

AMERICAN AND Commercial Daily Advertiser

WEDNESDAY, OCTOBER 10, 1864.

John M'Kim, junr. No. 108, Market-street.

FALL GOODS Consisting of Rose, striped and point Blankets; superfine, second and coarse Cloths; Swandowns, Tullies, etc.

Calhoun & Laramot, No. 9, Baltimore-street. Have received by the Diana, and Fair from Liverpool, a complete assortment of Fall and Winter Goods.

Fresh Drugs & Medicine. M. Jambu Having purchased the concern of M. Jambu & Co. Druggists, will in future carry it on, for his own account, and offers for sale a general assortment of fresh Drugs and Medicines.

Just received, By the brig Sopbia, from Tinea, and for sale by the subscribers, Platillas, Clocks, Holland-Brittannias, Bagging, Red Turkey Cotton, Yarn, Veives, White and Marbled Castle Soap, Zante Currants, Iron Wire, Sheet Iron, and Pans.

H. A. Wilms, No. 181, Market street. Imported in the ship Juno, Captain P. Jacobs de Jong from Tomingen, 2 boxes Bonten, 1 do. assorted Cotton Stockings, 1 do. do. do. and 1 do. do. do.

Abner Neal, At his Book-store, No. 1, Water-street. HAS received, and ready to be delivered to subscribers the 2d part of the 3d volume of the Encyclopedia.

Payson and Smith HAVE FOR SALE, 100 pipes gin, imported in the ship Friend-ship, capt. Sherman, from Amsterdam.

John M'Kim, junr. No. 106, Market-street. Has just imported in the ship Six Sisters, from Liverpool, Low priced deep blue Cloths, Superfine do. do. do. Deep blue Cassimeres, Scarlet do. do. do. White do. do. do.

25 qr. casks Lisbon Wine 109 boxes Mould Candles 180 half boxes Soap 20 boxes Playing Cards, assorted 2 cases Bandanna Handkerchiefs 200 small Kegs Ginger, and 200 bids Pork

George Maris, Druggist, No. 140, Market street. HAS JUST RECEIVED, 2000 wt. Glauber SALTS 500 wt. Fresh OAT MEAL 200 bottles fresh CASTOR OIL.

Luke Tiernan & Co. Have received by the late arrivals from London, Liverpool and Hull, A CONSIDERABLE PART OF THEIR FALL GOODS,

I. BASSETT, Dentist, HAS Removed from Gay street, No. 25, to No. 24, South-street, where he still continues to clean, file, plumb and regulate Teeth in the most approved manner.

ALEX. McILVAIN INFORMS his friends and customers, that he has been and is still engaged in selecting his Fall and Winter Goods,

TAN-YARD FOR SALE. A Valuable new Tan Yard, fronting on a lane running back of Market street extended, and opposite to Mr. William Booth's, nursery and seedman.

Columbian Inn to Let. WILL be Let, for one or more years, those two large three-story Brick HOUSES, with Cellars under the whole, and very extensive back buildings, now in the tenure of Mr. David Fulton, and known by the name of the Columbian Inn.

John M'Kim, junr. No. 106, Market-street. Has just imported in the ship Six Sisters, from Liverpool, Low priced deep blue Cloths, Superfine do. do. do. Deep blue Cassimeres, Scarlet do. do. do. White do. do. do.

From the NATIONAL INTELLIGENCER. TO THE PEOPLE. THE DEFENCE.—No. IV.

IN reviewing the measures of the administration we shall divide them according to their connection with the great departments of the government. By this course we shall be enabled to make some approaches to system, & to assign responsibility its proper limits.

Before we proceed to this enquiry, it is necessary to take a short view of the distribution of powers under the constitution, which appears in the discussions of the day, to have been entirely lost sight of, and which it is essentially necessary to understand to avoid running into error in the estimates made of Executive conduct.

The Constitution establishes three great departments of power, the legislative, executive and judicial. Congress constitute the first, the President the second, and the judges the last. In the discharge of judicial functions the President does not in the least co-operate, except so far as to nominate the judges.

making good laws was intended by the Constitution to reside in Congress. Was it likewise the intention of that instrument that the chief magistrate should share it with them? To a certain extent, it certainly was; but to what extent is not so certain.—The theory of the British constitution, which appears to have been steadily in the contemplation of the Convention, vests this power, without any qualification, in the King. Yet that magistrate, notwithstanding the monarchical structure of the government, and the little respect paid to public opinion, has waived the exercise of it for more than a century.

It will not be concealed that the constitution requires the approbation of the president to every bill before it becomes a law. "If he APPROVE, he shall sign it." It is absolutely necessary, then, that he should approve before he signs a bill; it follows that if he disapprove a bill he shall not sign it. Of what nature are we then to consider this approbation?

It may be assumed as certain, that the same unqualified approbation is not implied as by the legislative body. The latter are called upon to pursue bills into all their details, to accept or reject different parts, and to introduce whatever modification they think proper.—The former is only permitted to approve or reject, in the whole, without the power of suggesting any amendment. Farther;—before a bill can be submitted to him, it must have received the approbation of both branches of the legislature, the representatives of the people and of the states. When, therefore, a bill, under these circumstances is submitted to him, it is apparent that the case is essentially varied from that which existed during its progress through the legislature. All enquiry into its details arising from the desire of improving them is foreclosed. The opinion of the legislature, virtually that of the people, is declared in its favor. It only remains to the president to decide whether, under these circumstances, the public

good may be promoted or injured by his approbation. The bill may be unwise or imperfect; and yet the public good be subserved by suffering it to go into effect. It may be advisable that the experiment should be tried, and the public profit by their own errors. But paramount to these motives to forbearance, the chief magistrate, if sincerely devoted to republican institutions, will feel the necessity of restraining a disposition to array his own individual opinion in hostility to that of the nation, as convened through their peculiar organs of legislation. He will habitually distrust the suggestions of his own mind when opposed to their will. While, therefore, he will not hesitate to exert the high prerogative, with which he is invested, on great occasions, in which the voice of duty is loud and commanding, and in which the public good unequivocally requires it, he will, with cautious wisdom, forego its exercise on all other occasions.

His legislative responsibility will, therefore, be in a narrow compass; it will depend upon the single consideration whether, under all the circumstances attending the opposition of laws submitted to him, the public welfare will be promoted by his sanction.

This view has been taken for the purpose of separating the legislative from the executive responsibility of the government. It is no less incorrect, than it is common, to consider the executive responsible for all the acts of the government. However this opinion may prevail among the friends of a monarchical system, it is not the less a heresy under ours. As neither the legislative or judicial departments are responsible for the acts of the executive department, so neither is the executive answerable for theirs. The constitution forbids the president except, in the prescribed orbit we have delineated, or by advice given to congress, to interfere with the powers of the legislature. No less is all such interference forbidden by the jealous independence with which every public agent, equally with every private citizen, is in this country accustomed to assert his rights. No doubt can be entertained, that under the joint influence of these considerations, the chief magistrate, who should attempt to usurp the legislative power either by direct or indirect means, would soon learn that the high power of impeachment was not fruitlessly reposed in the legislature. It is not then true, that the president is absolutely responsible for all the legislative acts passed during his administration. The probability is that many of these acts are such as he, in the character of a legislator or a citizen, would never have assented to.

Among these acts are two of the first importance; the judiciary act, and the amendment to the constitution; neither of which were recommended, or even suggested by the president. It will be most regular to consider these measures, in this place, as they do not properly fall under either of the great provisions we have proposed; and as they have little, if any necessary connection with executive duties.

On no occasions, perhaps, has there been a more daring spirit of falsehood, than on these. Both these measures have, without the least reason, been ascribed to the president. Whereas, the truth is, that in his official capacity, he has not, and could not even notice the one; and has no otherwise noticed the other than by giving his assent to a bill previously passed by the two houses. Nor has any proof of his private opinions, on either of these points, transpired to this day. Even that ardor of mind, so apt in the estimation of his enemies to betray him into an imprudent exposure of his opinions, has not furnished occasion for a solitary charge. By a bold assumption, that, inasmuch as his general politics coincided with those of the legislature who devised these measures, he must therefore be considered as friendly to them, and being friendly to them, must be considered as their author, an attempt has been made to make him pre-eminently responsible for all their effects. Thus does party fury, as blind as headstrong, without discrimination seek its victim, and having once marked him, hunt him to destruction, not for any actually committed by him, but for all the sins committed by others.

It is true that the general subject of the judiciary was recommended, in the first message, to the attention of Congress. But in what terms? Not in those of hostility to the new system; but in the following dispassionate language:

"The judiciary system of the United States, says the President, and especially that portion of it recently vested, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several states, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those which were depending when additional courts and judges were brought in to their aid."

No opinion is expressed of the origin or the tendencies of the new judiciary system; information is only given on this, as on a variety of other objects, viz. on the receipts of the several taxes, their application to the various objects designated by law; on the state of the militia; on our foreign relations; on our naval strength; on the establishment

of the mint; on the fortifications, & many other objects. As well might it be inferred that from the mere exhibition of the situation of the various establishments of the government, the President intimated the propriety of their destruction or radical modification, as that, by this information, relative to the judiciary, he intended to inculcate the expediency of repealing the act of 1800.

As his conduct is similar in all these cases, it is but just to ascribe to him a common motive applicable to them all. The constitution expressly commanding him to "give to Congress information on the state of the union"—and "to recommend to their consideration such measures as he shall judge necessary & expedient;" assigns two distinct and separable duties. In relation to the judiciary, he discharged the one unwinterwoven with the other.

In other cases where he judged certain measures necessary and expedient, he did not scruple to declare his opinion, as in the case of the internal taxes, and the retrenchment of numerous sources of expence; thus evincing to every correct mind, capable of deducing a sound inference, that as on points where he expressed an opinion, he wished that opinion to operate as a recommendation; so on points where no opinion was expressed, he deliberately withheld all recommendation.

This measure must then be considered as purely legislative in its origin, as well as nature; and of consequence, Congress, and not the President, are responsible for it.

It is not the object of these remarks to supersede the necessity of its investigation. Viewed as a great question of policy, destined, according to its solution, to have a leading agency in its effects on the public welfare, it becomes the duty of every intelligent citizen to understand it. This shall be our apology, for dwelling on it a few minutes longer.

In reviewing the voluminous discussions to which the repealing law gave rise, we perceive a mixed mass of eloquence, of party animadversion, and of argument. Being the first important debate, after the change of the administration, it was seized as the occasion of contrasting, in all the features of dissimilitude, the two hostile parties. The minority, unaccustomed to submission, resolved to make a desperate effort to regain their powers, and fancied they saw in this measure the means. This accounts for this heterogeneous mixture; for which, however, and her reason may be assigned. No class of men are less competent to the discussion of great questions of policy than lawyers. In the habit of testing all contested points by precedent, they rarely bend the powers of their mind to the development of principle. Looking out of their own minds for every thing, it is not strange that they gradually sink into the vehicles of the ideas of others. Their faith insensibly, like that of the church, in proportion as it distrusts its own powers, clings to that of the saints: It may be added that the routine of their duties, by exhausting their capacity on little things, necessarily disqualifies them from taking these enlarged views which national legislation demands. Of this description of men the minority was principally composed. We are not, therefore, surprised at minds thus feeble, instead of courting the distinction of a strong, plain and concise view of the subject, endeavoring to develop it by a mass of inapplicable precedents, of crude opinions, and fanciful analogies.

Notwithstanding the volumes written upon this subject, it is apprehended that its merits lie in a narrow compass. Two views have been taken of it, and it is capable of no other. Is it constitutional? and is it expedient? Its justification required that it should be both.

Is it constitutional? It is allowed on all hands, that Congress possessed the power of modifying, at pleasure, the existing judiciary laws, so far as they regarded the duties of the judges. The first words of the constitution declare, that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives."—The power is unlimited.

A subsequent section says "Congress shall have power to constitute tribunals inferior to the supreme court." The language is not imperative. They may, or may not, exercise it.

A subsequent section gives the further power, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof."

On this point, therefore, the legislative power is perfect, and commands as well details, as general principles. The tribunals, inferior to the supreme court are the creatures of legislation; as without legislation they could not have existed. The duties of those who fill them are designed by law. They may, by law, be increased, or diminished. To their augmentation there is a constitutional limit; but there is none to their diminution. There is no portion of the power, thus vested by law, that may not by law be divested. If every portion of power may be taken away, then may the whole be taken away, which is but the aggregate of the parts. In such an