Mr. Sandford, district attorney, replied, and argued that the process by attachment was neither conformable to the practice of the courts of the United States, nor allowable in this case, as the witnesses were not guilty of a contempt by their non appearance.

Mr. Pierpont Edwards supported Mr. Sandford on all the grounds he had taken, by several law authorities.

It was apparent that Judge Patterson was, in his weak state of health, greatly exhausted, and the court at half past two o'clock, adjourned till ten o'clock this morning.

Third Day.

The court met at 10 o'clock, pursuant to adjournment.

Present—Judges Patterson and Talmage.

The jury and witnesses for the prosecution were called over, and dismissed until ten o'clock this morning.

After some desultory observations by the counsel who spoke yesterday, Mr. Edwards was heard in continuation of his argument.

Mr. Emmett replied in a speech of great length. We are sorry that the rules of the court do not permit us to give a detail of a speech so argumentative, elegant and impressive.

He was followed, on the same side, by Mr. Harrison, who spoke at considerable length.

At half past two, the court adjourned to 10 o'clock this morning, when it is expected they will determine on the farther proceeding in the trial, or the issuing an attachment against the witnesses who have been subpoenaed and do not attend.

From the Mercantile Advertiser.

July 18.

The circuit court having met yesterday morning pursuant to adjournment, the honorable Judge Patterson pronounced the opinion of the court on the motion, the discussion of which has employed the court the last two days.

The course which the discussion of the motion has taken, embraced two particulars—the first a postponement of the trial of Wm S. Smith—and the second the granting an attachment, or compulsory process, against Mr. Madison and other absent witnesses. The court gave the following opinion.

On the first question the court was unanimous that the trial ought not to be postponed.

On the second, the court disagreed—one of the judges being of opinion that an attachment ought not now to be granted, but that a rule to shew cause why an attachment should not issue, ought to be granted; the other being of the opinion that neither an attachment, nor a rule to shew cause, should be granted.

Judge Patterson having delivered the opinion and detailed, in an impressive manner, the arguments and authorities, on which this opinion was grounded excused himself from attending the court until his exhausted strength should be recruited.

After Judge Patterson had retired, Mr. Morton for the defendant rose & on the ground of an affidavit by Mr. Smith which was read by the clerk, moved a postponement of the trial until September next, or until the regular term of the court. The affidavit stated that the commander and the supercargo of the Leander are material witnesses in favor of the defendant; that they are now abroad but are expected to return by the time first mentioned. Judge Talmage observed that these facts should have been disclosed before the question was determined, that the motion was now too late, and could not be granted.

The council for the defendant then moved a postponement until the morrow, the district attorney consented, & the court adjourned.

Extract of a letter from Thomas Clarkson, esq. in London, to his friend in New York, dated May 17, 1806.

"I congratulate you and every friend to humanity, that the abolition of the foreign slave trade took place last night, in the legislature of this country, by which 25,000 unhappy people will be annually saved from slavery on the coast of Africa."

The Grand Jury of the United States inquiring in and for the district of New-York, reported to the court yesterday morning, that they had found no bills and were discharged.

New York, July 17.

We have seen a letter from Trinidad, dated on the 19 of June, received by a respectable commercial house in this city by way of Baltimore, which contains the following article:

"Miranda's business occupies the general attention at this place; he is expected here on Saturday or Sunday. Great preparations are now making to receive him in a manner suited to his rank. Nine Spaniards, who it is said, came here for the purpose of assassinating him, have been apprehended, and are lodged in prison. General Hyslop, we are assured, has made an offer of his best services, and two thousand volunteers, to assist this illustrious character in attaining the object of his expedition."

COURT OF VICE ADMIRALTY.

Nassau, June 24.

Before his honor Henry Moreton Dyer, Esq. sole judge and commissary.

Sampson, Plaskin, master.—On admission of still further proof respecting the claims of Messrs. Duval and Dubadie, of Philadelphia, merchants, his honor was pleased to pronounce the property to belong as claimed, and directed the same, or the nett proceeds to be restored to the claimants for the use of the owners and proprietors thereof.

New-York, July 16.

Our intelligence from England and from the continent of Europe, is now brought down to the 7th of June. For this we are indebted to captain Smith, of the brig Jane, from Bordeaux, and to captain Manning of the schooner Nimrod, from Halifax, who have favored the editor of the Mercantile Advertiser, one with Paris papers to the 7th, and the other with Halifax papers, containing London news to the same date, received there by the British packet Princess Mary, which arrived on the 4th July, and was to sail for this port on the 8th. From the former we have translated, and from the latter copied the following interesting articles:

LONDON, June 4.

The King has been pleased to cause it to be signified by the right honorable Charles James Fox his Majesty's secretary of state for Foreign affairs, to the ministers of friendly and neutral powers residing at this court, that in consequence of subsequent advices, the blockade announced to the said ministers on the 8th of April inst. shall not extend to the river Trave.

The method of punishing the seamen on board the men of war, by running the gauntlet, is ordered to be immediately discontinued.

Sir Sidney Smith, with the Pompee, and three frigates, has arrived off Sicily; all apprehensions of an attack upon that island by the French must be at an end. It is stated, that Sir Sidney has succeeded in throwing supplies into Gaeta.

Commodore Sir Home Popham had the address to secure Bonaparte's dispatches to Admiral Lincis on board Le Volantaire, which have been transmitted to our board of admiralty.

The Piedmontese, French ship of 80 guns from Toulon, with dispatches was going into the Cape of Good Hope, but being informed by a Dane that it was in possession of the English, she proceeded for the Isle of France.

The French have not changed their position in Germany: nor has Prussia made any further attempt on Pomerania.

The Russians are strengthening and extending themselves in Dalmatia, and are on the eve of taking possession of Zara, which is the capital of that province. It thus appears that the emperor Alexander is determined to oppose the further advances of the French in that quarter.

May 31.

Government, after having shewn great tardiness in publishing the royal order for granting letters of marque against the navigation of Prussia and Papenburg is equally slow in the execution of that order and in maintaining it to its utmost extent. This order, agreed to on the 14th of this month by his majesty in council, and published on the 20th in the London Gazette, was not sent until yesterday by the court of admiralty to be carried into execution. Besides before this definitive dispatch, it has been materially altered by another royal order, agreed to by his majesty in council on the 21st of this month, and published in the Gazette of the 28th. This second order which bears the title of "Additional, to the act of the 14th May," makes an important and remarkable change, by reserving for the navigation of the Baltic, and to the commerce carried on there, the same liberty which England has to the present time allowed to that navigation and commerce. The following is the tenor of the additional act,

G. R. The instructions to the commanders of all ships of war and armed vessels, who may have received from our court of St. James letters of marque, have been extended as follows:—

"As we have been always animated with a wish to prevent whatever might have a tendency to annoy the commerce of those nations with whom we are at peace, as well as to promote the necessary operations of war; and as these objects will be more effectually answered if the present state of the commerce and navigation of the Baltic remain uninterrupted: We have judged it expedient and resolve accordingly, That our ships of war and other armed vessels, and all vessels holding commissions from us, shall henceforth abstain from taking or intercepting any ships or vessels navigating the said sea; ordering and enjoining besides, to the commanders of all vessels having letters of mark and reprisal, not to intercept in the Baltic, by virtue of their commission or under their flag, any ship or vessel with the intention of seizing her: but on the contrary, to suffer such ships or vessels as they may fall in with in that sea to continue their voyage to their respective places of destination without the least obstacle or restraint whatever.

By his Majesty's command,

(Signed) SPENCER.

FROM THE ENQUIRER.

Should Mr. Madison attend the trial of Ogden?

The prosecution of Mr Ogden is instituted by the government itself for the general *good* of the country. But the absence of Mr. Madison from the seat of government, may produce still greater injury to the country than even the complete failure of that prosecution. He is the great responsible agent of the executive. Into his hands the most material interests of the union are confided. Would it not therefore, be better to encounter the risk of seeing a prosecution dismissed by the judge on account of the non-attendance of witnesses, whom he might even deem essential to the defence of the accused, than that the Secretary of State should be absent, and the wheels of the government itself possibly arrested?

But the evil does not terminate here. The *precedent* set in this instance by the Secretary of State, may be considered as obligatory upon his successors. But what will be the consequence? A Secretary of State may be continually flying from one part of the continent to another to attend his judicial mandates. Subpoena after subpoena may summon him; and a return from Georgia may be but a prelude to a tour through Maine. But when an opposition is in this manner created between the judicial and executive duties of an individual; when a prosecution before a court or the department of state must one of them cease, who can hesitate for a moment in his choice?

Can it however be conceded, that Mr. Madison is really a *material* witness in this cause? Mr. Ogden is charged with assisting to fit out a military expedition in our ports, against a nation with whom we are at peace. L. U. S. April 24 1800. Does Mr. Ogden pretend to say, that Mr. Madison will clear him from this accusation? No all that he can hope for is that by proving the government was concerned in the expedition it may serve to lessen his fine and imprisonment.

It is no doubt to be desired, that Mr. Madison *could* attend the court to refute the unfounded suspicions that have been levelled against our administration, on account of the Miranda affair. But we must wave the pleasure and advantages of this event in consideration of the superior interests of the state

It is no doubt too a desirable thing that no man should be accused under our government, who has not the fullest means that can be *legally* obtained for proving his innocence. Nay, the constitution itself declares that, "the accused shall have *compulsory* process for obtaining witnesses in his favour." But is it not obvious that even this constitutional provision has its limits? Would a judge *compel* every man to appear before him, whom the accused may wish to subpoena! Would he compel every inhabitant of the union to be forthcoming, if this summoning spirit should take such a wide range? Such a doctrine as this cannot be supported. A judge may send his compulsory process to every witness, whom he may believe necessary to the defence of the accused. But how then is Mr. Madison to be deemed essential to Mr. Ogden's defence? Nay: let a judge even grant his subpoena, is it not still the right of Mr. Madison to refuse obedience? He may incur the penalties, which are attached to his disobedience; but is it not a duty, which he owes to the government, to incur them?

It is urged, that Mr Pitt the then Premier of England, was subpoenaed on the Trial of Horn Tooke in the year 1794. The *Apostate* Premier even appeared on that trial. Shall the republican Mr. Madison then, it is vauntingly asked aspire to an exemption from the law, which Mr. Pitt himself never assumed? But there is a marked difference between these two cases. The trial of Horne Tooke was held in the old Bailey at London; in the very metropolis of the British Court. It was a very slight inconvenience to Mr. Pitt to pass from his bureau to the public tribunal, before whom his testimony was to be given. In two or three hours the whole business might be dispatched, and in the mean time, the affairs of the Executive department might proceed without the smallest interruption. But Mr. Madison is summoned to attend the District Court of New-York two or three hundred miles from the Department of state. Should he obey the subpoena of the court, what might be the consequence? His presence might be necessary at Washington; dispatches of the highest importance might arrive from France or England, which required his immediate superintendance. Were the court held in the District of Columbia, there is no doubt that Mr. Madison would obey the judicial process with as much readiness, at least as Mr. Pitt.

But, say the federalists, how is it possible to reconcile the doctrine here maintained with the reproaches which were so profusely cast upon the federal judiciary and federal executive, in the case of Thomas Cooper? *There*, the criminal was shut out of all the benefits which might be derived from the testimony of Mr. Adams; and yet *here* the very same privilege is claimed for Mr. Madison. But is it not plain, that these two cases are no less different from each other, than the cases of Horne Tooke and Ogden? that the very circumstance that suffered Mr Pitt to attend at the Old Bailey, & which should have led the federal judges to demand the attendance of Mr. Adams, should exempt Mr. Madison? The seat of government was at that time established in Philadelphia: in the same city was held the Circuit Court of the United States. With how little embarrassment then might the President have repaired from his levee-room to the public court, from the company of the sycophantic and the vain, to a public tribunal, to give testimony in favour of an innocent man? The court, however, even refused to summon him. Mr. Adams would not even *deign* to reply to Mr Cooper's application to him, for authentic copies of certain addresses to and from him, as President of the United States. Even the private secretary of the President refused to compare a printed series of these papers, with the original manuscripts, to determine their correctness But the situation of Mr. Madison is at this time compleatly different. Removed as he is from the residence of the court, and removed as that court will be from the seat of government, it is impossible that he can obey its mandates, without subjecting himself to the risk of interrupting the operations of the executive.

But if the testimony of Mr. Madison cannot be obtained by *personal* attendance, may it not be had by *deposition*?

Any man can see, by recurring to the laws of the United States, that *they* have made no *express* provision for taking the *depositions* of witnesses in *criminal* cases. By the 30th section of the act of 1789, for *establishing the judicial courts of the U. States* there is an express rule laid down for civil, but none for criminal causes. "And when (says that section) the testimony of any person shall be necessary in any *civil* cause depending in any district in any court of the United States, who shall live a greater distance from the place of trial than *one hundred miles*, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial as aforesaid, before the time of trial, or is ancient or very infirm, the *deposition* of such person may be taken *de bene esse* before any justice and judge of any of the courts of the U. States, &c &c." The preceding clause does not contain a single expression in favor of taking depositions in criminal prosecutions.

What has been the doctrine of the English judicature, on this subject, seems not to have been completely settled. On Judge Chase's impeachment, *this* question was started in the course of the pleadings: but it was not very far hunted after, for a very obvious reason. He had refused to grant Callender the necessary time for obtaining the *attendance* of witnesses, although an affidavit had been offered of their being necessary to his defence: and the refusing of these reasonable applications, was one of the articles of impeachment against him. But judge Chase was not impeached for refusing to issue commissions to take the *depositions* of witnesses, because no such application had been made by Callender's council. The question however *was* started on the trial, whether the judge *would have had* the right to issue these commissions; but Mr. Rodney and Mr. Martin seem to be the only two who touched upon it at all.

Mr. Rodney stated that there was "a case in Cowper's Reports, when the person accused made an affidavit of the absence of a very material witness, who was out of the reach of the process of the court. And the court informed the prosecutor, that unless he would consent that the *deposition of the witness should be taken and read in evidence*, that they would postpone the case forever. In England, courts of common law have no power to issue commissions to take the depositions of witnesses, unless by consent, and therefore lord Mansfield declared, that although the court could not oblige the prosecutor to consent, yet they would postpone the trial forever, unless he did. But the statutes of the U. S. *expressly* authorise the courts to issue commissions, &c." Page 171 of the Report. In answer to this, Mr. Martin says: "A case has also been referred to in Cowper's Reports, where the defendant wanting the testimony of a witness who lived out of the jurisdiction of the court, and the court not having the power to issue a commission to obtain his testimony, the court declared that if the plaintiffs would not consent to have the deposition of such witnesses taken to be read at the trial, they would continue the cause indefinitely. The honorable manager has further said, that though in England, the court cannot issue a commission to examine the witnesses, yet *here* the court has a power to issue a commission for that purpose. This honorable court will recollect the case of Callender was a criminal prosecution. I doubt whether the court has any power in a *criminal* case to issue a commission to examine witnesses for or against the prosecution. I do not know of any law which gives them that power." Mr. Rodney was certainly mistaken if he asserted that the statutes of U. S. *expressly* authorised the courts to issue commissions in *criminal* cases; but the case which he cited from the English courts was perfectly correct. This doctrine as laid down by Lord Mansfield in the case of Mostyn *Versus* Fabricas, quoted from Cowper's Reports, is in the following words: "if he wants the testimony of witnesses whom he cannot compel to attend, the court may do what the court did in the case of a *criminal* prosecution of a woman who had received a pension as an officer's widow; and it was charged in the indictment that she never was married at all. She alledged a marriage in Scotland, but that she could not compel her witnesses to come up, to give evidence. The court obliged the prosecutor to consent that the witnesses might be examined before any of the judges of the court of sessions or any of the barons of the court of Exchequer in Scotland, and that the *depositions so taken should be read at the trial.*"

Our conclusions then are:

That the executive functions of a secretary of state are paramount to any judicial duties, which he may incur.

That he ought not (at least in the present case) to give his *personal* attendance, where the seat of the court is so far removed from the seat of government:

That a court has a right only to expect his attendance, when it is held within the very district where he resides:

That our laws do not *expressly* provide for obtaining evidence by the way of a *deposition* in *criminal* cases:

That the practice in *England* seems generally to have been, to refuse the benefits of this process, even if with the consent of parties:

But that one case at least had occurred prior to the declaration of our independence, where it had been granted with the consent of parties; but that this was in a case, where the court could not compel the *attendance* of the witnesses:

In fine; that it is not the *duty* of Mr. Madison to attend at the trial of Mr. Ogden; but that it *may* possibly be the right of the judge to issue a commission for taking his deposition.

A want of knowledge of the law prevents us from giving on this point a more positive opinion. But this we may venture to assert, that in a case so unsettled by precedents, but so interesting to the executive department, it becomes the duty of Congress to provide for taking the deposition of the department of the government, in certain, perhaps in all, criminal prosecutions.

OXEN FOR SALE.

I have a pair of working Oxen for sale; they are gentle and go well in the plough, cart or waggon.

JAMES HOBAN.

July 21—3t

10 DOLLARS REWARD.

RANAWAY from the subscriber living in Prince George's county near Nottingham on Friday the 4th inst. a negro boy named ROMULUS about 14 years of age, slender made, his hair cut close, a remarkably flat nose and crooked great toes; had on an oznabrig shirt, a pair of new striped country cloth trowsers and an old brown cloth jacket. Whoever apprehends and secures the said negro in jail so that I get him again shall receive the above reward, and if brought home all reasonable charges paid, by

JOHN EVERSFIELD.

July 21—3t

PUBLIC AUCTION.

WILL be sold on Saturday the 2d day of August at the subscriber's Auction Store, at the Navy Yard the following articles.

1 pair of Card Tables, 2 Dining tables, 1 1-2 dozen Chairs, 2 Looking Glasses, 1 pair Andirons Shovels and Tongs, 4 Bedsteads, 1 Carpet, 1 Cradle, 1 small Chair, 1 Bureau, 8 Prints, 3 brass Candlesticks, 1 iron Tea Kettle, 1 small iron Pot, 1 Coffee Mill, 1 pair of Flat Irons, 1 pair of Steelyards and 1 Bed.

N. L. QUEEN, Auct.

July 21—tdf

WILL BE SOLD AT PUBLIC VENDUE,

ON Friday the 21st of June, near the Seven buildinings, at 4 o'clock P. M. a variety of wet and dry goods, amongst which are,

Tea, soap, candles, cloths, Indian cottons, calico, muslin handkerchiefs, shawls, stockings, gloves, nankeens, linnes, leading linnes, jacket patterns fine and common hats, fine and common shoes, crockery ware, glass ware, looking glasses, hour glasses, and a number of other articles, herrings in barrels, cherry bounce, French brandy, furniture of various kinds, and made cloaths.

JOHN STEPHEN, Auct.

July 21.

AT a meeting of REPUBLICAN DELEGATES from that part of Frederick county, which by law is attached to the 3d Congressional district held at the house of Mr David Levy in Frederick town, on Friday the 4th of July 1806, the propriety of taking measures to insure success to the Republican Candidate for Congress was reflected upon, Where it was

Resolved unanimously, that the conduct of PATRICK MAGRUDER, has been such at the last of session of Congress, as to command the respect and confidence of the Republicans of the third Congressional district—Therefore

Resolved unanimously, That PATRICK MAGRUDER, be recommended to the republican voters of said district, to be by them supported at the Congressional election in October next.

Resolved unanimously, That these resolutions be published in the republican papers of Frederick town, and in the National Intelligencer.

A true copy from the minutes of the meeting.

Test JOHN B. COLVIN, Sec.

July 18—4w