From the VIRGINIA GAZETTE.

Mr. A. Davis,

I OBSERVE in your paper of the 29th inſtant, a ſtatement of the proceedings of laſt Friday, at the court-houſe, in which it is mentioned, that I had been applied to by Mr. George Hay for a warrant againſt James T. Callender, and had refuſed to grant it.

Mr. George Hay did apply to me for a warrant, or to uſe his own words, *demanded it* I informed Mr. Hay that it was a new caſe, and that I had my doubts whether ſuch a warrant could legally be granted; that I muſt have time to conſider the ſubject, and obtain the beſt legal opinion I could; that if I ſhould be convinced that I ought to grant it, I certainly would do ſo. Mr. Hay then read the act of aſſembly in the reviſed code, page 100, and inſiſted that by that law, I was authorized to grant the warrant, but that if I had any doubts, Mr. M'Rae (who was then preſent) would give me his advice. Mr. M'Rae gave it as his opinion, that I had power to grant the warrant; however, as I was determined not to do an act which appeared to be of ſuch conſequence, before I had taken ſufficient time to conſider, and alſo to get the beſt advice I was capable of procuring, I told Mr. Hay that I would not grant the warrant until I had conſulted the ſtate's attorney, Mr. William Marſhall, who was, in my opinion, the moſt proper perſon for magiſtrates to apply to, when they were at a loſs in points of law.

In leſs than half an hour after Mr. Hay left me, I called upon Mr. Marſhall and informed him of the application that had been made by Mr. Hay, and alſo of the anſwer I had given him. Mr. Marſhall obſerved, that he was not ſurpriſed that I required time to conſider a ſubject of ſuch importance; that it was a new caſe, and ſuch as he never could have ſuppoſed would come before any magiſtrate in the United States; that he muſt himſelf take time to examine authorities on the ſubject, before he would give me his opinion, but that his preſent impreſſion was, that it would be an illegal act.

After parting with Mr. Marſhall, I called on Mr. George W. Smith, who has always given me his friendly advice upon application. I ſtated the caſe to Mr. Smith, and informed him of the anſwer I had given to Mr. Hay; he, in a moſt friendly manner, expreſſed his approbation of my conduct, and ſaid that he had no heſitation in declaring that it was his opinion, that a warrant could not legally be granted, and adviſed me not to do it. I then applied to Mr. James Rind, who agreed exactly in opinion with Mr. Smith.

Before my return home I again applied to Mr. Marſhall; his anſwer was, that he had conſidered the ſubject, and that his opinion was, that it would be an illegal act, and that I ought not to grant the warrant.

On my return home, I was informed by my clerk, that Mr. Hay had called at the compting-houſe and deſired him to inform me, that I need not give myſelf any more trouble in the buſineſs, as he had obtained a warrant.

I have, however, ſince that time, conſulted almoſt all the lawyers in Richmond, who have declared their opinions to correſpond with thoſe of the gentlemen mentioned above.

My motive for troubling the public, is merely to ſtate facts, which I have reaſon to believe are not properly underſtood.

JOHN FOSTER.

Richmond, December 30, 1802.

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."

[CONTINUED.]

If the deciſion in the caſe of Callender and Pace ſhould prevail, the conſtruction of libels would be entirely left to magiſtrates. They will have the power of judging of the extent of the ſuppoſed libellous matter, and not a jury. The inconvenience that will hence ariſe to ſociety cannot be better deſcribed than by quoting a paragraph from Junius on this ſubject:

"If any honeſt man ſhall ſtill be inclined to leave the conſtruction of libels to the court, I would intreat him to conſider what a dreadful complication of hardſhips he impoſes upon his fellow ſubjects. In the firſt place the proſecution commences by information of an officer of the crown, not by the regular conſtitutional mode of indictment before a grand jury. As the fact is uſually admitted, or in general can eaſily be proved, the office of the petty jury is nugatory. The court then judges of the nature and extent of the offence, and determines, *ad arbitrium*, the *quantum* of the puniſhment, from a ſmall fine to a heavy one, to repeated whipping, to pillory, and unlimited impriſonment. Cutting off ears and noſes might ſtill be inflicted by a reſolute judge."

The caſe in queſtion is even more dangerous than that which Junius ſuppoſes. For according to the opinions of the juſtices of Henrico county, a ſingle individual magiſtrate is veſted with the power of obliging any perſon whom *he may ſuſpect* about to write libellous matter, to give recognizance to an enormous amount, which recognizance will be forfeited if the perſon bound over ſhould afterwards publiſh the moſt trivial libel.

The jury ought to be the perſons entitled to judge of the extent of a libel; but according to the principles now laid down, this is left to the pleaſure of any magiſtrate; for whatever the nature of the libel may be, the whole ſum mentioned in the bond of ſecurity becomes forfeited. We ſhall ſuppoſe, for inſtance, that a perſon has given a recognizance for five thouſand dollars; this perſon afterwards accuſes ſome obſcure individual in the ſtate of ſome inſignificant act, that he never committed, and which perhaps does not injure his reputation a ſingle cent, yet he is compelled to pay the five thouſand dollars equally as if he had libelled in the moſt ſlanderous manner the whole community. There is neither juſtice nor reaſon in this ſort of doctrine. Such a principle in law was never ſtarted before; that all libels, of every deſcription, from the moſt trifling which can be conceived, to the moſt heinous and the moſt aggravating that can be committed, ſhould receive the ſame puniſhment. For this will be preciſely the caſe, if the deſpotic doctrine laid down by Mr. Hay, his counſel, and the three juſtices of Henrico county, be ſuſtained. The ſuſpected libeller is not puniſhed for what he has done, but for his future crimes. Therefore, however he may conduct himſelf, whether immoderately or with diſcretion, his puniſhment is the ſame. It is aſtoniſhing how any men verſed in law could have advanced or liſtened to ſuch abſurdities. It is pretended that many ſuch inſtances have occurred in England; but that they have been too trifling to be noticed. No attempt has ever been made in Great-Britain upon the liberty of the preſs, but which has ſounded from one extremity of the kingdom to the other; and if ſuch an extraordinary inſtance as the preſent had happened, the whole world would have heard of it. It would not have been confined to Great-Britain alone. Statements and reſtatements of it would have been publiſhed in every country and in every language in Europe, where the freedom of the preſs is ſuffered. What noiſe did the trial of Woodfall make! What commotions did the perſecution of Wilkes ſtir up! Yet theſe were caſes inſignificant and paltry when compared to the preſent. No doubt but many acts equally tyrannical have been committed and are ſtill committed with regard to the preſs in other countries, where liberty is not allowed to breathe. Such a deciſion, or order, would be thought nothing of at the preſent day in France; it would only accord with the general policy which ſeems to prevail in that country. But this deciſion in a free country, ſuch as America, muſt excite not only the greateſt ſurpriſe, but the moſt poignant indignation in the breaſt of every man who knows what freedom is; who underſtands the importance of the preſervation of the preſs to his perſonal liberty, and who is not ſo debaſed as to court the intereſt of party or faction.

If the preſent reſtraint upon the liberty of the preſs be ſuffered to paſs unnoticed, men in office may ſport what actions they pleaſe with impunity. No ſtrictures can either be made on their conduct, or on the meaſures of government. No individual will be ſuffered to examine into the conduct of magiſtrates or perſons holding offices under government. The lips of honeſt ſcrutiny will be ſealed up. Peculation, diſorder and immorality may triumph, without the eye of cenſure daring to behold and expoſe crimes. The citizens of the United States will be hurled inſtantaneouſly from a ſtate of virtuous freedom into the abandoned condition of ſervility. Such unqueſtionably will be the melancholy conſequences of ſuch doctrines!

The reſtraint which the ſedition act laid upon the preſs was trifling in compariſon of the preſent; nor did it affect the preſs ſo materially as was imagined; but it was found to be improper, and conſequently was repealed.

The apprehenſion of perſonal danger and defamation of character, are circumſtances very different. It is highly neceſſary that preventive juſtice ſhould take place in the former, but not in the latter. No redreſs but what is pecuniary, can be procured for a perſonal aſſault. If a man has an eye knocked out of his head, no court or jury can replace it; but character may be repaired. Upon the conviction of the ſlanderer, the reputation of the ſlandered ſtands in the world as fair, and ſometimes higher than ever. It is therefore evident why the policy which juſtifies that men of bad fame ſhould be bound to keep the peace, is not intended to operate as a reſtraint upon words or publications. Bodily injury, or the deſtruction of property, are not eaſily repaired, but character ſuffers no loſs when the ſlander is proved falſe and malicious.

If the mode of binding over perſons to keep the peace and refrain from making ſtrictures on characters be found to be law, in what a ſituation will Paine, Cheetham and Duane be placed? The author of Common Senſe may return back to France; the Clintonian editor may ſhip himſelf for Mancheſter; and the organ of the public Will may take his paſſage to Calcutta. Theſe deſamers of morals will even be at more liberty in the countries which they have forſaken than in America if the preſent doctrine ſhould prevail. We are convinced that no circumſtance which has happened ſince the revolution will attract the public notice more than the commitment of Callender to jail. With the greateſt anxiety we wait the iſſue of this important affair, on which the liberty of the preſs depends. Not only the citizens of Europe are intereſted in it, but thouſands of Europeans who may be at this moment preparing to make America their future home. The intelligence of the event, if unpropitious to the cauſe of liberty, will be conveyed acroſs the Atlantic with more eagerneſs, and will ſtrike the embarking alien with more terror, than the ſedition and alien laws ever did.

It would ſeem that the preſent ruling party are afraid that certain ſecret matters will break forth, which may bring into diſgrace ſeveral characters who are now in high repute, or they would never have reſorted to ſuch an expedient, which they themſelves not two years ago reviled and execrated. The clamors of the democratic party during the adminiſtration of preſident Adams are certainly not forgotten. Yet in that adminiſtration no ſtretch of power was exerted by any magiſtrate or juſtice of the peace which could be compared to this. Thoſe who were accuſed of writing libels, before they received ſentence or puniſhment, were regularly tried and found guilty by juries. No propoſition was ever made to bind either printers, authors or bookſellers, from publiſhing what they pleaſed. This extraordinary attack on the freedom of the preſs was reſerved to the preſent day.

From the NEW-YORK EVENING-POST.

NUMBER 5.

PRESIDENT's MESSAGE.

Louiſiana forms the next topic of the meſſage, worthy particular notice. Our chief magiſtrate ſpeaks in the following manner of the moſt important event, as reſpects the United States, which has happened ſince the breaking out of the French revolution: "The ceſſion of the Spaniſh province of Louiſiana to France, which took place in the courſe of the late war, will, if carried into effect, *make a change in the aſpect of our foreign relations*, which will doubtleſs have juſt weight in any deliberations of the legiſlature connected with that ſubject."

It is granted that it would not have been becoming the office of the preſident of the United States to have announced this event in violent and angry language; yet, we ſurely had a right to expect from him that he would have preſented ſome preciſe ideas to the legiſlature on the ſubject, expreſſed in a tone of dignity and firmneſs. Inſtead of this, he merely informs them of the circumſtance as an affair which might, *if carried into effect, make a change in the aſpect of our foreign relations.* Out of a hundred readers, not five, it may ſafely be aſſerted, would be able to affix any definite meaning to theſe words. An explanation therefore may not be unſatisfactory.

Every perſon in this country knows that Mr. Jefferſon has heretofore been ſtrongly inclined to the moſt intimate and friendly connection with France, and to hold perpetually a frowning aſpect towards England; that, as to the former his maxim has been *All for love and the world well loſt*, while againſt the latter, he has not been above harboring the moſt illiberal and violent hatred. Now however, ſince all his advances have been but coldly received by France, his "amities" ſlighted, and the ardors of his paſſion have met with only neglect and diſdain; in ſhort, ſince the fair object of his affections has ſhown herſelf, in the ſtrong language of the poet, a downright "ſtabbing ſtrumpet," he turns ſoftly round and in the ſtile of coquetry, begins an amorous dalliance with England. Our aſpect towards England muſt be changed! Inſtead of frowns and ſulkineſs, we are to ogle and leer at her with all the artifice of well painted paſſion. Such is the meaning of the above phraſe, rather hinted than expreſſed; it is, I take it, the firſt ſtep of a gentle wooer. And, without intending any thing derogatory to the modeſty of the lady, we ſuſpect he will find her "*nothing loth*."

To drop the perſonification for the ſake of ſpeaking in a plainer ſtyle, we will ſay without heſitation, that Great-Britain cannot view with indifference the colonization of Louiſiana by the French, and that ſhe ſtands ready at this moment to co-operate with the American adminiſtration in preventing an event which ſhe foreſees will ultimately prove ſo extremely detrimental to her as well as to us. If we are careleſs of our Miſſiſippi territory, ſhe is not of her Jamaica and the reſt of her Weſt-India iſlands, and ſhe perceives they would never be out of jeopardy if once the French became powerful in the Floridas; more eſpecially if they ſhould ſucceed in conquering St. Domingo, retarded at preſent by nothing but a want of money.

Since we are on this ſubject, now become ſo intereſting to the people of this country, it may be expected that we ſhould treat it ſomewhat in detail.

Louiſiana was diſcovered by the Spaniards in the ſixteenth century, but firſt taken poſſeſſion of by Louis 14th of France. By the treaty of Paris, made in 1763, between Great-Britain, France and Spain, the former* obtained a ceſſion of the Floridas, and a free navigation of the Miſſiſippi; defined by a line drawn along the middle of the river Miſſiſippi from its ſource to the river Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Ponchartrain to the ſea; beſides the river and port of the Mobile, and all other poſſeſſions of the latter, on the left ſide of the Miſſiſippi, except the town of New-Orleans, and the iſland in which it is ſituated, which was to remain to France, provided that the navigation of the Miſſiſippi was to be equally free as well to ſubjects of Great-Britain as to thoſe of France, in its whole breadth and length from the ſource to the ſea, and expreſsly that part which is between the iſland of New-Orleans and the right bank of that river, as well as the paſſage both in and out of its mouth. In 1779 Spain, having taken part in our revolutionary war, attacked and diſpoſſeſſed the Engliſh of their poſts on the Miſſiſippi which ſhe retained till the peace, and then by the definitive treaty in 1783 with Great-Britain, ſhe obtained the ceſſion of the Floridas; of which ſhe ſtill retains poſſeſſion.

The next thing we heard of from Spain was a claim ſhe ſet up to the *excluſive* navigation of the Miſſiſippi: which ſhe attempted to enforce by actually ſeizing the property of ſeveral of our citizens when deſcending the ſtream. In the year 1795 an inhabitant of the weſtern country ſent a boat down the river with furs and other property to the amount of about 4000 dollars, which was all ſeized at New-Orleans. This produced a memorial from the owner to Mr. Jay, our miniſter at that time at the court of Spain. The ſtate of North-Carolina drew up a remonſtrance to congreſs on the ſubject of a ſimilar violence practiſed on one of the citizens of that ſtate: and it is believed that Virginia alſo inſtructed her repreſentatives on the ſame point. In ſhort the conduct of Spain cauſed a pretty ſtrong ſenſation throughout the United States. The excluſive uſe of the river was a favorite point with her ſtateſmen, and it was ſaid that ſhe propoſed, though in rather a ſecret manner, to allow us certain commercial advantages and to ſtand our friend with the Barbary powers if we would ſay nothing about her excluſive navigation of the Miſſiſippi for twenty-five years. And there were not wanting certain perſons from the ſouthern ſtates who were much inclined to liſten to the propoſition. We ſhall here mention a fact not unworthy repetition at this time.

During our revolutionary war, there was in congreſs a ſouthern faction, quite enough diſpoſed to ſacrifice our weſtern intereſts, without any real neceſſity for it, and they had ſufficient influence to get a reſolution actually paſſed, authorizing our miniſter then at the court of Madrid, Mr. Jay, to accommodate to the views of Spain on the Miſſiſippi, as the conſideration of her yielding to our independence. This was communicated to Mr. Jay in a letter, but that great and upright ſtateſman ſaw the conſequences which muſt reſult from this meaſure, and very wiſely omitted to make uſe of the power thus confided to him. The letter which he wrote back expreſſing his ſentiments on the ſubject, opened the eyes of ſome who had not been ſufficiently aware of its importance; the queſtion was reconſidered, ſome of the ſouthern members joined the northern, and the power was revoked. This is ſtated on good authority, but as it is here given from recollection alone, it can only be aſſerted to be ſubſtantially correct.

At length in 1795, a treaty of friendſhip, limits and navigation was formed between Spain and the United States. In the 4th article of this treaty it was ſtipulated that the weſtern boundary of the United States which ſeparates us from the Spaniſh colony of Louiſiana, ſhould be in the middle of the channel of the river Miſſiſippi, from our northern boundary to the completion of the thirty-firſt degree of latitude north of the equator, and that the navigation of the river, in its whole breadth from its ſource to the ocean ſhould be free only to the citizens of the United States and the Spaniards, unleſs by ſpecial convention between the king of Spain and other powers. But beſides this, it was abſolutely eſſential that the citizens of the United States ſhould have ſome place of depoſit, where their property might be taken out of their river-boats and laid up, previous to its being ſhipped on board veſſels of ſuitable burden for exportation; and ſo again, where their importations might be firſt unladen and depoſited previous to being put on board the boats, to be carried up the river, ſince without ſuch place of depoſit, as it is called, the navigation of the river would be almoſt or quite uſeleſs to them. It was therefore further agreed by the penultimate article of the treaty, as follows: "And in conſequence of the ſtipulations contained in the 4th article, his Catholic majeſty will permit the citizens of the United States, *for the ſpace of three years* from this time, to depoſit their merchandize 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 the 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 there, he will aſſign to them on another part of the banks of the Miſſiſippi, an equivalent eſtabliſhment." Obſervations on theſe two articles, and their fair conſtruction, are reſerved till we come to ſpeak more particularly of the affair of New-Orleans.

[*To be continued.*]

* *It was not ceded to Spain in* 1763, *as ſtated by Carolianus in the Morning Chronicle.*

From the New-York Commercial Advertiſer.

IMPORTANT DISCOVERY.

Since the invention of the pendulum for the regulation of time by Gableo, the object of the reſearches of all the artiſts and philoſophers for the improvement of that art, has been to correct the defects ariſing from the contraction and expanſion of metals by heat and cold. Hariſon, a celebrated Engliſh artiſt, has in ſome degree correſted theſe defects by the invention of the grid iron, put in practice by himſelf; by Cummings, and moſt of the eminent watch and clock makers in Great-Britain, France, &c. Mr. Le Paute, an eminent artiſt of Paris, and watch-maker to the king, invented a more ſimple pendulum, by which the expanſion and contraction of metals is ingeniouſly ſhown, by the aſſiſtance of a hand and quadrant on the pendulum, which mark the diffent degrees of heat and cold. This, although leſs complicated, comes as near the object in view as the grid-iron. But to cry the corrective to perfection was reſeted for America.

Mr. Launy, an artiſt well known in this city, and formerly diſtinguiſhed in ſeveral cities of Europe, has diſcovered a ſill and complete corrective of the defects lready mentioned. This invention is far le complicated than thoſe of Hariſon ad Le Paute. Several artiſts, who have amined this invention, have expreſſed th fulleſt confidence in its correctneſs and utility. This fortunate diſcovery, which wil carry to perfection an art of ſo much uſ in ſociety, will unqueſtionably gain the igheſt honor to its ingenius author.

We hear that Mr. Launy is actualy executing a time-piece to give motion to his compenſating pendulum; and that he intends, in the courſe of the winter to give it a fair and concluſive experiment, by expoſing the time piece for a week to the coldeſt weather, and by confining it another week in a room kept hot day and night with a ſtove; after which he will communicate his experiments and obſervations on the ſubject to the public.

We are alſo informed, that with very little expence, Mr. Launy will affix his pendulum to any well-made eight-day clock, and to regulate it ſo correctly that it will not vary more than two or three minutes in twelve months. Any well-made city clock may be converted into an aſtronomical time-keeper by the addition of this pendulum.

NEW-YORK, December 31.

[The New-York State Society of the Cincinnati, having propoſed to erect an Equeſtrian Statue of Bronze, as a teſtimonial of their reſpect for the virtuous and public ſervices of the late illuſtrious general WASHINGTON; the committee of ſuperintendance, agreeably to a reſolve of the ſociety, have prepared for publication the following pathetic appeal to the liberality of their fellow-citizens. We earneſtly recommend it to the attention of our readers.

It will be conſidered, perhaps, a ſingular coincidence of circumſtances, that this appeal ſhould be made on the anniverſary of the day which three years ago, was ſet apart for a ſolemn public proceſſion in memory of the then recent death of our exalted hero.]

Fellow-citizens,

Veneration for the character of the illuſtrious WASHINGTON is a ſentiment which, perhaps, without exaggeration, may be deemed common to the civilized world. It is at leaſt one in which the hearts of Americans moſt cordially unite: the deſire of teſtifying it has been prompt to embrace every fit opportunity, and has repeatedly ſhewn itſelf ſolicitous to adopt means for the purpoſe, more permanent and more impreſſive, than have yet been put in practice. Among the expedients which have occurred, the erection of ſome laſting MONUMENT, as a cuſtomary and ſignificant memorial of diſtinguiſhed worth, has been contemplated, in various inſtances, by public bodies and by individuals.

The ſociety of the Cincinnati of this ſtate, encouraged by indications of this diſpoſition in the community, and participating largely in the feelings by which it has been produced, have ventured upon a determination to attempt the accompliſhment of the object; looking with full confidence to the aid of their fellow-citizens for the ſucceſs of the undertaking. Their reſolutions, deſignating the outline of the plan which has appeared to them the moſt eligible, are already before the public. In the choice of this plan, the facility of execution without an inconvenient draught upon the liberality of individuals, has been a conſideration of material weight; but in no degree tenacious of a particular mode of effecting the end, the ſociety through their committee, in the eventual application of the fund to be raiſed, will carefully attend to any ſuggeſtions for improvement, which may be likely to afford general ſatisfaction.

The ſociety have flattered themſelves that the agency, which upon this occaſion they have aſſumed, will be viewed by you with candor, and even with indulgence. Was there an impropriety in the intervention of a claſs of men moſt of whom ſtood in ſo peculiar a relation to the beloved chief, to whoſe memory the tribute of gratitude is to be offered? Is i probable that the deſign would have bee promoted by more diffuſive conſultations? Or was there a culpable preſumption in ſtepping forward on ſuch a ſubject, and in ſuch a ſituation, to preſent a definite object to a known public wiſh? If there was, it is hoped and believed, that the pure and laudable zeal which was the ſole cauſe of the error, will readily admit an apology for it.

It would ill comport with the exalted nature of the object to be attained, and would as ill accord with a juſt and reſpectful eſtimate of your ſentiments, to detai you a ſingle moment by a diſplay of the inducements which invite your co-operation. By you they are well underſtood, and equally felt. Satisfied that they are deeply rooted in your affections, to theſe alone we appeal.

On behalf of the Society,

Nicholas Fiſh,
John Stagg, jun.
Matthew Clarkſon,
James Fairlie,
Ebenezer Stevens,
} COMMITTEE

PHILADELPHIA, January 4.

Cleared, ſhip Jefferſon, M'Pherſon, St Andero; brig Venus, Webb, St. Barthe mews; ſchooner Hope, Taylor, Weſt Indies; Alexander, Reynolds, St. Th mas; ſloop Jefferſon, Kenney, Martinique