twenty seven causes. This paper serves to show not what business is done, but what a mass of business there is undone and which the court is incompetent to dismiss. What a frightful picture has he given of the judicature of his own state. How alarming must it be to foreigners and the citizens of other states who may have causes depending in Virginia—What chance can a citizen of South Carolina, Massachusetts or elsewhere, have of obtaining justice before the lapse of many years, if the history given by the gentleman of Virginia be correct. Should a citizen of another state be a suitor in Virginia it is competent to the citizen of that state to carry the cause into the court of chancery, where a mass of business presents itself to his view, and he finds 2600 causes must be dismissed before his can be heard. Where would the citizens of other states having debts in Virginia attempt their recovery? They would seek justice, Sir, in the federal circuit court, which gentlemen are now endeavouring to annihilate, and not in the state court, which may be more properly called a bed of justice than a court of justice, if justice sleeps there as the gentleman has represented. He also states that state justice is cheaper than national justice. I do not believe this a correct position. I am very willing to enter into a comparison, but must exclude from it, Virginia, because he has shown that justice is denied there, 't being greatly delayed. I did hope, Mr. Chairman, the motion made before I got up for the rising of the committee would have obtained, and should not have commenced offering my observations at so late an hour, had there not been a loud call for the question, but as I am unwilling to abuse the patience of the committee, as I have detained them I find more than two hours, and have not yet offered half of the observations I am desirous of submitting, I will suspend them for the present and continue them to-morrow, or will now proceed as shall be most agreeable to the committee.

On motion of Gen. Smith the committee rose.

THURSDAY, Feb. 25, 1802.

I beg leave, Mr. Chairman, to proffer my thanks to the committee for the indulgence with which they favoured me yesterday, and at the same time to acknowledge the respect excited by the politeness of the honorable gentleman from Maryland who moved for its rising. In the course of the observations I yesterday offered I endeavoured to show that 'twas the intention of the convention to make our judges independent of both executive and legislative power—that this was the acknowledged understanding of all the political writers of that time, the belief of the state conventions, and of the first Congress when they organized our judicial system. If I have been successful in my attempt to establish this position, and if (what I suppose cannot be denied) it be true in jurisprudence that whenever power is given specially to any branch of government, and the tenure by which 'tis to be exercised be specially defined, that no other, by virtue of general powers, can rightfully intrude into the trust—then I presume it must follow of consequence that the present intermeddling of Congress with the judicial department is *a downright usurpation* and that its effect will be the concentration of all power in one body, which is the true definition of *despotism*. As, Sir, every thing depends upon the fair construction which this article in the constitution respecting the judiciary is susceptible of, I must again read it (here Mr. R read several clauses of the constitution,) some of the clauses we see are directory and others prohibitory. Now, Sir, I beg to be informed of what avail are your prohibitory clauses, if there be no power to check Congress and the President from doing *what the constitution has prohibited* them from doing? Those prohibitory regulations were designed for the safety of the state governments, and the liberties of the people. But establish what is this day the ministerial doctrine, and your prohibitory clauses are no longer barriers against the ambition or the will of the national government; it becomes supreme and is without controul. In looking over those prohibitory clauses as the representative of South Carolina, my eye turns with no inconsiderable degree of jealousy and anxiety to the 9th Sec. of the 1st article—which declares, (here Mr. R. read the article respecting migration before the year 1808.)

I know this clause was meant to refer to the importation of Africans only, but there are gentlemen who insist that it has a general reference, and was designed to prohibit our *inhibiting migration* as well from Europe as any where else. It is in the recollection of many gentlemen who now hear me, that in discussing the alien bill, this clause in the constitution was shewn to us, and we were told it was a bar to the measure, and an honorable gentleman from Georgia, then a member of this house, and now a Senator of the United States (and who had been a member of the convention) told us very gravely, he never considered this prohibition as relating to the importation of slaves.—I call upon gentlemen from the southern states to look well to this business. If they persevere in fritting away the honest meaning of the constitution by their forced implications, this clause is not worth a rush—is a mere dead letter; and yet, without having it in the constitution, I know the members from South-Carolina would never have signed this instrument, nor would the convention of that state have adopted it. My friend from Delaware, standing on this vantage ground, says to our opponents, here I throw the gauntlet, and demand of you how you will extricate yourselves from the dilemma in which you will be placed should Congress pass any such acts as are prohibited by the constitution. The judges are sworn to obey the constitution which limits the powers of Congress, and says they shan't pass a bill of attainder or ex post facto law; they shall not tax articles exported from any state, and has other prohibitory regulations. Well, sir, suppose Congress should pass an ex post facto law, or legislate upon any other subject which is prohibited to them, where are the people of this country to seek redress? Who are to decide between the constitution and the acts of Congress? Who are to pronounce on the laws? Who will declare whether they be unconstitutional? Gentlemen have not answered this pertinent enquiry. Sir, they cannot answer it satisfactorily to the people of this country.—It is a source of much gratification to me to know, that my sentiments on this subject, as they relate to the constitutionality of it, are in unison with those of the wisest and best men in my native state. The judicial system had proved so inconvenient there as to render a new organization of it necessary some years past. There were gentlemen in the legislature as anxious to send from the bench some of the judges as gentlemen here are to dismiss our federal judges; personal animosities existed there as well as here, though not to so great an extent; but 'twas the opinion of a large majority of the South-Carolina legislature, that as the constitution declares "the judges shall hold their offices during good behaviour," the office could not be taken from them, the measure was abandoned, and the wise and cautious course pursued, which we wish gentlemen here to follow; the system was not *abolished*, but modified and extended; the judges had new duties assigned to them, and their number was increased, but no judge was deprived of his office. In South-Carolina they have a court of chancery, consisting of three chancellors, and the law establishing it requires the presence of two judges to hold a court. During a recess of the legislature one of the chancellors resigned and another died. The functions of this court of consequence became suspended. All the business pending in it was put to sleep.—The public prints were immediately filled with projects for destroying the court which had been denounced as unnecessary. As the citizens of the western part of the state had not participated much in the benefits derived from the court of chancery, many of the most influential of them deemed it of little utility. The opposition assumed so formidable an aspect as to determine the governor (who exercises the power of appointing judges during the recess of the legislature) not to make any appointment, believing the court would be abolished. When the legislature met an effort was made to abolish the court; but a large majority, giving to the constitution the honest meaning of its framers, considered the judges as having a life estate in their offices, provided they behaved well; and the vacancies on the chancery bench were immediately supplied.

That the national judicial establishment is comparatively more costly than are the state judiciaries, is far from being the case, I believe. It may be so in Virginia, where they have one chancellor with little salary and much business, but it is not so in other states. In South-Carolina, we have six judges at common law, at six hundred pounds sterling a year each, three chancellors at 500l. each, which, together with the salaries and fees of office of the attorney general, master in chancery, solicitors, clerks and sheriffs, amount to *six thousand two hundred pounds sterling*. And yet, sir, justice I believe is no where cheaper than in South-Carolina. By the judicious structure of her judiciary system, the streams of justice are diffused over the whole state, and every man is completely protected in his life, liberty, property and reputation. The courts are almost constantly in session. The judges are gentlemen of high talents, integrity and strict impartiality, and every one who goes into the court of that state, not only obtains ample justice, but obtains it promptly—this, sir, is what I call cheap justice. The gentleman from Virginia has seen fit to notice the law which laid a direct tax, and said it was imposed when we knew the administration of this government was soon to pass from those then in power—and was resorted to as a mean of extending executive patronage, and to make provision for the friends of an expiring executive. Can the honorable gentleman be serious in all this? Does he remember when we passed this law? It was in 1798, when, I will be bold to say, the administration enjoyed the highest degree of popular favor. In no popular government perhaps was an administration more popular than was the former administration at the time this tax was laid. Sir, this law had no connexion with personal or party considerations—Like all the measures of the past administration, 'twas designed to promote the public good. Had we, like our opponents, consulted the caprices and prejudices, and not the real interests of our constituents; had we been merely attentive to popular favor, we should not have passed this law: at the crisis 'twas passed the public good demanded it, and we were regardless of every other consideration. A nation that had lighted up the flame of war in every corner of Europe, that was prostrating the liberties of every free people, and subverting the government of every country, saw fit to menace us. Told us for the preservation of our peace and independence we must pay tribute. This degrading measure was scornfully rejected by our administration—they said if we must fall we will fall after a struggle, and our citizens prepared themselves for war with alacrity, and regarded every sacrifice as inconsiderable compared with the great sacrifice of independence. With this prospect of immediate war, we should have acted not only unwisely but treacherously, had we trusted for public income to the revenue derived from trade—had our trade been destroyed, there would have been a complete destitution of revenue, and to place the means of national defence as far beyond the reach of contingency as possible we imposed the direct tax. We knew this law would prove arms and amunition to those who were inventing all the falsehood credulity could swallow, and who were busily employed in misrepresenting and calumniating the conduct of the government. We did suppose they might make this law their artillery to batter down the administration—but we were not deterred from our honest purposes by this expectation—a change of men when compared with a change of government weighed with our minds as dust does in the balance—our measures did not aim at popularity, and we were just to our country, regardless of any party consequences. At this early period, says the gentleman, it was to have been calculated what would be the result of the Presidential election. Sir, those must have been gifted with second sight, they must have been prophets indeed, who could have then foretold how the election would issue—the result was as doubtful as any event could be, 'till within a few days of the election—it is recollected that every thing depended upon the South-Carolina vote—all the gentlemen in nomination went there with an equal number of votes—the anxiety displayed at the time by the gentlemen here from Virginia proved they then deemed it very doubtful how the election would terminate. Indeed, sir, nothing could have been more doubtful, and I believe it is fully known to the ministerial side of this house that it depended upon one of the gentlemen nominated who had not the Carolina votes to have obtained them and produced to the election a different result—but his correct mind was obnoxious to any intrigue; 'twould not descend to any compromise, and this honorable man knew that no station could be honorable to him unless honorably obtained. In the very wide range which the gentleman from Virginia has permitted himself to take, he has been pleased to notice the conduct of the late congress when they were occupied in the election of a President of the United States, and he has said we were then 'pushing forward to immolate the constitution of our country.' What does all this mean sir? What sir! Because we, of the two gentlemen who had from the electors an equal number of votes, did not prefer him *who was from Virginia*, are we to be charged with an immolation of our constitution? Sir, the gentleman from Virginia was not a member of the last congress, and lest he should not know the history of the transaction to which he alludes, I will give it.

The electors chosen in the different states gave the same number of votes for Thomas Jefferson and Aaron Burr; there being a tie it devolved by the direction of the constitution upon the House of representatives to make an election. We sincerely believed that Mr. Burr was the best and the most fit man to be president, and we accordingly voted for him; we continued to vote for him six and thirty times; we were anxious to have him elected and we deprecated the election of the other candidate, but when we found gentlemen were determined not to have the candidate from New-York, and said they would have him from Virginia, President, or they would have no President, we, who venerated our constitution too sacredly to do any thing which should hazard the loss of it, yielded. We believed Mr. Jefferson radically and on principle hostile to the national constitution—we believed some of the most important features in it obnoxious to him—we believed him desirous of destroying the independence of our judiciary—we believed him opposed to the senate as now organized, and we believed him destitute of that degree of energy necessary to maintain the general liberty of the people of the United States. With these impressions deep upon our minds, we should have been traitors to our country had we voted for the gentleman from Virginia, as long as there was any prospect left to us of elevating the gentleman from New-York; but when we found the object of our preference was so obnoxious to gentlemen on the other side, that they would hazard the having of no president rather than have him, we ceased our opposition. And this is what the honorable gentleman from Virginia has been pleased to call 'pushing forward to immolate the constitution.' I regret, Mr. Chairman, being compelled to mention names and say any thing of a personal nature, but I am obliged to do it in pursuing the gentleman from Virginia, who in his extraordinary course has not only mentioned the names of gentlemen but ascribed unworthy motives for their conduct. He has said Mr. Read & Mr. Green voted for the law under which they got appointments. Although I have abundant proof that neither of these gentlemen solicited their offices, that they were given spontaneously, and without being expected, yet I will merely answer this observation by mentioning, what is very generally known to all gentlemen who have been of late in the councils of the nation—it is, that it was the invariable practice of the former executive to appoint gentlemen to office without previously advising with them. It is well known that under the law gentlemen are now endeavoring to repeal, Mr. Jay was appointed chief justice, and about the same time several gentlemen in this house were appointed to some of the most honorable stations under our government—the executive's intention it is well known had not been previously notified to them—it is known they all declined accepting the places proffered to them. Permit me, sir, to give a brief history of the case of Mr. Greene, on which the gentleman from Virginia has dwelt so much.

[Mr. RUTLEDGE's speech to be concluded in our next.]

HOUSE OF REPRESENTATIVES, U. S.

THURSDAY March 18, 1802.

INTERNAL TAXES.

Mr. GRISWOLD—Concluded.

Believing it unsafe to abandon any of these taxes, I shall vote against repealing all of them. I have of consequence, no idea of giving up the tax either upon stamps or stills. I believe all to be necessary, as necessary for the support of public credit, as for the honor and safety of the nation.

We have no peculiar interest in retaining these taxes—We share not the loaves and fishes. But we are deeply interested in the support of public credit, in the safety and honor of the nation; and let money go where it may, I will always vote for money enough to support public credit, and to maintain the honor and safety of the nation.

I believe in this project more is intended than is expressed. I know, whenever a deficiency shall occur, where it will fall. I know that it will fall on our naval establishment. Look back to the sentiments and conduct of those, who once held seats on this floor, and who now hold high offices under the executive, and shew me when they voted a cent for a navy. Did they not invariably say, let commerce shift for itself? Yes, I have heard these declarations, and they account for these measures to starve the navy. It is therefore I feel alarmed, knowing full well where the deficiency is to fall.

But it is said, the collection of the internal taxes is attended with great expence, and therefore they ought to be given up; that they increase executive patronage, and therefore ought to be surrendered. I deny that their collection costs more than that of duties on imports. It is stated by the treasury officers, that the expence on imposts is only 5 per cent. But how often have you been told, that your merchants are only your collectors. Gentlemen have never heard me say that all the duties fall on the merchant, I know the contrary; and I know that to protect the fair trader from injury, all you have to do is not to make them so high as to produce smuggling, or so prompt in their payment as to prevent the merchant from collecting them from the consumer before he pays them into your treasury; but the merchant sells to the retailer, whom he charges 20 or 25 per cent. on the duties paid by him. Before the articles sold get into the hands of the retailer, they come charged with an advance of 25 per cent. The retailer sells to the consumer with his 33 per cent. added. I did not say they stood charged with 100 per cent. but with 40 per cent. at least. All those who make these charges are collectors; so that the fact is, that instead of costing 5 per cent. as asserted, they cost to the man who pays the tax, the consumer, more than 40 per cent.

Let us, in this view of comparative expence, turn to the other branch of the subject.

1st. As to *carriages*.

The Secretary of the Treasury informed us at the beginning of the session, that the internal revenues, taken together, cost in collection 19 per cent.—Now that officer acknowledges that they do not cost more than 15 per cent.—When an officer states one thing to day, and another thing thing to-morrow, I will submit whether it is not better to make our own calculations. It is easy to prove that in Massachusetts the collection of the internal taxes does not exceed 8 per cent. and it may be made equally low elsewhere. Therefore you may reduce this sum within 10 per cent. Indeed, if you carry these taxes as far as you ought to do to meet and equalize the duties on imported goods, you may bring the collection down to 5 per cent. Carry the duty on distilled spirits as high as on imported spirits, and my life for it, the expence will not be greater.

But from another view, it will appear that the expence paid by the consumers of the objects of internal revenue, is not so high as on imported articles.—For instance, distilled spirits are either retailed by the distiller or sold directly to the retailers, and the distiller charges ordinarily no advance upon the tax, but gets his profit by being paid for the labour of distillation; this makes a difference of 20 per cent. In other articles, in licences to retailers, there are no additional charges, no 20 per cent. Sales at auction are in the same situation; with respect to carriages there is still a greater difference. The consumer pays nothing but the tax, without paying any commission or profit. Stamps are precisely so situated in most parts of the country.

The calculation, therefore, is fallacious, that makes the expence of collecting the internal revenue greater than that on imported articles; as with regard to the latter, the consumer in paying your duties, not only pays the collection, but also pays the merchant and retailer. So that these internal taxes are collected with the least expence of any. For what matters it to the consumer, whether he pays 20 per cent. to the merchant or to the retailer, or to your officer? He actually pays it in either case.

Now this being clear, and also that the taxes may be so modified as to be collected still lower; particularly that on carriages (which may be collected by the deputy postmaster, who may receive the tax of persons living at a distance through the mail) I ask why give up the internal taxes in preference to those on imported articles? The gentleman from Virginia (Mr. Randolph) tells us, that the system of internal taxes is repugnant to the theory of a free government; that it requires a host of officers to collect them. But what is the danger from this source? Is it not well known that the tax gatherer is always odious, and that instead of having influence to subvert the government, he ceases, as soon as he becomes an officer, to have that influence which he would otherwise have possessed. The officers too are very few, only one supervisor and a few collectors in each state. The gentleman must think very contemptuously of the people, to suppose that they can be corrupted by a few officers with inconsiderable salaries. For these reasons, I consider this objection an argument against every thing; as applicable to the army, the navy, and every other important object that can be named. It is an objection which may do to talk about, but which has no solidity in it.

I have only one further observation to make; and that is, that if we can part with any taxes, though my opinion is, that if we sincerely mean to support the credit of the government we cannot part with any; but if we can, we ought to give up the tax upon some imported articles. Coffee is taxed 5 cents a pound; the present price, including the impost, is not more than 20 cents; the duty is more than 50 per cent. on the cost abroad. This enormous duty is a great temptation to smuggling. It can be easily done. Let gentlemen look to the sea-coast. The temptation to gain 50 per cent. is immense; and I am apprehensive the practice may be gone into, unless you lessen the inducement? and in that event your revenue is gone; for the payment of it depends upon the honor of your merchants. Such is your sea-coast, that the vigilance of a thousand officers could not resist the practice, if the disposition were not wanting. If this duty on coffee shall produce smuggling in the merchant who imports it, his neighbour, who imports sugar, will say, my neighbour is growing rich by this practice; I have the same right with him; and the practice will catch like wild-fire. We ought therefore to put these excessive duties down.

Besides, as to sugar, that, in my opinion, is a necessary of life. The duty is 50 per cent. on its first cost. It must therefore be oppressive; and if we can dispense with any of the impositions, it ought to be with those which fall upon the necessaries of life, which are consumed by the poor.

For these reasons I am for retaining the carriage tax, for retaining all the internal taxes, and for modifying and improving them. I believe that in this way the expence of collection may be greatly lessened, and such a modification of the taxes take place as shall produce an equal pressure of the public burthens upon the whole community.

[Debate to be continued.]