From the VIRGINIA GAZETTE.

The Liberty of the Press invaded,

Notwithstanding the declaration of rights made by the good people of Virginia, assembled in full and free convention, and which declares "that the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments."

A quarrel, of private nature, between Mr. Geo. Hay, a member of the executive council of Virginia, and Mr. Callender, the editor of the Recorder, has given rise to a more formidable restraint upon the liberty of the press, than any scheme which has ever been invented by the enemies to free discussion. This quarrel has been made the grounds of attacking the palladium of American liberty, in a manner which no citizen of the United States could have supposed or expected. Unless speedy measures be taken for preventing in future like attempts, the boasted freedom of this country will only be the "shadow of the name." A particular account of this interesting affair, cannot but be, therefore, acceptable to the citizens at large.

It is not our intention to enter into the merits of the quarrel between Mr. Hay and Mr. Callender. We wish to be tho't neither the partizans of the one nor the other; but we consider it our duty to lay before the public the particulars of a transaction, which we consider of greater magnitude to the interest of Americans, than any circumstance that has occurred since the formation of the federal constitution. *Mr. Callender has been thrown into jail, where he now lies, without either trial by jury or any other body; not for any crime which he has written; but to prevent his future publications. The magistrates of Henrico county, upon the application of Mr. Hay, required that both Mr. Callender and his partner Mr. Pace, should find security in five hundred dollars each, besides their own security to the same amount, that they would publish nothing libellous upon any character, public or private, in the state of Virginia. Mr. Pace gave security, but Mr. Callender did not, and was in consequence thereof ordered to jail.*

It is the legality of this extraordinary stretch of power which we mean to investigate, and not the personal quarrel between Mr. Hay and Mr. Callender. Mr. Hay, it appears, had assaulted Mr. Callender in a public store in Richmond, and had beaten him with a stick, or as Mr. Callender terms it, a bludgeon, for some reflections which were made concerning Mr. Hay in the Recorder, in consequence of which assault Mr. Callender bound over Mr. Hay to keep the peace, as is usually done in such cases. Mr. Hay, in his turn, applied to Mr. Foster, the mayor of Richmond, to grant a warrant, to commit to jail Messrs. Callender and Pace, unless they gave security that they would publish nothing that reflected on the character of Mr. Hay, or any of the citizens of Virginia. The mayor very properly refused to grant such a warrant, as being in his opinion laying a previous restraint upon the freedom of press. Mr. Gervas Storrs, one of the magistrates of Henrico county, was next applied to, who granted a warrant for the above purpose. Mr. Callender and his partner Mr. Pace, in consequence, attended in the court-house of Henrico county on Friday morning, with Messrs. Marshall and Rind, as their counsel. Mr. Hay also appeared with Messrs. Wickham and M'Rae, as his counsel. The magistrates who sat upon the occasion were Gervas Storrs, William Price, Pleasant Younghusband, and Joseph Selden, esquires.

Mr. M'Rea opened the cause, on the part of Mr. Hay, and demanded that Messrs. Callender and Pace should be bound over from publishing libellous matter, as being persons of bad fame. He said the magistrates had the discretionary power of binding over characters of this description, by a statute of Virginia, similar to the 34th statute of Edward III. C. 1. which empowered the justices of England to bind over to the good behavior towards the king and his people, all those that be not of good fame. He read the several acts which canstituted bad fame; these were, sleeping in the day; prowling at night; frequenting houses of bad fame; gaming, drunkenness, and being in the habit of using libellous expressions. He said that he could prove by a bundle of the Recordor which he held in his hand, that Callender and his partner Pace were men of this description; that Pace was even more insignificant and base than Callender, as being destitute of talents. He maintained that Callender was a vile calumniator, and malignant slanderer; that he had libelled Mr. Madison, a gentleman whose whole life was an example of the strictest virtue; that he had slandered Mr. Giles; and, in short, almost every respectable person in the state of Virginia. He was proceeding to unfold Callender's general character, as a noted libeller, when Mr. Marshall interrupted him, and hoped that their worships, the magistrates, would confine the counsel of Mr. Hay to the charge contained in the warrant, which solely related to the libelling of Mr. Hay and not any other individual. Mr. M'Rea, in reply stated, that as Messrs. Callender and Pace were required by the nature of the bond given on such occasions, to keep the peace with the community at large, it was necessary to show that they had not only threatened to libel Mr. Hay, but had already libelled several others, and to prove that they were men who bore the characters of infamous libellers.

The magistrates, when their opinion on this point of law was asked, concurred with the counsel of Mr. Hay; Mr. M'Rea therefore proceeded. He endeavored to exhibit the character of Mr. Callender in the most odious point of view, as a slanderer, a miscreant, and a person who by his repeated calumnies on virtuous citizens had justly incurred the character of a libeller, and consequently that of a person of bad fame. He indulged in a strain of invective against Mr. Callender, which we think improper to repeat. He concluded by praying that both Mr. Callender and Mr. Pace should be required to give security, in such a sum, that neither they, nor any friend they would find, would easily pay if they transgressed. Mr. Wickham made also a short speech on the propriety of binding over both Mr. Callender and Mr. Pace; but he entirely abstained from all abuse or invective.

Messrs. Rind and Marshall, as counsel for Callender, began their defence by stating, that the magistrates of Henrico county were not empowered to take cognizance of the present question, which properly ought to have come before the magistrates of the city of Richmond alone. That the dispute was between two citizens of Richmond, and being a criminal case, and not a civil one, was not cognizable before the magistrates of the county. That if this mode were generally adopted, it might sometimes occur, that criminals would be indicted, prosecuted and tried for the same offence before both these courts at the same time. They were answered by Messrs. M'Rea and Wickham, and the megistrates concurred in opinion with the latter.

Mr. Rind, in his defence for Mr. Callender, stated, that the character of bad fame could not apply to Messrs. Callender and Pace; that they were men who were industriously employed; that they neither frequented houses of bad fame, nor were addicted to gaming and idleness; that they could not be charged with publishing libels, as no jury had found them guilty of that crime. He maintained that no publication could be deemed libellous, unless regularly found so by a jury, in the ordinary process of law. That unless this was first done, it was not proper that Messrs. Callender and Pace should be bound over. He argued, that if the magistrates in the present instance, obliged Messrs. Callender and Pace to give security for their future publications, that it would amount to a restraint upon the liberty of the press, which no court in a free country were empowered to inflict. He asserted, that if the magistrates in the city of London, dared to commit any printer to prison, for not giving security in a similar case, that both the magistrates and the accuser would not remain in existence twelve hours after. He hoped he should never witness the day, when the justices of Virginia, or any other state of the union, would hazard such a stretch of power as was asked by Mr. Hay. He said he did not come into court either to defend or to oppose Mr. Callender; that he received, nor would take, though offered, no fee on the occasion; that his motives were truly patriotic and voluntary; that he appeared as the advocate for the liberty of the press; that if the magistates agreed to the proposal of Mr. Hay, in the present case, the freedom of the press might justly be said to be extinguished in this country. He said that if Mr. Hay thought Mr. Callender published falsehoods reflecting on his conduct, that it was his duty to prosecute Callender and Pace for defamation, and that a jury would determine the extent of the offence. This was the only and the proper course in his opinion, which Mr. Hay ought to pursue. But if the magistrates bound Callender and Pace over, they would become the judges of the nature of the publication in question. They would in fact, be assuming an authority, which was never vested in any magistrate in a free country. He therefore entreated, that their worships would properly consider the magnitude of the present question, which was one of the most important that ever occurred in the union, and not by binding Messrs. Callender and Pace to keep the peace, lay a restraint upon the liberty of the press, which would be reprobated from one end of the continent to the other.

Such was the general tendedcy of the able speech which Mr. Rind made on this occasion, and for which he merits the thanks of all citizens who have a concern for the preservation of the palladium of true liberty.

Mr. Marshall proceeded nearly on the same grounds with Mr. Rind. He stated to the magistrates, that his motives for appearing in court were precisely the same with those actuated Mr. Rind; a desire to preserve the liberty of the press from any unjust attacks which might be attempted to be laid upon it. In support of the illegality of binding over printers to keep the peace, he read in court the sentiments of judge Blackstone, on the liberty of the press, book IV. chap. 11. § 1. This learned author expressly declares, "That the liberty of the press consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity." Mr. Marshall therefore argued that the act of binding over Messrs. Callender & Pace was unquestionably a previous restraint laid upon the press. That those two men had not yet been proved guilty of libelling any person, nor was any prosecution at present intended to be commenced against them on that supposition; but that Mr. Hay, merely on suspicion that they were to publish libels on his character, demanded of their worships to bind them over to keep the peace. Mr. Marshall said, that it was the most extraordinary application which he ever had heard of; and if the magistrates should comply with the demand, it would be an act equally extraordinary. But he hoped that this would not be the case, nor that it would be said, that in the state of Virginia, the freedom of the press had received a check which it never experienced in any country that boasted of liberty.

Mr. Wickham, in reply, contended that the binding over of Callender and Pace would be no restraint laid on the liberty of the press. That they were at full liberty to publish what they pleased notwithstanding, and that their recognizance could not be forfeited, unless they published libellous matter, which would remain to be determined by a jury.

Mr. Rind, in answer to this argument, proved clearly that it would act as a previous restraint upon the liberty of the press; for if Callender and Pace gave security, and afterwards published what might be deemed libellous, that they would be sued simply upon the recognizance, which would unquestionably be forfeited, however trivial the nature of the libel might be.

Notwithstanding this reasoning on the part of the counsel of Callender and Pace, which we believed appeared satisfactory to the greater majority of those who were present, both the editors were required to give two securities, in the sum of five hundred dollars each; besides their own bonds to the same amount. Mr. Pace gave security, but Mr. Callender having failed to give security, was sent to jail, where he now is, without any other detainer. Mr. Selden was the only magistrate of the four who voted against the decision. He said he thought it improper that such a restraint should be laid on the press.

The citizens of other states will no doubt be anxious to know the political principles of the several magistrates and the counsel on both sides. Mr. Foster, the mayor of Richmond, is considered to be a federalist. The four magistrates who presided in court are known to belong to the party called anti-federal or democratic. Mr. Marshall, counsel for Messrs. Callender and Pace, and Mr. Wickham, counsel for Mr. Hay, are federalists. Mr. Rind and Mr. M'Rae, the other counsel, are of the other party.

This decision furnishes, however, the most decided proof of the real principles of the present ruling party, and of those men who are perpetually bawling about liberty and republicanism.

The commitment of printers to jail on suspicion that they might publish libels, is an act which never until now was heard of in the United States. Such a circumstance never occurred in Great-Britain, or indeed in any country where the people enjoyed the liberty of the press. Mr. Rind properly observed, that if such an attempt should be made in London, that both the magistrate and the agent in the business would lose their lives in twelve hours after. We truly believe this would happen; but no justice there would have the audacity to make the attempt. We can state on the authority of a person who once had the opportunity of being present in the court of session of Edinburg, which is the court that generally decides all matters of any importance in Scotland, when an application was made to the lords of session to issue a warrant against the printers of a periodical pamphlet, in order to oblige him to give security that nothing libellous would appear in the succeeding numbers. But the learned lords who composed that court, were unanimously of opinion that no such previous restraint could be laid upon the press. If any libels were published either against government or against individuals, they said ample redress could afterwards be procured; but the binding of individuals over to keep the peace was an act that only took place when personal danger or the destruction of property were apprehended.

If we consider the words of sir William Blackstone, it will appear that this was evidently the opinion of that learned lawyer. "Any justice of the peace (book iv. chap. 18. § 1.) may, ex officio, bind all those to keep the peace, who in his presence make any affray; or threaten to kill or beat another; or go about with unsual weapons, to the terror of the people; and all such as he knows to be common barretors; and such as are brought before him by the constable for a breach of the peace in his presence; and all such persons as, having been before bound to the peace, have broken it, and forfeited their recognizances. Also, wherever any private man hath just cause to fear, that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him; or that he will procure others so to do, he may demand surety of the peace against such person; and every justice of the peace is bound to grant it, if he who demands it will make oath, that he is actually under fear of death or bodily harm; and will shew that he has just cause to be so by reason of the other's menaces, attempts or having lain in wait for him; and will also farther swear, that he does not require such surety out of malice or for mere vexation."

[*To be continued.*]

Lumber Yard.

THE Subscribers beg leave to inform their friends and the public in general, that they have opened a LUMBER YARD, on Buchanan's wharf, or Frederick-street dock, a little below Messrs Van Wyck and Dorsey's auction room, where they intend keeping a general assortment of the best *LUMBER* that the market will afford, which they will dispose of on terms which shall be made satisfactory to purchasers.

A share of public patronage is respectfully solicited. WRIGHT & PRICE.

November 27. eo

MESSAGE
FROM THE
PRESIDENT OF THE *U. STATES,*

Transmitting a report from the secretary of state, with the information requested in a resolution of the house, of the 17th instant, relative to the violation on the part of SPAIN, of the twenty-second article of the treaty of Friendship, Limits and Navigation, between the UNITED STATES and the KING of SPAIN.

"*Gentlemen of the House of Representatives,*

"I now transmit a report from the secretary of state, with the information requested in your resolution of the 17th instant.

"In making this communication I deem it proper to observe, that I was led by the regard due to the rights and interests of the United States, and to the just sensibility of the portion of our fellow-citizens, more immediately affected by the irregular proceeding at New-Orleans, to lose not a moment in causing every step to be taken which the occasion claimed from me: being equally aware of the obligation to maintain, in all cases, the rights of the nation, and to employ, for that purpose, those just and honorable means which belong to the character of the United States. "TH: JEFFERSON."

December 22, 1802.

REPORT

Of the Secretary of State to the President of the United States,

The secretary of state, to whom the resolution of the house of representatives of the United States of the 17th instant, was referred by the president, has the honor to inclose to him, the letters and communications annexed, from the governor of the Mississippi territory, the governor of Kentucky, and from William E. Hulings, formerly appointed vice-consul of the United States at New Orleans. In addition to this information on the subject of the resolution, it is stated from other sources, that on the 29th October, American vessels from sea remained under the prohibition to land their cargoes; and that the American produce carried down the Mississippi could be landed only on paying a duty of 6 per cent. with an intimation that this was a temporary permission. Whether in these violations of treaty the officer of Spain at New-Orleans has proceeded with or without orders from his government, cannot as yet be decided by direct and positive testimony; but it ought not to be omitted in the statement here made, that other circumstances concur with the good faith and friendship otherwise observed by his Catholic majesty, in favoring a belief that no such orders have been given.

JAMES MADISON.

Department of State, 21st Dec. 1802.

(COPY.)

New-Orleans, 18th Oct. 1802.

SIR,

I have the honor to inclose you an extract from a decree this day published by the intendant of the province of Louisiana, by which you will see that the Americans are no longer permitted to deposit their merchandize in this city. No information of any other place being appropriated for an American deposit, is yet given; nor have we any reason to hope that the government has such place in view. The season for the cotton from the Natchez, and other produce from the settlements higher up, to come down, approaches. The difficulties and risks of property that will fall on the citizens of the United States, if deprived of their deposit, are incalculable; their boats being so frail, and so subject to be sunk by storms that they cannot be converted into floating stores, to wait the arrival of sea vessels to carry away their cargoes.

The port is also this day shut against all foreign commerce, which can only be carried on by Spanish subjects in Spanish bottoms.

I am, sir, with the greatest respect,

(Signed) WM. E. HULINGS.

The hon. James Madison, esq. secretary of state.

Extract from a publication made 16th October, 1802, by Juan Ventura Morales, intendant of the province of Louisianna, &c.

N. B. The preceding part of the publication relates only to the ratification of peace and the shutting of the port against foreign trade.

(Translation.)

As long as it was necessary to tolerate the commerce of neutrals which is now abolished, it would have been prejudicial to the province, had the intendant in compliance with his duty, prevented the deposit in this city of the property of Americans, granted to them by the twenty-second article of the treaty of friendship, limits and navigation, of the 27th October, 1795, during the term of three years. With the publication of the ratification of the treaty of Amiens and the re-establishment of the communication between the English and Spanish subjects, that inconvenience has ceased. Considering that the twenty-second article of the said treaty takes from me the power of continuing the toleration, which necessity required; since after the fulfilment of the said term this ministry can no longer consent to it without an express order of the king. Therefore, and without prejudice to the exportation of what has been admitted in proper time, I order, that from this date the privilege which the Americans had of importing and depositing their merchandize and effects in this capital, shall be interdicted: and that the foregoing may be publickly known, and that no body may alledge ignorance, I order it to be published in the usual places, copies to be posted up in the public sitioes; and that the necessary notice be given of it to the officers of finance, the administrator of rents, and otherwise as may be necessary.

The present being given under my hand, and countersigned by the under written notary of finance, pro tempore, in the office of intendancy of New-Orleans, 16th October, 1802. (Signed)

JUAN VENTURA MORALES.

By order of the Intendant.

PEDRO PEDESCLAUX.

Faithfully translated from the Spanish language. JACOB WAGNER, Ch. Clk. Dep. State.

Near Natchez, October 29, 1802.

SIR,

I have the honor to enclose you a letter, which I last evening received from Mr. William E. Hulings, together with a translation of an extract from a publication made by Juan Ventura Morales, intendant of the province of Lousiana, &c. dated October 16th, 1802. These dispatches announce that the port of New Orleans is shut against foreign commerce, and also the *American deposit.*

Not understanding from the intendant's proclamation, whether or not another place on the banks of the Mississippi had been assigned by his Catholic majesty, (in conformity to our treaty with Spain,) for "*an equivalent establishment;*" I have by letter (a copy of which is enclosed) requested information *upon this point,* from the governor general of the province of Louisiana; when his answer is received, it shall be forwarded to you.

This late act of the Spanish government at Orleans has excited considerable agitation at Natchez and its vicinity: It has inflicted a severe wound on the agricultural and commercial interests of this territory, and will prove no less injurious to all the Western country.

There being at present an interruption in the post between this territory and Tennessee, and supposing it of importance that the government should be early apprized of the late event at Orleans, I have forwarded this letter by express to Nashville, where it will be deposited in the mail.

I am, Sir,

With sentiments of esteem and respect,

Your humble servant,

(Signed)

WM. C. C. CLAIBORNE.

The honorable the secretary of state for the United States.

New Orleans, 18th October, 1802.

SIR,

I have to announce to you that this day the port is shut against foreign commerce, and not against foreign commerce only, but against the *American deposit* in this city. In the decree posted up in the public places no mention is made of any other place appointed for a deposit. You will use this information as you may think proper.

I am, with great respect,

Your most obedient humble servant,

WM. E. HULINGS.

William C. C. Claiborne, governor Mississippi territory.

(COPY.)

Natchez, October 28th, 1802.

SIR,

I was this day informed, that in a proclamation issued on the 16th instant by the intendant of the province of Louisiana, it was announced, "That the citizens of the United States should no longer be permitted to deposit their merchandizes and effects in the port of New-Orleans."

Information of an event so immediately interesting to the citizens of the United States, led me to peruse attentively "The treaty of friendship, limits and navigation, between the United States of America and the king of Spain," and upon adverting to the twenty-second article, I found it expressly declared, that "His Catholic majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandizes and effects in the port of New Orleans, and to export them from thence, without paying any other duty, than a fair price for the hire of stores; and his majesty promises either to continue this permission, if he finds during that time, that it is not prejudicial to the interests of Spain, or if he should not agree to continue it then, he will assign to them on another part of the banks of the Mississippi, an equivalent establishment." I have here quoted the words of the treaty, and find them too explicit to require comment, or to admit of a doubtful construction.

If, therefore, his Catholic majesty has discontinued his permission to the citizens of the United States, to deposit their merchandizes and effects at the port of New-Orleans, will your excellency be good enough to inform me whether any, and what other place on the banks of the Mississippi has been assigned (in conformity to the treaty) for "An equivalent establishment?" The subject of this enquiry is so interesting to the commerce of the United States, and the welfare of her citizens, that I must request your excellency to favor me with an *early answer.*

Accept assurances of my great respect and high consideration.

(Signed)

W. C. C. CLAIBORNE.

His excellency Manual de Salvado, governor-general of the province of Louisiana.

The Governor of Kentucky to the President of the United States.

(COPY)

STATE OF KENTUCKY.

Frankfort, November 30, 1802.

SIR,

Two days ago I received the inclosed letters from Dr. James Speed, and Meker