

WEDNESDAY, JUNE 13, 1787.

JOURNAL

Wednesday June 13. 1787.

The Order of the day being read

The House resolved itself into a Committee of the whole House to consider of the state of the american Union.

Mr President left the Chair

Mr Gorham took the Chair of the Committee

Mr President resumed the Chair

Mr Gorham reported from the Committee that the Committee having considered and gone through the propostions offered to the House by the honorable Mr Randolph, and to them referred, were prepared to report thereon — and had directed him to submit the report to the consideration of the House.

The report was then delivered in at the Secretary's table, and having been once read

It was moved by Mr. Randolph seconded by Mr Martin to postpone the farther consideration of the report till to-morrow

and on the question to postpone  
it passed in the affirmative.

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

In a Committee of the whole House

Wednesday June 13. 1787.

Mr Gorham in the Chair

It was moved by Mr Randolph seconded by Mr Madison to adopt the following resolution respecting the national Judiciary namely

“That the jurisdiction of the national Judiciary shall

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“extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony”

passed in the affirmative

It was moved by Mr Pinckney seconded by Mr Sherman to insert after the words “One supreme Tribunal” “the Judges of which to be appointed by the second branch of the national Legislature.”<sup>1</sup>

passed in the affirmative.

It was moved by Mr Gerry seconded by Mr Pinckney<sup>2</sup> to add the following words to the fifth resolution adopted by the Committee namely

“excepting money bills, which shall originate in the first branch of the national Legislature”

passed in the negative [Ayes — 3; noes — 8.]<sup>3</sup>

It was then moved and seconded that the Committee do rise and report their proceedings to the House.

The Committee then rose

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
[61]	no	no	no	aye	no	no	aye	no	aye	no	no	no	no	That money bills should only originate in the first branch	3	8	

[A]

State of the resolutions submitted to the consideration of the House by the honorable Mr Randolph, as agreed to in a Committee of the whole House.<sup>4</sup>

RESOLVED that it is the opinion of this Committee

<sup>1</sup> The Journal is probably wrong in its statement of this motion, see below note 12.

<sup>2</sup> It hardly seems as if Pinckney could have seconded this motion if the sentiments ascribed to him by Madison are correct.   <sup>3</sup> Vote 61, Detail of Ayes and Noes.

<sup>4</sup> This document was among the papers of the Convention turned over to the

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that a national government ought to be established, consisting of  
a Supreme Legislative, Judiciary, and Executive.

Resolved that the National Legislature ought to consist of two branches.

Resolved that the members of the first branch of the National Legislature ought to be elected by the people of the several States.

Resolved<sup>5</sup> that the members of the second branch of the national Legislature ought to be chosen by the individual Legislatures.

Resolved that each branch ought to possess the right of originating acts.

Resolved that the national Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the confederation; and moreover.  
to legislate in all cases to which the separate States are incompetent: or in which the harmony of the United States may be interrupted by the exercise of individual legislation.  
to negative all laws passed by the several States contravening, in the opinion of the national legislature, the articles of union; or any treaties subsisting under the authority of the Union

Resolved that a national Executive be instituted to consist of

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Secretary of State by President Washington in 1796. Its heading is misleading as it represents the work of the Convention only to the beginning of June 12, when, as Yates said, "it was found necessary to take up such parts of the preceeding resolves as had been postponed, or not agreed to." The document has a peculiar value in that it gives, with a few exceptions noted, the resolutions in the order of their adoption.

<sup>5</sup> If put in the order of its adoption this paragraph should come just before the paragraph on the "suffrage in the first branch".

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a single person.<sup>6</sup>

with power

to carry into execution the national laws;  
to appoint to offices in cases not otherwise provided for.

To be chosen by the national Legislature  
for the term of seven years.

to be ineligible a second time; and; to be removable on impeachment and conviction of mal-practice, or neglect of duty.

Resolved that the national Executive shall have a right to negative any legislative act; which shall not be afterwards passed unless by two third parts of each branch of the national Legislature.

Resolved that a national Judiciary be established to consist of

One supreme tribunal

To hold their Offices during good behaviour; and to receive punctually, at stated times, a fixed compensation for their services; in which no encrease or diminution shall be made, so as to affect the persons actually in Office at the time of such encrease or diminution.

Resolved<sup>7</sup> that the national Legislature be empowered to appoint inferior Tribunals.

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.

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<sup>6</sup> That the executive should "consist of a single person" was not adopted until later, and should come after the impeachment of the executive.

<sup>7</sup> In order of adoption should come after the second paragraph below, on the continuance of Congress.

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Resolved that provision ought to be made for the continuance of a Congress, and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted; and for the completion of all their engagements.

Resolved that the right of suffrage in the first branch of the national Legislature ought not to be according to the rule established in the articles of confederation; but according to some equitable ratio of representation — namely in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.

Resolved that the right of suffrage in the second branch of the national Legislature ought to be according to the rule established for the first

Resolved that a republican constitution, and it's existing laws, ought to be guaranteed to each State by the United-States.

Resolved that provision ought to be made for the amendment of the articles of union whensoever it shall seem necessary.

Resolved that the Legislative, Executive, and judiciary powers within the several States ought to be bound by oath to support the articles of union

Resolved that the amendments which shall be offered to the confederation by the Convention, ought at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be

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expressly chosen by the people to consider and decide thereon

[B]<sup>8</sup>

State of the resolutions submitted to the consideration of the House by the honorable Mr Randolph, as altered, amended, and agreed to in a Committee of the whole House.

1. Resolved that it is the opinion of this Committee that a national government ought to be established consisting of a Supreme Legislative, Judiciary, and Executive.
- 2 Resolved. that the national Legislature ought to consist of Two Branches.
- 3 Resolved that the Members of the first branch of the national Legislature ought to be elected by the People of the several States for the term of Three years. to receive fixed stipends, by which they may be compensated for the devotion of their time to public service to be paid out of the National-Treasury. to be ineligible to any Office established by a particular State or under the authority of the United-States (except those peculiarly belonging to the functions of the first branch) during the term of service, and under the national government for the space of one year after it's expiration.
- 4 Resolved. that the Members of the second Branch of the national Legislature ought to be chosen by the individual Legislatures. to be of the age of thirty years at least. to hold their offices for a term sufficient to ensure their independency, namely seven years.

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<sup>8</sup> This document was among the papers of the Convention turned over to the Secretary of State by President Washington in 1796.

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to receive fixed stipends, by which they may be compensated for the devotion of their time to public service — to be paid out of the National Treasury

to be ineligible to any Office established by a particular State, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national government, for the space of One year after it's expiration.

5. Resolved that each branch ought to possess the right of originating acts

6. Resolved. that the national Legislature ought to be empowered

to enjoy the legislative rights vested in Congress by the confederation — and moreover

to legislate in all cases to which the separate States are incompetent: or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

to negative all laws passed by the several States contravening, in the opinion of the national legislature, the articles of union, or any treaties subsisting under the authority of the union.

7. Resolved. that the right of suffrage in the first branch of the national Legislature ought not to be according to the rule established in the articles of confederation: but according to some equitable ratio of representation — namely.

in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.

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- 8 Resolved. that the right of suffrage in the second branch of the national Legislature ought to be according to the rule established for the first
- 9 Resolved. that a national Executive be instituted to consist of
- a Single Person.
  - to be chosen by the National Legislature.
  - for the term of Seven years.
  - with power to carry into execution the National Laws.
  - to appoint to Offices in cases not otherwise provided for
  - to be ineligible a second time, and
  - to be removable on impeachment and conviction of mal practice or neglect of duty.
  - to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service <sup>9</sup>
  - to be paid out of the national Treasury.<sup>9</sup>
- 10 Resolved. that the national executive shall have a right to negative any legislative act: which shall not be afterwards passed unless by two third parts of each branch of the national Legislature.
- 11 Resolved. that a national Judiciary be established to consist of
- One supreme Tribunal
  - The Judges of which to be appointed by the second Branch of the National Legislature.
  - to hold their offices during good behaviour
  - to receive, punctually, at stated times, a fixed compensation for their services: in which no encrease or diminution shall be made so as to affect the per-

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<sup>9</sup> There seems to be no record of any favorable action on this point. It was postponed on June 2; it does not appear in A; and there is no such action noticed on June 12. It was perhaps voted on June 12, when similar action was taken for the legislature.



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sons actually in office at the time of such encrease or diminution

- 12 Resolved. That the national Legislature be empowered to appoint  
inferior Tribunals.
- 13 Resolved. that the jurisdiction of the national Judiciary shall extend to cases which respect the collection of the national revenue: impeachments of any national Officers: and questions which involve the national peace and harmony.
14. 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.
15. Resolved. that provision ought to be made for the continuance of Congress<sup>10</sup> and their authorities until a given day after the reform of the articles of Union shall be adopted; and for the completion of all their engagements.
16. Resolved that a republican Constitution, and it's existing laws, ought to be guaranteed to each State by the United States.
17. Resolved. that provision ought to be made for the amendment of the articles of Union, whensoever it shall seem necessary.
18. Resolved. that the Legislative, Executive, and Judiciary powers within the several States ought to be bound by oath to support the articles of Union
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<sup>10</sup> A reads "a Congress".

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19 Resolved. that the amendments which shall be offered to the confederation by the Convention, ought at a proper time or times, after the approbation of Congress to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen by the People to consider and decide thereon.

## MADISON

Wednesday June 13. in Committee of the whole

(Resol: 9. being resumed) The latter parts of the clause relating to the jurisdiction of the Natl. tribunals, was struck out nem. con in order to leave full room for their organization.

(Mr. Randolph & Mr. Madison, then moved the following resolution respecting a National Judiciary, viz "that the jurisdiction of the national Judiciary shall extend to cases, which respect the collection of the National revenue, impeachments of any national officers, and questions which involve the national peace and harmony" which was agreed to.<sup>11</sup>

Mr. Pinkney & Mr. Sherman moved to insert after the words "one supreme tribunal" the words "the Judges of which to be appointed by the national Legislature"<sup>12</sup>)

(Mr.) M(adison), objected to an appt. by the whole Legislature. Many of them were incompetent Judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had perhaps assisted ignorant members in business of their own, or of their Constituents, or used other winning means, would without any of the essential qualifications for an expositor of

<sup>11</sup> Taken from *Journal*.

<sup>12</sup> Originally Madison had recorded "Mr. Pinkney proposed that the National Judiciary should be appointed by the Natl. Legislature. Mr. Sherman seconds him." This was struck out, and the wording of the text, revised from *Journal*, was substituted. Note that Madison retains his own form of the motion, *i.e.*, appointment by the "Legislature", and not by the "second branch" as stated in the *Journal*. See above, note 1. Yates agrees with Madison, and they are undoubtedly right and the *Journal* wrong as the subsequent records show.

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the laws prevail over a competitor not having these recommendations but possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate, which as a less numerous & more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

Mr. Sharman & Mr. Pinkney withdrew their motion, and the appt. by the Senate was agd. to nem. con.

Mr. Gerry. moved to restrain the Senatorial branch from originating money bills.<sup>13</sup> The other branch was more immediately the representatives of the people, and it was a maxim that the people ought to hold the purse-strings. If the Senate should be allowed to originate such bills, they wd. repeat the experiment, till chance should furnish a sett of representatives in the other branch who will fall into their snares.

Mr. Butler saw no reason for such a discrimination. We were always following the British Constitution when the reason of it did not apply. There was no analogy between the Ho of Lords and the body proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it in favor of the other branch. And it will lead the latter into the practice of tacking other clauses to money bills.

(Mr.) M(adison) observed that the Commentators on the Brit: Const: had not yet agreed on the reason of the restriction on the H. of L. in money bills. Certain it was there could be no similar reason in the case before us. The Senate would be the representatives of the people as well as the 1st. branch. If they sd. have any dangerous influence over it, they would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable sett of men, it wd. be wrong to disable them from any preparation of the business, especially of that which was most important and in our republics, worse prepared than any other. The Gentleman in pursuance of

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<sup>13</sup> Upon this subject, see *Records* of July 5-7, July 14, July 16, August 8, September 5, September 8, note 9, and Appendix A, XLI, CLVIII (43-46), CCXL.

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his principle ought to carry the restraint to the *amendment*; as well as the originating of money bills. Since, an addition of a given sum wd. be equivalent to a (distinct) proposition of it.

Mr. King<sup>14</sup> differed from Mr. Gerry, and concurred in the objections to the proposition.

Mr. Read favored the proposition, but would not extend the restraint to the case of amendments.

Mr. Pinkney thinks the question premature. If the Senate shd. be formed on the *same* proportional representation as it stands at present, they sd have equal power; otherwise if a different principle sd. be introduced.

Mr. Sherman. As both branches must concur, there can be no danger whichever way the Senate be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business — The Senate bear their share of the taxes, and are also the representatives of the people. What a man does by another, he does by himself is a maxim. In Cont. both branches can originate in all cases, and it has been found safe & convenient. Whatever might have been the reason of the rule as to The H. of Lords, it is clear that no good arises from it now even there.

Genl. Pinkney. This distinction prevails in S. C. & has been a source of pernicious disputes between ye. 2 branches. The constitution is now evaded, by informal schedules of amendments handed (from ye. Senate to the other House.)

Mr. Williamson wishes for a question chiefly to prevent re-discussion. The restriction will have one advantage, it will oblige some member in lower branch to move, & people can then mark him

On the question for excepting money bills as propd. by Mr. Gerry. Mas. no. Cont. no. N. Y. ay. N. J. no. Del. ay. Md. no. Va. ay. N. C. no. S. C. no. Geo. no. [Ayes — 3; noes — 7.]<sup>15</sup>

Committee rose<sup>16</sup> & Mr. Ghorum made report, which was

<sup>14</sup> Crossed out "Mr. King reinforced the arguts."

<sup>15</sup> Detail of Ayes and Noes, Vote 61, includes Pennsylvania in the negative.

<sup>16</sup> See Appendix A, CLVIII (8-9).

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postponed till tomorrow, to give an opportunity for other plans to be proposed, the report was in the words following.

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Report of the Committee of Whole on Mr. Randolphs propositions <sup>17</sup>

1. Resd. that it is the opinion of this Committee that a National Governmt. ought to be established, consisting of a supreme Legislative, Executive & Judiciary.

2. Resold. that the National Legislature ought to consist of two branches.

3. Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of three years, to receive fixed Stipends by which they may be compensated for the devotion of their time to public service, to be paid out of the National Treasury: to be ineligible to any office established by a particular State, or under the authority of the U. States, (except those peculiarly belonging to the functions of the first branch), during the term of service, and under the national Government for the space of one year after its expiration.

4. Resd. that the members of the second branch of the Natl. Legislature ought to be chosen by the individual Legislatures, to be of the age of 30 years at least, to hold their offices for a term sufficient to ensure their independency, namely, seven years, to receive fixed stipends by which they may be compensated for the devotion of their time to public service to be paid out of the National Treasury; to be ineligible to any office established by a particular State, or under the authority of the U. States, (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the Natl. Govt. for the space of one year after its expiration.

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<sup>17</sup> The differences between the wording of this document and that of B above are too slight to be noticed, except in Resolution 19 where Madison omits the words "of representatives" after "Assemblies". Copies of this report are found among the papers of various delegates, but they are not sufficiently distinctive to warrant reprinting. Cf. Appendix A, CLVIII (6).

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5. Resd. that each branch ought to possess the right of originating Acts

6. Resd. that the Natl. Legislature ought to be empowered to enjoy the Legislative rights vested in Congs. by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U. S. may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union, or any treaties subsisting under the authority of the Union.

7. Resd. that the rights of suffrage in the 1st. branch of the National Legislature, ought not to be according to the rule established in the articles of confederation but according to some equitable ratio of representation, namely, in proportion to the whole number of white & other free citizens & inhabitants, of every age sex and condition, including those bound to servitude for a term of years, & three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each State:

8. Resolved that the right of suffrage in the 2d. branch of the National Legislature ought to be according to the rule established for the first.

9. Resolved that a National Executive be instituted to consist of a single person, to be chosen by the Natl. Legislature for the term of seven years, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for — to be ineligible a second time, & to be removeable on impeachment and conviction of malpractices or neglect of duty — to receive a fixed stipend by which he may be compensated for the devotion of his time to public service to be paid out of the national Treasury.

10. Resold. that the natl. Executive shall have a right to negative any Legislative Act, which shall not be afterwards passed unless by two thirds of each branch of the National Legislature

11. Resold. that a Natl. Judiciary be established, to consist of one supreme tribunal, the Judges of which to be ap-

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pointed by the 2d. branch of the Natl. Legislature, to hold their offices during good behaviour, & to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resd. that the Natl. Legislature be empowered to appoint inferior Tribunals.

13. Resd. that the jurisdiction of the Natl. Judiciary shall extend to all cases which respect the collection of the Natl. revenue,<sup>18</sup> impeachments of any Natl. Officers, and questions which involve the national peace & harmony.

14. Resd. that provision ought to be made for the admission of States lawfully arising within the limits of the U. States, whether from a voluntary junction of Government & territory or otherwise, with the consent of a number of voices in the Natl. Legislature less than the whole.

15. Resd. that provision ought to be made for the continuance of Congress and their authorities and privileges untill a given day after the reform of the articles of Union shall be adopted and for the completion of all their engagements.

16. Resd. that a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States.

17. Resd. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary.

18. Resd. that the Legislative, Executive, & Judiciary powers within the several States ought to be bound by oath to support the articles of Union

19. Resd. that the amendments which shall be offered to the confederation by the convention ought at a proper time or times after the approbation of Congs. to be submitted to an Assembly or Assemblies<sup>19</sup> recommended by the several Legislatures to be expressly chosen by the people to consider and decide thereon.

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<sup>18</sup> In Wilson's copy is a marginal note opposite this clause: — "(or the national Regulations of Trade) N. B. the Judicial should be commensurate to the legislative and executive Authority".

<sup>19</sup> See above, note 17.

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## YATES

WEDNESDAY, JUNE 13th, 1787.

Met pursuant to adjournment. Present 11 states.

Gov. Randolph observed the difficulty in establishing the powers of the judiciary — the object however at present is to establish this principle, to wit, the security of foreigners where treaties are in their favor, and to preserve the harmony of states and that of the citizens thereof. This being once established, it will be the business of a sub-committee to detail it; and therefore moved to obliterate such parts of the resolve so as only to establish the principle, to wit, *that the jurisdiction of the national judiciary shall extend to all cases of national revenue, impeachment of national officers, and questions which involve the national peace or harmony.* Agreed to unanimously.

It was further agreed, that the judiciary be paid out of the national treasury.

Mr. Pinkney moved that the judiciary be appointed by the national legislature.

Mr. Madison of is opinion that the second branch of the legislature ought to appoint the judiciary, which the convention agreed to.

Mr. Gerry moved that the first branch shall have the only right of originating bills to supply the treasury.

Mr. Butler against the motion. We are constantly running away with the idea of the excellence of the British parliament, and with or without reason copying from them; when in fact there is no similitude in our situations. With us both houses are appointed by the people, and both ought to be equally trusted.

Mr. Gerry. If we dislike the British government for the oppressive measures by them carried on against us, yet he hoped we would not be so far prejudiced as to make ours in every thing opposite to theirs.

Mr. Madison's question carried.

The committee having now gone through the whole of the propositions from Virginia — Resolved, That the com-



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mittee do report to the convention their proceedings — This was accordingly done. (*See a copy of it hereunto annexed.*)<sup>20</sup>

The house resolved on the report being read, that the consideration thereof be postponed to to-morrow, and that members have leave to take copies thereof.

Adjourned to to-morrow morning.

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<sup>20</sup> Not found, see *Records*, July 5, note 18.