REPORT
OF THE
ATTORNEY GENERAL

Of the U. States, in the case of the Mandamus lately issued by the Judges of the Circuit Court of the U. S. for the district of South Carolina.

SIR,

I have read and considered the papers and documents referred to me relative to the case of a *mandamus*, issued by the circuit court of the United States for the district of South Carolina to compel the collector of the port of Charleston to grant clearances to certain vessels.

The first question that naturally presents itself, is whether the court possessed the power of issuing a *mandamus* in such a case?

A *mandamus* in England is styled a prerogative writ, and in that country is awarded solely and exclusively by the court of King's bench.

The constitution and laws of the United States establish our judicial system. To these we must refer in order to ascertain the jurisdiction of the respective courts, the extent of their powers, and the limits of their authority.

The "Act to establish the judicial courts of the United States," passed on the 24th September, 1789, declares and defines the jurisdiction of the several courts thereby created, and among these the jurisdiction of the circuit courts. Upon a careful and attentive perusal, it will be found to delegate to the circuit courts no power to issue writs of *mandamus*. In the thirteenth section of that act this authority is expressly given to the supreme courts of the United States. In like manner it is specially provided by the act of the 3d of February, 1801, that the supreme court shall have power to issue writs of *mandamus*. This last act having been repealed and the former revived, the question must rest on the true construction to be given to the original act.

The eleventh section defines and limits the jurisdiction of the circuit courts. It is specially appropriated to this single object. There are no expressions in this section which can fairly be interpreted to confer the authority of issuing writs of *mandamus*. Nor can the power be either implied or inferred from any language it contains. It is true, the proceeding by *mandamus* in England is on the crown side, as it is termed, of the court of King's Bench. But it is a prosecution relative to a civil right to enfore it, and to obtain prompt redress; and not to punish criminally as in the case of an offence.—The provision therefore that the circuit courts "shall have exclusive cognizance of all crimes and offences cognizable under the authority of the United States, *except when the act otherwise provides, &c.*" cannot warrant such a proceeding. Besides the same act does provide that the supreme court shall issue writs of *mandamus*—An authority given perhaps because its jurisdiction extended all over the United States.

The fourteenth section, immediately succeeding that which gives this authority in plain and positive terms to the supreme court, solely, if not exclusively, (and the affirmative frequently, and in this case justly, I think implies a negative) contains the following provision: "All the before mentioned courts of the United States (including the supreme and district courts) shall have power to issue writs of *scire facias, habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdiction." This clause cannot affect the case, I conceive. The mandamus is a writ, which we have seen is specially provided for by law. This section was evidently not designed to give any additional jurisdiction to either of the courts, but merely the means of executing that jurisdiction already granted to them respectively. The issuing of a *mandamus* in the case under consideration was an act of original jurisdiction. Precisely as much so, as it would have been in the supreme court, to have exercised the power in the case of Marbury vs. Madison. In that case the supreme court declared, that to issue a mandamus to the Secretary of State, would be, to exercise an original jurisdiction, not given by the constitution, and which could not be granted by Congress. The constitution having enumerated or declared the particular cases in which the supreme court should exercise original jurisdiction, though there were no negative expressions, the affirmative they considered implied them. It was on this principle alone they refused to exert their authority.

The practice, I believe, has uniformly been, so far as I can trace it from the books of reports, that have been published, or recollection and experience on the subject, to apply to the supreme court for a *mandamus*. This court it is true have determined not to issue the writ, when it would be an act of original jurisdiction. But this I apprehend, can afford no ground for the circuit court's assuming an authority, which the supreme court have declined, unless by a legislative act the power be delegated to them. This power is not inherent nor necessarily incidental to a court of justice, even of general jurisdiction. For in England but a single one of several courts having general jurisdiction, possesses the authority. Neither the chancery, the common pleas, nor the exchequer, though classed among the kings superior courts, and having general jurisdiction over the realm, can exercise this power. It is the peculiar privilege of the king's bench alone. Our circuit courts have merely a local and subordinate jurisdiction. Their analogies therefore with the four courts of England, having general and superior jurisdiction, must be very weak, and still weaker their claim to the pre-eminent distinction of the king's bench, which possesses solely the exclusive authority of issuing the mandamus.

For these reasons I am induced to believe from the best consideration I have been enabled to give the subject, that the circuit court of South Carolina had not authority to issue a mandamus to the collector of the port of Charleston.

It is scarcely necessary to remark, that when a court has no jurisdiction, even consent will not give it, and much less with the mere tacit acquiescence of a party, in not denying their authority.

Independent of this serious and conclusive objection to the proceeding adopted by the court, there are others entitled to consideration. For supposing the court did not err in the exercise of jurisdiction, and admitting the British doctrines on the subject without restriction or limitation could be extended to this country, there are legal exceptions to the course they have pursued, supported by English authority.

In the first place, the law gave the collector complete discretion over the subject. According to the opinion he might form, he possessed competent authority to grant or refuse a clearance. And I apprehend where the law has left this discretion in an officer, the court, agreeably to the British practice precedents, ought not to interpose, by way of *mandamus*.

Secondly. In this case there was a controling power in the chief magistrate of the United States. There was in fact, an express appeal given to the President by the very words of the act of Congress, which authorizes the collector to detain vessels, "until the decision of the President of the United States be had thereupon." By the *mandamus* the reference to the President is taken away, and the collector is commanded to clear the vessel without delay. Agreeably to the English authorities under such circumstances, it is not the course I believe to issue a *mandamus*.

Thirdly. The parties it seems had their legal remedy [illegible] tor, and it is not usual, if not unprecedented, to grant a *mandamus* in such a case.

Fourthly. A *mandamus* is not issued to a mere ministerial officer to compel him to do his duty. The court will leave the parties to their remedy by action, or even by indictment. In England, in a very late case, they decided that they would not grant a *mandamus* to a ministerial officer, such as the treasurer of a county, for the proper remedy was by indictment.

I am aware of a precedent in which it seems to be admitted that a *mandamus* may issue to the commissioners of excise, to compel them in a proper case to grant a *permit*. This case is more analogous to the one now before us than any other, I have been able to discover, after a diligerent search. But in this instance the point was not made, nor the question urged. Besides, the commissioners of excise in England form a board for superintending the collection of that branch of the revenue. They constitute in many respects a court of inferior jurisdiction, which in particular cases takes cognizance in a summary way, of offences against the excise laws. A mandamus might be granted to such a tribunal when it would not be issued to a mere ministerial officer, acting under them in the collection of the revenue.

It results from this view of the subject that the mandamus issued by the circuit court for the district of South Carolina, was not warranted by any power vested in the circuit courts by statute; nor by any power necessarily incident to courts, nor countenanced by any analogy between the circuit courts and the court of king's bench, the only court in that country possessing the power of issuing such writs. And it further appears that even the court of king's bench, for the reasons assigned, would not agreeable to their practice and principles have interfered in the present case by *mandamus*.

It might perhaps with propriety be added that there does not appear in the constitution of the United States any thing which favors an indefinite extention of the jurisdiction of courts, over the ministerial officer within the executive department. On the contrary, the careful discrimination which is marked between the several departments, should dictate great circumspection to each, in the exercise of powers having any relation to the other.

The courts are [illegible] of regal redress f[illegible] by ministerial offi[illegible] are above the law [illegible] be administered by [illegible] in the ordinary wa[illegible] to be a material a[illegible] tion, between a [illegible] which redresses a[illegible] an executive offi[illegible] by a mandatory [illegible] tive authority ou[illegible] President, and [illegible] which he and the [illegible] ment must pursu[illegible] cutive is left fre[illegible] sphere, but is he[illegible] ty; in the other [illegible] ken away, and he[illegible] cial mandate. [illegible] made applicable [illegible] nately, and acts [illegible] executive in the[illegible] powers vested in [illegible] ther department. [illegible] present, where th[illegible] a discretion in a [illegible] court can not onl[illegible] against the misuse [illegible] can previously d[illegible] of it, would seem that under the name of a judicial power, an executive function is necessaril[illegible] assumed, and that part of the constitution perhaps defeated, which makes it the duty of the President to take care that the laws be faithfully executed. I do not see any clear limitation to this doctrine, which would prevent the cours from compelling by mandamus all subordinate to the President at least, whether charged with legal duties in the treasury or other department, to execute the same according to the opinion of the judiciary and contrary to that of the executive. And it is evident that the confusion arising will be greatly increased by the exercise of such a power, by a number of separate courts of local jurisdiction, whose proceedings would have complete and final effect, without an opportunity of control by the supreme court. So many branches of the judiciary, acting within their respective districts, their courses might be different, and different rules of action might be prescribed for the citizens of the different states, instead of that unity of administration which the constitution mean to secure by placing the executive power for them all, in the same head.

What too becomes of the responsibility of the Executive to the court of impeachment, and to the nation? Is he to rem[illegible] in responsible for acts done by [illegible] command of another department? Or is the nation to lose the security of that responsibility altogether? From these and other considerations, were this [illegible] of the subject [illegible] might be inferred, that the constitution of the United States, by the distribution of the powers of our government to different departments, ascribing the executive duties to one, and the judiciary to another, controls any principles of the English law, which would authorise either to enter into the department of the other, to annul the powers of that other, and to assume the direction of its operations to itself.

These remaks are respectfully submitted to your consideration. They are made with due deference to the opinion of the cort, with one of the judges constituting which I am personally acquainted, and for whose character I feel the sincerest regard.

Yours very respectfully,
(Signed) C. A. RODNEY.

July 15, 1808.

The President of the U. States

NEWORK, July 26.

LATES FROM EUROPE.

The ship [illegible]alia, captain Silliman, arrived at th[illegible] port yesterday from Falmouth, fr[illegible] whence she sailed on the 8th of Ju[illegible]

Capt. S. informs that a few days before he sailed about 10,000 of the inhabitants of Yorkshire, principally weavers, had assoled in a tulmuous manner on accou[illegible] of the high price of provisions, and demand an increase of wages. The[illegible]ops in the barracks and in the town w[illegible] employed to quell the riot, and the [illegible]ple at length dispersed, but not until [illegible]eral of them had been killed by the [illegible]tary. It was said, al[illegible] so, that 60,0[illegible] looms in Manchester and its neighbo[illegible]ood were without employment.

A small v[illegible] arrived at Falmouth about the 5t[illegible] June from Bilboa, having on board [illegible] Spanish deputies who had come to[illegible]cit assistance in arms and cloathin[illegible]m the British government, in co[illegible]nence of the revolution. They repor[illegible]hat every Frenchman found in the [illegible]nce of Biscay had been massacred.

No detai[illegible]roperty had been condemned in [illegible]rt of France.

Capt. S. [illegible] bearer of dispatches from Mr. P[illegible]ey to the Secretary of State.

From the LO[illegible] TRAVELLER, *of May* 27.

In anoth[illegible] of our paper we have given the s[illegible]ce of some letters received yesterday from Manchester, relating to the proceedings of the distressed manufacturers in that town and neighbourhood, in consequence of the refusal of parliament to entertain a bill for fixing a *minimum* for their weekly labour. We are sorry to state that it has been found necessary to have recourse to strong measures to dissolve the meetings which took place among this unhappy class of the people. The following letter, which we received this morning from a correspondent, upon whose accuracy we can place perfect reliance, contains an account of what occurred at Manchester on Wednesday. The cotton weavers seems to have adopted a very erroneous idea of the feelings of parliament with respect to their case. We were present at the short discussion which took place on the subject on Friday last, and we can assert that it was from motives of the purest compassion for them that leave was not given to bring in the bill.—There was but one opinion in the house respecting it, and it was this, that it would encrease rather than remove the distresses of the manufacturers; that it might do infinite mischief and no possible good.

"*Manchester, Wednesday evening.*

"Your London papers will no doubt teem with dreadful accounts of the riots at Manchester; but having been accidentally both an eye and an ear witness of what has unfortunately taken place here, I send you a few hasty lines.

"A number of the journeymen weavers assembled yesterday, not in a riotous or tumultuous manner, but in a decent orderly style, requesting to have their grievances redressed, and their wages raised. Some thousands attended on the ground called St. George's Fields, and appointed delegates to wait upon the principal manufacturers, humbly desiring an immediate interview. The magistrates and several respectable gentlemen sent to remonstrate with the poor, emaciated, and distressed objects, requesting them to disperse; but finding every thing they said was of no avail, they were under the painful necessity of resorting to the reading of the riot act, and sending the constables and military among them, who soon cleared the ground; but finding the inhabitants were considerably alarmed, the streets were patroled all Tuesday night, and every thing remained pretty quiet.

"This morning, about ten o'clock, my curiosity was attracted, by seeing some hundreds of weavers marching, in a most orderly manner, in Manchester, to join several thousand of others of the same calling, who had again assembled in St. George's Field (which is close to the edge of the town.) A regular square was formed and the members of the respective committees stationed themselves in the centre. They then dispatched delegates, to commune with the Boroughreeve and the principal officers of the town, who were requested to use their influence with the most eminent manufacturers to raise their wages. One of the delegates soon returned and went round the square, attended by the committee, and addressing the poor half famished, but patient auditors, informed them, that he had seen the Boroughreeve, that he was friendly to their cause, and sympathised with them in their present distress, which he was sorry he could not alleviate; that he had taken the names and places of abode of their delegates, who were responsible for the conduct and behaviour of their fellow sufferers. The delegate then exhorted them to be firm in the cause they had undertaken to support, and strongly enjoined them to behave peaceably and orderly.

About three o'clock P. M. I again went to the field, attended by a friend and was astonished to see so many thousands of people; for as all the weavers had struck their work in the neighbouring towns, I am of opinion that there was at least from ten to fifteen thousand people. Loud, indeed, were the murmurs of the poor wretches, but not the least indication was there of a riot.

"Many baskets of bread, with some ale, and several cans of butter milk, were distributed among the multitude, and their sorrowful and piteous tales of distress quite unmanned me, as also, several other sympathetic spectators. About half past three o'clock, the Boroughreeve, accompanied by another gentleman on horseback, entered the (hollow) square, and the poor creatures gave a patient hearing to them: he advised them to disperse, but the general cry was—"we have nothing to eat; and unless our wages are raised, we might as well play and starve, as work and be famished." I listened attentively, and heard tales of the most distressing scenes that ever human eye was witness to; and I am sorry to say that the military were obliged to interfere for the second time, and I apprehend that the consequences will be dreadful, as I saw them fire, and observed several wounded wretches carried to the infirmary. The shops and houses are all shut up in this quarter, and the riflemen and Manchester volunteers, &c. &c. are now marching to the scene of action, and I find the streets are to be again patroled. The peaceable inhabitants are most dreadfully alarmed.

"Ten P. M.—I have just seen a poor old man's widow, who is left with five children. Her husband was shot in an entry; and I find that several of the multitude have been taken to gaol. An apothecary with whom I conversed, has been to dress the wounds of many who were badly hurt by the swords and bayonets of the soldiery.

"P. S.—After the military were assembled, I saw a gentleman enter the square on horseback he harangued the unfortunate people. I did not hear him speak, but I am told by a friend, whose veracity I can rely on, that he said "his father was a weaver, and exhorted them to support the cause, but to conduct themselves with propriety, and that he would stand by them, and if one was hurt to apply to him for redress."

THE TWO MILLIONS.

In the Courant of 29th ult. it is asserted that Mr. Madison declared to John Randolph, "that France wanted money and we must give it." This is a base mutilation of what passed at an interview between those two gentlemen, some time during the session of Congress in the winter of 1805—6—The object of the Courant, or rather of those papers from which the Courant copies, and upon which it depends for fuel, is to show, that Mr. Madison is devoted to the French interest, and therefore unfit for a President of the United States.

The interview and conversation to which the Courant alludes, happened "in this way." While the bill respecting the two millions of dollars, was before Congress the interview took place. The object of the bill was as every body knew, the purchase of the Floridas, and against the passage thereof Mr. Randolph had taken strong ground and made several violent speeches.

The situation of French affairs at that time, as far as was known in this country was somewhat thus. Bonaparte was on his way to the heart of Germany, with a large army. His progress was to be resisted by very numerous German, Russian, and perhaps Prussian armies, under experienced commanders. The battle of Austerlitz had not happened. It was expected that the campaign would be arduous and indecisive. The pecuniary resources of France were supposed to be inadequate.

At the interview in question, the observations of Mr. Madison were of this import. "Now is the time to purchase the Floridas; France wants money and must have it;" (not "we must give," as stated in the Courant,) "we never shall have a better opportunity to purchase these provinces; they are a natural appendage of the United States."—From this statement of plain facts, has been felicited, a most grievious charge against Mr. Madison. By a similar perversion of a passage in the "notes of Virginia," federalists, eight years ago, *proved* Mr. Jefferson to be a polytheist; by a similar perversion, an atheist may prove from the sacred scriptures "there is no God."

Before the negociation for the purchase of the Floridas had succeeded, the battle of Austerlitz was fought; the Russian army was dispersed or captured; Bonaparte had made peace with Prussia and Germany; France wanted no money; and the two millions of dollars still remain in the treasury of the United States. Federal editors! will you be satisfied till September?

(American Mercury.)

The frigate Chesapeake, Capt. Decatur, sailed yesterday on a cruize.—The repairs of the Constitution lying at the Navy Yard of this port are nearly compleated. The long delay which has taken place in her completion has been owing to a deficiency of workmen. Fifteen or twenty of the gun-boats are hauled up into the mill pond at the Wallabout, and a number are also in Newton Creek. They are nearly all dismantled and generally without crews. At Governor's Island, the fortifications progress rapidly, 500 labourers are constantly employed at the rate of 75 cents per day.—The grand tower is raised one story, and will form an almost impregnable fortress.—It is situated on a point of the island which at once commands the entrance of the Narrows and the East and North rivers, and is also so situated that the guns of the ramparts also command it. The ingenuity of Col. Williams, aided by the skill of Messrs. Hillyard and Souder, has wrought wonders on the Island. In point of neatness of workmanship and real strength Fort Jay is superior to any other in the United States, and perhaps is surpassed by few even in Europe.

Oracle.

NEW-ORLEANS, June 17.

A report has been in circulation since yesterday morning, founded it is said, on the authority of a letter from Havanna, that a new viceroy for Mexico has reached that place. He is said to be a Frenchman by birth, emigrated early, and bears a Spanish title of nobility. We presume he comes out under the new king.