

A
LETTER

TO A

MEMBER OF CONGRESS;

RESPECTING

The Alien and Sedition Laws.

SIR,

I HAVE lately been favoured with the perusal of "An Address to the People of Virginia respecting the Alien and Sedition Laws," which your friends ascribe to you; it might be considered rather as an apology for your own conduct in voting for those laws, than a vindication of the late congress for passing them.—As one of your constituents, I might therefore claim a right to scrutinize your conduct, and enquire, whether you have not suffered yourself to be borne away by party zeal, on those, and some other occasions, instead of being influenced by considerations, which an impartial attachment to the principles of our constitution, might have dictated. But, having no intention to be personal, I shall consider your address, in the form that it appears; that is, an anonymous publication, and not as a justificatory address from an individual whose voice contributed to the passage of those acts.

Thomas Evans, of Accomack County.

YOUR address contains much matter—a part of which merits an answer; the whole is too long for a person of little leisure, and less inclination for controversial writing, minutely to discuss; the sum of your arguments may be reduced to this point—that the ALIEN and SEDITION LAWS passed by the late congress, are *wise, politic, just and constitutional* acts. The question which it is my present intention to discuss, is whether they are CONSTITUTIONAL or not. The wisdom, policy or justice of them, unconnected with that question, I shall leave to those who possess more leisure, and more information than I pretend to.

In order to this discussion it may not be improper to recur to fundamental principles; for it seems, now a days, that there is no text so explicit, as not to be susceptible of different interpretations, although neither of the disputants may, by any possible periphrasis, be able to expound its meaning in more definite terms, or more intelligible language. Had not this been the case, it would probably never have happened that a doubt could be entertained, either respecting the right of *personal security*, or the *liberty of the press* in this country.

Permit me then to state as fundamental principles the following propositions, which it is presumed it will not be necessary to prove.

1. That the SOVEREIGNTY of the United States resides in the PEOPLE; is *inherent* IN THEM; and *unalienable* FROM THEM.

2. That the constitution of the United States is the instrument by which the FEDERAL GOVERNMENT WAS CREATED; ITS POWERS DEFINED; their EXTENT LIMITED; the DUTIES of the public functionaries PRESCRIBED; and the PRINCIPLES according to which the government is to be administered DELINEATED.

3. That the FEDERAL GOVERNMENT of the United States, is that PORTION ONLY, of the SOVEREIGN POWER, which is by the constitution entrusted to the public functionaries, who are to administer it as the agents and servants of the PEOPLE.

4. That the several states in the union, at the time of the adoption of the constitution of the United States, were FREE, SOVEREIGN, and INDEPENDENT STATES, possessing all the RIGHTS, POWERS and JURISDICTIONS, INCIDENT TO GOVERNMENT, ACCORDING TO their SEVERAL CONSTITUTIONS.

5. Consequently, that the powers not *delegated* to the United States, by the constitution, nor *prohibited* by it to the states, are reserved to the states respectively or to the people.

6. That all the powers of the federal government are either expressly enumerated, and positive, or are both *necessary* and proper to the execution of some enumerated power.

7. That as exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases not enumerated, and therefore,

8. That every power which was carved out of the sovereignty of the states, at that time in full possession of all the rights of sovereignty is to be construed strictly, wherever it may derogate from any power reserved to the states by the federal constitution.

9. And that every power which concerns the rights of the citizens being granted to secure the blessings of liberty to them, every such power is in like manner to be construed strictly where it may operate to impair, and liberally; and for their benefit, where it may operate to the security and preservation of those blessings.

10. That in a representative government it is essential to liberty, to the rights of the people, and to the preservation of the *substance* of that government, that the people should be fully informed of the conduct of their servants, and possess the *uncontralable right of censuring, or approving*, according to their judgment.

11. That this right can only be preserved by an equally *uncontralable right* to examine the *motives* which probably led to that conduct, which they have the right to censure or applaud.

12. That whenever this right of *censuring is denied*, the practical right of election is in danger of being converted into a mere matter of form; and that whenever it is *prohibited* the liberty of the citizen is annihilated, and the nature of the government changed.

If any of these points require proof, I confess that I have altogether mistaken the nature of our government, consequently my deductions from them will be erroneous; but if what I have supposed be conformable to sound doctrine, I shall endeavour with candour to examine, whether the acts in question can stand the test of a scrutiny upon the principles thus advanced.

I shall begin, as you have done, with the act concerning *aliens*, which was approved June 25, 1798.

The motives which you assign for the adoption of this measure, are detailed at length in your address, from the fifth to the thirteenth pages, as follows:—

“Let us next enquire what were probably the circumstances which induced the legislature of the union to adopt this measure?—Suffice it to say, without reference to the merits of the complaints of either, that the government of France had expressed serious discontents at some proceedings of the government of the United States, said to affect the interests of France:—The government of the United States on the other hand conceived they had just cause of complaint against France. In this state of things the views of the two governments seem to have been widely variant upon the score of conciliation. France terminated her mission to the United States, by recalling Mt. Adet, her minister, and his last words were those of an invitation to the people of the United States, to

exercise "the most sacred of rights, and the most indispensable of duties," that is, of insurrection against the government of their country,* though constituted by themselves. About the same time the government of the United States had determined to supersede Mr. Monroe, by the mission of General Pinckney, a gentleman notable distinguished by a sincere affection for the French nation, and the cause in which they were supposed to be engaged, than by a firm and enlightened zeal for the interests, honour and independence of his own country. "The immediate object of his mission," (says General Washington, then President,) was to make to that government such explanations of the principles and conduct of our own, as by manifesting our good faith, might remove all jealousy and discontent, and maintain that harmony and good understanding, which it has been my constant solicitude to preserve."† France refused to receive or communicate with him, and informed the recalled minister, Mr. Monroe, "that the Executive Directory had determined not to receive another minister plenipotentiary from the United States, until after the redress of the grievances demanded of the American government, and which the French republic had a right to expect from it."‡ Thus it was required by France, that we should submit to their demands without discussion and without investigation, nor was the measure of "the redress expected" known. Such was the state of things when France discontinued all diplomatic intercourse with our government. Not content with this, and as if studiously to insult our government over and beyond the refusal to hold any correspondence with it, the executive directory openly and publicly attempted to make use of the recalled minister of the United States, as a missionary, or agent of the government of France, to the people of the United States, against their own government.¶

"Notwithstanding all this, our government from its desire "to preserve peace and friendship with all nations, determined to institute a fresh attempt at negotiation," by a solemn mission of three envoys extraordinary, and as preparatory to that attempt, made a public and solemn declaration, concurred in and approved by each branch of the legislature: "If we have committed errors, and these can be demonstrated, we shall be willing to correct them; if we have done injuries, we shall be willing, on conviction, to redress them."§ Is there more than this, to which an American would wish his country to submit? Is there a point beyond justice in the laws of nations, to which one nation upon the demand,

* French Constitution of 1793, Sect. 35, and Adel's last letter. † Message to Congress, Jan. 19, 1797. ‡ De la Croix to Monroe, December 11, 1796.

§ Answer of the President of the Directory, to Mr. Monroe's valedictory address, December 30, 1796. ¶ President's speech to Congress, May 16, 1797.

of another may yield; and yet stop short of absolute degradation and servility? That mission under these auspices took place. The instructions given were as liberal and conciliatory as those, who had been most accustomed to censure the administration of our government, and to justify the acts of the government of France, pretended to desire. The conduct of our envoys in circumstances the most embarrassing exhibited a memorable example of prudence and moderation, and the most anxious solicitude for the preservation of amity and peace. What the conduct on the part of the government of France was, may be seen by a recurrence to the dispatches published by the authority of the government of the United States, and merits the most serious attention of every friend of his country: In those dispatches is to be found a complete proof of every position contained in the letter of the venerable and illustrious Washington, signifying his acceptance of the command of the armies of his country.* But as relative to the subject under consideration, it will suffice to attend to the following particulars. Demands were made of our envoys, and though under the names of loans, and the purchase of Dutch rescriptions, in fact, "amounting to tribute,"† and involving "a surrender of our independence."‡ A compliance with these demands was declared to be an indispensable preliminary to the reception of our envoys, and to a *suspicion of hostilities*.|| This of necessity was refused: That refusal caused a recourse to threats. "The attention of our envoys was called to the situation of our country and to the *force*, France was capable of bringing to bear upon us. They were told, they were the best judges of our capacity to resist, so far as depended on our own resources, and they ought not to deceive themselves on *so interesting a subject*. The fate of VENICE, was one which might befall the United States."§ They were further told, "perhaps you may believe that in returning and exposing to your countrymen the *unreasonableness of the demands of this government*, you will unite them in their resistance, to those demands; you are mistaken; you ought to know that the *diplomatic skill* of France, & the *means she possesses in your country*, are sufficient to enable her, with the *French party in America*, to throw the blame which will attend the rupture of the negotiations on the federalists, as you term yourselves, but on the *British party*, as France terms you; and you may assure yourselves *this will be done*."¶ Such were the threats made on the part of France: Such were the

* Dated July 13, 1793. † Washington's letter before referred to, *Kide Hadouville's to the consuls of the French republic*, dated Cape Francois, 13 Floreal, 6th year. "I myself well know, that it was the intention of the French government to demand a contribution from the American government." ‡ Dispatches, page 36. || *Ib* page 33. § *Ib*, page 32. ¶ *Ib*, 33.

Information laid before the Congress of the United States, as now the same is before the public—Were these threats thus pointedly made, and under the extraordinary circumstances attending the transaction, to be disregarded? Has not a threat, proceeding from the same source against Switzerland,* been verified in the event? Without attention on the part of our government, and support on the part of the people, can we reasonably hope for a different fate? Is not *the spirit* exhibited in *those threats*, precisely in unison with *that spirit*, which has directed the conduct of France in her aggressions upon every other nation? Has not her “*diplomatic skill*” been uniformly displayed in professions “of not interfering with the internal affairs of other nations, of her profound respect for the principles of liberty and justice, and of her inviolable observance of good faith;” and, at the same time, in a total disregard of all those professions in practice? Have not her emissaries and propaganda been the constant pioneers of her hostilities against every nation, first to excite discontents and divisions, then to favour any consequent commotions, and finally, by diffusing universal discord and distrust, to divide every people amongst themselves, and from their government, and so prepare them as an easy prey for the invincible arms of the terrible republic?—A recurrence to the conduct of the former public agents of France here, were sufficient to put us on our guard, if symptoms of a more recent date, in addition to the foregoing threats, had not admonished us of the continuance of the same designs in the hands of secret agents.—From whom was received the intelligence, that if other gentlemen had constituted the mission, the differences between the two nations would have been accommodated before this time? By what means did the giver of that intelligence acquire his knowledge of the disposition of the directory, as to any gentlemen in our country? † To whom did Mr. Talleyrand transmit his letter, ‡ of March 18th, 1798, in order to its publication by Bache? Were those correspondents of the government of France, American citizens or aliens? § If citizens, are they not “*traitors in thought,*” if “*not in deed?*” ¶ If aliens, ought they to be permitted to remain among us? Can they plead with truth, that they have come as *alien friends,* § and not as spies, to see the nakedness of our land? What meant those letters, under the official seal of the department of foreign affairs, transmitted about the same time to various characters, and amongst them to Genet, in this country? What meant the sudden departure of Dr. Logan, from Philadelphia for Paris, and why was the intention to depart concealed from his

* Pl. 43. † *Dispatches*, page 35. ‡ *Id.* page 92. § *Notes on Talleyrand*, page 165. ¶ *Allemarle Remonstrances*, files shown as such.

nearest relations? Were not these circumstances combined with the conduct and threats of France, sufficient to induce a reasonable presumption, that there were persons in our country "concerned in treasonable or secret machinations against the government of the United States?" If congress, yielding to that presumption, conceived there ought to be power lodged some where, to provide for the common defence against the dangers thence arising: Did they differ in opinion with the great body of their countrymen? — But were these secret agents contemplated by France, as the whole of the means which she possessed in our country? Let it be remembered that many thousands of the citizens of that nation are resident within our territory; that if France should persist in her demands, resistance must be the unavoidable consequence on our part, or in other words, a war of defence must ensue. In such a state of things is it presumable that France would cease to claim the service of her citizens wherever they may be found? And to an invading army their numbers, and still more their information, would be of the utmost consequence. Nor are their numbers and local information the only circumstances which ought to excite attention, especially in the southern states: let the nature of the population of that part of the union be remembered: let the scenes which have passed in St. Domingo be recollected: — And what so likely to facilitate like events here, as the promiscuous uncontrolled residence of the citizens of a nation, who have adopted the wild notion of absolute equality: of a nation, who have not hitherto hesitated at any measures likely to forward their designs of ambition and plunder, and who have dared to tell us, that by the means they possess in our country they will prevent all resistance to their unreasonable demands? If then with resistance and that that resistance shall be effectual, is it not necessary there should somewhere exist a power, competent to prevent by mild and gentle means, if possible, so terrible a calamity? How often have the terrors of those scenes been displayed by the partizans of France, to discourage their fellow-citizens from every idea of resistance? When now the public sentiment is no longer equivocal, that we will assert our independence and self-government, even against France, and when means are sought to obviate those calamities, which we were told would be necessarily attendant: — Have not those very means of prevention become themselves the subject of loudest censure with those self-same individuals, who before announced the evils now to be prevented?"

It might have been expected from a gentleman eminent for his candour, to have informed his fellow citizens, that in order to obviate all those evils which threatened us from France and her sub-

ted, congress had thought it expedient not only to annul our treaty with her, but had also passed an act respecting alien enemies, the provisions of which are amply sufficient to answer the purposes for which it was intended: of which your constituents would be better able to judge by a transcript of the act itself, which I shall insert for their information.

An ACT respecting ALIEN ENEMIES.

Sec. 1. *BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion, shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, That aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States and the hostile nation or government, of which they shall be native citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

Sec. 2. *And be it further enacted,* That after any proclamation

shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state, having criminal jurisdiction, and of the several judges and justices of the courts of the United States; and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States, shall and may establish, in the premises, to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice; and after a full examination and hearing on such complaint, and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed.

Sec. 3. *And be it further enacted*, That it shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any court, judge or justice, as aforesaid, shall be required to depart, and to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President of the United States, or of the court, judge or justice ordering the same, as the case may be.

JONATHAN DAYTON,

Speaker of the House of Representatives

THEODORE SEDGWICK,

President of the Senate, pro tempore

APPROVED, July 6, 1798.

JOHN ADAMS,

President of the United States.

And now, sir, let me appeal to your wonted candour (though I shall never admit, that, because a particular mode of power may seem fitter for any objects of congress, it must therefore be constitutional) does, or does not this act provide as fully for all the dangers which might be apprehended from the hostile designs of *France* and her subjects, or from any other nation between whom and the United States there may be either a declared war, or by

whom an invasion or predatory incursion might be perpetrated, attempted or threatened, as the wisdom and zeal of congress itself could possibly devise? And if it does, let me also appeal to the same candour to decide, whether the act concerning aliens, passed the 25th day of June, 1798, was not intended to operate upon alien friends, between whole nation and ours, there is neither declared war, nor any invasion, or predatory incursion perpetrated, attempted or threatened; and not upon alien enemies only, whose case is amply provided for in the other act? If you cannot refuse your assent to this supposition (and I dare believe you will not) we must, in order to discuss the constitutionality of the act enquire into the rights of alien friends: this I shall do under three different heads.

1. Under the common law and statutes of England, which where they are applicable to the nature of the subject you contend are in force in the United States.

2. Under the colonial and state charters and laws—In this part of my enquiry I must confine myself to the laws of Virginia, not having the codes of the other states to refer to.

3. Under the constitution of the United States,

1. Judge Blackstone, in his Commentaries, treating of the rights of persons, having in his first grand division distributed them under the heads of magistrates and people, and having concluded his treatise on the former, proceeds thus, "I now proceed to consider such persons as fall under the denomination of the people.

"And herein all the inferior and subordinate magistrates treated of in the last chapter are included.—The most obvious division of the people is into aliens and natural born subjects."—From this short passage we have the authority of the commentator to declare that aliens are persons, and that they constitute a part of the people. The use that I mean to make of this deduction will appear hereafter.

Local allegiance is due from an alien so long as he continues under the government;† and during that time he is entitled to the protection of the government, allegiance being the right of the government, and protection the right of the people.‡

The rights of aliens are distinguishable from those of natural born subjects, by the criterion of time and of locality; the rights of aliens are more circumscribed, being acquired only by residence, and lost whenever they remove. The principal features which distinguish an alien from a natural born subject are these—An alien may purchase lands or other estates, but he cannot hold them. But although the law prohibits an alien from purchasing or holding lands, yet until office found, that is, until it be found by the court

by a jury, or inquest of office *that he is an alien*, the lands cannot be seized by the government. A devise to an alien is good, and he may enter and hold the lands *until office found*. From this it is evident that it must appear by matter of record that a person is an alien, before the government can avail itself of his incapacity to hold lands. So that *prima facie*, every person (other than an alien enemy) is in the eye of the law a *natural born* subject, until the contrary be made to appear in due form of law. An alien for any felony or offence whatsoever (except high treason) may have a jury *de medietate linguae* to try him. But he must pray it, otherwise he shall be tried as a natural born subject.† A further proof that he shall not be considered as alien unless it be properly shewn; that is, by an *inquest of office* where he is to lose by it, or by *his own shewing* where it is to be for his advantage. An alien may acquire property in goods, money or other personal estate, or may hire a house for his habitation. He may trade *as freely as other people*, but is subject to certain higher duties at the custom house. He may bring an action concerning personal property (tho' not any real action, because it would be absurd to aid him in the recovery of that which the laws prohibit him from holding) He may make a will of personal estate, and dispose of his chattels by will.‡ An alien may be an administrator, and by consequence an executor, and may have the administration of leases as well as personal things.¶ These are the points noticed by Mr. Blackstone and other authors, not one of which implies any inferiority in the rights of *personal* liberty or of *personal* security; nor any distinction except in favour of the alien, by giving him upon his prayer an opportunity of being tried by a jury one half of whom may be his of his own nation.

Sir Edward Coke in his exposition of that chapter of *magna charta* which (if any part of the common law or statutes of Great Britain be in force in the United States,) is certainly in force here, says, that the words *liber homo* (freeman) extends not only to the female sex; but to *villains* saving against their lords; § From whence we may fairly conclude that it extends to *aliens*; & that aliens are not noticed by him could only be, because being within the very letter, they could not be deemed not to be within the spirit of the statute. Upon the words *nulli vendemus*, in the latter part of the statute, which I presume may be translated, we will sell to *no person*, he remarks; “and therefore every subject of this realm, for in- jury done him *in bonis, terris, vel persona*, by any other subject, “be he ecclesiastical or temporal, free or bond, man or woman,

* *Vi: Co. Litt.* 240. b. *1b.* 2. *B. C.* 378. 5. *Co.* 54. 2. *Ver.* 360. † *H.* c. 159. 3. *Ins.* 27. ‡ *1. B. C.* 372. ¶ *Cræ. Car.* 8. *vent.* 417.
§ *2. Litt.* c. 45.

old or young, or be he outlawed, excommunicated, or any other way, without exception, may take his remedy by the course of law, and have justice."* *Aliens* therefore must come under the description of the statute, and be comprehended under the beneficial provisions of it, equally with natural born subjects.

The right of personal liberty, says Blackstone, is so deeply implanted in the British constitution, and rooted even in the very soul that a slave, or negro, the moment he lands in England, falls under the protection of the laws.† In the whole chapter which treats of the rights of *personal liberty* and *personal security* there is not a single word that could be tortured by the ingenuity of a *Manfield*, or the effrontery of a *Jefferies* to mean that *alien friends* are not entitled to the full protection of the laws of England, equally with any other subject of the British government. Among the rights of British subjects let it be remembered to the honour of the laws of that nation, that *no man*, be he an *alien* or natural born subject, can be *taken* or *imprisoned*, or *exiled*, but by the *legal judgment* of his peers, or by the *law of the land*; by which expression, sir Edward Coke informs us, is meant *indictment*, or *presentment* of good and lawful men, where such deeds be done in due manner, that is, in a court of judicature, or by *due process*, or by *writ original*, according to the *old law of the land*. This, adds he, is a *beneficial law* and is construed *benignly*, and therefore "the king cannot send any subject of England (not any natural born subject only) against his will to serve him out of the realm. *No man* shall be taken, that is, *restrained of liberty*, by petition or suggestion to the king in council, unless by indictment, &c."

From these authorities, and many more which might be recapitulated, there can be little doubt that the rights of *alien friends* so far as regards the rights of *personal liberty* and of *personal security*, are the same as those of natural born subjects. Concerning these rights, says Blackstone, as they are strictly *natural*, the laws of England have never *abridged* them without sufficient cause; they never can be abridged in that kingdom at the mere discretion of the magistrate.‡

2. I shall now consider the rights of *alien friends* under the colonial, and state charters and laws.

Queen Elizabeth's charter to sir Humphrey Gilbert, and that to sir Walter Raleigh, authorises the grantees respectively, to discover and search out all such remote, heathen and barbarous countries or territories as were not actually possessed by any christian prince or people, and thither to lead and carry with them, and

* 2. Inst. 55.

† 1. D. C. 127.

‡ 1. D. C. 135.

§ Stueb's history of

Virginia, page 9.

there to inhabit, such, and so many of her majesty's subjects, as would willingly accompany and join in the enterprise, and for the *better encouragement* of all who would engage therein, she grants and declares that the said countries so to be possessed and inhabited should from thenceforth be in allegiance and protection of her, her heirs, and successors; and further grants to them, their heirs and assigns, and to every other person or persons, to their and every of their heirs, that they and every of them that should thereafter be inhabiting the said lands, countries and territories, should and might have all the privileges of free denizens, or persons native of England.

The true construction of this grant I apprehend, is that the natural born subjects of the Queen should still continue to enjoy in these countries the privileges of natural born subjects; but that all those who came hither to inhabit, *not being natural born subjects*, should in virtue of their settlement in this country instantly become denizens and possess the rights of denizens in England. I need not inform you, sir, though some of your countrymen perhaps are unacquainted with that circumstance, that although by the laws of England no person could be naturalized but by act of parliament, yet the crown may make denizens *ad libitum*. And in order to encourage aliens as well as native born subjects of England to come over and inhabit this country, all such aliens as might thereafter be inhabiting here, by that act alone acquired the right of denizenship. And this was necessary to enable the alien to acquire lands, the object for which he came out. All alien inhabiting the United States, therefore became *instantly* entitled to this valuable privilege; and inasmuch as the issue of a denizen born after his denization might inherit his lands, this privilege in the early settlement of the colonies was probably deemed sufficient for all beneficial purposes; about a century afterwards an act was brought over under the great seal of England, by lord Culpeper, and passed in 1680* authorizing the governor to grant letters of naturalization for which the grantees were to pay fifty shillings and no more; and moreover confirming the title to lands which had been patented or bought and sold by any alien to the purchasers. This act was confirmed by a subsequent act made in the reign of Queen Anne.† —The preamble to both recites that nothing can contribute more to the speedy settling the colony, than that all possible encouragement should be given to persons of different nations to transport themselves hither with their families, &c. — And by an act passed in the year 1766‡ it is declared, that every person then seized or possessed of any lands, derived by descent or purchase from such aliens being protestants as had formerly removed into this country, shall

continue to hold the same as if such alien had been naturalized at the time of such descent or purchase.

I am not informed what other laws might have been proposed in this or the other states, for encouraging the migration of foreigners, and facilitating their acquisition of the rights of natural born subjects, but among the acts of misrule alledged against our rejected sovereign, George the Third, in the declaration of independence, it is asserted, "that he had endeavoured to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners, and refusing to pass others to encourage their migrations hither." This leads us to consider of the rights which aliens have acquired since the revolution.

In May 1779 the legislature of Virginia passed an act declaring who should be deemed citizens; by which it is declared, that all white persons who had resided therein two years before the passing of that act, and all who should thereafter migrate into the same (*other than alien enemies*) and give assurance of fidelity to the commonwealth, and all infants *wheresoever* born, whose father if living, or otherwise whose mother was a citizen at the time of their birth; or who migrate hither, their father if living, or otherwise their mother becoming a citizen or who migrate hither without father or mother, shall be deemed citizens of the commonwealth; and all others not being citizens of any of the United States of America shall be deemed aliens.—In the same session foreigners as well as others were permitted to purchase land warrants, and to locate their lands, after which they were allowed two years to become citizens, or to dispose of their warrants. § By the articles of confederation the citizens of each state were entitled to the privilege of citizens in every other. After the peace with Great Britain, when it was foreseen that the introduction of secret enemies into offices ought to be guarded against, persons of a particular description were absolutely prohibited, from returning into the commonwealth, and some restrictions were imposed in regard to the admission of such foreigners as had lately been our avowed enemies, to all the rights of citizenship; but none was imposed which could be construed to impair the right of personal security, or of personal liberty, and more liberal encouragement was held out to foreigners

* c. 55.

† c. 13.

§ How far foreigners were enabled to purchase and hold lands in the territory of the United States, under the 1st Ordinance passed by Congress, May 20th, 1785, I am not prepared to say, not having that Document to refer to. But I suspect that they were enabled to become purchasers; and consequently that the faith of the United States was pledged to them, that they should also be capable of holding lands. The lands sold under that Ordinance (if I have been rightly informed), were either immediately or mediately purchased by foreigners.

to migrate hither and settle. * In 1783, an act † which is a transcript from the 29th chapter of *magna charta*, was passed declaring that *no freeman shall be taken or imprisoned or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed but by lawful judgment of his peers, or by the law of the land.* Sir Edward Coke's commentary upon the 29th cha. of *magna charta* must therefore apply to this act, and we have seen that *alien friends* are within the benefit of it. Consequently, that whatever rights any subject of Great Britain possessed under that chapter of *magna charta*, the same rights at least did every citizen of Virginia, and every *alien friend* residing therein possess under the last recited act. And whilst the statute law of England remained in force, the same right did every person resident therein retain under *magna charta*: For I presume it will scarcely be controverted by you, sir, that the common law of England and every statute of that kingdom made for the benefit of the subject before our ancestors migrated to this country, so far as the same were applicable to the nature of their situation, and for their benefit were brought over hither by them; and where they are not repealed, altered or amended by legislative or constitutional acts and declarations, they remain in full force: but on the contrary, it seems to be no less certain and consonant with reason, that every statute and rule of the common law which were in derogation of the rights of the people, being founded in the nature of regal government, were consigned to oblivion in America by the declaration of independence, whereby royalty was annihilated in this country and prerogative buried under the equal rights of men and citizens.

It is under these restrictions that I admit the force of the common law and statutes of England, made prior to the settlement of our forefathers in this country to be in force here, except where from local circumstances, or from the change of the principles of our government, it would be absurd to suppose that their obligation continued. The whole of which I shall sum up in a few words, viz. Every rule of the common law and every statutory provision, made in England for the security of the life, liberty or property of the subject prior to the fourth of James the first, ought to be resorted to in our courts, as the law therein, unless a different rule or provision can be found in our own constitutions or laws for the like purposes.

Let us now compare the situation and rights of aliens in England with those in America. An alien in England remained the subject of that king or government under which he was born; he

* November 1783. c. 16. 17. 3 do. 1794. c. 110. † do. 1794 c. 55

36: 27: 1841

migrated to England for the temporary purposes of merchandize, and not of perpetual residence; because, as he continued to be the subject of a foreign power, he was always supposed to retain the *animus revertendi* to his natural sovereign; and consequently, whenever a war broke out between his own nation and that of Great Britain, he was however attached to the place of his residence, its laws or government, considered as an enemy, unless he could obtain a special letter of license from the crown to remain in England; he could not be made a *denizen*, but by the *special favour* of the crown; nor be *naturalized*, but by the *like favour* of the Supreme legislature (whose power extends even to an alteration of the constitution itself.) Both these acquisitions must be obtained as a matter of the *highest grace and favour* and not of *right*. Yet under all these circumstances, an *alien*, whose *nation is in amity* with England, is clearly and indisputably entitled to the full protection of the laws in every matter that respects his personal liberty, his personal security, and his personal property, as fully and completely as if he had been naturalized by act of parliament, or had acquired all the rights of an Englishman by his birth. *

An alien in America, antecedent to the revolution was entitled to *all* the rights and privileges of an alien in England, and *many more*; to *all* that an alien in England could claim, because as has been already remarked, the *common law of England* and every statute, of that country *made for the benefit of the subject* before our ancestors migrated to this country, were, so far as the same were applicable to the nature of their situation *and for their benefit brought over thither by them*; and wherever they are not repealed, altered or amended by legislative declarations, every *beneficial* statute and rule of the common law still remains in force. An alien in America was also entitled to *many more rights* than an alien in England. 1st. By the very act of migrating to and settling in America, he became *ipso facto* a *denizen*; 2ndly, By the same act of migrating he might be *naturalized* under the sanction of a *pre-existing* law, made not only for the *benefit*, but for the *encouragement* of *all* in a similar situation with himself. † The operation of these laws was *immediate*, not *remote*; he became a *denizen*, as of *right* instantly; he became naturalized upon payment of the legal fees for his letters of naturalization, and taking the usual oaths. Will it then be contended, or can it be supposed that an alien coming to *settle* in America was less entitled to the protection of the laws than he would have enjoyed in England, if he had gone thither to make a temporary residence?

3. By the adoption of the constitution of the United States, the rights of aliens to become citizens was by no means intended to be taken away—on the contrary it is expressly provided that

congress shall have power to establish an *uniform rule of naturalization*, throughout the United States. The *dissimilarity* in the rules of naturalization in the several states, was supposed to have laid the foundation for intricate and delicate questions, under that article of the confederation which declares, that the *free inhabitants* of each state, paupers, vagabonds, and fugitives from justice excepted, should be entitled to all privileges and immunities of *free citizens*, in the several states; under which provision, it seems to have been apprehended, that the *free inhabitants* of one state although *not citizens* thereof, might be entitled to all the privileges of *citizens* in every other; to obviate this and similar inconveniences, this power of prescribing an uniform rule of naturalization was vested in the federal government.* And here we may observe that congress are authorized to prescribe the *mode* by which aliens may be naturalized, but it never was intended to authorize it to take away the *right*. Every alien coming into the United States in time of peace, therefore acquires an *inchoate right*, under the constitution, to become a citizen; and when he has, in compliance with the laws, made the requisite declarations of his intention to become a citizen, and to renounce forever all allegiance and fidelity to any foreign prince, or state, and particularly that prince or state, whereof he was last a citizen or subject, he seems to have acquired a *right*, of which *no subsequent* event can divest him, without violating the principles of political justice, as well as of moral obligation. For the government in requiring this declaration of renunciation on the part of the alien, previous to his admission to the rights of citizenship, and that at a very considerable period before his right can, by the rule prescribed, be consummated, tacitly engages not to withdraw its protection from him; and much more, not to *betray him*, by sending him back to that sovereign, whose allegiance he had in the most solemn manner disclaimed, and whose subject and adherent he could no longer be considered, to be, whatever political relations the two nations may thereafter stand in, with respect to each other. If this position be just with respect to those who might under different circumstances, have been regarded as *alien enemies*, (as being *antecedently* subjects of a power with which the United States may *thereafter* be at war,) how much more powerfully will the same reasoning apply in favour of those, who can, under no possible view of their case, be considered in that light? And, in fact, nothing could more effectually *discourage* emigration, (no, not even a total incapacity ever to be naturalized,) than such an interpretation of our constitution and laws, as would lay a snare for every foreigner disposed to settle in this country; from whence, up-

on any personal pique or national quarrel, in which he had no part or share, he might be banished and sent back to that very sovereign whom he must have offended by making the declarations prescribed by our laws. //

Hitherto we have met with nothing to induce us to suppose that the rights of *alien friends* were intended to be generally abridged by the constitution of the United States. Their rights then were at least equal to the rights of *alien friends* in England at the time of the first settlement of America, and something more.—In the constitution it is provided, that the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of *rebellion* or *invasion* the public safety may require it.—Of the nature and efficacy of this writ, you, sir, and your countrymen in general, are too well informed to require any elaborate discussion—I will only say it is grantable, of *common right*, *ex debito justicie*, to all manner of persons without exception, except *alien enemies* in England; and I will not presume that its operation is less extensive, or less efficacious in the United States, except in the case of persons held to labour or service under the laws of any state. There are certain circumstances under which it ceases to be a matter of right, both in England and America, as where a person is committed on a charge of treason or felony, plainly expressed in the warrant of commitment; but this arises from the delinquency, or supposed delinquency of the party, as the charge is always presumed to be made against him upon oath, and not from any *antecedent* incapacity, or privation of *common right*. The privilege of the writ of *habeas corpus* is then *general* and extends to all *freemen* without distinction.—Congress cannot deprive one set of men of it, and continue it to others. They must *suspend it* as to *all persons whatsoever*, whenever they do suspend it—That can only be done in the time of *rebellion*, or actual *invasion*. No such case has occurred.—Congress therefore have not the power of suspension. A declared war, without an *invasion*, or internal *rebellion*, will not justify the suspension.—The laws therefore must continue to operate in all cases where the liberty of the person is concerned, until one or other of those occurrences shall happen, without any distinction between citizens and others, who are not strictly *alien enemies*: for the doctrine of *constructive delinquency*, I would vain hope, is too odious to meet with encouragement in our courts of judicature, however zealous the leaders or tools of a faction may be for its propagation.

It is well known that by a great portion of the union, the constitution of the United States was supposed to be defective, in not providing a sufficient guarantee for the security of that liberty which the people of the United States had just purchased at the expense of much blood and treasure, and which they were deter-

mined to preserve, and transmit to their posterity unimpaired.—Sensible of this, the first congress that was assembled under the constitution, “in order to prevent misconstruction or abuse of its powers,” proposed, “further *declaratory* and *restrictive* clauses,” thereto; among which are the following:

The *rights* of the *people* [not of the *citizens* only,] to be secure in their *persons*, houses, papers and effects, against unreasonable searches and seizures, shall *not* be violated; and *no* warrants shall issue but upon *probable cause*, supported by *oath* or *affirmation*, and particularly describing the place to be searched, and the persons, or things to be seized.

The *right* which is here spoken of is not one which the *people* derive from the constitution, but that inherent *natural right* which all men are equally entitled to, being as Mr. Blackstone expresses, a *right, strictly natural*; as such *aliens* as well as *citizens*, must equally have been in possession of it.* This clause extends then to secure *aliens* equally with *citizens*, from any *violation* of it. They are therefore equally entitled to the benefit of the *restrictions* which it imposes.

These restrictions are four fold, two only of which are necessary to our present purpose.—1st. *No warrant* shall issue (and consequently no arrest be made) but upon *probable cause*—2nd. Every such warrant must be supported by *oath*; or by *solemn affirmation*, in those cases where that mode of giving testimony is admitted by law.

And here, sir, let me call in the aid of sir Edward Coke to inform us what is meant by the word *probable*; he tells us, in his commentary on the statute of treason, that the word *provablement* in that statute, means upon *direct* and *manifest proof*, not upon *conjectural presumptions* or *inferences*. It is true that with his usual quaintness he endeavours to make a distinction between the words *provable* and *probable*, but you, sir, are too good an etymologist, to require to be informed that the classical word *probabilis* from the verb *probo*, to prove, is the primitive word from which both the barbarous French and the purer English derive their just interpretation—and this is further confirmed by requiring the sanctity of an oath to the information on which the warrant may be grounded.

A succeeding article declares that *no person* [not confining the expression to *citizens*, but extending it as far as language can extend it] shall be deprived of life, liberty, or property, without *due process of law*; which words as was before observed, Sir Edward Coke in his commentary on *magna charta* thus expounds; “by indictment or presentment of good and lawful men where

“ such things be done in due manner, or by *writ original* of the common law.” Which chapter he further informs us is but *declaratory* of the old law of the land; and being for the *benefit* of the subject, I presume it remains at this day in full force in this country.

The next article* declares, that in all *criminal prosecutions* the *accused* shall enjoy the right to a *speedy* and public trial, by an impartial jury; and to be informed of the nature and cause of his *accusation*; and to be *confronted* with the witnesses against him.

The word *accused* being strictly an adjective, let me ask you, sir, for the proper substantive to it. Will the word *president*, *senator*, *representative* in congress, *judge*, *ambassador* or *officer*, be deemed a proper substantive? If they will not, why must they be rejected? Your candour will answer, because not sufficiently *general*. If we substitute the word *citizen*, will it not be liable to the same objection; more especially as the word *person* twice repeated in the preceding article furnishes the very *substantive* we are in quest of.

I could never have prevailed on myself to descend to these *literal* disquisitions, had they not been introduced elsewhere for the express purpose of excluding *alien friends* from the protection of the *constitution*, by degrading them from the rank of *persons*. If there be any citizen of the United States, who can deny them this rank, and at the same time preserve his gravity, he must either be a better actor or a deeper dissembler, than I have been in the habit of conversing with.

And now, sir, let us proceed to consider the bill concerning aliens, the tenor of which is as follows:—

AN ACT CONCERNING ALIENS,

[APPROVED—JUNE 25, 1798.]

Sec. 1. BE it enacted by the senate and house of representatives of the United States of America, in congress assembled, That it shall be lawful for the president of the United States at any time during the continuance of this act, to order all such *aliens* as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable ground to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order—which order shall be served on such alien by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the secretary of state, by the marshal or other person to whom the same shall be directed. And in case any alien, so ordered to depart, shall be

found at large within the United States after the time limited in such order for his departure, and not having obtained a *license* from the president to reside therein, or having obtained such *license* shall not have conformed thereto, every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States. *Provided always and be it further enacted*, That if any alien so ordered to depart shall prove to the satisfaction of the president, by evidence to be taken before such person or persons as the president shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States, will arise from suffering such alien to reside therein, the president may grant a *license* to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the president may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties to the satisfaction of the person authorized by the president to take the same, conditioned for the good behaviour of such alien during his residence in the United States, and not violating his license, which license the president may revoke, whenever he shall think proper.

Sec. II. *And be it further enacted*, That it shall be lawful for the president of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a license as aforesaid, in all cases, where in the opinion of the president the public safety requires a speedy removal. And if any alien so removed, or sent out of the United States by the president shall voluntarily return thereto, unless by permission of the president of the United States, such alien on conviction thereof, shall be imprisoned so long as in the opinion of the president, the public safety may require.

Sec. III. *And be it further enacted*, That every master or commander of any ship or vessel which shall come into any port of the United States after the first day of July next, shall immediately on his arrival make report in writing to the collector or other chief officer of the customs of such port, of aliens if any on board his vessel, specifying their names, age, the place of nativity, the country from which they shall have come, the nation to which they belong and owe allegiance, their occupation &c. a description of their persons, as far as he shall be informed thereof, and on failure, every such master and commander shall forfeit and pay three hundred dollars, for the payment whereof on default of such master or

commander, such vessel shall also be holden, and may by such collector or other officer of the customs be detained. And it shall be the duty of such collector or other officer of the customs, forthwith to transmit to the office of the department of state true copies of all such returns.

Sec. IV. *And be it further enacted*, That the circuit and district courts of the United States, shall respectively have cognizance of all crimes and offences against this act. And all marshals and other officers of the United States are required to execute all precepts and orders of the president of the United States issued in pursuance or by virtue of this act.

Sec. V. *And be it further enacted*, That it shall be lawful for any alien who may be ordered to remove from the United States, by virtue of this act, to take with him such part of his goods, chattels or other property, as he may find convenient; and all property left in the United States, by any alien who may be removed, as aforesaid, shall be, and remain subject to his order and disposal, in the same manner as if this act had not been passed.

Sec. VI. *And be it further enacted*, That this act shall continue and be in force for and during the term of two years from the passing thereof.

That we may canvass its merits the more freely, let us suppose that some member, ambitious to distinguish himself for a more zealous love of order and good government, than his compeers, should move to strike out the word *aliens*, throughout the bill, and in lieu thereof to insert the word *persons*. Apathy itself would probably have been roused at the proposition: permit me to suppose, that awakened by such a proposition, you might possibly have expressed yourself somewhat to this effect:

Mr. Chairman,

The proposition which has just been submitted to the committee fills me with astonishment; from the great talents which the mover has so often and so eminently displayed upon this floor, I cannot suppose him to be ignorant of the principles of our constitution and government; and from the active part which he hath taken in support of this bill, in its more early stages, it would be an affront to his understanding to presume that there is a syllable in it, the full import of which he has not thoroughly considered and digested.— I, sir, was ready to give it the support of my voice in its present shape, while it is confined to *aliens*: who, not being parties to the instrument by which our constitution was settled, cannot be considered as entitled to the benefits it was intended to se-

ere." Sir, the proposition submitted to the committee at present, is calculated by a kind of parliamentary magic to convert a wise, politic, just and necessary law, into the most abominable engine of oppression and tyranny that ever was conceived by the most arbitrary despot that ever sway'd the sceptre in the old world.— Our president, the administrator of the laws of the union, and chosen by the common suffrage of the people, will in a moment be transformed into a monster of despotism, more absolute than the grand Seignior, more tyrannical than the Mamlukes of Egypt, and more terrible than the Hydra-headed directory of France. Liberty will in a moment be utterly destroyed, its essence annihilated, and its very name forgotten, or buried in the gloomy dungeons of oppression, or banished like another Cain, and condemned perpetually to wander a fugitive and a vagabond upon the face of the earth. That bill, which in its present shape, I regard as an additional bulwark to our happy constitution, and as a *pillar of brass to the government*, if the proposed amendment takes place, will in an instant annihilate the one, and swallow up the other.— We, Mr. Chairman, who are now debating upon it, and who refuse our support to it, may expect, if it takes effect, to be transported like Barthelemi and Pichegru, to some remote region, at a distance from our wives, our children, our dearest connexions, our property, our liberty, and our all, there in sackcloth and ashes to bewail our miserable fate, and deprecate, by unavailing curses, the imprudence of this hour.

I beg pardon, sir, of the committee, and of you for the unaccustomed warmth of my address. My feelings were excited as if this dagger which is aimed at the vitals of our constitution had passed through my own. But I will endeavour to compose myself, and with calmness to review the subject.

The bill before you, sir, authorizes the President to *order* all such *aliens* as he shall judge dangerous or shall have reasonable grounds to *suspect* are concerned in any treasonable or secret machinations against the government, to *depart* from the U. States, which if they fail to do, they shall be liable on conviction to three years imprisonment, and shall never after be admitted as citizens; and the second clause moreover authorizes him to banish such as may be imprisoned in pursuance of the act; that is to *superadd the punishment of banishment, to the punishment of imprisonment*, inflicted by the courts' judgment; and also, to cause to be arrested and banished such aliens as shall have been before ordered to *depart*, whenever he judges the public safety may require a speedy removal. And the proposition now before you, sir, is to strike out the word *aliens* and insert the word *persons*, in lieu of it wherever it occurs.

* See the report of the committee of Congress, made the 25th of February, 1799.

The mover of this clause could not be so ignorant of the import of the term *persons* as not to know that it is the most general term by which the individuals of the human race can be designated. It comprehends *all, young and old, male and female, high and low, rich and poor.* Yes, sir, I repeat it, the word *persons*, taken singly, cannot be made to refer to one class of the human species and not to another. Its import cannot be confined to *any in particular*, for it comprehends *all*. It is not only co-extensive, but *more extensive* than the word *people*. For the latter may be referred only to a *collective* body, whilst the former refers not only to every individual of a *collective* body, but to every other individual whatever.—Sir, I do not speak it irreverently, when I say, that this word *persons* not only comprehends the whole *human race*, but is even applied, by *Divines* themselves, to the characters of the *Holy Trinity*: which is conformable to Mr. Locke's definition of the word, a *thinking intelligent BEING*.*—How then, sir, shall we reconcile this amendment to the principles of our free government? Was it the intention of the mover to subject every *citizen* of the *United State*, to *banishment*, without accusation, without witnesses, without trial, and without defence, merely upon the suggestions of suspicion, in the breast of one man, however exalted, however trusted heretofore, or however worthy of confidence. Sir, not only the spirit of our own free constitution is against it, but that of every government where the liberty of the subject is the object of protection, is diametrically opposed to it. Will any member of this committee be so hardy as to advance, or will any man who hears him believe, that the people of America, bound by no laws but those of the Almighty ruler of the universe, intended, by their own voluntary act, to establish an arbitrary and despotic government over their own heads? That having groaned under oppression, and shaken it off, they voluntarily meant to impose a yoke upon their own necks? The ox, patient and submissive as he is to the hand of his master, solicits not the yoke. The ass, stupid and unfeeling as nature has made him, rejoices at the removal of his pack. The Camel kneels not down to receive his load, until the stripes of his master have taught him submission. Americans, sir, have not yet been brutalized to a similar state of non-resistance, nor could it be presumed, that, like the fanatics of a cloister, they meant to scourge themselves into a state of salvation.—No, sir, this could never be the intention of a nation as numerous, as extensive, and as enlightened, as the American. Individuals may labour under a temporary suspension of their intellectual powers, but a whole nation, once enlightened, cannot in a moment be re-plunged into a

* A *person* is an individual substance, of a *rational, or intelligent nature.* BOETHIUS.
 A *person* is a *thinking intelligent being.* LOCKE.

state of barbarous ignorance, or insanity. They must have recollected their *rights* under that government which they had just taken off, because those *rights* had been invaded. Will it be contended then, that they meant to be less free, under their own government, than whilst they were the subjects of Great Britain? Surely not—What then were their rights, as men, and as British subjects? Were they not the *right* of personal security, of personal liberty, and of private property? Wherein did those several rights consist, and how were they secured?

One of the most accurate writers on the British constitution informs us, that the *right of personal security*, consists in the *uninterrupted enjoyment* of life, limbs, body, health and reputation; that the *right of personal liberty*, consists in the power of *locomotion*, of *changing situation*, or removing one's person, to whatsoever place one's inclination may direct; without imprisonment, or restraint, except by due course of law. That this is a right *strictly natural*; and that the laws of England have never abridged it without sufficient cause; and that in that country it *can never be abridged*, at the mere discretion of the magistrate.* What, sir, are the powers proposed to be granted by this bill, are they not *merely discretionary*? Has the President any rule to go by but his own *opinion*?—Are not his *suspensions*, however founded, a sufficient justification for him? is he to wait for information against any person? No, sir, if he dislike the face of a man, if he squints, if he be wry-necked, if his mouth be awry, his nose longer, or shorter than the standard of beauty in his own mind; if he fails to make his obeisance as he passes, or to shout, "long live the President" when he appears in public, all these *may be grounds of suspicion*, for which the President will not be accountable to any one but himself. Is not this mere discretion, sir? If it be, it must be allowed, that the amendment proposed will enable the president to banish any citizen of the United States, any member of this or the other House of Congress, nay, the Vice-President himself, whom the constitution contemplates as his immediate successor, in case of his death or disability, at his *discretion*. Let us suppose the case, sir, that a president armed with the powers which this amendment proposes, should foresee, that at the next election some more popular character may start up as his competitor. If he considers it "to be necessary for the public safety that he should continue in office," would not the bill before you render it a matter of *sound discretion*, in him to *banish* the person from whom such danger might be apprehended? And if he did, and were to *banish us* at the same time, could we complain that he had exceeded the powers vested in him by such an act?

16 This act as proposed to be amended by the motion now be-
 17 fore the committee, vests the president, with a power far great-
 18 er than the King of England, possesses, or than any King of Eng-
 19 land ever possessed.—The manner in which a *citizen* may be or-
 20 dered to depart resembles the old *lettres de Cachet* in France ;
 21 the monstrous suspicion which it proposes, to preside over the
 22 councils of the president, and the fate of the *citizen*, is more
 23 terrible than the jaws of the Venetian lion, gaping for food for
 24 the state inquisition ; and the stroke of persecution, will be as
 25 sudden, as decisive, and as fatal, as the fall of the guillotine.”

This speech being ended, and I must apologize to you, sir, for
 not supposing you to have made a better, let us suppose some o-
 ther member to have addressed the chair, thus :—

“ Mr. Chairman,

16 I am happy to find that in the progress of this debate, the ad-
 17 vocates for the bill before you are at length likely to discern
 18 its true construction. The comments of the member who spoke
 19 last upon its operation if the amendment proposed, be adopted,
 20 require no further illustration ; they shew the bill in all its real
 21 deformity. One thing, however, surprises me not a little—it
 22 is, that when the worthy member was so fully apprised of the
 23 import of the word *persons*, as to shew, as he has done from the
 24 highest authority, that it comprehends the *whole human race*,
 25 he should not have discovered, that it must necessarily have
 26 comprehended ALIENS, as a part of that race. Is it, sir, that
 27 *Americans* are so highly favoured by providence, as to have an
 28 exclusive title to the character of *thinking intelligent beings*, in the
 29 terms of the definition, given us from Mr. *Locke* ; or from what
 30 other circumstance does it happen that *aliens* are not compre-
 31 hended under so general and extensive a term ?—Sir, I will not
 32 believe, unless assured by that gentleman to the contrary, that
 33 he is so blind to the force of his own arguments, as not to per-
 34 ceive that the word *persons* does comprehend *aliens*, as well as
 35 *citizens* : and, though perhaps not strictly in order, on the pre-
 36 sent motion, I shall beg leave to add a few words on the con-
 37 sequences which must flow from the proof of that important
 38 point.

“ It being then admitted, that *aliens* are comprehended under
 the word *persons* ; and that the word *persons* is, at least, co-ex-
 tensive with the word *people*, let us examine the bill now before
 you by the test of the constitution.

By the Constitution

1. The right of the *people* to be secure in their *persons*, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause [i. e. *direct* and *manifest proof*, not upon *conjectural presumptions*, or inferences,] supported by oath or affirmation, and particularly describing the place to be searched, and the *persons*, or things to be seized.

The *trial* of all *crimes* shall be by *jury* [not by the president.] No *person* shall be convicted of *treason* unless on the testimony of *two witnesses*.

No *person* shall be held to answer for a *capital* or otherwise infamous crime [*treasonable machinations* are capital crimes] unless on presentment or indictment of a grand jury.

No *person* shall be deprived of life, *liberty*, or property, without due process of law [i. e. upon conviction upon an indictment, or presentment of a grand jury.]

In all criminal prosecutions the *accused* shall enjoy the right to a *public trial*, by an *impartial jury*. [not by the President.]

In all criminal prosecutions the *accused* shall be informed of the nature and cause of accusation, and *confronted* with the *witnesses* against him; have compulsory process for witnesses in his favour, and have the aid of counsel for his defence.

By the Bill

The President may *order* all such *aliens* as he shall judge dangerous, or shall have *reasonable grounds to suspect*, to be concerned in any *treasonable* or secret *machinations* against the government to depart.

The President may cause to be *arrested* and sent out of the United States such of those *aliens* as shall have been *ordered to depart*, and shall not have obtained a license to remain in the U. States, in all cases, where, in the *opinion of the President*, the public safety may require a *speedy removal*.

“ If there be any man so hardy as to affirm, that *aliens* are not *persons*; that *treasonable machinations* are not *crimes*; that the

"suspicions of a president, are a probable cause supported by oath of
 "affirmation; that the opinion, or judgment of a president, is a trial
 "by jury; that such an opinion, or such a judgment founded up-
 "on mere suspicion, is a conviction upon the testimony of two witnes-
 "ses; that being ordered to depart under the penalty of imprison-
 "ment and banishment at discretion, is neither holding a man to an-
 "swer for a crime imputed to him, nor a sentence or judgment;
 "that the imprisonment or banishment of a person is not depriving
 "him of his liberty; that the private resolutions and determina-
 "tions of a president, are a public trial by an impartial jury; if there
 "be any man so hardy, I say, as to maintain these things, he
 "may perhaps reconcile the conflicting clauses of the constitu-
 "tion and the bill together, so as to satisfy his own perverted
 "judgment, but he will scarcely satisfy that of any other thinking in-
 "telligent being."

Here, sir, I should have closed this discussion had I not been
 lately favoured with a sight of a report of a committee of con-
 gress, of which, I think you were a member, which was made the
 order of the day on the 25th of February, and agreed to by a ma-
 jority of four votes.

The report states—That the act concerning aliens (not that con-
 cerning alien enemies) is said to violate the constitution,

1. Because congress have no power to pass a law for remov-
 ing aliens: To which it is answered,

"That the asylum given by a nation to foreigners is mere mat-
 "ter of favour, resumable at the public will."

To this I will take the liberty to reply, that I have proved that
 aliens migrating to the United States to settle, by the mere act of
 migrating acquire rights, under our constitution, whatever may be
 the case in other countries. Therefore that in any parallel drawn
 between the situation of alien friends in America, and alien friends
 in other countries, the rights of the former stand upon much high-
 er ground than those of the latter.

2. The report alleges—"That the constitution was made for
 "citizens not for aliens."

This is mere assertion—and though asserted by a committee of
 congress, cannot stand the test of scrutiny, unless it can be proved
 that aliens are not persons.

3. The report alleges, "That the removal of aliens though
 "it may be inconvenient for them; cannot be considered as a pu-
 "nishment inflicted for an offence."

I reply—That the act supposes an offence to be imputed to them;
 namely treasonable or secret machinations against the government. I
 reply further, That every oppression under colour of authority is a
 punishment.

The committee seem not to be aware, that in endeavouring to prove that the act does not authorize *punishment for an offence*, they have clearly shewn that it authorizes *oppression without any offence*. For one of these two conclusions must necessarily follow—It either authorizes *punishment for an offence*; or it authorizes *imprisonment and banishment* (both which I conceive to be very grievous punishments) whether there has been any *offence or not*.

This argument of the committee, also reminds me of a maxim in the Code of the *Holy Inquisition*. A person *suspected of heresy*, or any other crime cognizable before that awful tribunal, cannot, in the language of the *Inquisition* (which is precisely that of the committee) be *punished*, until there is ample *proof* of his guilt: the most *satisfactory proof*, according to the lenient maxims of that tribunal, is the *confession* of the offender. To obtain this, they put him to the *torture*: this, they contend, is no *punishment*, because it *precedes*, instead of *following conviction*.

I shall now proceed to discuss the SEDITION LAW.

But before we proceed therein, let me beg leave to recall your attention to those points which I have advanced as fundamental principles in the first pages of this letter;

The text of the Constitution is,

“ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press.

The text of the act, commonly called the Sedition Law is,

“ if any person shall write, *print*, utter or *publish*, or shall cause or procure to be written, *printed*, uttered or *published*, or shall knowingly and willing *assist*, or *aid* in writing, *printing*, uttering or publishing any false, scandalous and malicious writing or writings against the *government* of the United States, or *either house of congress* of the United States, or the *president* of the United States, with intent to defame the said government, or either house of the said congress, or the said president, or to bring them or either of them, into *contempt* or *disrepute*; or to excite against them, or *either*, or *any* of them the *hatred* of the good people of the United States, or to stir up *sedition* in the United States; &c. such person being thereof convicted *before any court of the United States having jurisdiction thereof*, shall be punished, &c.

It is contended that these two text do not militate with each other; nor with the fundamental principles of our *representative democracy*, as I shall take the liberty of stiling the government of the United States.

The justificatory report of the committee of congress, of which you were a member, states, that one ground of objection to the constitutionality of this act is, "that congress have no power by the constitution to pass any act for punishing libels, *no such power being expressly given*, and all powers not expressly given being reserved to the states, or to the people thereof.

To this they answer, "That a law to punish false, scandalous and malicious writings *against the government, with intent to stir up sedition* is a law necessary for carrying into effect the powers vested by the constitution in the government, and therefore such a law as congress may pass."

The committee seem to have relied on the use of the figure *Synechdoche*, whereby the *whole* may be taken for the *part* at the will of the speaker.—For were it granted them (which is by no means the case) that congress had a right to pass a law to punish such writings against the *government* with "*intent to stir up sedition*," it would not prove that it had a right to pass an act to punish writings calculated to *bring congress* or the *President* into *contempt* or *disrepute*. For such *contempt* or *disrepute* may be entertained for them, or either of them, without incurring the guilt of *sedition against the government*, and without the most remote design of *opposing* or *resisting* any law, or any act of the *president* done in *pur-
suance of any law*; or of *aiding, encouraging* or *abetting* any hostile designs of any foreign nation. So much of the act as relates to the *defamation of the president*, or of either house of congress, or *either, or any of them*, is therefore not justified by the reasons of the committee itself; and we have no reason to doubt that they urged every one that ingenuity could suggest. To prove this, were a person to assert that Mr. Adams is fastidious in his manner; that he affects the stile and mimicks the etiquette of a crowned head; that in his political writings he is an advocate for a monarchy; that in his administration he has taken care to advance and provide for his own family, friends and adherents; all this may be false, and might bring Mr. Adams into undeserved *disrepute* and *contempt*; but I confess I am at a loss to conceive how it could be construed to be *sedition against the government*; *opposition* or *resistance* to a law; or to any act of the president *done in pursuance of a law*; or an *aiding, encouraging* or *abetting*, any *hostile designs* of a foreign nation. The most that can be made of it is, that it might tend to *make Mr. Adams lose his election*.

The justificatory report further adds—"That it would be manifestly absurd to suppose that a government might punish *sedition*."

tion, and yet be void of power to prevent it, by punishing those acts which plainly and necessarily lead to it."

If this be sound doctrine, we have indeed delivered ourselves bound hand and foot into the power of the federal government. An expression of disapprobation of any measure of government may be construed plainly and necessarily to lead to sedition; the smallest complaint, might receive the same construction; the most respectful remonstrance, nay the most humble petition, are liable to the same liberal interpretation; any argument in defence of an opinion uttered on the subject, might be tortured into a seditious speech, and as such, according to this doctrine, punished, as leading to sedition.— The liberty of speech and of the press, standing precisely upon the same constitutional ground, whatever may be fairly predicated of the one, may be of the other. Therefore who ever may utter a disrespectful sentiment of the president or either house of congress, according to the reasoning of the committee, might be punished for it, because, such disrespectful sentiment might bring them into disrepute. Will any member of the committee maintain this to be the intention of the constitution? If they will, and if this be the interpretation of the constitution by those who are to administer it, it is time that the people, who made it, should also give their explanation of it; if any further explanation than what is contained in the words of the amendment be requisite or admissible.

The justificatory report further proceeds to vindicate the act, upon the ground, "that under the general power to make all laws proper and necessary for carrying into effect the powers vested by the constitution in the government of the United States, congress has passed many laws, for which no express provision can be found in the constitution, and the constitutionality of which has never been questioned." This might well have happened; because the people might have seen, as well as the congress, that such laws were both necessary and proper to carry into execution some power expressly granted. But this reasoning by no means sanctifies an act, which is neither necessary, nor proper, for carrying any express power into execution: and so far as relates to bringing the president or congress, into contempt, or disrepute, the committee itself has not attempted to shew that the act in question is such an one.

This deduction therefore is without foundation: But there is something in this part of the report which merits further notice, as it evinces an opinion in the committee, that whatever congress have once done, without their authority being questioned, the same, or the like may they do again, upon the bare authority of the first precedent, whether right or wrong. This shews it is time to be vi-

pliant; and if unconstitutional precedents are attempted, they ought to be detected and exposed.*

Before I proceed with the justificatory report, I beg leave to remark, that the committee have not ventured to give any answer to that part of the objection which is founded on the twelfth article of the amendments to the constitution; viz. that all powers not delegated to the United States by the constitution, nor prohibited by it, to the states, are reserved to the states respectively, or to the people.

The committee having in vain endeavoured to shew, that congress have power to punish a person for publishing any writing with intent to bring *them* or the *president* into contempt or dispute, it follows, under this amendment, that the power of punishing in these cases remains with the states respectively. Consequently that an act which transfers the cognizance of such cases from the *constitutional tribunal*, viz. the *state courts*, must be an *unconstitutional act*. For it will be remembered, and I rely on it as a sound and uncontroversible position, that the powers *carved out* of the state sovereignties, are to be construed strictly wherever the grant may in any measure derogate from such *pre-existent sovereignty* in the *state*; for *there* only are we to seek for all the *unenumerated powers* incident to every government, where they are not restrained by the constitution. In confirmation of this sentiment I shall refer you to that luminary of federal politics, *Publius*,† who expressly informs us, that, “the powers delegated to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, as *war, peace, negotiation and foreign commerce*; with which last the power of taxation will for the most part be connected. The powers reserved to the several states, will extend to all the objects, which in the ordinary course of affairs, concern the *lives, liberties, and properties of the people*; and the *internal order, improvement and prosperity of the state*.” Such is the language of *your own apostle*; if ye will not believe *him*, neither would ye believe one though he were to rise from the dead.

The second objection stated by the committee is that the act is expressly contrary to that part of the constitution which declares, that “congress shall make no law respecting an establishment of

* The acts authorizing the president of the United States to appoint militia officers (5. Con. c. 64 and 74.) and exempting the volunteers from all militia duty which may be required of them by the laws of any state, are among those questionable acts, to which the public mind has not yet paid the attention they deserve—They will hereafter perhaps be quoted as precedents.

“ religion, or abridging the *freedom of speech*, or of the *press*.” —
To which they answer,

1st. “ That the liberty of the press consists not in a license for every man to publish what he pleases, without being liable to punishment for an abuse of this license; but in a *permission* to publish without *previous restraint*, whatever he may think proper, being answerable to the public, and to individuals, for any abuse thereof to their prejudice.”

This doctrine, that the freedom of the press, consists only in a *permission to publish without any previous restraint*, is not an oracle of the *genius* of the *constitution* of the United States; but the result of deference to resolutions, precedents, and *extra-judicial Dogmas*,* first uttered, and digested in that *mirror of justice*, the high court of *star chamber*, in England; “ the judges of which (as we are informed by the British parliament, itself) undertook to punish where *no law* did warrant; and the proceedings and censures of which, were an *intolerable burthen* upon the subject, and the means to introduce an *arbitrary power* and *government*.”

Pickering's case† was determined in that court in the 3rd year of James 1st.—Queen Elizabeth, not long before, had passed a decree, in that court, “ prohibiting under *severe penalties* the publishing of any book or pamphlet against the form or meaning of any restraint, or ordinance contained in any statute, or laws of the realm, or in any injunction made or set by her majesty, or her privy council, or against the true sense and meaning, of any letters patent, commissions, or prohibitions, under the great seal of England.” †—There were at that time no *licenses of the press*, these being first established by James; consequently, there was no *previous restraint* upon such publications: and therefore, (according to this reasoning of the committee) the *liberty of the press* was not abridged by this decree.

It is not improbable that this decree, † passed in that *very court* of

* The general rules laid down by the court of star-chamber, in *Pickering's case*, 5. Co. 125. are either *extra-judicial*, or not maintained; one of which lord Coke himself contradicted upon another occasion. BARRINGTON 88.

† The reason of the questionable doctrines contained in this case, arises from every one of these rules being borrowed from the civil law.—Lord Coke who was no great civil lawyer has therefore entitled the case *De Libellis famosis*; which is the title of the chapter in the Roman law; and what severity in it we not expect from a country, in which, by the twelve tables, in the time of the Decemvirs a libeller was punished with death. Barrington on the statutes—pa. 84.—Such appears to be the origin of the new fashioned doctrine concerning the freedom of the press.

† 5. Co. 125. commonly called the case *Delibellis famosis*.

‡ Hume.

‡ Elizabeth was not contented with the terrors which this decree was calculated to inspire: she procured a statute to be passed in the twenty third year of her reign, whereby it was declared to be Felony, “ for any person within the realm, or without, to devise, write, print, or set forth any book, rhyme, ballad, letter, or writing containing any

Star-chamber, where Pickering's case was in a very few years afterwards determined, laid the foundation of those very extrajudicial rules, which were there promulgated in that case; and which have since been relied on, by much greater and wiser men than the framers themselves, as constituting the fundamental principles of the law respecting libels; and are now applied to the freedom of the press. The very name of that infamous court might drive the blood from the cheeks of an American. That its doctrines should be relied on in a country where the people are the sovereign and magistrates their agents and servants, is enough to rouse the genius of the constitution, to speak for itself. Hear its words.

"The genius of the constitution cannot be over-ruled by those, who administer the government. Among those principles deemed SACRED in America, among those SACRED RIGHTS considered as forming the BULWARK of their LIBERTY, which the government should contemplate with awful reverence and approach only with the most cautious circumspection, here is none of which the importance is more deeply impressed on the public mind than the LIBERTY of the PRESS."

A government which should contemplate the genius of our constitution with such awful reverence, and approach those sacred rights which form the bulwark of our liberties, with such cautious circumspection, might set the shafts of calumny, and of satire, at defiance, and triumph over the licentiousness of the press.—Such a government would never think it necessary to remove a wart, by the amputation of a limb.

From the premises before stated, the committee draw the fol-

* Letter from our Envoys to Tallyrand.

"false, seditious, and slanderous matter to the desamation of the Queen."—To speak any slanderous news or Tales of the Queen, was by the same statute punishable with the loss of both ears; except the offender should pay two hundred pounds to the Queen's use, within two months after judgment.—Mr. Hume mentions the case of one Udal, who was prosecuted under this statute, for publishing a book, in which he inveighed against the government of Bishops. It was pretended that the Bishops were part of the Queen's political body; and to speak against them, was really to attack her, and was therefore felony by the statute. He was accordingly found guilty.—For, says Hume, "as the Queen was extremely bent upon his prosecution, it was impossible he could escape." He died in prison before execution of the sentence.—Hume, App. 111.

Under the reign of such an arbitrary and despotic prince as Elizabeth, when the parliament could enact such laws, it is not to be wondered that judges should be found corrupt enough to put the most unwarrantable construction upon the law, to please the monarch. All the leading cases upon the subject of libels having been decided at this period, and generally in the court of Star-chamber; whose disposition to flatter the Queen was as unbounded, as its power, which had no limits; no respect is due to the judicial doctrines of that day in such cases.—"Sir Edward Coke, gravely delivers it as his own opinion, that if any person should make a libel against himself, he should be punished for it in the Star-chamber; for it is an offence, says he, to the King. 12. co. 35.

lowing conclusion; "That a law to restrain the *licentiousness* of the
 "press in publishing false, scandalous, and malicious *libels against*
 "the government, cannot be considered as an *abridgment* of its li-
 "berty."

This word *licentiousness*, as applied to the PRESS, and to *writ-
 ings against the government*, is a word of the most *indefinite signifi-
 cation* of any in the English language. We have just seen a specimen
 of what was deemed to be *licentiousness of the press* in the days of
 Queen Elizabeth, viz. "The publication of any book or pamphlet
 "against the *form or meaning of any restraint or ordinance*, con-
 "tained or to be contained in any statute or laws of the realm, or
 "in any *injunction made*, or set forth by her *majesty*, or her *privy*
 "council, or against the *true sense and meaning* of any letters patent,
 "commissions or prohibitions under the great seal of England."

A certain writer whose name is not in the title page of his book,
 treats the subject of *slandrous libels*, and *licentiousness* of the press
 with no less humour, than judgment. "There are says he, *vari-
 ous kinds of truth*. Truths that may be spoken;—such as the Pec-
 "cadillo's of a poor rascal! Truths that may not be spoken such
 "as the robberies of a rich rascal! Truths that are *in fashion*;
 "such as the *virtues and talents of a great man in power*. Truths
 "that are *out of fashion*, such as *those of a great man not in power*;
 "and that which is *Truth to-day* may be a *lie to-morrow*."—He
 proceeds thus— I once had the audacity to attempt a comedy, and
 "the still greater audacity to attack the favourite vice of the favo-
 "rite mistress of the favourite footman of the favourite minister: it
 "happened about that time that the fashionable question of the day
 "was an enquiry into the real and imaginary wealth of nations,
 "and as it is not necessary to possess the thing you write about I
 "freely described the true causes of national poverty: when sudden-
 "ly I was awakened in my bed at midnight, and entrusted to the
 "tender care of certain Myrmidons, whose magic power caused
 "the heavy gates of an old castle to fly open at my approach,
 "where I was graciously received, lodged, and ornamented accord-
 "ing to the fashion of the place, and provided with straw and
 "bread, and water *gratis*. My ardor for liberty sufficiently cool-
 "ed I was once more turned adrift in the wide world with leave
 "to provide straw, and bread, and water for myself. On this my
 "second birth, I found the nation in raptures concerning a most
 "generous Edict lately published, in favour of the *liberty of the*
 "*press*: and I soon learnt, that provided I neither spoke of the
 "*wealth of nations*, in my writings, nor of the government nor of-
 "fended the favourite mistress of the minister's favourite footman,
 "nor said *any thing* which could be *twisted* into a reference, or hint,
 "*derogatory* to any individual *in power*; or who had more power

“ Full friends than I had, *I was at liberty to write freely all and whatsoever I pleased.*” If this definition of the liberty of the press will serve the turn of the committee, it is heartily at their service. But to be serious,

“ No man, says a writer, ought to be hindred saying or writing what he pleases, on the conduct of those who undertake the management of national affairs, in which all are concerned, and therefore have a *right to enquire*, and to publish their suspicions concerning them.”

“ * It seems unnatural,” says the same author, “ to attempt to lay a restraint on those who would criticise the conduct of men, who undertake to do other peoples business. All history shews the necessity, in order to the preservation of liberty, of the subjects having a watchful eye on the conduct of governments and of every subjects being not only secured, but encouraged in alarming his fellow-subjects, on occasion of every attempt on public liberty.”

“ In public, as well as private life, said lord Chesterfield, in the British parliament, the *only way to prevent* being ridiculed or censured, is to avoid all ridiculous or wicked measures, and to pursue such only as are virtuous and worthy. The people never endeavour to ridicule those they love and esteem, nor will they suffer them to be ridiculed, or slandered.”

“ The people, says Algernoon Sidney † cannot be deprived of their natural rights upon a frivolous pretence to that which never was, nor ever can be. They who create magistrates, and give them such power as they think fit, do only know, whether the end for which they were created, be performed, or not. They who give a being to the power which had no existence before, can only judge, whether it be employed for their welfare, or turned to their ruin. They do not set up one or a few men, that they and their posterity may live in splendor and greatness; but that justice may be administered, virtue established, and provision made for the public safety.” Such were the sentiments and opinions which brought that great man to the block, in that country, whose exploded and tyrannical maxims we now attempt to revive.

“ It has been the general unhappiness of countries, that the bad men, are bold and enterprising, forward and active; whereas such as keep their integrity are unactive, cold, and lazy; contented with the barren praise of not being guilty themselves, they suffer others to invade so much power, as that they can do hurt, and do it safely. Those who would tread in the path of common honesty and wisdom shall be overcome, and shoved out of the

" way, by the strong faction of those who find their account in
 " *misgovernment*. Such as maintain their understanding in the ge-
 " neral frenzy, shall be admired, but not followed; esteemed, but
 " not consulted; heard, but not regarded. Mend things they
 " cannot; if they will be *quietly wise*, and say *nothing*, they are en-
 " *dured*; and if inactive they are suffered; when their superior
 " skill is *forgiven*, and connived at; when such as have more than
 " common endowments are allowed to subsist, and preserve them-
 " selves, though they cannot save their country, it is thought a
 " *sufficient favor*; but all the while they shall be made uneasy;
 " pursued with malicious whispers; *blackened as disaffected*, and
 " made obnoxious to the people; till at last they are forced to re-
 " tire; and let their brethren of the state ruin and betray the nati-
 " on in quiet."* The only remedy for all this seems to be the
 " *freedom of the press*; there only can a virtuous individual stand up-
 " on equal ground with a *wicked* antagonist in *power*. There only
 " are the *people* equal to the *government* which *themselves* have created.

I shall conclude this head, with an observation, which is related
 to have been made in the British House of Commons by Sir John
 Bernard. "The *liberties of Englishmen* are *weightier* than any ar-
 " *bitrary precedent*."—What then are those of the *people of Ameri-*
 " *ca!!!*

It is answered, "secondly, by the committee, that the liberty of
 " the press did never extend according to the laws of any state, or
 " of the U. States, or of England from whence our laws are de-
 " rived, to the publication of false scandalous, and seditious
 " writings against the government; from whence it follows, un-
 " deniably, that a law to punish *seditious*, and *malicious* publicati-
 " ons, is not an *abridgment* of the liberty of the press, for it would
 " be a manifest absurdity to say that a man's *liberty* was abridged
 " by punishing him for that which he never had a *liberty* to do."

This passage contains little more than a proof, that the commit-
 tee possess the faculty of clothing the same ideas in different words.
 I shall however take the liberty of transcribing a passage on the
 subject of the *freedom of the press*, from *De Lolme*, who seems to
 have been at some pains in his enquiries respecting it.

"In England, says that writer † it is not the *authority* of the
 " *government* it is the *liberty* of the subject that is supposed to be *un-*
 " *bounded*. All the individual's actions are supposed to be *lawful*,
 " till that law is *pointed out* which makes them otherwise. The *Onus*
 " *probandi* is here transferred from the subject to the prince. The
 " subject is not at any time to *show the grounds of his conduct*. When
 " the sovereign or magistrate think proper to exert themselves, it is
 " their business to *find out and produce the law in their own favor* and
 " the prohibition against the subject."

" I remember when I was beginning to pay attention to the operations of the English government, I used to take it for granted that every article of liberty the subject enjoys was grounded upon some *positive law* by which this liberty was ensured him.— In regard to the *freedom of the press* I had no doubt but it was so, and that there existed some *particular law* or rather *series of laws*, or legislative paragraphs by which this *freedom was defined*; and carefully secured: and as the liberty of writing happened at that time to be carried very far, and to excite a great deal of attention I particularly wished to see those laws I supposed, not doubting but there must be something remarkable in the wording of them. I looked into those law books I had opportunities to come at, such as Jacob's, and Cunningham's law Dictionaries, Wood's Institutes and Judge Blackstone's Commentaries. I also found means to have a sight of Comyns's Digest of the laws of England, and I was again disappointed: this author, though his work consists of five folio volumes, had not, any more than the authors just mentioned, any room to spare for the interesting law I was in search of. At length it occurred to me that this *liberty of the press* was grounded upon its *not being prohibited*; that this *want of prohibition* was the *sole*, and at the same time *solid* foundation of it.—So much for the laws of *England*, in relation to the subject,

The constitution of Virginia (I have not the constitutions of the other states to refer to, but I believe they accord with that of Virginia) declares—" That the *freedom of the press* is one of the great *Bulwarks of liberty*, and can never be *restrained but by despotic governments.*" True it is, that during the revolutionary war; when the *goats* were not separated from the *sheep*; when every American fought with a rope about his neck; when the insidious practices of our tyrannical enemy manifested themselves every where, and on every occasion; the act for punishing certain offences, cited in your address did pass, in October 1776.—But to draw that act into precedent, at this time, would be like justifying cool deliberate, murder, because the law permits a man struggling for life, under the hands of a powerful adversary, to stab him, to the heart, with impunity.

If according to *De Lolme*, the *want of prohibition* is a *solid foundation* for the liberty of the press, in *England*, how much *more solid* must that foundation be, which rests upon such a *positive law*, as he looked for in vain, in the British Code; a law not only grafted in our constitution, but forming one of the *radical* members of it, and which it is impossible to violate, without subverting the constitution itself. In vain then have the committee endeavoured to dumbfound us, by asking, where is the law that permits *libels* against the government to be printed—When the law says

that the freedom of press shall *not* be *abridged*, it clearly means, that congress shall leave the subject where they found it. For the effect of any law, variant from the constitution, must be to *abridge the freedom* which the constitution declares shall *not* be *abridged*, since no law could possibly *enlarge* it.

The committee, answer, third, that the act in question cannot be unconstitutional, because, 1st. It makes nothing penal, which was not penal before—2nd. It gives no new powers to the court—and 3rd. is merely declaratory of the *common law*. Of these in their order.

1st—First, say the committee, “the act makes nothing penal that was not penal before.” It is of little importance whether this position be true or false, the question not being what the law is, in all, or any of the states; but whether congress can enact a law respecting offences at common law, merely because the states have enacted such laws.—It is an offence by the common law to steal a horse. In some of the states, this offence is punished with death, in others, only with corporal pain and imprisonment. Has congress, for these reasons, a right to pass a law declaring an uniform punishment for horse-stealing, throughout the United States? The answer will apply to the acts in question. I cannot, however, but remark, in this place, that the committee seem to be of opinion, that if in the wide range of sophistry they can discover one colourable argument (however unsound it may be) that seems to favor the act, it is sufficient to maintain it. The reverse of this position is nearer to the truth. Were there fifty solid reasons in favor of an act of congress, and *one, only*, to prove it *unconstitutional*, it must fall.

2ndly, The act, say the committee, gives no new powers to the court. This, I likewise *deny*; the *state courts* were in *exclusive possession* of the subject under the constitution, as I have already shewn. A *new and unconstitutional* power is given to the *federal courts*, to whom the cognizance of the offences *created by this act*, is consigned.

Another circumstance proves this assertion to be unfounded in Virginia, at least. Here (in the *state courts*) the *jury* and *not* the *judges*, are to assess the fine. Here (the *federal courts*) the *judges* and *not* the *jury* are to impose it.

3rdly, Say the committee—this act is merely declaratory of the *common law*—To this I reply; that the act makes the bare act of *printing*; or of *assisting* or *aiding in printing without publication*, or *writing*, penal. The bare act of *printing with types*; *composing with types*; *colouring the types*; and every other act connected with the art of printing may be done by *seperate persons*; the act makes them all *guilty*; the *common law* makes the *writer* and *publisher* of a libel *only* guilty; because *writing* and *publishing* are *entire acts*.—The act of congress makes *in*

complete acts, not amounting either to *writing* or *publication* penal. It therefore makes *that* penal which was *not* penal at the common law. For a compositor who sets the types, though they be never coloured is within the act. So is the *printer's devil*, who applies the *cushions*, without being able to read the types—So is the *press-man* who *lays the paper* upon them. Neither of these have written, or published, the libel—they have *only* aided and assisted in *printing* it.

To prove this—let us suppose a man to be indicted at *common law* for a libel—that the evidence against him is, that he *set the types*; but neither coloured them, nor worked them off, nor did any other act towards the publication. Will you as a *lawyer*, sir, say that upon this evidence he could ~~be~~ be found guilty at *common law*? If you must acknowledge, as I dare believe you will, that the evidence would *not* be sufficient to convict him at *common law*, would it be sufficient under the act? I dare believe you will say, *it would*. The act then makes *that* penal, which the *common law*, did *not* make penal. The act then is more than merely declaratory of the common law.

The committee answer, *lastly*, “That had the constitution intended to prohibit congress from legislating at all on the subject of the *press*, which is the construction whereon the objections to this law are founded, it would have used the same expression, as in that part of the law which relates to religion; or religious tests; whereas the words are wholly different. Congress says the constitution (amendment 3d) shall make no law *respecting* an establishment of religion or *prohibiting* the free exercise thereof, or abridging the freedom of speech or of the *press*. Here it is manifest that the constitution intended to prohibit congress from legislating at all on the subject of religious establishments, and the prohibition is made in the most express terms—Had the same intention prevailed respecting the *press*, the same expressions would have been used, and congress would have been prohibited from passing any law *respecting* the *press*. They are not however prohibited from legislating at all upon the subject, but merely from *abridging* the liberty of the *press*. It is evident that they may legislate respecting the *press*, may pass laws for its *regulation*, and to punish those who pervert it into an engine of mischief, provided those laws do not *abridge* its liberty.”

Here we find a great constitutional question in a moment dwindled into a philological controversy, more worthy of schoolmasters, and teachers of rhetoric, who distinguish between the *form* and the *figure* of a *lat*; than of the guardians of the bulwarks of the

liberty of "a great, powerful and independent nation." The ingenious *Horne Tooke* informs us, that he was condemned for a libel, upon the construction of an *article*. The constitution of the United States in danger of shipwreck upon a similar rock.—Perhaps the committee emulous of the *critical* fame acquired, on that occasion, by the learned judge who pronounced sentence upon Mr. *Tooke*, were resolved to evince to the world, that they, as well as he,

"could divide

"A hair 'twixt west and south-west side."

Sir Edward Coke, who, in his time, was a great splitter of hairs, seems to *approach* that *bulwark* of *British liberty*, *magna charta*, with too much *reverence* to attempt it, in his exposition of that chapter, which declares, that "no free man shall be taken, or imprisoned, or disizied of his freehold, or liberties, or free customs, or be outlawed, or banished, or in any manner destroyed, nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by law of the land." For he expressly tells us, "that these words "by law of the land" do refer to all the precedent matters in this chapter; and therefore, that no man shall be taken, or imprisoned, but by the law of the land. Whereas a committee of rhetoricians might have told us very gravely, that the sentence consisted of two distinct members, totally disjoined by the disjunctive *nor*; so that the words *law of the land*, could not refer to the taking, or imprisoning a man, but merely to his trial, and condemnation.

The fourth article of the decalogue is in these words. "Remember that thou keep holy the Sabbath day. Six days shall thou labour, and do all that thou hast to do; but the seventh day is the Sabbath of the Lord thy God. In it thou shalt do no manner of work; thou, and thy son, and thy daughter, thy man servant, and thy maid servant, thy cattle and the stranger that is within thy gates." A committee of critics might insist, that this injunction to keep the *Sabbath day holy* is confined to the master of a family only. Because, as they might say, it would be absurd to extend the injunction, to the son, and the daughter, and the servant, and the stranger; inasmuch as the cattle, who cannot be supposed to know any thing of the matter are included in the same, sentence; which merely refers to the not doing any work. A Synod of Connecticut Clergymen would probably not be convinced by such reasoning. But let us return to Sir Edward Coke.

That great man in his exposition of *magna charta* lays down the following rule—"Quando aliquid prohibetur, prohibetur et omnia, per quod devenitur ad illud." Which for the benefit of my unlearned readers, I shall endeavour to expound as nearly as

possible according to the *true spirit* of the rule—"When the constitution *forbids* congress to make *any law abridging* the freedom of *speech, or of the press* it *forbids* them to make *any law respecting either of those subjects.*"

I shall now bid adieu to the committee, and to that labyrinth of sophistry, whose doublings and turnings, have brought us, by different meanders, a dozen times to the same spot; where instead of the illuminations of *truth*, we have invariably, been involved in "darknets visible."

Notwithstanding the various lights on which this subject has been already viewed in the preceding pages, it may perhaps receive some additional illustration, from a mode of discussion similar to that which was adopted in relation to the *alien law*. And as the bill does not extend so far as to prohibit the freedom of *speech*, or (in the words of the committee) "to *regulate* it, and *punish* those who pervert it into an engine of mischief," I will take the liberty of supposing, that a motion was made to amend the bill, by inserting the word *SPEAK*, after the word "shall," in the first line of the second section, so that the bill when thus amended might run thus—"If any person shall *speak, write, print, utter or publish*" &c.—with corresponding amendments in the latter part of the clause, so as to make it equally penal to *speak* as to *write, or print* in any of the cases enumerated in the act.—I hope, sir, that I shall not do injustice to your patriotism, whatever I may to your oratorical talents, by supposing that you might have again addressed the chair, somewhat in the following manner.

" Mr. Chairman,

" This motion, like the one made on a similar occasion, is likely to change the subject of debate, now before us, and if adopted, will give an entire new complexion to the bill before you.

" Surely, sir, the gentleman who made this motion has not weighed its import, or its extent! Does he not perceive that it is calculated by an instantaneous *fiat* to debase the people of the United States, the freest, "and most enlightened nation upon earth," to a nation of *mutes and slaves*. Does he not perceive, that that awful silence which he wishes to impose upon the citizens of the United States, is only suited to the genius of despotism; and is to be found no where, but within the gloomy regions which are hushed into silence by its frown, and desolated by its pestilential breath? The dungeons of tyranny, where the sufferer is cut off from the light of Heaven, and from the converse of man, may enforce such a law. But Americans have not yet constructed such a sepulchre for liberty: and un-

" til there shall not remain one spark of the godlike flame which
 " her breath first enkindled in their bosoms. they will not engage in
 " such a work of sacrilege and parricide. Sir, to what cause is A-
 " merica indebted for that liberty, independence, pre-eminenthap-
 " piness, and superior illumination which she now enjoys? Is it not
 " to that *freedom of speech*, and of discussion upon all topics, moral,
 " political religious and natural, which knows no limits, but has
 " been hitherto unshackled as thought. and boundless as creation?
 " And is this the return we are to make for these blessings! must
 " we deliver ourselves and our posterity over to the government,
 " bound hand and foot, live upon its clemency, and exist only by its
 " permission? Are the *sovereign people* of the United States,
 " whose breath made and whose breath can dissolve, the *govern-*
 " *ment*, to be transformed to a swinish multitude of *slaves*, to that
 " very *government*, which themselves erected for their own benefit?
 " The genius of our constitution declares that the *people* are the
 " only *sovereign*; that the *government* established by *themselves*, is
 " for *their* benefit; that those who administer the *government* are
 " the *agents* and *servants* of the *people*, not their *rulers* and *tyrants*.
 " That these *agents* are *responsible* for their conduct to the *people*.—
 " That it is indispensably necessary to enforce this *responsibility*, that
 " the *people* should *enquire* into the *conduct* of their *agents*, *scruti-*
 " *nise* their *motives*, *sift* their *intentions*, *penetrate* their *designs*, and
 " *censure*, applaud *condemn*, acquit, *reject*, or employ them again,
 " as the most severe scrutiny shall advise.—Can this be done, if
 " we presume to abridge the freedom of speech. It will be said,
 " that the bill goes only to restrain speeches against the *government*;
 " against the *president*; and against the two houses of *congress*.—
 " But what is the *government* but a creature of the constitution? who
 " is the *president* who are the *senate*, who are *this* house, but the
 " *agents* and *servants* of the *people*? Shall we set ourselves above
 " our creators? Sir, If any man employed in the government
 " finds the tenure of office too severe, because responsibility is in-
 " seperably annexed to it, let him retire. If he cannot bear scru-
 " tiny, let him resign; if censure be too galling for him, let him
 " avoid it in the shades of domestic privacy. If flattery be the on-
 " ly food which his depraved appetite can taste; the only music
 " to his ear; the only balm to his heart: if he sickens when it is
 " withheld, and turns pale if it be denied him; or if power, like
 " the dagger of Macbeth, invites his imaginary grasp, let the in-
 " dignation of the *people* mark him, and hurl him from their coun-
 " cils, and their confidence, forever.

" What will be said, sir, what will be thought, when the pro-
 " position now before you shall be known to our constituents
 " Will they not think, will they not believe, will they not p

“ nounce aloud, that there must have been some secret consciou-
 “ nels in our breasts? Something, that told us, that we should
 “ shrink from enquiry, as from the eye of the Basilick, or the
 “ breath of the Chimæra; something that informed, like our first
 “ parents, that we ought to be ashamed, and to conceal which, we
 “ have in vain applied this fig leaf!

“ Sir, do we want evidence of the jealous sensibility of the *peo-*
 “ *ple* upon the subject? Do we not remember how much it was
 “ aroused by the silence of the federal constitution in respect to it?
 “ Was not the omission censured, or lamented, from Massachu-
 “ setts to Georgia, from the Atlantic to the Mississippi? Were the
 “ alarms of the people quieted by an assurance that what was not
 “ *expressly granted*, remained with them, and could not be taken
 “ away? These assurances though proceeding from the most re-
 “ spectable authority, and founded upon the firm basis of reason,
 “ were not deemed sufficient—The *freedom of speech* was made a
 “ *fundamental article*, as it before was a *fundamental principle*, of the
 “ federal constitution. That constitution, sir, is to us as to all o-
 “ *thers a supreme law*. We must not, we dare not violate it.

“ The reasons for this jealous sensibility, this watchful anxiety,
 “ are to be found in abhorrence of the maxims and principles of
 “ that government which they had just shaken off; its laws, cal-
 “ culated to favour the usurpations of monarchy, and often passed
 “ to gratify and flatter a tyrannical prince; and the adjudications
 “ of a court, whose name and memory are held in abhorrence; *
 “ and whose decisions upheld the *jure divinis* right, and the sanc-
 “ tity of the persons and characters, of kings, † as strenuously, as
 “ the inquisition itself could maintain the legitimate succession of
 “ the Apostolical chair of St. Peter to the Bishop of Rome. They
 “ had read, and their fore-fathers had told them, that to obtain
 “ an assylum from persecution, and to enjoy the blessings of liber-
 “ ty, *even in a wilderness*, their ancestors, with their wives, and
 “ their children and their little ones, braved the horrors of an
 “ unexplored world and fought among *savage nations* a security
 “ which they could not find at home. ‡ *Freedom*, unshackled, un-

* During the existence of the court of high commission any word or writing which tended towards heresy or schism were punishable by the court; the court alone were judges what expressions had that tendency. The Star chamber possessed the same authority in civil matters, and its methods of proceeding, were equally arbitrary, and unlimited. At no time was its authority circumscribed by any law or statute. Hume. Life of James 1st.

† The prerogative of the crown was represented by lawyers, as something real, and durable, like those eternal essences of the schools, which no time, or force could alter.— The sanction of religion was by divines called in aid; and the Monarch of Heaven was supposed to be interested in supporting the authority of his earthly viceregent. Hume. 1b.

‡ The spirit of independency which was receiving in England, soon forth in its full force in the colonies planted, during the reign of James, in North America; and received

“ limited, undefined, they fought; the same freedom they fought
 “ for; the same by the strength of their arms, they maintained a-
 “ gainst a powerful foe: the same they have established by the
 “ constitutions of the several states; the same they have vindicat-
 “ ed from usurpation by the federal constitution; and by the same
 “ act, they have consecrated it to themselves and to their posterity
 “ forever.

“ For these reasons, sir, though prepared to give the bill in its
 “ present form, the support of my vote, I shall nevertheless vote
 “ against the amendment.”

To this speech, as on a former occasion, let us suppose some op-
 “ poxent of the bill to make the following reply.

“ Mr. Chairman,

“ The gentleman who spoke last has a second time obliged me,
 “ by developing in stronger, and more pointed terms than I should
 “ probably have used, the fatal tendency, and unconstitutional tenor
 “ of the bill before you.—True it is, as that gentleman has
 “ informed you, that to the freedom of speech, and of discussion,
 “ the American nation is indebted for its liberty, its happiness,
 “ its enlightened state, nay more, for its existence. True it is, that
 “ the same freedom of speech and of discussion is indispensibly ne-
 “ cessary to preserve those blessings, of which it was the immedi-
 “ ate cause; true it is, that if that freedom be *abridged* or in any
 “ wise impaired the nature of government will instantly be chang-
 “ ed from a representative democracy, in which the *people* are the
 “ *sovereign*, and those who administer the government, their agents,
 “ to a complete oligarchy, aristocracy, or monarchy, according to
 “ the prevailing caprice of the constituted authorities, or of those
 “ who may usurp them.—True it is that where *discussion* is *prohi-*
 “ *bited*, or *restrained*, *responsibility vanishes*. True it is that an at-
 “ tempt to *prohibit*, or *restrain* this freedom of discussion may well
 “ be construed to proceed from a consciousness that our proceed-
 “ ings cannot stand the test of scrutiny. True it is, that the Ame-
 “ rican people have ever manifested a most jealous sensibility on the
 “ subject of this inestimable right, which they have always regard-
 “ ed as a fundamental principle in their government, and have en-
 “ grafted upon its constitution, True also it is that this sentiment
 “ was generated in their bosoms, by an abhorrence to the maxims
 “ and principles of that government, which we have shaken off,
 “ and a detestation of the persecutions endured in that *odious court*,

*new accession from the aspiring character of those, who being discontented with the esta-
 blished church, and monarchy, had fought for freedom amidst those savage desarts.*
 Name. 16.

whose extrajudicial dogmas are now obtruded upon us as the
 law of the land. True, it is, that our ancestors fled from ty-
 ranny and persecution in their native country, that they might en-
 joy, and their posterity establish, and transmit to latest ages, free-
 dom, unhackled, unlimited, and undefined; and most true it is,
 that we, in our time, have vindicated, fought for, and established
 that freedom both by arms, and by the constitution of our go-
 vernment, upon the broadest basis; and upon a foundation
 which I trust will equally resist the attacks of malice and the ef-
 fects of time.—But, sir, is it not matter of surprise, is it not
 even amazing and incomprehensible, that gentlemen can so clear-
 ly see the unconstitutional tendency, and mischievous conse-
 quences of suppressing, or restraining the freedom of discussion,
 in one mode, and that they can neither discover any mischievous
 consequence nor unconstitutional tendency in the suppression, or
 restraint of the same freedom of discussion, in another mode?—
 —And yet, sir, the same clause of the constitution, the same sen-
 tence may the same identical words provide for the unrestrained
 freedom of speech, and of the press. “Congress shall make no law
 respecting an establishment of religion, or prohibiting the free ex-
 ercise thereof, or abridging the freedom of SPEECH, or of the
 PREES.”* Where I pray is the constitutional distinction between
 these two modes of discussion to be found? If the unrestrained
 freedom of the press, be not guaranteed, thereby, neither is that
 of SPEECH. If on the contrary the unrestrained freedom of SPEECH
 is guaranteed thereby, so also, is that of the PRESS.—When
 gentlemen contend that we must not trench upon the liberty of
 speech, that the genius of our constitution, and the nature of our
 government revolt against it, how can they be so blind to the force
 of their own arguments, and to the text of the constitution, as
 not to perceive that one has the same constitutional sanction as the
 other.—If the genius of our constitution has vested the people with
 the censorial power; a power (which according to a celebrated
 writer†) begins to operate from the point where the legislative
 power begins to fail; if the fundamental principles of that con-
 stitution invests them with the sovereignty, itself; if magistrates
 are their agents; if these are responsible for their acts of agency;
 if the people may censure whom they disapprove, and reject whom
 they find unworthy; if approbation or censure ought to result
 from enquiry and scrutiny, why is the exercise of this censorial
 power, this sovereign right, this necessary enquiry and scrutiny, to
 be confined to freedom of SPEECH? Is it because it is better a-
 dopted to the purposes of the censorial power? Surely not. The

" *best speech* cannot be heard by more than a thousand persons; nor
 " distinctly understood by half that number. The *best speech* may
 " be misunderstood, misrepresented, and imperfectly remembered
 " by those *present*: to *all others*, it is, as if it had never been. The
 " *best speech* must often be too short for the investigation of a sub-
 " ject; the best speech, then must be inadequate, *totally inade-*
 " *quate*, to the due exercise of the *cenforial power* in the people.—
 " What supplementary aid hath the *genius* of the *constitution* pro-
 " vided? The FREEDOM of the PRESS.—Not a *limited cir-*
 " *cumscribed, regulated, FREEDOM*;* not an *infant* in swaddling
 " cloths; not a *pigmy*; or *birth-strangled babe*; but that FREE-
 " DOM, capacious as the human mind, the image of its Creator;
 " filling all space; present every where; viewing all things; pe-
 " netrating the recesses of the human heart; unfolding the mo-
 " tives of human actions; estimating all things according to their
 " true standard; applauding where praise is due; censuring the
 " undeserving; condemning the unworthy; and consecrating to
 " posterity the memory of those who have deserved well of their
 " country. Such is that *freedom* of the PRESS, which the *genius*
 " of our *constitution* has recognized as its great *Pregenitor* and on-
 " ly stable *Bulwark*.

" Wherefore has the *genius* of our *constitution* consecrated the
 " freedom of the press, in so solemn a manner? It is, sir, because
 " the people of the United States saw and felt that they owed
 " their deliverance to it, as to a Guardian Angel, who with in-
 " cessant pains diffused the same light; and infused the same spirit
 " through *all*. The horrid tale of tyrannical usurpation; the
 " quick-sighted sense of approaching danger; the keen smart of
 " present injury; the manly indignation of oppressed freemen; and
 " the stern resolution of those who preferred death to slavery, were
 " communicated from Massachusetts to Georgia, with electrical
 " rapidity, by the *press*. The bond of union among the states
 " from *thence* received its stamp. Drawn together by the *press*,
 " as it were into a magic circle, their adversary was alike unable
 " to overcome, and to dissolve the charm. That charm will never
 " be dissolved, or broken, whilst the *press* remains free. For whilst
 " *that* remains free, the *causes* of *seperation* will never have existence.
 " Destroy that freedom, and you proclaim to your respective con-
 " stituents, that it is time to seperate.

" We have been told, sir, " that congress may *legislate respect-*
 " *ing the press*, may pass laws for its regulation, and punish those who
 " pervert it into an engine of mischief, *provided those laws do not*

* " It is evident they [congress] may legislate respecting the press, may pass laws for its regulation,
 and to punish those who pervert it into an engine of mischief, provided, those laws do not abridge its li-
 berty." Justificatory report of the committee of congress.

"abridge its liberty."* Without undertaking to expose the irreconcilable opposition between the former, and the latter part of this sentence, I shall shortly state; that laws to regulate must (according to the true interpretation of that word) impose rules, not before imposed; that to impose rules is to restrain; to restrain is to abridge; to abridge the freedom of the press, is prohibited by the constitution. It therefore prohibits the bill before you, equally as it prohibits an amendment abridging the freedom of SPEECH."

Here, sir, I shall conclude this discussion, in which I have endeavoured strictly to confine myself to the constitutionality of the acts in question. But before I conclude my letter, permit me to bring to your recollection an anecdote respecting an unfortunate Prince of Spain, who was strangled by the command of his father, some where about the middle of the present century.

When the persons entrusted with the execution of that paternal mandate laid hold of the unfortunate victim to offended majesty, the prince, as might have been expected, struggled with them, and made a violent outcry in hopes of assistance. "PEACE! PEACE!" said one of them earnestly. "Tis for your good."

The story leaves us in doubt whether the young prince was convinced; but it is certain he was strangled.

COLUMBUS, +

Virginia, June 6th, 1799.

* Report of the Committee.

+ P. G. Tucker

FINIS.