From the BALANCE.

"Nothing extenuate, nor set down aught in malice."

AN ACCURATE STATEMENT OF FACTS

CONCERNING

Mr. ATTORNEY-GENERAL SPENCER'S

LATE ATTACK ON THE

LIBERTY OF THE PRESS

IN THIS COUNTRY:

Written by a gentleman who was at court during the whole transaction, and ... himself that the detail is ...

[It is ... are g... taken ... advan...

On th... Harry C... Balance, ... warrant, ... ſeſſions of ... in Claverac... read to hi... with the u... charged Mr... ed a paper c... "Jefferſon," ... "paid Callen... traitor, a rob... ing Adams a... and for libellin... virtue in the ... dictment ſtated ... well had, in the ... piece entitled "... contained the fol...

1. He [Jeffer... paid out of the t... ceau, contrary to ... tution, which give... propriating money to co...

2d. He has diſplaced ... of this country, and ap... them foreigners and fl... always ſhewn themſelves ... of whom* was prime a... inſurrection to oppoſe t... thorities.

3d. He plan...ed and ... on the conſtitution laſt ... the independence of th... ſtroyed, and our conſti... mangled.

4th. He has remit... nal,† after the fi... the ... 5th. He releaſed Du... tion, inſtituted for a li... without the leaſt auth... ſtitution, or any law—... ane had contributed his ... to office. It would be ... enumerate the many act... ty to common ſenſe and ... of which this "*man of the* ... guilty. Theſe are facts, ... his friends and foes—every ... you not bluſh for your co... preſident?—Do you not in... ly perceive the little arts c... mind?

Any obſervations upon th... hood of the charges here ma... improper. They are to be tr... And, in the language of one ... ſel, "I thank my God that ... muſt be by a jury of the coun... *drawn* from the community—... of no party—reſponſible to no power, but to their conſciences and their God."

Meſſrs. Williams, Van Neſs, and Van Renſſelaer, the counſel for Mr. Croſwell, demanded copies of the indictments before they ſhould be compelled to plead. They ſtated, that there never was an inſtance where a copy was thus demanded and refuſed. That copies could not be before obtained, in the uſual way, from the clerk; for that the indictments had never been left with him. Mr. Spencer, with great warmth, oppoſed the demand. He could not ſay that ever a ſimilar requeſt was refuſed, becauſe he did not believe it was ever before made. But, he ſaid, if this was granted, every perſon indicted would make the ſame demand, and thus public buſineſs be greatly retarded.

He was anſwered, that inaſmuch as this was a motion to the ſound diſcretion of the court, whenever the requeſt was made for the purpoſe of delay, the court would be juſtified in refuſing; and thus the delays apprehended would never happen.—The preſent caſe, it was ſtated, was eminently entitled to the interference of the court. That the indictments were long and unintelligible; and to force Mr. Croſwell to plead without copies, was to entrap him and ſacrifice his cauſe. A majority of the court, however, refuſed the requeſt, and ruled that Mr. Croſwell ſhould immediately plead. To both indictments he plead NOT GUILTY.

It was then ſuggeſted by the counſel for Mr. Croſwell, that as the law on the ſubject of libels was extremely intricate even in England, and leſs known in this country than that on any other ſubject, it would be proper that the trials ſhould be poſtponed until the next court of Oyer and Terminer, when a judge of the ſupreme court would be preſent and aſſiſt in the deciſions. This was objected to by Mr. Spencer, and the court refuſed to interfere.

It was then ſtated, that from the face of the indictments it would appear, that the witneſſes required by Mr. Croſwell were in Virginia, and of courſe could not be obtained this court. It was, therefore, moved that the trials ſhould be poſtponed until the next ſeſſion.

To this Mr. Spencer objected. He ſaid that the only evidence Mr. Croſwell would want, which he could not obtain this court, was merely to prove the truth of his publications. He decl... citly, that the truth could not ... in evidence as a juſtification; ... fore, even if Mr. Croſwell, by ... ponement, could obtain evide... truth of his publications, it ... avail: It never would be admit... only queſtion was, whether Mr. ... had publiſhed thoſe libels. U... queſtion, he was as well ... believer ...

...ing the term, and requeſted by Mr. Spencer to be ready for his trial the next day.

The next day (Wedneſday) towards evening, Mr. Croſwell came into court with his counſel, and offered an affidavit to the following effect;—That he intended and expected to prove the truth of the facts as ſtated in the "Waſp," of September 9th, and for the alledged publication of which he was indicted. Upon this affidavit, they moved the court to poſtpone the trial. The attorney general ſaw fit to abandon his oppoſition, and it was agreed that Mr. Croſwell ſhould be recognized to appear at the next court of ſeſſions to be tried upon one of the indictments, and upon the other at the next court of oyer and terminer. Mr. Croſwell then came forward with his ſureties; and Mr. Spencer moved, that he ſhould alſo be bound *to keep the peace and be of good behavior.* The counſel for Mr. Croſwell admitted that it was proper he ſhould enter into a recognizance to appear and anſwer, &c. But they inſiſted that to demand ſurety *for the peace and good behavior*, was illegal, a violation of his liberty as a free citizen of the United States; that it was a direct attack upon the freedom of the preſs, and that if any thing could, at this time, aſtoniſh them, it was a propoſition pregnant with ſuch direct and palpable hoſtility to the freedom of diſcuſſion, and to the beſt principles of true republicaniſm. Mr. Spencer however perſevered, and the debate on the queſtion was deferred until the next morning.

[The arguments of the counſel on both ſides, will be given next week.]

* *Albert Gallatin, ſecretary of the treaſury.*
† *Callender.*

Congreſs of the United States.

HOUSE OF REPRESENTATIVES.

THURSDAY, January 27.

(Debate continued.)

The chairman then read the ſecond reſolution, as follows:

Reſolved, That proviſion ought to be made by law, for ſubmitting to judicial deciſion, the right of the judges of the circuit court, to their compenſations.

Mr. Randolph ſaid he was not ready for the queſtion. He had one or two remarks to offer, which had ſuggeſted themſelves during the reading of the reſolution. It had been repeatedly decided that the United States would not permit themſelves to be brought into their own courts. Wherefore grant to a particular claſs of perſons in a ſingle caſe, that which had ever been refuſed to the war worn ſoldier of the revolution? Eſpecially when it ſhould be recollected, that this caſe, involving the intereſt of judges, as a *caſt*, could not be decided by any judicial trib... free from bias.

...ſions on an opinion the moſt incomprehenſible which he had ever heard. That his own mind had long been made up on this ſubject, and he ſuppoſed other gentlemen to be equally decided.

Mr. Dana was of opinion that every ſubject ſhould be brought fairly and directly to a deciſion. And after it had been fully diſcuſſed and fairly decided, it ought to be conſidered as ſettled. So far as this ſubject had been completely decided, he had no diſpoſition now to enter into diſcuſſion. He fully agreed too with the gentleman from Virginia that to admit that congreſs had the conſtitutional right to take away the powers of the judges was virtually to give up their claim for compenſation, which only reſulted from their right to office. Other gentlemen, however, were of a different opinion; and ſuch an opinion may have been, and, he believed, was taken by ſome of the gentlemen who paſſed the repealing law. Such opinions, he knew had been expreſſed by ſome gentlemen in public and in private.

The queſtion of compenſation to the judges involved conſiderations very diſtinct for thoſe ordinarily decided upon in that houſe. Moſt of the individual caſes bro't here were made in purſuance of ſome particular law, and did not call in queſtion the authority of congreſs. If the caſe of the judges were to be referred to any tribunal, the right to refer was founded on the principle of controlling the deciſions of the legiſlature in caſe thoſe deciſions ſhould appear to the tribunal to be unconſtitutional. It was, therefore, in this view not proper to refer the queſtion to a tribunal dependant on the body to be controlled. This was the only courſe that would probably be deemed impartial by all the parties concerned.

Mr. Bacon ſaid the true queſtion was on the conſtitutionality of the repealing law. One congreſs had paſſed a law conſtituting certain courts, which at the laſt ſeſſion had been repealed. Now of what do courts conſiſt? Of judges who are officers of the court. The queſtion is whether by aboliſhing the courts, theſe offices are aboliſhed. He ſuppoſed they were. He conſidered the terms as ſynonimous. Now the queſtion is whether if the offices are aboliſhed, thoſe who filled them before they were aboliſhed, are entitled to ſalaries? That is the only queſtion which remains undetermined. What does the conſtitution ſay? Admitting the offices aboliſhed—it ſays, "The judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behavior, and ſhall, at ſtated times, receive for their ſervices a compenſation, which ſhall not be diminiſhed during their *continuance in office.*"

Does it not follow, that if they do continue in office, they are entitled to a ſalary for the ſervices they perform. If they do not continue in office they are entitled to nothing, and the conſtitution has no reference to them. This is the true queſtion.

Mr. Bacon ſaid he had been reminded of ſome obſervations made by him the laſt winter. But he ſuppoſed that having determined the queſtion that the offices were aboliſhed, the queſtion of compenſation was determined of courſe.

Mr. Griſwold. Laſt winter the gentleman from Maſſachuſetts informed us that the right of the judges to ſalaries was not involved in a deciſion on their powers. Now, he ſays by a deciſion of that queſtion the preſent queſtion was decided of courſe. I conceive that this queſtion never has bee ſettled by the legiſlature. Opinions entertained by different gentlemen have varied. It is the opinion of ſome very reſpectable legal characters, that though congreſs may deprive the judges of all their powers, yet they cannot deprive them of their offices, and their characters of judges, and that they are ſtill entitled to their ſalaries. Such an opinion is entertained by high and reſpectable law characters. I am not of this opinion, as hinted by the gentleman from Virginia. I thought that ... eſſentially impairing ... e, we eſſentially im... when we deprived ... we alſo deprived him ... But gentlemen of ... table character were ... They may, per... d ſo long as ſuch ... an impartial tribu... ſhed to decide the ... any objection to ... e never felt an ob... rts of law, the de... pon legal grounds. ... mode of deciſion ... at whatever an in... lf as having a right ... d in a court of law. ... he reference of this ... ne court. I have, ... ſolution, & I hope ... the opinion of the ... ia (Mr. Randolph) ... vely relates to the ... he judges, I con... rect. The judges ... law as uncon... therefore, conſider ... ges of the United ... aranteed by the ... not be removed ... They believe it to be ... very legal ... e that principle, as ... ng act. Believing ... believing it to be ... f the people of the ... uld they relinquiſh ... ations, a neceſſary ... thout relinquiſhing ... ey could not do it. ... h to go into an ex... queſtion, which I ... elieving, as I ſaid ... courſe taken by the houſe, it is ſettled that the reſolution ſhall be rejected.

[*To be continued.*]

Friday, January 28, 1803.

Mr. Dawſon moved the following reſolution, which he prefaced with a few remarks, the object of which was to ſhew that the contemplated meaſure would produce a ſaving of time and money.

Reſolved, That during the preſent, and at the commencement of every ſeſſion of congreſs, two additional clerks ſhall be elected, to be denominated "committee clerks," whoſe duty it ſhall be to attend to the buſineſs referred to the ſeveral committees, and to keep records thereof; and who ſhall receive for their ſervices an adequate compenſation.

Mr. Dawſon moved that the houſe ſhould immediately take the reſolution into conſideration.

Motion loſt—Ayes 19.

Mr. Nicholſon preſented the following memorial from the citizens of Waſhington:

To the ſenate and houſe of repreſentatives of the United States of America in congreſs aſſembled, the memorial of the ſubſcribers, citizens of Waſhington, convened on the 26th inſtant, (January.)

RESPECTFULLY REPRESENTS:

That your memorialiſts, in common with the other inhabitants of the territory of Columbia, are ſeriouſly impreſſed with the unfavorable circumſtances in which they are placed, and ſtill more ſeriouſly impreſſed with the apprehenſion of greater evils likely to enſue. Their ſhort experience has forcibly confirmed the wiſdom of all the political inſtitutions of America, by which the citizens of an independent republic, except in the ſolitary caſe of Columbia are inveſted with the powers of ſelf-government; powers commenſurate to the protection of their rights and the promotion of their happineſs. Notwithſtanding, however, the deprivation of this ineſtimable right, they have hitherto ſubmitted without a murmur to the proviſions eſtabliſhed by the collected wiſdom of the nation, in the hope that their intereſts, under the guardianſhip of the general government, would be ſolicitouſly conſulted and faithfully promoted. But an experience of more than two years has proved the hope illuſive. Of the unfeigned deſire of the legiſlature of the United States to diſcharge every duty aſſigned them by the conſtitution, they entertain no doubts; but it is their belief that a legiſlative body, inſtituted for the accompliſhment of great national objects, and unacquainted with the minute and local circumſtances attending the territory of Columbia, cannot be conſidered as poſſeſſed of that peculiar knowledge which is required in legiſlating for them. Nor are your memorialiſts inſenſible to the impropriety of claiming, to the neglect of national concerns, and at a great expence, ſo large a portion of time as ſuch legiſlation would demand.

Under theſe conſiderations, and with impreſſions derived from the known friendſhip of congreſs, your memorialiſts requeſt that they may be authoriſed, in common with their fellow-citizens, to elect delegates to a convention, to eſtabliſh a ſyſtem of government for themſelves, if ſuch ſhall appear to be their ſenſe, as expreſſed through the organ of their repreſentatives ſo aſſembled; or if ſuch ſhall not appear to be the ſenſe of the territory, that they be empowered to recommend to the adoption of congreſs ſuch other meaſures as ſhall in their opinion beſt promote the general welfare of their conſtituents.

As citizens of the United States, as members of a great and independent empire, founded on equal rights, and diffuſing equal happineſs and protection, we appeal to the magnanimity, the patriotiſm, and the juſtice of congreſs. We aſk that which they can give without derogating from their dignity or impairing their power; and that, without which our induſtry and reſources, active and extenſive as they are, muſt be without avail.

Other objects, of an intereſting, though ſubordinate nature, in our opinion, claim the early attention to congreſs. To them, as exhibited in the annexed ſtatement, we reſpectfully invite their attention, truſting that their preſſing importance will obtain the contemplated legiſlative redreſs during the preſent ſeſſion.

ROBERT BRENT, *Chairman.*

The above memorial, with a counter memorial from the citizens of Alexandria, were referred to Meſſrs. Thompſon, Plater, Campbell, Taliaferro and Early.

A letter, received from David Humphreys (noticed in our laſt) reſpecting preſents made him by the Dey of Algiers and the king of Spain, after conſiderable debate on a refereace to a committee of the whole, or a ſelect committee, was referred to a ſelect committee, conſiſting of Meſſrs. Jones, Dana, and Elmendorf.

Mr. Euſtis reported a bill to provide an additional armament for the protection of the ſeamen and commerce of the United States, which was read twice, and referred to a committee of the whole on Monday next.

Mr. Davis, one of the members from the ſtate of Kentucky, preſented to the houſe, certain reſolutions of the legiſlature of the ſaid ſtate, together with a memorial annexed thereto from the ſaid legiſlature, addreſſed to the preſident of the United States, and the ſenate and houſe of repreſentatives, of congreſs, repreſenting, that in conſequence of a violation on the part of Spain, of an article of the treaty of friendſhip, limits and navigation between the United States and the king of Spain, the citizens of the ſaid ſtate are deprived of a place of depoſit, in the Spaniſh territory, in conformity with the ſtipulation contained in the ſaid treaty, by the proceedings of the intendant at the port of New-Orleans, who has, by a proclamation, dated the 18th day of October, forbidden American citizens to depoſit their merchandizes and effects in the ſaid port of New Orleans, without having aſſigned to the United States, an equivalent eſtabliſhment on another part of the banks of the river Miſſiſippi; that they rely on the wiſdom and juſtice of the government of the United States to redreſs the grievance of which they complain, and pledge themſelves to ſupport, at the expence of their lives and fortunes, ſuch meaſures as the honor and intereſt of the United States may require, in defence thereof.

The ſaid reſolutions and memorial were read, and ordered to be referred to the committee of the whole houſe, on the ſtate of the union.

Mr. Davis ſaid the war department had purſued a method of granting military land warrants, in his opinion, not conformable to the reſolves of congreſs, granting a bounty in lands to officers and ſoldiers who ſerved in the late revolutionary war. He would not ſay that the practice was uniform, but as it related to his own perſonal application it was, and he expected it was ſo in all caſes. He would be xplicit. The war department does not grant warrants to the repreſentatives of any perſon ſlain in the ſervice of the United States, unleſs ſuch perſon was enliſted for during, or ſerved to the end of the war. It was his opinion, that the repreſentatives of any perſon killed in the ſervice of the United States were entitled to bounty land, whether they had enliſted for the whole of the war or for a ſhorter time. In this opinion he was not ſingular. He had ſpoken to two gentlemen from Maryland, who appeared to accord with him in opinion.

Mr. D. ſaid he did not expect the war department would depart from their uſual practice without ſome legiſlative interference. He therefore propoſed the following reſolution, to wit:

Reſolved, That the committee appointed on the 29th ultimo, to enquire into the expediency of giving further time to the holders and owners of military land warrants to locate the ſame, be and they are hereby directed to enquire whether any, and if any, what legiſlative proviſion is neceſſary to carry fully into effect the reſolutions of congreſs of the 16th of September, 1776, and the 12th of Auguſt, 1780, which give a bounty in land to officers and ſoldiers who ſerved in the late revolutionary war.

This reſolution was immediately taken up and agreed to.

Mr. Davis ſaid there was another ſub-