NATIONAL INTELLIGENCER,
AND
WASHINGTON ADVERTISER.

VOL. V. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. NO. DCCLII.

THREE DOLLARS PER ANNUM. MONDAY, AUGUST 5, 1805. PAID TO 1811

IMPEACHMENT OF JUDGE CHASE.

SATURDAY, FEBRUARY 22.

MR. MARTIN, *continued.*

Who, with a view to shield himself from Parliament, to hold out the idea, that he was now yielding to the wishes, and expected to the enforcement of this law, but he equally knew that it was impossible to carry it into execution without regard to the sentiments of any portion of the community, or however disagreeable it might be to them. Upon these circumstances he rested his defence, and found the counsel from the trial, to apply this case, attempting, as he could not but consider it, to palliate the indecent and unjustifiable language of that day. Any honorable client who would know mankind, and has been accustomed to popular assemblies, appears to me perfectly unknown, as his first impulse, to indulge his feelings in good humor, and to amuse them at the expense of those very persons, who were the observers of his conduct, and whose the audience on that time. Hence the mirth, the fun, the boisterous laughter, which his conduct was marked during the trial; a conduct, which, if it could be was attended with the happy consequence he intended from it, or it is admitted that it had, it would have been a great good humour, and excited peals of laughter at the expense of the counsel, as the witness very justly conclude, for he says, "I thought it was good fun, to join in the laugh." And this, yet, must satisfy the accusations for the more than usual exertion of his faculties, in lessons on the trial of Callender; and I doubt not, yet the real cause of that exertion.

Among the different charges made against Chase, one of the most unusual language by him used towards the counsel in Callender, was that he said, that when the judge had repeatedly cautioned, he perfectly, he permitted to argue to the jury the constitutionality of the law, and one of the counsel, who appeared to have had the temerity to give on the occasion, still urging that question to argue, the judge interrupted him, and declared that the counsel of Callender had from the first mistaken the law, and that they had persisted in persisting their mistakes on the court. Never was there a more proper or correct expression used by a Judge, than this, yet, did the conduct of lawyers more fully justify such a charge? And, why affidavits, on the ground on its great, as they are represented to be, from absent impossible witnesses, their reports of their intentions, and with the express view to harrass the witness? In the first place, Cunningham, that the jury, not the court, was the judge of the law, and that, to assume the *fact*, which should be impressed upon him, if found guilty. This was one of the charges, and, it is admitted and error it was. And yet my memorandum of this trial charge, I have long years for calling it to my witness, stated, "it would be error, if the Prosecutor has it in his *power* proof," a mistaken notion, indeed, of some expression, which my recollection, at the time, perhaps, should not have hesitated in calling it a *mere* error.

The idea that the jury was to be guided by some there was remained an individual, and, that the judge was not to be liable to be challenged, was another mistake; yet, which he thought, that any lawyer could scarcely be expected to have made. The difficulty to interpret, the law, and, their trifling, or, at least, nonsense of their conclusion consequence of that incorrect affidavit, was another mistake.

An additional mistake, was their idea that the court should reject such testimony, they meant should be given by the witness, and, that it was improper to require that the questions put to the prosecutor to cal. Tyler, should be confined to "what, he, the attempt to obtain from the jury a decision that the witness, was a man of intention, in which they to perpetually persisted, was a mistake, or, if, not, whether, when the counsel had been guilty of all these mistakes, it did not *perfectly* justify the judge, in the use the expression he used, that they had been from the first wrong, and, that they had continued throughout persisting their mistakes upon the court? Nay, did it not justify the observation used by him, which has been urged as most exceptionable, "that they must know better; and that their conduct was intended to influence the by-standers?" That the counsel's great object was to give an impression to the people he knew, it was hedged on such? and the court must have had a very moderate loss, indeed of the legal abilities of Callender's counsel, if they could have supposed such a succession of errors to have arisen from ignorance.

But the Judge is also charged with great violence in the manner in which he replied to one part of the argument in Mr. Hay's, and, at a time when the gentleman had finished a syllogism, by replying that it was a *non sequitur*—I will state the transaction. Mr. Wirt having, to his supposed, established the position, that the jury had a right to decide the law as well as the facts, he proceeded to argue from precedents, and the supreme law of the land, and there, after that, claim the jury had a right to decide the law, on the constitution, and, the law, the jury must certainly have a right to decide the constitutionality of a law made under it; and this argument, appears, to be perfectly syllogistic. As Mr. Wirt had assumed the premises, and, ended in the argument, nothing could be more natural than for the Judge in his answer, to assume the conclusion, and, he immediately replied, like a logician, "a *non sequitur*, sir." The correct answer to a syllogism, which is rather illusive in its conclusion. But, it seems this argument was considered by a certain bow. As? bows, sir, according to the manner they are made, very like wood according to the manner they are jointed, convey very different meanings, and, it is also difficult to determine the bent or deneeb of the bow, without seeing it, as, it is the expression of words without having heard them, to discover whether, whether there was any thing improper in this bow, I could have wished that the witness, who expressed so much of its effect, had given us a sample of it, that we been fairly put not only with the answer, but also with a complete idea of the bow, and, we might have been better enabled to have judged of the propriety of my honorable friend's conduct in this bow, and, that it seems this bow together with the bow, which, the gentleman, mentioned poor Mr. Wirt said down he sat "and never were spoken more!"—I, is, a bow, saving of time. But we have no proof that Mr. Wirt meant to have proceeded to argue from the syllogism, even had he not been encouraged with this unpleasant bow, and, that, even, if, the proposition, it, that having consented, to be where he was, he had argued, in a syllogistic form, and finding his syllogism and his premises, not properly considered, he then has sent without winding to spend more of his breath in what, after the bad reception of his syllogism, no doubt considered a fruitless attempt. Mr. Nicholas, in his speech, said, "I, as a gentleman mild and polite in his manners, he was indeed, a man of high politeness. He did not persist in addressing the jury contrary to the decision of the court, he therefore not with no interruptions.

We have now more particularly to discuss the charges made against Judge Chase, as they relate to Mr. Hay, the other counsel for Callender. Mr. Hay insisted that the indictment could not be supported, because the title of attendee's publication years of which were charged to be libellous, was not inserted in the indictment. The gentleman, who, stated the libellous, was not stated in the indictment, that the judge, which contained the libellous article, was called "The Prospect Before Us." And to support this objection he went on to prove, that when an indictment states libellous writings in terms following, the indictment, at Mr. Hay, may set forth, and on which the indictment, which must be set forth "in the ipsissima verba." There was no attempt to show that any expression in the indictment, was not stated correctly both verbally and literally, as published by Callender. The indictment did not charge the title of the book as being libellous, but, the publication was of the book in any manner. If the title of the book was material, it should have inserted, which I deny, there could not have been a more absurd or inconsistent argument, to support the opinion that that upon which Mr. Hay relied; and, he, thought, was great enough, merely exposing it to ridicule in the manner he did, he observing, that as he insisted the libellous matter should not set *verbatim et literatim*, he would insist the title should be set forth *literatim*. An observation, by the which perhaps contained tell as much of good sense as of smartness, and, more of the same, if, the author, written or printed, will be liable to different constructions, and, convey very different meanings, as they are understood. Mr. Hay, it appears from his own testimony, was of the opinion, that, the other witnesses, was guilty of very improper conduct in the trial, and, he stated that if the prisoner was convicted upon that indictment, he might again be indicted for the same offence, and, could not defend himself by the conviction, in the indictment then before the court. When the court assured him he was mistaken in the law, Mr. Hay still persisted and declared that he should not be more surprised, even if Mr. Callender should again be indicted for the same offence, and should be punished *a second time* for the same offence, than he was surprised at the indictment then before the court, and the attempt to punish Callender in consequence of that indictment. What language, I pray you, could be used to the court, but in reality addressed to the people, without derogating from the administration, as being unprincipledly and improperly, at a time when that attack upon the integrity of the judges, holding them up as the venal tools of the administration, ready to be the instruments of its oppression?

What was also the final conduct of Mr. Hay, when having repeatedly attempted to argue to the jury against the direction of the court and having as repeatedly been interrupted and stopped by the court? He took up his papers to withdraw; upon which the court told him, if he pleased he might proceed. His answer was, "I will not, sir!" Upon the court further observed, you will not Mr. Hay, be explicit, go on if you please in any manner you choose, and we will not interrupt you. Even then, when in my opinion, the court had, as it was, even, more than proper concession, what was his answer? "I will not, I am cautious, *but I will not proceed.*" And he left the jury and the court, withdrew.

How came he thus to act? As to Callender, he acknowledges he despised the author, but, his object was, to serve the cause, not Callender. How was he to serve the cause? By giving an impression to the public mind. What impression did he wish to give? By holding up the idea of oppression, tyranny, of the government, and corruption on the part of the court. He was, indeed, the author, called in his attempt, by the superior wisdom of the court, and, by the superior knowledge of mankind; finding, instead of a prejudice, prejudice against my client, my client most fortunately had excited against him the laughter and ridicule of the court, and, he went out in passion. At the same time he was, in his opinion, in the hope, the court slowed his wish to impress the public mind, as it, thought, with such sentiments disadvantageous to the court. And, as to the interruption Mr. Hay received, they were, perhaps, not, in, in consequence of his pertinaciously attempting to argue against the direction of the court, and, in that case the interruption could, perhaps, be no more, or Mr. Hay had the control over the court?

But, sir, there is another charge which has been made against my honorable client, to justify that part of the conduct of the court, in the trial of Callender. It is said, that speaking of Callender's counsel, or addressing himself to them, he said, "I know *what you are aiming at.*" To me it appears astonishing, that their experience, if cited by the judge, should be brought against him, as, a, reproach, or a proper subject of a criminal charge; and, that, it, should, be made a charge against Mr. Nicholas, whose whole conduct marks him as a gentleman, did not, even, in the heat of passion, he, he, forbear that he was young at the time, and whoever has been him as a wilful, or, intentional, error, he, ought, to, his affection. But we are told that Mr. Wirt was at that time about thirty years of age, had been a man of a man, and was then a widower. It does not appear from the Judge's view of their circumstances; but if he had, considered that Mr. Wirt was a widower, he, perhaps, would, have, felt, that, it, it was an error, in calling *him a young* gentleman. But, for, fear, it, be, considered that the expression, has, been, flatted by the honorable managers, to be nearly three feet—and ten, at, all, the, public attention, has, been, directed, and let me ask, if any person through the whole, of, the, nation, is, so much inferior to himself in age and knowledge, by the epithet of "young gentleman," that, it, will, be, considered, by, *criminal* as to the public? But as another influence of his rudeness we are told, he, addressed, the, counsel, Mr. Wirt, who observed that "he was going on," the judge replied "so he, I am going on, therefore, lie down, sir." This address was made by the judge to Mr. Wirt, who, he, (the judge) was about to give a long opinion on, the, law, the counsel employed with him, which opinion should, not, be, given, if, the, court, did give. And pray, sir, was there the least impropriety in a division of different subjects, by, the, counsel, and, the counsel to be flent and to take their seats?

Before judge Chase went from Baltimore, he sold to a number of gentlemen, he knew that the decision law had been violated in Virginia. I had myself, put into his hands The Prospect Before Us. He felt it his duty to enforce the laws of his country. What, is, he, a judge in one part of the United States, to permit the breach of our laws to go unpunished, because they are there unpopular, and in another part to carry them into execution, because there they may be thought wise and salutary? And would you really with your judges indead of sifting from principle, to court only the applause of their auditors? Would you with them to be what Sir Michael Foster has so correctly stated, will contemptible of all characters, popular judges? Judges who look for popularity in their decisions, not for the applause of the wise and good, of their own consciences; of the Good—but of the ruble,—or any person in any party. I flatter myself but this honorable female will never, by their decisions, function fault principles of the government, or, as we say, tyrannical, nor acting on whim or caprice. We boast of it as being a government of *laws*. But how can it be fixed, under the laws, while they exist are *variable* and *impartiality*, without regard to popularity, and the excitement? What, sir, shall judges differ, criminate? Shall they be permitted to say, "this law I will execute, and that I will not; because in the one case I may be benefited, in the other I may make myself enemies?" And would you reality, sir, in, this, land, under a government where your laws were first admitted? Would you really with for such unpleasant, such, time, for your judges? No, sir, you would not. You will with us say, "Give me the judge who will decide boldly, may, even, tyrannically, in his duty, equally uninfluenced equally unintimidated by the *o' nutanis* values *jubentium*." Such are the judges we, ourselves, have been taught to have *and shall have.* Our *property* and our *liberty*, our *lives*, can only be protected and secured by such judges. Which this honorable court it remains, whether *we shall have such judges.*

The remaining part of this charge flatter, that my gentlemen, I, have, contrayed an indecent f licitude for the conviction of the accused, *endeavoring* even to impose prejudices, and, to, excite against the witness, and, if, anything, I, am, grateful to the character of a judge, as, I, am, to, the, sensibility, of, justice (?) I am not certain, sir, whether I, ought, to, say, what is here meant by a *judge* (?) *officer.* If, thereby is meant, a, judge, or, officer, who prosecutes their charged with being guilty of crimes against the public, I am indeed, sorry, to, say, that, these officers, to, necessary, are holden by the House of Representatives of the United States, in, no, inconsiderable, degree, of, dency, fir, the propriety of the remark; and, will be prompted to release, the *judicial prosecutor* from a remark to degrade, tory. *He* is as much the protector of government, as the prosecutor (?) his duties are clearly marked as those of a judge. They have both one common object in view, though, in, different, characters. The prosecutor and the judge are equally bound to field the innocent, and to punish the guilty. The prosecutor does the same benefit to his country by having the innocent from punishment, as, the judge, by, protecting, from impunity. Neither the judge nor prosecutor ought to, assume, a, tone, *insulting innocence.* It is equally the duty of both to punish *guilt?* Such, sir, are my ideas. Such, I, trust, will, judge, my, flood' the duties of an *officer*, which I have held in the state of Maryland, for, upwards, of, fifteen years or more, and if my conduct had not been during that period, conformant to their feelings, I, should, indeed feel myself degraded and dishonored.

I have now, Mr. President, gone through the various, criticisms, which have appeared to me necessary, to, make, on, fair articles. If I have been thought, tedious, my apology is the right, I, feel, for the dignified force from which these charges have proceeded;—from my inability to decide, which of, the, charges, as the honorable managers will, most rely upon, in their conclusion; and the, consciousness, that, I, ought, to, omit, none, all; fearfulle of the extreme danger, that for want of exertions which, I, might, have, greater abilities than I, am, able to bring into action, erroneous impressions, should, remain in any influence upon the minds of this honorable court, in a case of such public magnitude, and in which, no honorable client, is, I, deeply interested, for his fake—for the fake of my country, I have felt, it a sacred duty so exert, made for whatever which providence hath been pleased to bellow upon me?

(It was now five o'clock, when Mr. Martin, informed the Senate, he was not breakfasted that morning—and, had not during that day taken any refreshment of any kind, except two glasses of wine and water;—that the fifth, and, fifth articles yet remained to be investigated by them, as being altogether of a *legal nature*; and that he felt himself not much exhausted to proceed—difficult the indulgence of the court for, permit him to conclude on Monday, which, was granted, and the court accordingly adjourned.]

Monday, February 25, MR. MARTIN proceeded as follows:

I, sir, have, having, exercised my, fortune thanks to this honorable court for their polite attention on Saturday, in giving me time to the morning—I will, now proceed to the further investigation of the charges in which we are engaged, that, before I call your attention to the fifth and fixth articles of impeachment, sir, I, must, notice, some, few points that I find had been unintended to by me on Saturday.

When a witnesses (Mr. Rind) who had been in Aaron Burr's confidence in printing The Prospect Before Us, appeared at the trial of Callender to give evidence against him, we are told judge Chase allowed him that he might be under no apprehension from giving evidence, for that he should not be protected in the count of any thing he should disclose on that subject.

What is the fact from the evidence? Mr. Rind, it seem was summoned as a witness,—he came forward without any, process on him, or, any, other process—It was then that Mr. Hay, in order to show impediments in the way of the prosecution, to have, had, conversed, with the witness of the United States, and, to, shield, from, the, witness, not, obliged to give testimony, as it might, criminate himself. The judge replied it was very reasonable that the witness should take care the witness should not be protected on account of any thing he should disclose on that subject, which might effect himself. By this the court, stated that they would not infringe any constitutional rights against the witness, and if, any, question, should, be, put, to, him, on the, proceedings, on the testimony that given yesterday, he should interfere with government, and, that, he, *Hold, Hold!* Hold! Hold! on and thefe conditions, and under such pennalts, it is a much usual practice in, Virginia, for, the, prosecutor, to, move places to give evidence for the, convicts, tion of other and greater criminals. But, sir, the, witness, was, not, prosecuted in the judge —and one of the witnesses, Mr. Peter, attorney general of Virginia, has on this examination further hazarded the idea, that any interference of the court, in, such, a, case, ought to have been by the United States attorney for that district and not by the court.

The gentleman is mistaken. To G. Britain when an accomplice is produced to an witness, the prosecutor, will, the security he hath against prosecution on account of any thing which he may disclose, is, a, pardon, to, discover himself, is the act of the court and not of the public prosecutor, and, so far, still is done under the direction and with the approbation of, the, prosecutor, this position I will again turn to Mo'ale, page 203.

Not admitting an accomplice as a witness for the Crown, is not a matter granted by the *court* as of course, but, the court's approbation, of, the, evidence, Indictment can be found, and, supported without, an, witness.

As in the king against Robert and William Lockhurst, Maldstone, Lent Assizes, 1800.

Counsel for the Crown moved, that Avery, an accomplice, might be brought into court, in order to give evidence on a bill of indictment.

Justice Buller said it was not a motion of course, and, he desired the counsel to read over his brief, adding that there was not sufficient evidence to convince, the, judge, of, the, propriety of, accomplice, otherwise he would not allow the, motion, to, be, granted, for the, reason of letting off the worst offender, and, punishing the, less, when otherwise, according to circumstances, ought, to, weight, be, shewn, and, he, instanced a similar case, in, Hampshire, at, Winchester. The counsel then stated that this offence, was, a, conspiracy, and, that, Avery evidence against the others by the crown, ought, to, be, admitted, and, that, he would not pay any regard to that, because it ought not to be in the power of a justice of the peace, to, make, wrongful, and who ought not to be admitted king's evidence, and, the, counsel, spoke said that on reading the indictment and his brief, he thought the accomplice ought to be admitted as evidence, and, *he motion was granted.*" That is be the court——I, his authority cited, sir, was that in England it is considered the province of the court to decide when, and, in what terms accomplices shall be introduced as witnesses; and, such has been the uniform practice in Maryland.

And here let me observe before I end this subject, as to Mr. Hay's conduct, that although this witness, came forward voluntarily to give testimony