FEDERAL GAZETTE, AND BALTIMORE DAILY ADVERTISER.

MAY 6, 1808.

PRINTED & PUBLISHED BY J. HEWES, opposite the Post-office, St Paul's lane, Baltimore

Daily paper $7, Country paper $5 a year.

All advertisements appear in both papers.

Sheriff's Sale.

A quantity of Men's and Women's Shoes, (as before advertised for sale) will positively be sold on Saturday, the 7th instant, at 10 o'clock forenoon, at my office.

JOHN HUNTER, Sheriff.

may 5.

Sale by Auction OF CHINA GOODS.

On FRIDAY,

The 20th instant, at 10 o'clock, at the vendue warehouse at the corner of Second and Frederick-streets, will commence the sale of

The Entire CARGO of the Baltimore East India Company's ship William Bingham, John Cuningham, master from Canton, consisting of the following articles

80 qr chests Bohea Tea,
50 Campoy do.
50 Souchong do.
400 & 480 Cannister Hyson do.
276 & 422 boxes Hyson Skin do.
42 245 do. and 1080 Cannisters Imperial do.
7 and 63 do. Young Hyson do
2700 bales Yellow Nankeens Short,
300 do. Company do. long.
490 do. Blue do.
27 cases Silks, Satins, and Velvets,
2 do. Handkerchiefs
7 do. Sewing Silks,
2710 packages of Cassia,
353 boxes China. assorted

The terms which will be liberal will be made known at the time of sale and the goods exposed to view a few days preceding.

THOMAS CHASE, Auct'r.

may 5.

Public Sale.

On WEDNESDAY,

The 11th inst. at 11 o'clock will be sold, by order of the orphan's court of Baltimore county,

That handsome two story Brick DWELLING HOUSE, &c No 59, High street; also, the two story Brick STORE and SHED adjoining No 132, on said street; the whole subject to an annual ground-rent, and late the residence and property of Aquila Miles, deceased. The terms of sale, which are liberal will be made known at the time and place of sale. Also will be sold for cash, a smart active NEGRO BOY, and a handsome GOLD WATCH.

May 3. dt1M

The Subscriber wishes to

purchase two HACKNEY COACHES, immediately, apply at Mr Hussey's Tavern, for BEVERLY STUBBIFIELD.

may 3. d4t

Pickled Lobsters

For Sale at Robert Casey's, corner of Hanover and Market-streets.

may 3 d4t

A Wet Nurse,

Of unexceptionable character, wants a place, any person wanting such an one will apply at this office. May 4 d4t

Buffum and Goodhue,

No. 16, Bowly's wharf,

Have received per schooner Susan and William, Captain Luce, from Boston,

1000 reams Wrapping Paper,
45 tons Plaister of Paris.

may 5. d6t

To Let,

(Possession may be had immediately)

That large convenient HOUSE, in Bridge-street, No. 27, a good stand for business. Apply on the premises.

may 5 d4t

For Sale,

A likely Negro GIRL, aged 10 years, accustomed to SEW, and assist in house-work. She is healthy, cleanly and active. For further particulars apply at this Office.

may 4. d

Wanted to Hire,

A Servant GIRL, in a small family, who can come well recommended: to such a person liberal wages will be given. Inquire at this office.

may 5 d4t

John & James Roberts,

No. 230, MARKET-STREET,

Have on hand, and offer for sale on reasonable terms, by the Package or Piece,

2 boxes 4-4 Irish Linen,
3 do. 7-8 do. do.
4 do. 4 4 very fine do do.
12 bales Russia Sheating,
7 bales fine Flannels,
3 trunks Calicoes,
1 bale Superfine Cloths,
1 case 7-8 superfine Black Cambrick Muslins,
1 do. Cotton Chambray,
3 trunks 6-4 and 4-4 Cambric Muslins.

ALSO,

5-4 Brown Irish Linen, Dimities, India Muslins,
Green Senshaws and Lutestrings,
Seersuckers,
Constitution Cord, Velvet, Marseilles, Quilting, &c. &c.

Just Received,

A quantity of Young Hyson and Hyson Skin Tea, in quarter chests and boxes, which will be disposed of low for cash, or on a short credit.

may 4 d20t

SHAD.

Just Received and for Sale,

A quantity of prime Shad.

On hand,

Mess and Prime Pork,
Butter and Lard,
Superfine and fine Flour,
Prime Pearl, Pearl and Shelled Barley,
London Blistered, and German Steel,

For Sale by

JOHN TRIMBLE,
18, Cheapside.

5th mo. 4th. d6t

British Goods by the package.

On THURSDAY, the 12th May, will be sold to close a concern, By T B FREEMAN and CO Auct'rs. at their Stores, No. 31, Dock-street, Philadelphia,

97 Packages of Dry Goods;

Consisting of

Dimities,
Cambric Muslins,
Fancy Leno do.
Emboss Cambric,
Cotton Hose,
Fine Chintzes,
Quiltings,
Mantuas,
Silk Hose,
French Superfine Cloths,
Ribbons and Gauzes,
Silk Velvets,
Superfine Cloths,
Cassimeres,
Threads,
Lady's kid Gloves,
Gentlemen's fine Hats, &c. &c.

Terms made known at the time of sale

Philadelphia, april 29. may 4 d4t

Goods at First Cost.

The subscriber having resolved to retire from the retail dry goods business for the present, offers for sale, his stock of seasonable DRY GOODS, at first cost, for cash, which he presumes will be found considerably cheaper than those imported this spring.

ALEXANDER MITCHELL,
No. 21, Market-street.

May 3. d4t

Payson and Smith

Have just received and offer for sale,

43 pipes Cognac Brandy of excellent quality,
52 qr. casks Malaga Wine, do. do.
200 bags Calcutta Sugar,
7 boxes Blue Nankeens of genuine dye,
35 casks Patent Shot, assorted numbers,
40 chests Young Hyson Tea, Holland Gin
N.E. Rum, in hhds and bbls.
A few bales India Cottons,

Also on hand,

and will be sold very reasonable,

A few Piano Fortes.

From the Manufactory of Astor & Co. London.

may 4. d6t

Cassia and Salad Oil.

Just received and will be landed this day,

100 bales Thin Bark Cassia.
50 baskets Salad Oil, very fine quality and containing 12 bottles each.

For sale by

JOHN OKELY,
No. 61, Smith's wharf.

may 4. d4t co4t

Baltimore County, to wit;

I hereby certify, that James Downes of said county, brought before me the subscriber a justice of the peace for said county, a Bay MARE, found trespassing on his enclosures, about fourteen and a half hands high, about 4 years old, two white hind feet, no brand or artificial marks appearing, shod before, trots and canters; it does not appear that she has ever been worked in gears. Given under my hand this 3d of May, 1808.

JOHN DOUGHERTY

The owner is requested to take the above Mare, and pay expences. *James Downes,* Within 1 mile of Beam's Tavern.

May 3 d4t

Pocket-Book Lost.

This morning, between Messrs James and Charles Allison's and Mr Calhoun's tobacco inspection, or at the inspection, I Lost a red Morocco Pocket Book, containing about one hundred and ten dollars in bank notes, and some papers of consequence that can be of no use to any but the owner. I will give Ten Dollars reward to any person that will deliver the said pocket book to me or Messrs James and Charles Allison, Smith's wharf.

HENRY L. GASKINS.

May 3. d4t

LOST

(Supposed at the Review Ground,)

On Monday, a Red Morocco POCKET BOOK, considerably worn. It contains among sundry papers of no use to any person except the owner several bonds. TEN DOLLARS Reward will be given to the finder, on his leaving the Pocket Book and Papers, at this office.

may 3. d6t

Lost,

Last evening at the Theatre, a red morocco pocket book, containing fifty dollars in bank notes, and two bonds, and a receipt for two shares of stock in the fire insurance Company, and a number of papers not particularly recollected, whoever may have found the same and will deliver it, with its contents at the Post Office, or at the tavern of Mrs Griffith, shall be entitled to the fifty dollars.

may 3 d4t*

LOST,

A Red Morocco POCKET-BOOK, a few nights ago in the Play House, containing 200 dollars, in notes and some in silver; Dr. John Cromwell written in the inside, with many valuable papers. If left with the Printer the finder will be handsomely compensated, and no questions asked.

May 4. d4t

Notice is hereby given,

That the president and Directors of the Marine Insurance Company, have this day declared a dividend of seventy-five dollars per share on the stock of said company, and that two thirds thereof, or fifty dollars per share, will be ready for payment at the Company's Office on or after Friday, the 6th instant, while the remaining twenty-five dollars per share, will increase their stock agreeably to the charter of incorporation.

By order.

DAVID STEWART, Sec'ry.

may 4. d4t

To Manufacturers.

A suitable Person who may be disposed to pursue any Manufacturing business, as may be approved of, will hear of a person, who is willing to take an interest therein, and to furnish a principal part of such capital, as might be required.

A line addressed to A. B. Old-Town, and left at this office, will be attended to.

may 3 d4t

Columbian Volunteers,

You are ordered to meet at the Pantheon on Saturday Evening next, at 7 o'clock, precisely. The members are particularly requested to attend, in order to receive their Knapsacks & Canteens.

J. WILSON, Sec'ry.

may 5.

LAW INTELLIGENCE.

Murray and Mumford, vs. *The Insurance Company of the state of Pennsylvania.* } In the Circuit Court of the U. States.

APRIL SESSIONS, 1808.

The cause came on to be argued on the following facts:

The plaintiffs, on the 21st of October, 1803, effected insurance on the ship Hope, from Gottenburg to N. York, in the New-York insurance office, to the amount of four thousand dollars, valuing her at *four thousand dollars.*

On the 20th December, in the same year, they effected insurance on the same ship and voyage, to the amount of four thousand dollars, valuing her in that policy at *six thousand dollars,* in the office of the defendants, the insurance company of Pennsylvania.

At the time of effecting this last insurance, the defendants had no notice of the prior insurance effected at New York.

The *real value* of the ship, when she sailed from New York, exceeded six thousand dollars.

A partial loss took place by one of the perils insured against, and the plaintiffs settled with the New-York company, and received from them an average, calculated upon the four thousand dollars by them insured.

The parties to the present action referred it to three merchants, to ascertain the amount of average loss, and return premium due to the plaintiffs, if, in the opinion of the court, on a case stated, the defendants should be adjudged liable at all upon the second policy.

The plaintiffs claimed before the referees an average loss on 2000 dollars, which they alledged to be uncovered by the first policy, amounting to 696 dollars and 96 cents; and a return premium on the other 2000 dollars, (this being uncovered by the first insurance at New York) amounting to 110 dollars; being, together, 806 dollars and 96 cents.

For that sum, with several years interest, the referees reported in favor of the plaintiffs, amounting to 1003 dollars and 85 cents, subject to the opinion on the question of law. Whether the defendants are liable on the last mentioned policy for the amount reported; or, Whether by reason of the prior insurance at New York, the same is absolutely void; in which case, the defendants agreed they were bound to return the whole premium, with interest.

Both policies contain the usual printed clause, "That if the assured shall have made any other insurance upon the premises aforesaid, prior in date to this policy, then the said company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the premium hereby insured, and the said company to return the premium upon so much of the sum by them insured, as they shall be, by such prior assurance, exonerated from."

The case was argued on Monday, the 25th of April, by Messrs. Hallowell and Hare, for the plaintiffs; and Messrs. Rawle and Lewis, for the defendants.

For the plaintiffs, it was insisted, that if the first policy had been *open,* and not valued, no doubt could arise as to the legal operation of these two insurances; the first would have been good for the amount subscribed, the second for 2,000 dollars, (so much being uncovered by the first;) for the remaining 2000 dollars of the sum subscribed on the second policy, it would have been void, that being included in the first; and upon this last 2000 dollars, a return premium would of course have been due to the plaintiffs; that the circumstance of the first being valued, made no difference, *as between these parties;* the result, therefore, is the same, as if it had been open; it is agreed by the case stated, that the *real value* of the ship exceeded 6000 dollars, the valuation fixed by the defendants in their contract; of course, in the first policy the ship was *undervalued,* and Marshall, in his treatise on insurance, page 200, says, "If the property be *undervalued* in a policy, the merchant himself runs the risk of the deficiency," according to this doctrine, the plaintiffs, after the 21st of October, stood their own insurers for two thousand dollars; on 20th Dec. following, they did not chuse to continue so, and what was to prevent them from covering that sum, whenever they found it prudent, at a fair premium? Or in other words, had they not an insurable interest left after effecting the first insurance? Doubtless they had. The only effect of the first valuation, was to fix the amount *as between the parties to that contract* for their own conveniance merely, it could effect no other persons. Here the defendants have bound themselves by *their own valuation* of 6000 dollars, they cannot recede from it, and it is admitted in the case to be consistent with the truth, as she was really worth that sum.

It is stated that the defendants were not informed of the prior insurance; it was unnecessary; no law requires it, no case calls for it; the very terms of the special clause which has lately been introduced into the policies to prevent the operation of the rule of contribution amongst different sets of underwriters, necessarily imply that such communication cannot be made. In this case there was no fraud, no material concealment, no *over valuation;* and the plaintiffs, if they recover the sum reported in addition to what they have received from the first insurers, will receive an *indemnity,* and no more; and where that only is sought for, and every thing is fair, these contracts of insurance should be liberally construed.— The case is not affected by the prior valuation, it only operates on those who agree to it. As to the objection which may be urged, that in case of a total loss, the whole ship must have been abandoned to the first underwriters, and nothing would then be left to cede to the defendants; it is a sufficient answer to say, that the event has not occurred; a *partial loss* only has taken place, in which case there is no difference between a valued and an open policy; no abandonment has been made to either set of underwriters, or could be called for. If a total loss had happened, and the plaintiffs had actually made a cession of the whole ship to the insurers, then indeed there might be ground to urge that the policy now under consideration would have been *rendered void,* but the question before us is, whether it was void in its inception and creation. An event might occur where it might be the interest of the insured, situated as the plaintiffs are, to abandon on a total loss, to the second underwriters, and not resort to the first at all; as for instance, if the first should be insolvent.— Emerson 275, and one Johnson's New York Reports 385, were cited to show that a valuation was only conclusive between the parties, to the policy containing it.

For the defendants, it was urged that the first policy being *valued,* the second was absolutely void; the insured having deprived themselves of the power of ceding any part of the property to the defendants, inasmuch as the first underwriters would be entitled to total loss and abandonment to the whole; that as the defendants had no notice of the prior insurance when they subscribed their policy, they on that ground were discharged, it being a concealment of a material fact on the part of the plaintiffs. The cases of M'Kim against the Phœnix Insurance Company in this court; and of Yard's as signees against Murgatroyd, in the supreme court of Pennsylvania, were cited and relied upon by the defendant's counsel, as having decided principles, which must govern this case and terminate it in favor of the defendants; they went into a full examination of those cases and comparison of them with the present; they insisted also, and entered into arguments of considerable length, to prove that the plaintiffs were conclusively bound by the first valuation.

On the 26th, Judge Washington delivered the opinion of the court.

The case seems almost too plain to warrant an argument.—The parties to this suit have agreed by the policy on which the action is founded, that the property insured was worth 6000 dollars, and the defendants bound themselves to the extent of 4000, the sum subscribed to cover so much of the agreed value as had not been covered by any prior insurance. It turns out that 4000 of that value had been previously insured in New York. As to that sum, therefore the defendants are not liable, but they would have been liable to that amount had the agreed value of the property been 8000 dollars, because so much of the value was uncovered by any prior policy. But as in the present case only 2000 dollars of the value was uninsured when the policy was effected, the defendants cannot be called upon for a sum exceeding that so lost uncovered.

This is the plain import of the contract between these parties, why and should not the defendants comply with it? The reasons assigned are that the first policy being valued, the insured, in case of a total loss, must have abandoned the whole property saved to the first underwriters, and were thereby incapacitated to cede any thing to the defendants, without doing which he could not demand a total loss from the defendants, and that the omission to communicate to the defendants the existence of the first policy is such a concealment, as renders this policy void in its inception. In answer to these objections it is sufficient to say, that the plaintiffs do not claim a total loss, and in point of fact if this were material, they have not abandoned to the New-York company.—Claiming only a partial loss from these defendants they are not entitled to an abandonment. It is not the incapacity or the failure to abandon which can defeat the right of the insured to recover, unless he goes for a total loss. But if the law were otherwise, still the insured is not incapacitated to abandon to the second underwriters, until he has deprived himself of the power of doing so by having previously abandoned to some other underwriters.— It was correctly observed by one of the plaintiff's counsel that he might, if he chose, and sometimes it might be his interest to abandon to the underwriters on the second policy, and take from them so much as such policy, from the terms of it, covered. It follows from these principles that whether there was or was not a prior policy was a circumstance of no consequence to the underwriters on the second except as to the amount for which the latter, in case of loss might be liable, and therefore notice of such policy to them was unnecessary and idle. Besides, the very terms "in case the assured shall have made any prior assurance" imply that whether he has made such or not is a fact unknown to the underwriters on the second policy.

The case of M'Kim and the Phœnix Insurance is, so, far as it resembles the present against the defendents. In that case the first policy was underwritten by the Philadelphia Insurance Company, to the amount of 12,000, and was clearly open. The Phœnix Insurance Company afterwards underwrote 15,000 dolls on the return cargo of coffee, valuing the same at 22 cents per lb. and the question was, whether the plaintiff could recover any thing upon the latter policy, and if any thing, how much? the court decided that the first policy covered as much of the coffee as 12,000 dolls. would absorb *at prime cost and charges* instead of the value fixed on that article in the second policy, which of course would leave to be covered by the second policy, as much less of the cargo, as the difference between the prime cost and charges and 22 cents would amount to, and for so much of the cargo the Phœnix Company was held to be answerable. The court a fcr decided that the subsequent agreement of the Philadelphia Company, to wave all their right to the property which might be saved, could not change the nature of the contract entered into by the Plaintiff with the Phoenix Insurance Company, because at the moment it was made, no more of the cargo was insured but that which the first policy left uncovered, and was void as to so much as was so covered; if so, the subsequent agreement with the Philadelphia company, was, in relation to the Phœnix Company, res inter alies acta and could not affect the rights of the Phœnix Company. The notice spoken of in that case was not in relation to the *existence* of a prior policy, but the nature and extent of it.

The case of Yard's assignees vs. Murgatroyd is very imperfectly stated, but it appears, so far as I understand, to resemble this as little as the one just noticed.

The opinion of the court is, that the plaintiffs are intitled to recover the sum reported by the referees.

BOSTON May 2.

An account of the burning of the *Mars* never appeared in any *Boston* federal paper. We stated, and stated truly, that the ships *William, Eliza,* and *Brutus* had been piratically taken and *burnt* by two French national frigates. But no statement was ever made that the *Mars* was burnt.—We stated, and stated truly that the ship *Mars,* Capt. PETIT, of *N York* on her passage from *Savannah* for *London,* with a cargo of *American* produce, cotton, and rice, was taken, on the 4th *Feb.* last by the French lugger, *Active;* that Capt. PETIS, and crew, were taken out, and the *Mars* ordered for *St. Maloes;*—that after remaining on board the Frenchman 22 days, Capt PETIT was put on board the *Summarl,* of *N. York,* from thence on board the *Orono,* from *Biddeford,* and arrived at *Charleston S. C.* the 1st of the present month. This we have stated respecting the Mars, and this is true.

NEW-YORK, May 4.

THE ELECTION.

The accounts from all parts continue favorable to the REAL American cause. The following counties and towns (most of which have heretofore given Democratic majorities) have returned the following Federal majorities.

	Federal Maj.
Albany County for Congress	1300
Do. Assembly ticket	1201
Columbia and Rensselaer (each)	600
Schoharie, Oneida, Ontario and Madison (each)	500
Westchester	391

So that, there is but little doubt of our having a Federal asssembly. The Democrats of this city confess that the jig is up with them—they now say it was bad policy in them to cry out during the election, for "JEFFERSON AND THE EMBARGO" because, they say, they cannot now (with a good face) join their former friends in crying it down.

It is now admitted, on all sides, that the Federal majority in the next Assembly will be from 12 to 24. It is reported that several of the members returned from this city have said that they will not go to Albany the next session to be laughed at by the federalists!

The Federal ticket in the county of Columbia has succeeded by a majority of about 600, and Rensselaer by upwards of 500. Last year the latter county sent four democrats.

In Albany county the Federal congress ticket has gone in with the triumphant majority of 1300.

In the double district, consisting of Washington, Rensselaer and Columbia, which were lumped together for the purpose of securing two democratic members of congress, the Federal ticket has prevailed for both; Rensselaer and Columbia giving a majority of 1200. Washington is not heard from, but this majority cannot possibly be met by any thing there to affect it.

Accounts from the Western counties, so far as they have been heard from, are in the highest degree flattering.

Reflection.—"It is not to be dissembled, (quoth Cheetham,) that the embargo hath its effects."

Extract of a letter from Albany to the Editor, dated April 29, 1808.

"The democrats are completely foiled—They had made great exertions, and calculated largely on John Quincy Adams' letter, but they have wholly failed—the people in he county could not be brought forward to vote for the friends of the embargo, and have universally entered their protest against the unheard of tyranny of the rulers at Washington.

"The proceedings of the legislature have been seen through—Even the 450,000 dollar loan would not take—and the base conduct of the council of appointment has met its just reward.—Guilderland, which has been much of a democratic town, and which last year gave a democratic majority of 67, this year has given a federal majority of 89. The city of Schenectady last year gave but 130 federal votes, this year 300.

"Rensselaer county will give a federal majority of from four to 500. Schoharie county, Oneida county, Ontario and Madison will do the same, indeed we have the most sanguine expectations of a federal majority in the next house of assembly."

"Our senator, David Hopkins, will be elected."

Effects of the Embargo.—We have seen a letter from a gentleman in Montreal, to his correspondent in this city, which says, "There are several large ships and smaller vessels building here and a greater number at Quebec; which gives employment to a number of American Ship Carpenters and Joiners, who have lately arrived, and are much pleased with their situation as they receive from 6/9 to 7/6 sterling per day, (equal to 1 dollar 65) and live at about one half the expence they can in New-York.—Many more would find constant employment."

[It is to be regretted, that some plan could not be fallen upon, to prevent the emigration of our most useful mechanics,