(LVth YEAR.) THE (No. 2796.)

MARYLAND GAZETTE.

THURSDAY, AUGUST 14, 1800.

To the FREEMEN of the Fifth District of MARYLAND.

[*Continued from No.* 2793.]

FELLOW-CITIZENS,

THE friends of administration have laboured to persuade you that the system adopted by president WASHINGTON has been pursued by Mr. Adams. I have been particular in shewing that they have differed in many important points of national concern:—that they thought differently with respect to the great principle of national defence;—as it respects the MILITIA, and as it respects military establishments.—It has also been shewn that they have disagreed on the subject of foreign relations; and that they have not been governed by the same rules as to appointments to office. The views of the party in endeavouring to inculcate this opinion are readily seen.—The delusive mist is now dispelled.

A great deal has been said for and against the conduct of the president in the case of the unfortunate Jonathan Robbins. He had been committed to gaol in February 1799, on suspicion of having been concerned in a mutiny on board the British frigate Hermone in the year 1797, which ended in the murder of the principal officers, and carrying the frigate into a Spanish port. He was demanded by Mr. Liston the British minister under the 27th article of the treaty between the United States and Great-Britain. A state of the case will appear on reading the letter of the late secretary of state to judge Bee, which here follows:

Sir.

Mr. Liston, the minister of his Britannic majesty, has requested, that Thomas Nash who was a seaman on board the British frigate Hermione, and who he is informed is now a prisoner in the gaol of Charleston, should be delivered up. I have stated the matter to the president of the United States. He considers an offence committed on board a public ship of war, on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs. Nash, is charged, it is understood, with *piracy* and *murder*, committed by him on board the above-mentioned British frigate, on the high seas, and consequently "within the jurisdiction" of his Britannic majesty; and therefore, by the 27th article of the treaty of amity with Great-Britain, Nash ought to be delivered up, as requested by the British minister, *provided such evidence of his criminality be produced, as by the laws of the United States, or of South-Carolina, would justify his apprehension and commitment for trial, if the offence had been committed within the jurisdiction of the United States.* The president has in consequence hereof authorised me to communicate to you "his advice and request" that Thomas Nash may be delivered up to the consul or other agent of Great-Britain, who shall appear to receive him.

I have the honour to be, &c.

(Signed) TIMOTHY PICKERING.

The honourable Thomas Bee, Esq; judge of the district of South-Carolina.

The article of the treaty under which this requisition was made, follows in these words:

"It is further agreed, that his majesty, and the United States, on mutual requisitions, by them respectively, or by their respective ministers or officers authorised to make the same, will deliver up to justice all persons, who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality, as, according, to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expence of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive."

I think it unnecessary to enter into any argument on the construction of the treaty, or to establish the position that the crime of piracy gave jurisdiction to the courts here. The question, whether Jonathan Robbins, *alias* Thomas Nash, should have been delivered up on the requisition of Mr. Liston, is certainly a question of executive or judicial cognizance. Under this article of the treaty it appears evidently to me to be a subject of judicial investigation. If it is a subject which belonged to the judiciary, it necessarily follows that any interference of the executive, in which an opinion was given, must have been improper. Either the president had authority to interfere, or he had not. If he had authority to decide the question, it ought not to have been referred to the judiciary. If it belonged to the judiciary, the president ought not to have given an opinion which might influence the judge in his judicial decision.

A subject which involves in it not only the exposition of a treaty, which is a law of the land, but also an application of it to a particular case is palpably a subject of judicial cognizance. And a subject which involves a decision how far on a charge of murder or forgery, there is sufficient evidence of criminality to justify the apprehension and commitment of the person charged is certainly a subject for judicial inquiry. It is plain and evident that the president by referring it to judge Bee, conceived that it belonged to the judicial power. If it rested with the executive to make the decision any reference to the judiciary was unnecessary and improper. Our constitution has wisely provided that the executive and judicial power shall be vested in separate and distinct departments.

Robbins produced a national certificate of citizenship dated 20th May, 1795, and made affidavit that he was *impressed* from on board the brig Betsey of New-York, commanded by captain White, by the crew of the British frigate Hermione; and although, it is admitted that if he was *an impressed American*, the homicide on board the Hermione would, most certainly, not have been murder, yet he was delivered up, without any investigation of the facts of *citizenship* or *impressment*, and without any other than hearsay evidence that he was concerned in the piracy. The national certificate and affidavit were *prima facia* evidence of his citizenship and impressment; and as no contrary testimony was offered, the rational conclusion is that further time would have been allowed the prisoner to establish those facts, if under the opinion of the president the judge had not thought them immaterial. In delivering his opinion he observes "nor does it make any difference whether the offence is committed by a citizen or another person."—The only question which the judge seems to have deemed material was whether the evidence of his criminality was such as would justify his apprehension and commitment for trial. Upon this testimony the important order to surrender him to the British consul, was passed, and he was sent to Jamaica.——We have heard his fate.

On a similar occasion, in the case of captain Barre, president WASHINGTON declined interfering, and referred it wholly to the judiciary. The case is reported in the 3d volume of Dallas's Reports, page 42.

A motion was made by the attorney-general of the United States (Bradford) for a rule to shew cause why a *mandamus* should not be directed to John Lawrence, judge of the district of *New-York*, in order to compel him to issue a warrant, for apprehending captain Barre, commander of the frigate *Le Perdrix*, belonging to the French republic.

The case was this:—Captain Barre, soon after the dispersion of a French convoy on the *American* coast, voluntarily abandoned his ship, and became a resident in *New-York*. The vice-consul of the French republic, thereupon, made a demand, in writing, that judge *Lawrence* would issue a warrant to apprehend captain Barre, as a deserter from *Le Perdrix*, by virtue of the 9th article of the consular convention between the *United States* and *France*, which authorises the mutual delivery of deserters to the consuls or vice-consuls of the respective countries, on demand made in writing to the courts, judges and officers competent; and on proof by the exhibition of the ship's roll, that the persons required were part of the crews. The French consul could not produce the original register or roll d'equipage, but a copy only: this, judge Lawrence thought insufficient evidence under the clause of the convention. The minister of the French republic then applied to the executive, complaining of the refusal, and the motion was made in order to obtain the opinion of the supreme court of the United States upon the subject for the satisfaction of the minister. After counsel were heard in opposition to the motion the attorney-general in reply premised that "the executive of the United States had no inclination to press upon the court any particular construction of the article on which his motion was founded, but as it was the wish of our government to preserve the purest faith with all nations, the president could not avoid paying the highest respects and the promptest attention to the representation of the minister of France, who conceived that the decision of the district judge involved an infraction of the conventional rights of his republic.—In the present case from the nature of the subject as well as from the spirit of our political constitution the judiciary department is called on to decide. For it is essential to the independence of that department, that judicial mistakes should only be corrected by judicial authority. The president therefore introduces the question for the consideration of the court, in order to ensure a punctual execution of the laws, and at the same time to manifest to the world the solicitude of our government to preserve its faith and to cultivate the friendship and respect of foreign nations."

It appears then in both cases, a foreign consul claims a man to be delivered up under a clause of a treaty. The claim in each case is made to a district judge: in each case the foreign minister afterwards applies for the same purpose to the president of the United States. The late president did not hazard an opinion of his own or use his influence for or against the application from the French minister, but *introduced the question for the consideration of the court.*—Mr. Adams did give an opinion in favour of Mr. Liston's application, and advised and requested judge Bee hypothetically to deliver up the person claimed. The late president "had no inclination to press upon the court any particular construction of the clause in the treaty:" He deemed it "essential to the independence of the judiciary department, that judicial mistakes should only be corrected by judicial authority:" and, he determined "from the nature of the subject as well as from the spirit of our political constitution," to leave the decision of the question to the judiciary department.—Mr. Adams, we have seen, with the precedent of WASHINGTON before him, has pursued a different course. The cases are similar, as far as the authority of the president is implicated.

Fellow-citizens,

The choice of electors of president and vice-president in this state has become inseparably connected with, and in a great measure depends upon, the election of members of the house of delegates. The friends of Mr. Adam's election perceive that it will not be safe to entrust it with the people. They wish to strip you of the privilege and vest it in the legislature. Fortunately for us, some of them have been bold enough to avow their designs. The eagerness of the party in the pursuit of their views has put them off their usual guard, and discovered their principles before it is too late to oppose them. It often happens that men defeat their own intentions by a premature disclosure of them.

I contend that under the constitution of the United States, the people have the right to choose electors. The words of the constitution are "each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress."

Hence it is clear that the *state shall appoint*, and the *legislature may direct* the manner of appointment: that is, the legislature may direct whether the election shall be *viva voce*, or by ballot: by districts, or by a general ticket.

The word *state* must here mean the people in their highest sovereign capacity. It that sense the constitution was submitted to the *states*; and in that sense the *states* ratified it. We all know that it cannot mean the territory: it cannot mean the *legislature*, as is contended by some of our opponents, because the section of the constitution would then be read "the *legislature* shall appoint in such manner as the *legislature* may direct a number of electors &c." This construction is too absurd to require comment. A right to direct the *manner* of an election by no means includes the *more important* right of making the election. The word *state*, and the word *legislature* occur in the same sentence (nay in the same line) of the section under consideration and it cannot be supposed that they were intended to be used as *synonimous* terms.

It has been contended by others that "any manner of choosing which the legislature of each state shall direct is conformable and not contrary to the rights of the people." According to this mode of reasoning, the legislature may take from us this valuable privilege, and vest it in the governor and council, or in the governor alone, or in the council, or in any other person or persons *in* or *out of* the state. This construction is contrary to the principles of our government which is purely representative: and the right of electing our rulers constitutes more particularly the *essence* of a free and responsible government.

By the constitution of the United States, the people elect their immediate representatives;—they elect the senate through the medium of the state legislatures;—and the generally conceived opinion has been that through the medium of electors chosen by themselves, they had a right to choose the president and vice-president.

That this is the construction put upon the constitution by some of the most enlightened members of the convention who framed it, I will refer you to the 68th number of the Federalist, which was published soon after the constitution was projected. These papers, it has been generally believed were written by the learned and truly patriotic Mr. Madison, in conjunction with Mr. Hamilton, Mr. Jay and Mr. Duer. The two first were members of the convention; and Mr. Jay and Mr. Duer resided in New-York, and without doubt were well acquainted with the transactions of that memorable assembly.

"The mode of appointment of the chief magistrate of the United States is almost the only part of the system of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print has even