever a certain number of States shall adopt it.

Mr. ⟨Madison⟩ the clause can mean nothing more than that provision ought to be made for preventing an interregnum; which must exist in the interval between the adoption of the New Govt. and the commencement of its operation, if the old Govt. should cease on the first of these events.

Mr. Wilson did not entirely approve of the manner in which the clause relating to the engagements of Congs. was expressed; but he thought some provision on the subject would be proper in order to prevent any suspicion that the obligations of the Confederacy might be dissolved along with the Governt. under which they were contracted.

On the question on the 1st part–relating to continuance of Congs."

Mass. no-Cont. no. Pa. no. Del-no. Md. no. Va. ay. N. C. ay. S. C. *ay. Geo. no. [Ayes — 3; noes — 6.]

The 2d. part as to completion of their engagements. disagd. to. nem. con.

Resol. 16. "That a Republican Constitution & its existing laws ought to be guaranteid to each State by the U. States."

Mr. Govr. Morris — thought the Resol: very objectionable. He should be very unwilling that such laws as exist in R. Island should be guaranteid.

Mr. Wilson. The object is merely to secure the States agst. dangerous commotions, insurrections and rebellions.

Col. Mason. If the Genl Govt. should have no right to suppress rebellions agst. particular States, it will be in a bad situation indeed. As Rebellions agst. itself originate in & agst. individual States, it must remain a passive Spectator of its own subversion.

Mr. Randolph. The Resoln. has 2. Objects. 1. to secure Republican Government. 2. to suppress domestic commotions. He urged the necessity of both these provisions.

Mr. ⟨Madison⟩ moved to substitute "that the Constitutional

* ⟨In the printed Journal, S. Carolina — no.⟩

authority of the States shall be guarantied to them respectively agst. domestic as well as foreign violence."

Docr. McClurg seconded the motion.

Mr. Houston was afraid of perpetuating the existing Constitutions of the States. That of Georgia was a very bad one, and he hoped would be revised & amended. It may also be difficult for the Genl. Govt. to decide between contending parties each of which claim the sanction of the Constitution.

Mr. L. Martin was for leaving the States to suppress Rebellions themselves.

Mr. Ghorum thought it strange that a Rebellion should be known to exist in the Empire, and the Genl. Govt. shd. be restrained from interposing to subdue it, At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole & the Genl. Govt. be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State; as long as they confine their disputes to words they will be harmless to the Genl. Govt. & to each other. If they appeal to the sword it will then be necessary for the Genl. Govt., however difficult it may be to decide on the merits of their contest, to interpose & put an end to it.

Mr. Carrol. Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a casus federis at present. And no room ought to be left for such a doubt hereafter.

Mr. Randolph moved to add as amendt. to the motion; "and that no State be at liberty to form any other than a Republican Govt." Mr. ⟨Madison⟩ seconded the motion

Mr. Rutlidge thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congs. had the authority if they had the means to co-operate with any State in subduing a rebellion. It was & would be involved in the nature of the thing.

Mr. Wilson moved as a better expression of the idea, "that a Republican ⟨form of Governmt. shall⟩ be guarantied

to each State & that each State shall be protected agst. foreign & domestic violence.[15]

This seeming to be well received, Mr. ⟨Madison⟩ & Mr. Randolph withdrew their propositions & on the Question for agreeing to Mr. Wilson's motion it passed nem. con.

Adjd.[16]

[15] Revised from *Journal.*

[16] See Appendix A, LXV.