and though they are undoubtedly responsible to the States, yet, from their extended term of service, the effect of that responsibility, during the whole period of that term, must very much depend upon their own impressions of its obligatory force. When a body, thus constituted, expresses, before hand, its opinion in a particular case, and thus indirectly invites a prosecution, it not only assumes a power intended for wise reasons to be confined to others, but it shields the latter from that exclusive and personal responsibility under which it was intended to be exercised, and reverses the whole scheme of this part of the constitution.

Such would be some of the objections to this procedure, even if it were admitted that there is just ground for imputing to the President the offences charged in the resolution. But if, on the other hand, the House of Representatives shall be of opinion that there is no reason for charging them upon him, and shall therefore deem it improper to prefer an impeachment, then will the violation of privilege as it respects that House, of justice as it regards the President, and of the constitution, as it relates to both, be only the more conspicuous and impressive.

The constitutional mode of procedure on an impeachment has not only been wholly disregarded, but some of the first principles of natural right and enlightened jurisprudence, have been violated in the very form of the resolution. It carefully abstains from averring in *which* of "the late proceedings in relation to the "public revenue, the President has assum-"ed upon himself authority and power not "conferred by the constitution and laws." It carefully abstains from specifying *what laws or what parts* of the constitution have been violated. Why was not the certainty of the offence—"the nature and cause of the accusation"—set out in the manner required in the constitution, before even the humblest individual, for the smallest crime can be exposed to condemnation? Such a specification was due to the accused, that he might direct his defence to the real points of attack; to the People, that they might clearly understand in what particulars their institutions had been violated; and to the truth and certainty of our public annals. As the record now stands, whilst the resolution plainly charges upon the President at least one act of usurpation in "the late Executive proceedings in relation to the public revenue," and is so framed that those Senators who believed that one such act, and only one, had been committed, could assent to it; its language is yet broad enough to include several such acts; and so it may have been regarded by some of those who voted for it. But though the accusation is thus comprehensive in the censure it implies, there is no such certainty of time; place, or circumstance, as to exhibit the particular conclusion of fact or law which induced any one Senator to vote for it. And it may well have happened, that whilst one Senator believed that some particular act embraced in the resolution, was an arbitrary and unconstitutional assumption of power, others of the majority may have deemed that very act both constitutional and expedient, or if not expedient, yet still within the pale of the constitution. And thus a majority of the Senators may have been enatled to concur, in a vague and undefined accusation, that the President, in the course of "the late Executive proceedings in relation to the public revenue," had violated the constitution and laws; whilst, if a separate vote had been taken in respect to each particular act, included within the general terms, the accusers of the President might, on any such vote, have been found in the minority.

Still further to exemplify this feature of the proceeding, it is important to be remarked, that the resolution, as originally offered to the Senate, specified, with adequate precision certain acts of the President, which it denounced as a violation of the constitution and laws; and that it was not until the very close of the debate, and when perhaps, it was apprehended that a majority might not sustain the specific accusation continued in it, that the resolution was so modified as to assume its present form. A more striking illustration of the soundness and necessity of the rules which forbid vague and indefinite generalities, and require a reasonable certainty in all judicial allegations; and a more glaring instance of the violation of those rules has seldom been exhibited.

In this view of the resolution it must certainly be regarded, not as a vindication of any particular provision of the law or the constitution, but simply as an official rebuke or condemnatory sentence, too general and indefinite to be easily repelled, but yet sufficiently precise to bring into discredit the conduct and motives of the Executive. But whatever it may have been intended to accomplish, it is obvious that the vague, general, and abstract form of the resolution, is in perfect keeping with those other departures from first principles and settled improvements in jurisprudence, so properly the boast of free countries in modern times. And it is not too much to say, of the whole of these proceedings, that if they shall be approved and sustained by an intelligent people, then will that great contest with arbitrary power, which had established in statutes, in bils of rights, in sacred charters, and in constitutions of Government, the right of every citizen, to a notice before trial, to a hearing before conviction, and to an impartial tribunal for deciding on the charge, have been waged in vain.

If the resolution had been left in its original form, it is not to be presumed that it could ever have received the assent of a majority of the Senate, for the acts therein specified as violations of the constitution and laws were clearly within the limits of the Executive authority. They are the "dismissing the late Secretary of the "Treasury, because he would not contrary "to his sense of its own duty, remove the "money of the United States in deposite "with the Bank of the United States and its "branches, in conformity with the Presi-"dent's opinion; and appointing his suc-"sor to effect such removal, which has been "done." But as no other specification has been substituted, and as these were the "Executive proceedings in relation to the public revenue," principally referred to in the course of the discussion, they will doubtless be generally regarded as the acts intended to be denounced as "an as-"sumption of authority and power not "conferred by the constitution or laws, but "in derogation of both." It is therefore due to the occasion that a condensed summary of the views of the Executive in respect to them, should be here exhibited

By the constitution, "the Executive power is vested in a President of the United States." Among the duties imposed upon him, and which he is sworn to perform, is that of "taking care that the laws be faithfully executed." Being thus made responsible for the entire action of the Executive Department, it was but reasonable that the power of appointing, overseeing, and controlling those who execute the law—a power in its nature executive—should remain in his hands. It is, therefore, not only his right, but the constitution makes it his duty, to nominate, and by and with the advice and consent of the Senate appoint," all "officers of the United States whose appointments are not in the constitution otherwise provided for," with a proviso that the appointment of inferior officers may be vested in the President alone, in the Courts of justice, or in the Heads of Departments.

The Executive power vested in the Senate, is neither that of "nominating" "nor appointing." It is merely a check upon the Executive power of appointment. If individuals are porposed for appointment by the President, by them deemed incompetent or unworthy, they may withhold their consent, and the appointment cannot be made. They check the action of the Executive, but cannot, in relation to those very subjects, act themselves, nor direct him. Selections are still made by the President, and the negative given to the Senate, without diminishing his responsibility, furnishes an additional guarantee to the country that the subordinate executive, as well as the judicial offices, shall be filled with worthy and competent men

The whole Executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence that he should have a right to employ agents of his own choice to aid him in the performance of his duties, and to discharge them when he is no longer willing to be responsible for their acts. In strict accordance with this principle, the power of removal, which, like that of appointment, is an original Executive power, is left unchecked by the Constitution in relation to all executive officers, for whose conduct the President is responsible, while it is taken from him in relation to all judicial officers, for whose acts he is not responsible.

In the government from which many of the fundamental principles of our system are derived, the Head of the Executive Department originally had the power to appoint and remove at will all officers, Executive and Judicial. It was to take the Judges out of this general power of removal, and thus make them independent of the Executive, that the tenure of their offices was changed to good behaviour.—Nor is it conceivable why they are placed, in our constitution, upon a tenure different from that of all other officers appointed by the Executive, unless it be for the same purpose.

But if there were any just ground for doubt on the face of the constitution, whether all executive officers are removable at the will of the President, it is obviated by the contemporaneous construction of the instrument, and the uniform practice under it.

The power of removal was a topic of solemn debate in the Congress of 1789, while organizing the administrative departments of the Government, and it was finally decided, that the President derived from the constitution, the power of removal, so far as it regards that department for whose acts he is responsible. Although the debate covered the whole ground, embracing the Treasury as well as all the other Executive Departments, it arose on a motion to strike out of the bill to establish a Department of Foreign Affairs, since called the Department of State, a clause declaring the Secretary "to be removable from office by the President of the United States." After that motion had been decided in the negative, it was perceived that these words did not convey the sense of the House of Representatives, in relation to the true source of the power of removal. With the avowed object of preventing any future inference, that this power was exercised by the President in virtue of a grant from Congress, when in fact that body considered it as derived from the constitution, the words which had been the subject of debate were struck out, and in lieu thereof a clause was inserted in a provision concerning the Chief Clerk of the Department, which declared that "whenever the said principal officer shall be removed from office "by the President of the United States, or "in any other case of vacancy," the Chief Clerk should, during such vacancy, have charge of the papers of the office. This change having been made for the express purpose of declaring the sense of Congress, that the President derived the power of removal from the constitution, the act as it passed has always been considered as a full expression of the sense of the Legislature on this important part of the American constitution.

Here then we have the concurrent authority of President Washington, of the Senate, and the House of Representatives, numbers of whom had taken an active part in the convention which framed the constitution, and in the State conventions, which adopted it, that the President derived an unqualified power of removal from that instrument itself, which is "beyond the reach of Legislative authority." Upon this principle the Government has now been steadily administered for about forty-five years, during which there have been numerous removals made by the President or by his direction, embracing every grade of Executive officers, from the Heads of Departments to the messengers of Bureaus.

The Treasury Department, in the discussions of 1789, was considered on the same footing as the other Executive Departments, and in the act establishing it, the precise words were incorporated indicative of the sense of Congress, that the President derive his power to remove the Secretary from the constitution, which appears in the act establishing the Department of Foreign Affairs An assistant Secretary of the Treasury was created, and it was provided that he should take charge of the Books and papers of the Department, "whenever the Secretary shall be removed from office by the President of the United States." The Secretary of the Treasury being appointed by the President, and being considered as constitutionally removable by him, it appears never to have occurred to any one in the Congress of 1789, or since, until very recently, that he was other than an Executive officer, the mere instrument of the Chief Magistrate in the execution of the laws, subject, like all other Heads of Departments, to his supervision and control. No such idea as an officer of the Congress can be found in the constitution, or appears to have suggested itself to those who organized the government. There are officers of each House, the appointment of which is authorised by the constitution, but all officers referred to in that instrument, as coming within the appointing power of the President, whether established thereby or created by law, are "officers of the United States." No joint power of appointment is given to the two Houses of Congress, nor is there any accountability to them as one body, but as soon as any office is created by law, of whatever name or character, the appointment of the person or persons to fill it, devolves by the constitution upon the President, with the advice and consent of the Senate, unless it be an inferior office, and the appointment be vested by the law itself "in the President alone, in the courts of law, or in the Heads of Departments."

But at the time of the organization of the Treasury Department, an incident occurred which distinctly evinces the unanimous concurrence of the first Congress in the principle that the Treasury department is wholly Executive in its character and responsibilities. A motion was made to strike out the provision of the bill making it the duty of the Secretary "to digest and report plans for the improvement and management of the revenue, and for the support of the public credit," on the ground that it would give the Executive Department of the government too much influence and power in Congress. The motion was not opposed on the ground that the Secretary was the officer of Congress and responsible to that body, which would have been conclusive, if admitted, but on other grounds which conceded his Executive character throughout. The whole discussion evinces an unanimous concurrence in the principle, that the Secretary of the Treasury is wholly an Executive officer, and the struggle of the minority was to restrict his power as such. From that time down to the present, the Secretary of the Treasury, the Treasurer, Register, Comptrollers, Auditors, and Clerks, who fill the offices of that Department, have, in the practice of the government, been considered and treated as on the same footing with corresponding grades of officers in all the other Executive Departments.

The custody of the public property, under such regulations as may be prescribed by legislative authority, has always been considered an appropriate function of the Executive Department in this and all other governments. In accordance with this principle, every species of property belonging to the United States, (excepting that which is in the use of the several coordinate Departments of the government, as means to aid them in performing their appropriate functions,) is in charge of officers appointed by the President, whether it be lands, or buildings, or merchandise, or provisions, or clothing, or arms and munitions of war. The superintendents and keepers of the whole are appointed by the President, responsible to him, and removable at his will.

Public money is but a species of public property. It cannot be raised by taxation or customs, nor brought into the treasury in any other way, except by law; but whenever or howsoever obtained, its custody always has been, and always must be, unless the constitution be changed, intrusted to the Executive Department. No officer can be created by Congress for the purpose of taking charge of it, whose appointment would not, by the constitution, at once devolve on the President, and who would not be responsible to him for the faithful performance of his duties. The legislative power may undoubtedly bind him and the President, by any laws they may think proper to enact; they may prescribe in what place particular portions of the public money shall be kept, and for what reason it shall be removed, as they may direct that supplies for the army or navy shall be kept in particular stores; and it will be the duty of the President to see that the law is faithfully executed—yet will the custody remain in the Executive department of the government.—Were the Congress to assume, with or without a legislative act the power of appointing officers independently of the President, to take the charge and custody of the public property, contained in the military and naval arsenals, magazines and storehouses, it is believed that such an act would be regarded by all as a palpable usurpation of Executive power, subversive of the form as well as the fundamental principles of our government.—But where is the difference in principle, whether the public property be in the form of arms, munitions of war, and supplies, or in gold and silver, or bank notes? None can be perceived—none is believed to exist. Congress cannot, therefore, take out of the hands of the Executive department, the custody of the public property or money, without an assumption of Executive power, and a subversion of the first principles of the constitution.

[CONCLUDED NEXT WEEK.]

STATE OF INDIANA, } *Posey County.* }

POSEY CIRCUIT COURT, MARCH TERM, 1834.

James P. Drake,

vs.

John B. Weir, Adm'r. and others, the unknown heirs of William Snow, dec'd.

IN CHANCERY.

AND now here come the complainant, and it now here appearing to the satisfaction of the court here, on affidavit filed, that the above defendants, except the said John B. Weir, are not residents of the state of Indiana, on motion of the complainant, *It is Ordered*, that they appear here on or before the first day of the next term of this court, and answer the said complainant's bill of complaint, or the matters and things therein contained will be taken as confessed as against them, and decreed in their absence accordingly.—And it is ordered that notice of the pendency of this bill of complaint be given by publication of this order four weeks successively in the Western Sun, and that this cause be continued until the next term of this court.

Test,

WILLIAM E. STEWART, C.P.C.C.

April 26, 1834.—14–1t

Administrators' Notice.

LETTERS of Administration, on the estate of Elias Myars, (late of Daviess county, Ind.) deceased, have been granted to the undersigned by the Daviess Probate court. Persons indebted to said estate will please make immediate payment; and those who have claims against the same are requested to file them duly authenticated, and within the time prescribed by law. Said estate is solvent.

DANIEL MYARS,
FREDERICK MYARS.

April 26, 1834.—14–3t

STATE OF INDIANA, } *Posey County.* }

POSEY PROBATE COURT, *February Term*, 1834.

William E. Stewart, Adm'r. and Mary Ann Stewart, Adm'x. of Lionel J. Larkin, deceased,

vs.

The creditors of the said Lionel J. Larkin.

ON COMPLAINT OF INSOLVENCY.

THE said William E. Stewart and Mary Ann Stewart having filed their memorial in this court shewing the condition of the said estate, and complaining that the property both real and personal is insufficient to pay the debts and demands outstanding against it: *It is therefore Ordered*, that the filing and pendency of the said complaint be made known to the creditors of the said Lionel J. Larkin, deceased, by a publication of this order six weeks successively in the Western Sun and General Advertiser, a weekly newspaper published in Vincennes, Knox county, Indiana; and that they be informed that unless they notify the said administrators of the existence and extent of their claims by filing the same, or a statement of the nature, date & description of the contract upon which the same may be founded in the clerk's office of this court previous to the final distribution of the assets of the estate of the said Lionel J. Larkin, dec'd. such claims will be postponed in favor of the claims of more diligent creditors. By the court. Test,

W. E. STEWART, *Clerk*

March 27, 1834.—11–6t