

MARYLAND GAZETTE

T H U R S D A Y, OCTOBER 2, 1800.

To the FREEMEN of the Fifth District of MARYLAND.

[Continued from No. 2796.]

FELLOW-CITIZENS,

THE arguments which I have used in the three first numbers of my address to prove that the alien act, and the sedition act, are not warranted by the constitution, contain in my opinion, a full refutation of any thing that has been or can be advanced in favour of those acts by the advocates of administration. These arguments support the principles which were advocated by the enlightened patriots who were members of the convention who framed the constitution, and who subscribed it. They contain also the sentiments of those patriotic citizens who advocated the adoption of the constitution in the state conventions. They were the result of the collected wisdom of the continent. It is to those arguments and principles that we are indebted for the happy constitution under which we live.—They fully establish the following points.

1. Of the alien act: that it exercises a power nowhere delegated to the federal government. 2d. That it unites legislative and judicial powers to those of the executive. 3d. That this union of powers, subverts the general principles of free government. 4th. That it subverts the particular organization and positive provisions of the federal constitution.

2d. Of the sedition act: 1. That it exercises in like manner a power not delegated by the constitution. 2. That the power on the contrary is expressly and positively forbidden by one of the amendments to the constitution. 3d. That this is a power which more than any other ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

I shall nevertheless notice the observations of my worthy competitor, Mr. Chate, in his hand-bill of the 2d. instant.

He contends that neither of these acts are unconstitutional, and he endeavours to justify his construction of the constitution under the first specified power granted to congress by the constitution, which follows in these words:—"Congress shall have power—to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States."

The true and fair construction of the words "to provide for the common defence and general welfare," upon consideration will appear too plain to be mistaken. They were borrowed from the old confederation by the convention when framing the constitution and remodelling the former instrument. In the confederation, as well as by the constitution, congress is authorized to provide money for the common defence and general welfare. In both is subjoined to this authority an enumeration of the cases to which their power shall extend. Money cannot be applied to the general welfare, otherwise than by application of it to some particular measure, conducive to the general welfare. Whenever therefore money has been raised by congress, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in that body. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with and is enforced by that clause in the constitution, which declares that "no money shall be drawn from the treasury but in consequence of appropriations by law." An appropriation of money to the "general welfare" would be deemed rather a mockery than an observance of this constitutional injunction. What would the people of the United States think of an act of congress appropriating five millions of dollars to the "general welfare?" The integrity of the legislature, and the fairness of their motives and intentions, in passing such an act, would be immediately questioned. It could not fail to create universal suspicion and alarm. But an act to appropriate five millions of dollars to raise an army (for the common defence) in time of war, would be generally understood, and the propriety of the measure universally acknowledged. An act to regulate commerce with foreign nations, and among the several states, and with the Indian tribes, would be an act for the general welfare; and all would admit its propriety, and as it is within the enumerated powers of congress, its constitutionality could not be questioned. It is alleged in the hand-bill,—"Would it not be an extraordinary thing, in the organization of a national government, that the legislature should not possess the power of providing for the common defence and general welfare?" It certainly would be a political phenomenon. But it could never happen, under the construction proposed by Mr. Chate. Congress may legislate

on all the subjects submitted to their control by the enumerated powers in the constitution. Every act which congress can or ought to pass, should have for its object the "common defence" or "general welfare." An act to provide for organizing, arming and disciplining the militia, would be an act for the common defence and general welfare: and as the authority to pass such an act is within the enumerated powers of congress, its constitutionality would be clear and evident. But an act authorizing the president to appoint militia officers, would be unconstitutional, because, by the constitution, the appointment of militia officers is reserved to the states. Under the construction contended for in the hand-bill, the sovereignty of the United States would extend to all cases whatever, if it can be extended to all cases of the general welfare, of which congress are to be the judges. Of course the INDEPENDENCE and SOVEREIGNTY of the STATES, would be annihilated, and they would be consolidated into one sovereignty. This would inevitably pave the way to MONARCHY. The contrary construction leaves congress in the free and full exercise of all the powers enumerated in the constitution, and at the same time preserves the independence and sovereignty of the state governments, by reserving to them all powers not expressly granted to the general government, as it is wisely provided by the constitution.—It is needless to pursue the argument any further.

It is said in the hand-bill that "an alien has no right, interest, lot or part in our government; he has no claim to any of the immunities or privileges conferred by, or resulting from it; they belong exclusively to the citizens." This, I presume, is said in reference to alien enemies; because the hand-bill admits that "an alien friend, as long as he is permitted to remain in the territory of the United States, owes a temporary allegiance to the government; and is entitled to the protection of the laws, may acquire property in goods and chattels, and is capable of taking but not of holding real property." It is further said that "by the law of nations, every government has the power to order aliens to depart out of its territory."—The distinction between alien enemies and alien friends, is a clear and copulative answer to the observation, alien enemies are under the law of nations, and liable to be punished for offences against it. Alien friends, except in the single case of public ministers, are under the municipal law, and not to be tried and punished according to that law only.

In the event of a declaration of war by or against the United States, all the aliens from the country with which we should be at war, would immediately become alien enemies; and there could be no doubt as to the federal authority over them; the constitution having expressly delegated to congress the power to declare war against any nation, and of course to treat it and all its members as enemies. All the aliens from countries with which we should be at peace would remain alien friends.

With respect to the power assumed over alien friends, it is denied to be constitutional. It remains to be proved that the federal legislature has the power; and if it has the power, that it has been exercised in a constitutional manner. It should be borne in mind that the political situation of the people of the United States is different from that of any other people in the world. As citizens of the state in which we reside, we are governed by the laws of the state: as citizens of the United States we are subject to the laws of the federal legislature. It is our peculiar happiness that the powers of the general, as well as the state governments are defined by constitutions. By the general government it is provided that "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year 1808." Hence it is plain and evident that the states have the power over the admission of foreigners until the year 1808; but if the federal legislature can vest a power in the president to banish them at pleasure, the recited article conferring the power on the state governments is a nullity.

Independent of this article the power assumed by the federal government is not warranted. Most of the aliens in the United States fled from the oppressions of the despotic governments of Europe to seek an asylum in this land of liberty. They are invited thither by our naturalization laws, promising the rights of citizenship, after a certain term of residence and a compliance with other requisites prescribed by those laws. They come here under the plighted faith of our government, acquire property, form the most enduring ties and connexions, and when they have nearly completed the probationary title to citizenship, a law is passed authorizing the president, without a trial, his will being the law, to banish them out of the country.—Reason, justice, and humanity revolt at the idea.

The pretence that they may be engaged in conspiracies and machinations against the government is

too flimsy a veil not to be seen through. Experience has proved that native citizens are as likely to be engaged in machinations and treasonable acts against the government, as foreigners; and the laws which may prevent or punish such offences in the former, will as effectually repress and guard against them in the latter.

All the arguments which have been used to prove the unconstitutionality of the alien act, appear with greater force when applied to the sedition act. If the question be asked, whether the power over the press exercised in the sedition act be found among the powers expressly vested in the congress, it must be answered in the negative. It may be added that the power over the press exercised by the sedition act is expressly forbidden by one of the amendments to the constitution.

The amendment is in these words: "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; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The declaration of rights of this state contains the following article: "That the liberty of the press ought to be INVIOLABLY PRESERVED."

Notwithstanding all these guards, the liberty of the press is insecure. The liberty of giving the truth in evidence will generally be found to be a mere delusion. I repeat it, that it must be obvious to every reflecting mind that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may be altogether abstracted from particular facts; and that opinions and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts in a court of law.

A simple fact is capable of proof, but opinions are incapable of proof in the ordinary modes of trial. To what purpose would a man argue before a jury to prove the truth of an opinion, if the jury differed with him in sentiment on the subject? A law which one man may honestly think a good and beneficial act, another may conscientiously deem injurious to the real interest of the community. The most powerful arguments lose their force and are disregarded when advanced to convince men of their political errors. Every day's experience teaches us that men are less open to conviction on political subjects than any other, and that on certain occasions we may argue with as little effect to convince men of their errors in politics, as it would be to reason against a hurricane.

These observations shew the bad policy of the sedition act. But we are told "it is a terror to none but evil doers." It is unquestionably a terror to those who would freely and impartially examine public characters and measures; for although the truth of an opinion advanced may be as evident as the first proposition in Euclid, it may be urged in vain, for the reasons before suggested to men of different sentiments. The dread of fine and imprisonment will prevent full and free examination, however satisfied men may be of the purity and rectitude of their opinions. It is true that no man ought to encourage slander and defamation, whether against public or private character.—But why not leave the members of the federal government to a remedy for their injured reputations, under the same laws, and in the same tribunals which protect their lives, their liberties, and their properties?

Of the provisional army act, I shall observe, 1. That it transfers legislative power to the president of the United States. 2d. That as by this act, power is given to the president to appoint officers to command the volunteer companies of militia, it is repugnant to that part of the constitution which reserves to the states respectively the appointment of militia officers."

This transfer of power from the legislative to the executive,—from the whole to a part, is as dangerous to liberty, as an assumption by the whole, of more power than is given to it by the constitution.—Let us hear the remark of the truly patriotic and virtuous WASHINGTON upon the subject. "It is important likewise, that the habits of thinking in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a REAL DESPOTISM."—This subject is not touched in the hand-bill.

EXTRACTS from the addresses of the two houses of congress to Mr. Adams in 1797, soon after he had entered upon the duties of his office, are wholly irrelevant to the present examination. They were prior to all the acts of his administration which have been the subjects of complaint and discussion.

In the honourable mention made of him by Mr. Jefferson, in his speech in March, 1797, he certainly avoids saying one word concerning Mr. Adams's poli-