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MONDAY, DECEMBER 17, 1804.

From the AURORA.

Memorial of the Merchants——The following is a copy of this document, which we find, really deserving attention first because in many points it states what is strictly true and appropriate, and secondly because it concludes in a manner at once respectful to the government and creditable to the memorialists. We have not the smallest doubt, but the memorial will be read with attention and regarded with deference. The merchants themselves evidently perceive the extreme delicacy of the subject; they appear aware of the consequences of resisting the French cruisers; that although individual wealth may be obtained by a prosecution of the plan the most disasterous effects may result to their country at large.

The manner in which major Jackson* introduced the memorial, in his paper of last evening will add nothing to his own reputation, nor will his declamatory and insolent language tend to the advantage of the merchants. He not only insinuates what is unfounded but asserts what is untrue

The major insinuates that the administration is willing to concede the right of France to interdict our commerce with St. Domingo- on what grounds this insinuation was made, is unknown to us, but the major is defied to shew when or in what manner such concession has been offered or made: in case any of our unarmed vessels shall be captured in proceeding to a port not blockaded there is not a doubt but government will resolutely interfere an. claim every right under treaties and the laws of nations: the right to capture will not be conceded to France but government desires that force should be the last mode of redress.

The major also insinuates that the present administration has constantly shewn an hostility to commerce which insinuation is equally unfounded—the fact is, that under Mr. Adams, commerce was exclusively encouraged & attended to, to the neglect of agriculture and internal improvement. the attention of the present administration is directed to every branch of industry: Mr. Jefferson is not willing to sacrifice the peace, happiness and industry of the people generally, to promote the welfare of the merchants—and what is justice to the whole, is termed by major Jackson a neglect of a part.

It is asserted by Mr. Jackson that "from the capital and industry of the merchants, every shilling of the public revenue is derived" now we say this assertion is absolutely untrue. indeed it is nonsence, and yet it is repeated over and over without ceasing. No one will pretend that the merchants, who import coffee from St Domingo, add no per centage to cover the duties on the contrary every one must allow that the consumers of the coffee pay the merchant such a price as not only gives him a great profit on the original cost but pays the whole amount of the revenue to government. The merchant is nothing more than the receiver of the revenue from the mass of the community, and for his trouble he takes especial care to keep compensation.

Out of the memorial—we venture to say, the merchants will obtain every attention and succor from government, and if their wishes shall not be gratified in their full extent, it will be attributable to considerations of policy and regard for the general and ultimate welfare.

[* *See last Saturday's Federal Gazette.*]

MEMORIAL.

To the senate and house of representatives of the United States.

The Philadelphia Chamber of Commerce Respectfully represent,

That the bill to regulate the clearance of merchant vessels, now before the house of representatives, if passed into a law, will be very injurious to the merchants of the United States as well as to its general commerce

By this bill it is provided that "no merchant vessel armed or provided with the means of being armed at sea, shall receive a clearance or be permitted to leave the port where she may be so armed or provided,"—This clause excludes from arming not only all vessels employed to and from the West Indies, but also those trading to the South Pacific, north west coast, and along the west coast of Africa, where armaments are as usual and necessary as any other trade in which we are engaged. By another clause, armed merchant vessels of the United States are prohibited from going to the West Indies from any other country, under the penalty of forfeiture of the vessel and her equipment.

On these clauses your memorialists beg leave to remark, that the number of vessels cruising in the West Indies, having or pretending to have French commissions, and which capture or plunder unarmed Americans, without regard to their destination, renders it absolutely necessary either to give public protection to that part of our commerce or to suffer our merchants so to equip their ships as to be able to repress those depredations. And that the trade along the west coast of Africa, in the Pacific Ocean and on the north west coast of America, cannot be carried on with any degree of safety without some armament.

The prohibiting of vessels armed in the United States from going to the West Indies from any other country, will, as your memorialists believe, deprive the merchants of the United States of some very valuable branches of commerce which they at present enjoy Voyages from the Mediterranean to the West Indies are frequent and valuable, and vessels from India often find there a market for a part of their cargoes; all of which are interdicted by the bill in its present form.

By the same section it is provided, That if any vessel, clearing out for a port in the Mediterranean or beyond the Cape of Good Hope shall make or commit any depredation, outrage, unlawful assault, or violence, such vessel, with her arms, tackle and furniture, or the value thereof shall be forfeited to the use of the United States. This penalty your memorialists consider as unnecessarily severe, inasmuch as no instance of the misconduct of vessels thus trading has hitherto occurred to render it necessary, and as it leaves the property of the innocent owner subject to the indiscretion or misconduct of a commander or his crew. while the nature of the trespass by which the penalty may be incurred is entirely undefined.

By the third section power is given to the collectors to detain vessels on suspicion until the opinion of the president shall be obtained To this part of the bill your memorialists have objections that appear to them weighty.

By the bill, vessels intended for certain trades are permitted to arm. and. if afterwards they proceed to the West Indies, a penalty is incurred. It appears, therefore. superfluous to leave it in the power of a collector to detain such vessel upon surmise or suspicion; and it vests him with a discretion which may be exercised to the oppression of the merchants. to whom no remedy is pointed out, by which an abuse of such power can be corrected

Your memorialists, having thus briefly stated their objections to the bill in its present form. beg leave to add some observations which they submit with deference to the consideration of the legislature.

Since the establishment of the present government, and particularly during the wars which have taken place between the nations of Europe, the commerce of the United States has at various times been subjected to depredations of the armed vessels of those nations, and the losses which have been sustained, though compensated in part. are yet great, beyond all computation. Without intending to censure the government for the want of a protection which so extensive a commerce as that of the United States appears to call for. it is proper to remark that the necessity of the case and the peculiar state of things at this time, require on our part precautions, which in common cases would not be deemed necessary. On the evacuation of the French part of the island of St. Domingo, a great number of small vessels were equipped as privateers, from the Spanish part of that island and from Cuba, by which our ships have been continually harrassed and even captured although employed in their ordinary and lawful commerce; and the most wanton abuse of power is now daily exercised, on the persons and property of our fellow citizens, by a lawless banditti who are not under the controul of the government whose sanction they claim If to American vessels is denied the means of defending themselves, it cannot be doubted but the number of those marauders, will be multiplied to the further annoyance of our commerce, a very alarming change in our relations with the indigenous inhabitants of St Domingo, may be the consequence Without armament, their ports will be inaccessible to the Americans, which will impose on them the necessity of supplying themselves by means of armed boats and vessels. They will make prizes of all unarmed vessels and thus become the Algerines of the Western Hemisphere.

How far the proposed restriction may be of real utility to the mother country is very doubtful, it is however certain, that her present inability to support a proper authority over this important colony, may eventually produce an order of things in which from our vicinity we shall be more interested than any other nation.

If however the peace or general interest of the United States shall be found to require some restriction on the armament of merchant vessels, the merchants are willing to submit thereto, and only hope that the objects of the bill may be clearly defined; that such restrictions shall not extend beyond the necessity of the case, and that its unusual penalties, together with the discretionary power to the collectors, may be omitted.

Congress
OF THE
United States of America.

HOUSE OF REPRESENTATIVES.

Debate in Committee of the whole,
ON THE
IMPEACHMENT
OF
JUDGE CHASE.

(Concluded from our last)

The sixth article under consideration.

Mr Rodney. As I intend to vote against this article of Impeachment, I mean to assign my reasons in as few words as will enable me to be clearly understood. It has been admitted on all sides that such interesting proceeding as that in which we are engaged. should be conducted with calmness and temper. void of every sensation arising from hostile passions; but particularly when we consider all the circumstances connected with the object of this impeachment, a man of talents placed in an eminent elevation of office. qualified to ascertain the bearing of your evidence and testimony, too much caution cannot be used, and gentlemen are justified in their minute examination into the relation between the charges and testimony upon which they are erected.

I consider this article objectionable because there is concealed within it a principle pregnant with mischief to this country; if it be adopted it will go to establish a principle most dangerous and oppressive It goes so far as to say that the courts of the United States have criminal jurisdiction at common law If gentlemen will attend to the article they will observe that it cites the act of Congress establishing the judicial courts of the United States so far as relates to the regulations of the several states and they are enacted to be the rules of decision of the several courts in trials at common law—and then it goes on to charge judge Chase with violating this very act. It is the act of Congress which gives life to the act of Virginia in the United States courts, and it says that the statute shall be enforced as in trials at common law. The first enquiry will be what was the meaning of the legislature in using the expressions "in trials at common law," and to ascertain whether Callender was tried by the common law or under the sedition act. Law writers are not more clear precise, or correct, on any subject, than they are in their definition of the common law; it is the unwritten law, as contra-distinguished from statute law. A gentleman suggests to me that the common law mentioned in our statute is merely to mark the difference between our Admiralty and Maritime jurisdiction We usually referred to English authorities for an explanation of the technical words we borrow from them, and there we find that the common or unwritten law is so called to distinguish it from statute law—and this is the broad line laid down by Virginia herself in a late declaration of her legislature drawn up by one of the greatest statesman that ever that or any other country produced They declare that the United States government has no common law jurisdiction. All their powers must be exercised in virtue of some statute made under the conditions of the constitution. In casting our eyes over the constitution we shall not find a syllable of the words common law; the first time it appears it is in the 7th amendment relating to debts exceeding 20 dollars

The judiciary bill refers to the civil jurisdiction of those courts in cases between foreigners and citizens, but there is no where to be found a word that gives to the United States criminal jurisdiction at common law Mr. Chase held this opinion himself, as you hear from the affadavit of Mr Read. who observing the attack upon judge Chase in the Wilmington Mirror, reminded him that the sedition act did not protect the judges from libel; they had no cognizance thereof and it could not be punished but through the state courts. Even in England they paid respect to this distinction The first trial of Pinkwick Williams, commonly called the monster, for his abominable wickedness in cutting women as they past him in the street; he was indicted under a particular statute, judgement was successfully arrested tho' he was afterwards indicted at common law for assault and battery and convicted.

To make the allegation conform to the principles. it should be said that Callender was tried by the common law; where was the authority at common law? Callender's was not a civil case, between a citizen of another state and himself—No, it was a criminal case, under a particular statute, and he was tried by the statute law, not by the common law He was confirmed in this opinion by the report of the case, where it appears that such eminent men as Mr Hay and Mr. Nicholas, preferred to rely upon an affidavit for a postponement, rather than bring forward the statute of Virginia alledged to be decisive; they would hardly leave their client in the discretion of the court, when they had the strong language of the law, that they should not try the cause at that term; their talents and vigilance forbid us for a moment to entertain the idea that the matter had escaped their notice or recollection.

These are the principal reasons which induce me to vote against the sixth article now under our consideration.

Mr. *J. Randolph* said if he agreed in the construction which his friend from Delaware contended for he would not be the last man to join him against the article. He would not support any act that would tend to sustain the pretention that congress have criminal jurisdiction in common law cases. If this construction could in any wise be put on this article, he here entered his protest against it, as well as against the doctrine itself. One of the first acts of the general government was to establish judicial courts on the part of the United States. and let it be recollected that besides the great national power vested in the courts by the constitution, there were others vested in them of a peculiar nature. Their authority extended to cases between a state and citizens of another state, between citizens of different states, and foreign states citizens or subjects; It was enacted that the *laws of the several states*, except where the constitution, treaties, or statutes of the United States shall otherwise require, shall be regarded as the rules of decision in trials at common law. It has always been held as a sound rule of construction, that all the words ought to have efficacy, and when the law of the United States gave life and vital spirit to the law of Virginia, it provided that in all cases at common law the rule of the state should govern, but in cases under a statute where rules of decision are otherwise provided, the law of the state shall not govern Congress saw in the outset the necessity of carrying into effect that great constitutional power of establishing courts and regulating their mode of procedure. Indeed however, of establishing any mode of their own. they adopted the modes already existing in the several states, and there is no other mode except in cases of admiralty and maritime jurisdiction; if the laws of the state where the offence has been committed does not apply, what parallel rule of procedure or decision can govern the court? In what manner is a criminal trial to be conducted The 34th section under any other construction becomes unfurd and nugatory H did believe that by the 33d and 34th sections of the act establishing the judicial courts. the laws of the several states have been adopted by Congress in criminal as well as in civil cases.

But the gentleman from Delaware asks us how we can believe this to be the just construction when the able counsel assigned to the defence in this case failed to produce this law to the court which would have procured them the direct attainment of their ends, without applying to the discretion of the court? To this he answered he could not tell why they omitted to bring forward this objection This was not his concern It might perhaps have escaped their memory. But will it be an objection that because they failed, we also should fail who think this law has been violated. That the law of Virginia was the rule of conduct adopted in this case is proved by every preliminary as well as subsequent step. If then they did not make this exposition of the law of the United States, why was the trial in all other parts conducted conformably with the laws of Virginia. He stated the case in another point of view: although there is no common law jurisdiction of the United States in criminal cases, yet there is in each state a peculiar common law generally drawn from England but varied so as to suit their purposes. Suppose Virginia had never modified the common law of England, as it relates to the law of descents, and suppose a claim brought in the United States court by a citizen of N. Carolina for a tract of land in Virginia (it will be admitted that Congress can make no law in relation to descents)—how is the court to be governed by the law of descents in North Carolina, or by that of Virginia or by the common law of England. Certainly they must conform their decision to the rule of Virginia where the land lies. Take this common law doctrine then in any other sense than as being in contradistinction to our admiralty and maritime code, and it has no basis, for common law jurisdiction. Congress have none in criminal cases; as all such cases must be constituted crimes by a statute of Congress, previous to their perpetration, and a statute or written law is the opposite of common. which is an unwritten law made up of usages time immemorial. If it was established that this article tended in any shape to establish the exploded doctrine that the United States had common law jurisdiction in criminal cases, he would readily vote against the article.

Mr Nicholson entertained no doubt but the term of common law expressed in the statute establishing the courts of the United States, was used as a term of definition, and that it ought not to be construed to give the courts any additional jurisdiction, nor to abridge them of any they possessed. He observed in other parts of the law that the words common law are used to distinguish that mode of procedure from what was used in the courts of admiralty. In England they had three distinct courts, governed by three distinct modes of proceeding under three laws The common law courts, or the courts at Westminster, and the chancery court, are governed by the common law. The admiralty courts are governed by the civil law, and the ecclesiastical courts by the ecclesiastical law. But all and every one of these are governed by the statute law—But in their mode of proceeding, each has its own peculiar rules, yet they all are bound to conform to a statute, as if a statute had originally give them jurisdiction. In our own courts, he believed, it would be difficult to conduct trials without some provision as to the mode. Bills of exchange and promissory notes were not made current till the time of Queen Anne. The suit on these actions is still at common law, though the remedy is given by statute. So when an indictment is made upon a statute, it must be tried by the rules of the common law, as was the case mentioned in the articles And with the gentleman from Virginia, he asked in what manner a criminal can be prosecuted but by the rules of the common law, unless you have him to be tried by such arbitrary ones as the court may make at the time, in order to suit their own purpose If it be true that we have no rules of proceeding established for our courts of justice, it is high time to set about making them. But the fact is, that rules are established, and the reason why they were established, in the manner they are, is that in this way Congress expected. and justly too, that they would give more satisfaction to their constituents to leave them to the rules of proceeding they had long been accustomed to, than they would by introducing a novel set of their own contriving And he sat down fully convinced that the circuit court was bound to proceed through the whole case by the rules established by the laws of Virginia.

The sixth article was agreed to. The yeas were seventy-three, and nays forty-two as follow:

YEAS—Messrs. Anderson, Archer, Bard, Bedinger. Blackledge Boyd Boyle, Brown, Bryan, Butler, Caley, Claiborne, J. Clay M. Clay. Conrad, Crowninthield, Dawson Dawson, Dickson, Earle, Early, Eppes, Findley Gillespie, Goodwyn, Gray, Gregg Hasbrouck, Heister, Holland, Holmes, Jones, Kennedy Knight, Larned, Leib, Lucas Lyon, M'Cord, Meriwether, N. R. Moore. T. Moore, Morrow. Nelson, New, Newton Nicholson, Olin Palmer, J Randolph, T. M. Randolph. J. Rea (of Pennsylvania) J Rhea (of Tennessee) Riker. Sammons, Sandford, Seaver, Sloan Smilie, Southard, Stanford Stanton, Stewart, Thomas, Thompson, Trigg. Van Horne, Varnum, Whitehill, Wilson, Winn, Winston, Wynns.—73.

NAYS—Messrs. Alston. Baldwin, Betton J Campbell, Chamberlin, Chittenden, Clagett, Clark, Cutler, Dana. Davenport, Dwight, Elliot, Elmer, Goddard, Gridlin, G. Griswold. R. Griswold Hastings, Hough, Hunt, Lewis jun. Livingston, Lowndes, Mitchell, Mott Plater Purviance, Richey, Root, J. G. Smith. J. Smith, Stedman, Stevenson Taggart Tallmage Tenney, Thatcher, Tibbits, Wadsworth, & Williams 42.

The seventh article was agreed to—The yeas and nays were as follow:—

YEAS—Messrs. Alston, jun Anderson Archer, Bard, Bedinger, Boyd, Boyle, Brown, Butler, Casey, Claiborne, Clark, M. Clay, Conrad, Crowninshield, Dawson Dickson, Earle, Early, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson Kennedy, Knight Larned. Leib, Lucas, M'Cord. M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Nelson. New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M Randolph. J. Rea. (of Penn.) J. Rhea, (Ten.) Riker, Rodney, Root, Sammons, Sandford. Seaver Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas; Thompson, Trigg, Van Horne, Varnum, Whitehill, Wilson, Winn, Winston, and Wynns—74

NAYS—Messrs. Alston, jun. Baldwin, Betton, Blackledge, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Earle, Elliot, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Kennedy, Lewis, jun. Livingston, Mitchell, Mott, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stevenson. Taggart, Tallmage, Tenny, Thatcher, Tabbits, Wadsworth, and Williams.—38.

The eighth article was divided—The yeas and nays on the first paragraph were as follow:—

YAAS—Messrs. Anderson, Archer, Bedinger, Boyd, Boyle, Brown, Bryan, Butler, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Dawson, Dickson, Early, Elmer, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Knight, Larned, Leib, Lucas, Lyon, M'Cord. M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Nelson. New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M Randolph. J. Rea. (of Penn.) J. Rhea, (Ten.) Riker, Rodney, Root, Sammons, Sandford. Seaver Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas; Thompson, Trigg, Van Horne, Varnum, Whitehill, Wilson, Winn, Winnston, and Wynns—74

NAYS—Messrs. Alston, jun. Baldwin, Betton, Blackledge, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Earle, Elliot, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Kennedy, Lewis, jun. Livingston, Mitchell, Mott, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stevenson. Taggart, Tallmage, Tenny, Thatcher, Tabbits, Wadsworth, and Williams.—38.

The second paragraph of the eighth article was agreed to. Yeas and Nays as follow:

YEAS—Messrs. Alston, junr. Anderson. Archer, Bedinger, Blackledge, Boyd, Boyle, Brown, Bryan, Butler, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Dawson, Dickson, Earle, Early, Elmer, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heis-