be assembled from the extremes of the Union. It has been said that there is a danger of this power being abused if exercised by one man. Certainly the danger is as great with respect to the Senate, who are assembled from various parts of the continent, with different impressions and opinions. It appears to me that such a body is more likely to misuse this power than the man whom the united voice of America calls to the Presidential chair. As the nature of the Government requires the power of removal, I think it is to be exercised in this way by a hand capable of exerting itself with effect, and, the power must be conferred upon the President by the constitution, as the executive officer of the Government.

I believe some difficulty will result from determining this question by a mandamus. A mandamus is used to replace an officer who has been removed contrary to law; now, this officer being the creature of the law, we may declare that he shall be removed for incapacity, and if so declared, the removal will be according to law.

Mr. MADISON.—If the construction of the constitution is to be left to its natural course with respect to the executive powers of this Government, I own that the insertion of this sentiment in law may not be of material importance, though, if it is nothing more than a mere declaration of a clear grant made by the constitution, it can do no harm; but if it relates to a doubtful part of the constitution, I suppose an exposition of the constitution may come with as much propriety from the Legislature, as any other department of the Government. If the power naturally belongs to the Government, and the constitution is undecided as to the body which is to exercise it, it is likely that it is submitted to the discretion of the Legislature, and the question will depend upon its own merits.

I am clearly of opinion with the gentleman from South Carolina, (Mr. SMITH,) that we ought in this, and every other case, to adhere to the constitution, so far as it will serve as a guide to us, and that we ought not to be swayed in our decisions by the splendor of the character of the present Chief Magistrate, but to consider it with respect to the merit of men who, in the ordinary course of things, may be supposed to fill the chair. I believe the power here declared is a high one, and, in some respects, a dangerous one; but, in order to come to a right decision on this point, we must consider both sides of the question: the possible abuses which may spring from the single will of the First Magistrate, and the abuse which may spring from the combined will of the Executive and the Senatorial disqualification.

When we consider that the First Magistrate is to be appointed at present by the suffrages of three millions of people, and in all human probability in a few years' time by double that number, it is not to be presumed that a vicious or bad character will be selected. If the Government of any country on the face of the earth was ever effectually guarded against the election of ambitious or designing characters to the first office of the State, I think it may with truth be said to be the case under the constitution of the United States. With all the infirmities incident to a popular election, corrected by the particular mode of conducting it, as directed under the present system, I think we may fairly calculate that the instances will be very rare in which an unworthy man will receive that mark of the public confidence which is required to designate the President of the United States. Where the people are disposed to give so great an elevation to one of their fellow-citizens, I own that I am not afraid to place my confidence in him, especially when I know he is impeachable for any crime or misdemeanor before the Senate, at all times; and that, at all events, he is impeachable before the community at large every four years, and liable to be displaced if his conduct shall have given umbrage during the time he has been in office. Under these circumstances, although the trust is a high one, and in some degree, perhaps, a dangerous one, I am not sure but it will be safer here than placed where some gentlemen suppose it ought to be.

It is evidently the intention of the constitution, that the first Magistrate should be responsible for the executive department; so far therefore as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to his country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and has friends in that body, may choose rather to risk his establishment on the favor of that branch, than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor; in which case, his responsibility would be annihilated, and the expectation of it unjust. The high executive officers, joined in cabal with the Senate, would lay the foundation of discord, and end in an assumption of the executive power, only to be removed by a revolution in the Government. I believe no principle is more clearly laid down in the constitution than that of responsibility. After premising this, I will proceed to an investigation of the merits of the question upon constitutional ground.

I have, since the subject was last before the House, examined the constitution with attention, and I acknowledge that it does not perfectly correspond with the ideas I entertained of it from the first glance. I am inclined to think, that a free and systematic interpretation of the plan of Government will leave us less at liberty to abate the responsibility than gentlemen imagine. I have already acknowledged that the powers of the Government must re-

main as apportioned by the constitution. But it may be contended, that where the constitution is silent, it becomes a subject of legislative discretion; perhaps, in the opinion of some, an argument in favor of the clause may be successfully brought forward on this ground: I, however, leave it for the present untouched.

By a strict examination of the constitution, on what appears to be its true principles, and considering the great departments of the Government in the relation they have to each other, I have my doubts whether we are not absolutely tied down to the construction declared in the bill. In the first section of the first article, it is said, that all legislative powers herein granted shall be vested in a Congress of the United States. In the second article, it is affirmed that the executive power shall be vested in a President of the United States of America. In the third article, it is declared that the judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as Congress may, from time to time, ordain and establish. I suppose it will be readily admitted, that so far as the constitution has separated the powers of these great departments, it would be improper to combine them together; and so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them further than they are qualified by the constitution. The legislative powers are vested in Congress, and are to be exercised by them uncontrolled by any other department, except the constitution has qualified it otherwise. The constitution has qualified the legislative power, by authorizing the President to object to any act it may pass, requiring, in this case, two-thirds of both Houses to concur in making a law; but still the absolute legislative power is vested in the Congress with this qualification alone.

The constitution affirms, that the executive power shall be vested in the President. Are there exceptions to this proposition? Yes, there are. The constitution says, that in appointing to office, the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we a right to extend this exception? I believe not. If the constitution has invested all executive power in the President, I venture to assert that the Legislature has no right to diminish or modify his executive authority.

The question now resolves itself into this, Is the power of displacing, an executive power? I conceive that if any power whatsoever is in its nature executive, it is the power of appointing, overseeing, and controlling those who execute the laws. If the constitution had not qualified the power of the President in appointing to office, by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointment? Should we be authorized, in defiance of that clause in the constitution,—"The executive power shall be vested in a President," to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first only is authorized by being excepted out of the general rule established by the constitution, in these words, "the executive power shall be vested in the President."

The judicial power is vested in a Supreme Court; but will gentlemen say the judicial power can be placed elsewhere, unless the constitution has made an exception? The constitution justifies the Senate in exercising a judiciary power in determining on impeachments; but can the judicial power be further blended with the powers of that body? They cannot. I therefore say it is incontrovertible, if neither the legislative nor judicial powers are subjected to qualifications, other than those demanded in the constitution, that the executive powers are equally unabateable as either of the others; and inasmuch as the power of removal is of an executive nature, and not affected by any constitutional exception, it is beyond the reach of the legislative body.

If this is the true construction of this instrument, the clause in the bill is nothing more than explanatory of the meaning of the constitution, and therefore not liable to any particular objection on that account. If the constitution is silent, and it is a power the Legislature have a right to confer, it will appear to the world, if we strike out the clause, as if we doubted the propriety of vesting it in the President of the United States. I therefore think it best to retain it in the bill.

Mr. VINING.—I hoped, Mr. Chairman, after the discussion this subject had received on a former occasion, that it would have been unnecessary to re-examine it. The arguments against the clause are reiterated: but, I trust, without a chance of success. They were fully answered before; and I expect the impressions made at that time are not already effaced. The House, as well as the Committee of the whole, have determined that those words shall be inserted in the bill; the special committee could therefore do no less than place them where they are; a deference is due to the decicion of the House.

The House has determined to make a declaration of their construction on the constitution. I am perfectly in sentiment with the majority on this occasion; and contend, that if this power is not in the President, it is not vested in any body whatever. It cannot be within the legislative power of the Senate, because it is of an adverse nature; it cannot be within the executive power of the Senate, because they possess none but what is expressly granted by