

WEDNESDAY, AUGUST 29, 1787.

JOURNAL

Wednesday August 29 1787.

It was moved and seconded to commit the 16th article together with the following proposition

To establish uniform laws upon the subject of bankruptcies and respecting the damages arising on the protest of foreign bills of exchange.

which passed in the affirmative [Ayes — 9; noes — 2.]

It was moved and seconded to commit the following proposition

Whensoever the act of any State, whether legislative executive or judiciary shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other State as full proof of the existence of that act — and it's operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State, wherein the said act was done

which passed in the affirmative

It was moved and seconded to commit the following proposition

Full faith ought to be given in each State to the public acts, records, and judicial proceedings of every other State; and the Legislature shall by general laws determine the Proof and effect of such acts, records, and proceedings

which passed in the affirmative

and the foregoing Propositions together with the 16 article were referred to the honorable Mr Rutledge, Mr Randolph, Mr Gorham, Mr Wilson and Mr Johnson

It was moved and seconded to postpone the report of the

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Comme entd on ye Journal of the 24 instant take up the following proposition

That no act of the Legislature for the purpose of regulating the commerce of the United States with foreign powers or among the several States shall be passed without the assent of  $\frac{2}{3}$ ds of the Members of each House.

which passed in the negative [Ayes — 4; noes — 7.]

On the question to agree to the report of the Committee of eleven entered on the Journal of the 24 instant

it passed in the affirmative

It was moved and seconded to agree to the following proposition to be inserted after the 15 article

“If any Person bound to service or labor in any of the United States shall escape into another State, He or She shall not be discharged from such service or labor in consequence of any regulations subsisting in the State to which they escape; but shall be delivered up to the person justly claiming their service or labor”

which passed in the affirmative [Ayes — 11; noes — 0.]

It was moved and seconded to strike out the two last clauses of the 17 article

which passed in the affirmative [Ayes — 9; noes — 2.]<sup>1</sup>

It was moved and seconded to strike the following words out of the 17th article.

“but to such admission the consent of two thirds of the Members present in each House shall be necessary”

It was moved and seconded to agree to the following proposition, as a substitute for the 17 article.

“New States may be admitted by the Legislature into this union: but no new State shall be erected within the limits of any of the present States without the consent of the Legislature of such State as well as of the general Legislature.”

Separate questions being taken on the different clauses of the proposition

they passed in the affirmative [Ayes — 6; noes — 5.]

The House adjourned

<sup>1</sup> Vote 401, Detail of Ayes and Noes. *Journal* (p. 307) mistakenly ascribes this vote to the question following.

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## DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	No Carolina	So Carolina	Georgia	Questions	ayes	noes	divided
[398]	no	no	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	To commit the 16 article &ca			
[399]	no	no	no	no	no	no	aye	aye	aye	aye	no	aye	aye	To postpone the report of the Committee entd on the Journal 24 Augt			
[400]	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	To agree to the amendmt to the 15 article.			
[401]	aye	aye	aye	aye	aye	aye	aye	no	no	aye	aye	aye	aye	To strike out the two last clauses of the 17 article	9	2	
[402]	no	aye	no	no	aye	no	no	aye	aye	aye	aye	aye	aye	To agree to the substitute for the 17 article	6	5	

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Art: XVI. taken up.<sup>2</sup>

Mr. Williamson moved to substitute in place of it, the words of the Articles of Confederation on the same subject. He did (not) understand precisely the meaning of the article.

Mr. Wilson & Doctr. Johnson supposed the meaning to be that Judgments in one State should be the ground of actions in other States, & that acts of the Legislatures should be included,<sup>3</sup> for the sake of Acts of insolvency &c —

Mr. Pinkney moved to commit art XVI, with the following proposition, "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange"

Mr Ghorum was for agreeing to the article, and committing the (proposition.)

<sup>2</sup> Article XVI. "Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and Magistrates of every other State."

<sup>3</sup> Crossed out "as they may sometimes serve the like purpose as act".

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Mr. Madison was for committing both. He wished the Legislature might be authorized to provide for the *execution* of Judgments in other States, under such regulations as might be expedient— He thought that this might be safely done and was justified by the nature of the Union.

Mr. Randolph said there was no instance of one nation executing judgments of the Courts of another nation. He moved the following proposition.

“Whenever the Act of any State, whether Legislative Executive or Judiciary shall be attested & exemplified under the seal thereof, such attestation and exemplification, shall be deemed in other States as full proof of the existence of that act — and its operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State, wherein the said act was done.”

On the question for committing art: XVI with Mr. Pinkney’s motion

N. H. no. Mas. no. Ct. ay. N. J. ay. Pa ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes — 9; noes — 2.]

The motion of Mr. Randolph was also committed nem: con:

Mr. Govr. Morris moved to commit also the following proposition on the same subject.

“Full faith ought to be given in each State to the public acts, records, and judicial proceedings of every other State; and the Legislature shall by general laws, determine the proof and effect of such acts, records, and proceedings”. and it was committed nem: contrad:

The committee appointed for these references, were Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr Wilson, & Mr Johnson.

Mr. Dickenson mentioned to the House that on examining Blackstone’s Commentaries, he found that the terms “ex post facto” related to criminal cases only;<sup>4</sup> that they would

<sup>4</sup> See below, September 14 and Appendix A, CCXII.

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not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite.

Art. VII Sect. 6 by ye. Committee (of eleven) reported to be struck out<sup>5</sup> (see the 24 instant) being now taken up,

Mr. Pinkney moved to postpone the Report in favor of the following proposition — “That no act of the Legislature for the purpose of regulating the commerce of the U— S. with foreign powers, or among the several States, shall be passed without the assent of two thirds of the members of each House—” — He remarked that there were five distinct commercial interests— 1. the fisheries & W. India trade, which belonged to the N. England States. 2. the interest of N. York lay in a free trade. 3. Wheat & flour the Staples of the two Middle States, (N. J. & Penna.)— 4. Tobo. the staple of Maryland & Virginia (& partly of N. Carolina.)<sup>6</sup> 5. Rice & Indigo, the staples of S. Carolina & Georgia. These different interests would be a source of oppressive regulations if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the S. States. They did not need. the protection of the N. States at present.

Mr. Martin 2ded. the motion

Genl. Pinkney said it was the true interest of the S. States to have no regulation of commerce; but considering the loss brought on the commerce of the Eastern States by the revolution, their liberal conduct towards the views\* of South Carolina, and the interest the weak Southn. States had in being united with the strong Eastern States, he thought it proper that no

\* He meant the permission to import slaves. An understanding on the two subjects of *navigation* and *slavery*, had taken place between those parts of the Union, which explains the vote on the Motion depending, as well as the language of Genl. Pinkney & others.

<sup>5</sup> Requiring two-thirds of both houses to pass navigation acts. On this question see August 22 and Appendix A, CXV, CXXXII, CLV, CXCIII, CCXVI, CCXVII, CCCXXXVI. As this subject was a matter of compromise in connection with the slave-trade, see references under August 25, note 7.

<sup>6</sup> Probably but not certainly a later insertion.

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fetters should be imposed on the power of making commercial regulations; and that his constituents though prejudiced against the Eastern States, would be reconciled to this liberality— He had himself, he said, prejudices agst the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

Mr. Clymer. The diversity of commercial interests, of necessity creates difficulties, which ought not to be increased by unnecessary restrictions. The Northern & middle States will be ruined, if not enabled to defend themselves against foreign regulations.

Mr. Sherman, alluding to Mr. Pinkney's enumeration of particular interests, as requiring a security agst. abuse of the power; observed that, the diversity was of itself a security. adding that to require more than a majority to decide a question was always embarrassing as had been experienced in cases requiring the votes of nine States in Congress.

Mr. Pinkney replied that his enumeration meant the five minute interests— It still left the two great divisions of Northern & Southern Interests.

Mr. Govr. Morris. opposed the object of the motion as highly injurious— Preferences to american ships will multiply them, till they can carry the Southern produce cheaper than it is now carried— A navy was essential to security, particularly of the S. States, and can only be had by a navigation act encouraging american bottoms & seamen— In those points of view then alone, it is the interest of the S. States that navigation acts should be facilitated. Shipping he said was the worst & most precarious kind of property. and stood in need of public patronage.

Mr Williamson was in favor of making two thirds instead of a majority requisite, as more satisfactory to the Southern people. No useful measure he believed had been lost in Congress for want of nine votes As to the weakness of the Southern States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring  $\frac{2}{3}$  necessary in itself, because if

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a majority of Northern States should push their regulations too far, the S. States would build ships for themselves: but he knew the Southern people were apprehensive on this subject and would be pleased with the precaution.

Mr. Spaight was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

Mr. Butler differed from those who considered the rejection of the motion as no concession on the part of the S. States. He considered the interests of these and of the Eastern States, to be as different as the interests of Russia and Turkey. Being notwithstanding desirous of conciliating the affections of the East: States, he should vote agst. requiring  $\frac{3}{4}$  instead of a majority.

Col: Mason. If the Govt. is to be lasting, it must be founded in the confidence & affections of the people, and must be so constructed as to obtain these. The *Majority* will be governed by their interests. The Southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves bound hand & foot to the Eastern States, and enable them to exclaim, in the words of Cromwell on a certain occasion — “the lord hath delivered them into our hands.

Mr. Wilson took notice of the several objections and remarked that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority he said would be no more governed by interest than the minority— It was surely better to let the latter be bound hand and foot than the former. Great inconveniences had, he contended, been experienced in Congress from the article of confederation requiring nine votes in certain cases.

Mr. Madison. went into a pretty full view of the subject. He observed that the disadvantage to the S. States from a navigation act, lay chiefly in a temporary rise of freight, attended however with an increase of Southn. as well as Northern Shipping — with the emigration of Northern seamen & merchants to the Southern States — & with a removal of the existing<sup>7</sup> & injurious retaliations among the States (on each

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<sup>7</sup> Crossed out “& fetters”.

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other). The power of foreign nations to obstruct our retaliating measures<sup>8</sup> on them by a corrupt influence would also be less if a majority shd be made competent than if  $\frac{2}{3}$  of each House shd. be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of 2 branches — by the independence of the Senate, by the negative<sup>9</sup> of the Executive, by the interest of Connecticut & N. Jersey which were agricultural, not commercial States; by the interior interest which was also agricultural in the most commercial States— by the accession of Western States which wd. be altogether agricultural. He added that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the Coasting trade, and of seamen, would also be favorable to the S. States, by increasing, the consumption of their produce. If the Wealth of the Eastern should in a still greater proportion be augmented, that wealth wd. contribute the more to the public wants, and be otherwise a national benefit.<sup>10</sup>

Mr. Rutledge was agst. the motion of his colleague. It did not follow from a grant of the power to regulate trade, that it would be abused. At the worst a navigation act could bear hard a little while only on the S. States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country. That was the great object, and a navigation Act was necessary for obtaining it.

Mr. Randolph said that there were features so odious in the Constitution as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would compleat the deformity of the system. He took notice of the argument in favor of giving the power over trade to a

<sup>8</sup> Crossed out "and with successful retaliation on the injurious restrictions of foreign powers".

<sup>9</sup> Crossed out "controul".

<sup>10</sup> See Appendix A, CCCXC.



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majority, drawn from the opportunity foreign powers would have of obstructing retaliating measures, if two thirds were made requisite. He did not think there was weight in that consideration— The difference between a majority & two thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President who could require three fourths by his negative— He did not mean however to enter into the merits. What he had in view was merely to pave the way for a declaration which he might be hereafter obliged to make if an accumulation of obnoxious ingredients should take place, that he could not give his assent to the plan.

Mr Gorham. If the Government is to be so fettered as to be unable to relieve the Eastern States what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves. The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion, but if it should take place it was the Southern part of the Continent that had the most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern & Middle States being a security against it. It was moreover certain that foreign ships would never be altogether excluded especially those of Nations in treaty with us.

On the question to postpone in order to take up Mr. Pinkney's Motion

N— H. no. Mas. no. Ct. no N. J. no. Pa. no. Del. no. Md. ay. Va ay. N. C. ay— S— C. no— Geo. ay, [Ayes — 4 noes — 7.]

The Report of the Committee for striking out sect: 6. requiring two thirds of each House to pass a navigation act was then agreed to, nem: con:

Mr Butler moved to insert after art: XV. "If any person bound to service or labor in any of the U— States shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up

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to the person justly claiming their service or labor," which was agreed to nem: con:<sup>11</sup>

Art: XVII being taken up,<sup>12</sup> Mr. Govr. Morris moved to strike out the two last sentences, to wit "If the admission be consented to, the new States shall be admitted on the same terms with the original States— But the Legislature may make conditions with the new States, concerning the public debt, which shall be then subsisting". — He did not wish to bind down the Legislature to admit Western States on the terms here stated.

Mr Madison opposed the motion, insisting that the Western States neither would nor ought to submit to a Union which degraded them from an equal rank with the other States.

Col. Mason— If it were possible by just means to prevent emigrations to the Western Country, it might be good policy. But go the people will as they find it for their interest, and the best policy is to treat them with that equality which will make them friends<sup>13</sup> not enemies.

Mr Govr Morris. did not mean to discourage the growth of the Western Country. He knew that to be impossible. He did not wish however to throw the power into their hands.

Mr Sherman, was agst. the motion, & for fixing an equality of privileges by the Constitution.

Mr Langdon was in favor of the Motion. he did not know but circumstances might arise which would render it inconvenient to admit new States on terms of equality.

Mr. Williamson was for leaving the Legislature free. The existing *small* States enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to (new) Western States.

On Mr Govr Morris's motion for striking out.

N. H. ay— Mas. ay— Ct ay. N— J. ay. Pa. ay. Del. ay. Md. no Va. no. N— C— ay. S— C— ay. Geo. ay, [Ayes — 9; noes — 2.]

Mr. L— Martin & Mr Govr. Morris moved to strike out

<sup>11</sup> See above August 28, and Appendix A, CXV and CCXII, also references under August 25, note 7.

<sup>12</sup> Relating to the admission of new states.

<sup>13</sup> Crossed out "firm".

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of art XVII "but to such admission the consent of two thirds "of the members present shall be necessary." Before any question was taken on this motion,

Mr Govr. Morris moved the following proposition as a substitute for the XVII art: "New States may be admitted by the Legislature into this Union: but no new State shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the Genl. Legislature"<sup>14</sup>

The first part to Union inclusive was agreed to nem: con:

Mr. L— Martin opposed the latter part— Nothing he said would so alarm the limited States as to make the consent of the large States claiming the Western lands, necessary to the establishment of new States within their limits. It is proposed to guarantee the States. Shall Vermont be reduced by force in favor of the States claiming it? Frankland & the Western country of Virginia were in a like situation.

On Mr Govr. Morris's Motion to substitute &c (it was agreed to) —

N. H. no. Mas. ay. Ct. no. N. J. no. Pa. ay. Del. no. Md no. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes — 6; noes — 5.]

Art: XVII — before the House, as amended.

Mr. Sherman was against it. He thought it unnecessary. The Union cannot dismember a State without its consent.

Mr Langdon thought there was great weight in the argument of Mr. Luther Martin, and that the proposition substituted (by Mr. Govr. Morris) would excite a dangerous opposition to the plan.

Mr. Govr Morris thought on the contrary that the small States would be pleased with the regulation, as it holds up the idea of dismembering the large States.

Mr. Butler. If new States were to be erected without the consent of the dismembered States, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new States.

<sup>14</sup> Upon the significance of the wording of this article, see Appendix A, CCCIV.

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Docr. Johnson agreed in general with the ideas of Mr Sherman, but was afraid that as the clause stood, Vermont would be subjected to N— York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

Mr Langdon said his objections were connected with the case of Vermont. If they are not taken in, & remain exempt from taxes, it would prove of great injury to N. Hampshire and the other neighbouring States

Mr Dickinson hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small States to secure the large ones in their extensive claims of territory.

Mr. Wilson— When the *majority* of a State wish to divide they can do so. The aim of those in opposition to the article, he perceived, was that the Genl. Government should abet the *minority*, & by that means divide a State against its own consent.

Mr Govr. Morris. If the forced division of the States is the object of the new System, and is to be pointed agst one or two States, he expected, the gentleman from these<sup>15</sup> would pretty quickly leave us.

Adjourned<sup>16</sup>

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XVIII and XV agreed to.<sup>17</sup> XVI. article committed.

<sup>15</sup> Madison originally wrote "the gentleman in the Chair (George Washington)". Martin's remarks the next day would indicate that the reference was more general.

<sup>16</sup> See further, Appendix A, XCVII.

<sup>17</sup> According to the Journal and Madison, on August 28.