NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

Vol. VI. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. No. DCCCCXIII

FIVE DOLLARS PER ANNUM. WEDNESDAY, AUGUST 20, 1806. PAID IN ADVANCE.

National Intelligencer.

A refutation of the charge, that the measures of the administration have a greater tendency to advance the interests of the Southern than the Eastern section of the union.

(CONTINUED.)

We trust it has been made satisfactorily to appear, that all the measures which have been taken by the government, for the purchase of Louisiana, the acquisition of the Floridas, the extinguishment of Indian titles, and the maintenance of a small army on the frontier, have in fact promoted the general interests of the union, the interests of one section equally with those of another, and that there is not one of them which has not amply remunerated the nation for the money expended upon it. Taking, indeed, these objects in a collective view, they constitute a vast fund of national wealth and prosperity that will scarcely be exhausted for ages; and whose ultimate benefit on the general peace and prosperity will greatly exceed the good at present derived from them. Such then is the futility of the charges, brought against the administration, of partiality to the southern states. A concise view will evince the reproach of inattention to eastern interests to be equally unfounded. It is attempted to support this charge on two grounds: first, the refusal to establish a competent naval force for the protection of commerce; and secondly, the withholding the necessary funds for fortifying the ports and harbors of the U. S. the most important of which are alleged to be in the eastern and middle states.

In refutation of this charge, we contend, *in the first place*, that the whole union are equally interested in the protection of commerce; and, *secondly*, that it has been as efficiently protected under the present, as under former administrations.

If we succeed in establishing the first position, the charge may be considered as fully refuted. For if it be true that the whole union are equally interested in the protection of commerce, whatever degree of protection may be afforded, and however inadequate it may be, it is evident that the government cannot with any justice be charged with local partiality, when its measures will equally operate to the prejudice of every part of the union. Its sentiments may be erroneous and its conduct unwise; but its motives must be allowed to be honest.

To decide this point it is necessary to take two views; first, which part of the union is most interested in the disposal of its surplus productions, and in obtaining a supply of articles of foreign growth; and, secondly, which part of the union is most interested in the profit derived from selling the surplus of domestic production and the foreign commodities received in exchange.

To elucidate these views, it is requisite to determine the relative population of the eastern and southern sections of the union. In 1800, when the census was taken, the whole population of the U. S. was 5,385,582. It is now computed in Blodget's statistical table at 6,180,000. If we consider all the states to the Delaware inclusive, as constituting the eastern section, and the residue as constituting the southern section of the union, their relative numbers may be estimated as follows:

In the eastern section,	2,800,000
In the southern section,	3,200,000

Or they will stand relatively to each other as 7 to 8.

If then the surplus productions of domestic articles and the consumption of foreign articles, in each section of the union, bear this proportion, so far as this consideration goes, they are both equally interested in that trade which enables them to vend the one, and which supplies them with the other. Let us examine how far this is a fact. The luminous report of the Secretary of the Treasury enables us to do this with more precision than is usual in such views, so far as relates to the quantity of our surplus domestic productions, which is shewn by the extent of our exports. These are generalized into the following classes, which embrace a period of three years.

Provisions, including vegetable food, animal food and fish,	50,850,000
Cotton,	20,820,000
Tobacco,	18,429,000
Lumber, naval stores & potashes,	13,160,000
All other articles,	8,526,000
	111,785,000

Of these cotton and tobacco are entirely the production of what we have called the southern section, and the other articles are in part produced in the southern, and in part in the eastern section.

Of these articles the following statement exhibits as accurately as the materials before us enable us to do, the portions raised in each section.

EASTERN.

Provisions, including vegetable food, animal food, and fish,	33,900,000
Lumber, naval stores, & potashes,	8,000,000
All other articles,	3,500,000
	45,400,000

SOUTHERN.

Cotton,	20,820,000
Tobacco,	18,429,000
Provisions, including vegetable and animal food, & fish,	16,950,000
Lumber, naval stores & pot ashes,	5,160,000
All other articles,	5,026,000
	65,385,000

According to the ratio of their numbers, of the total aggregate amount of exports for three years, the eastern section should have raised seven-fifteenths, making	Dollars 52,164,000
And the southern eight fifteenths, making	59,621,000
Being an excess of the latter over the former of	7,457,000
But, according to the foregoing statement, it appears that the southern section imports to the amount of	66,385,000
And the eastern to the amount of	45,400,000
Making an excess of	20,985,000

or 13,528,000 dollars beyond its proportion during a period of three years, or 4,509,333 dollars a year. In this degree, then, is the southern section more interested in the protection of commerce than the eastern. For, but for commerce, they would be unable to find a market for their surplus productions, or the means of supplying themselves with the foreign commodities they want.

The data for determining the relative consumption of foreign commodities by the two sections of the union are not so easily obtained. We can but form estimates. But these estimates will all prove that either the consumption of the southern country is above, or equal to its relative numbers. The habits of their citizens are more luxurious, and they have among them but few internal manufactures. On the other hand, the habits of the eastern people are comparatively frugal, & they have in their bosom extensive and flourishing manufactures. There is one circumstance that goes a great length in demonstrating the consumption of the southern country to be relatively to their numbers much beyond that of the eastern. We know that the aggregate imports are nominally greater than the exports. Though this cannot actually be the case, yet the two may be considered as about equal, from which it would seem that, upon the whole, we imported foreign goods to the full extent of our ability. If then the southern states, while their relative exports so greatly transcended those of the eastern states, consumed foreign goods only in proportion to their numbers, the inevitable effect would be the rapid progress of the former in absolute, and their still greater progress in relative wealth; and the no less rapid declension of the latter both in absolute and relative wealth. For, as the gross amount of exports and imports is equal, just in proportion to the clear gain of the southern country derived from the superiority of their exports over their imports, would be the loss of the eastern country from the inferiority of their exports to their imports. This will be best illustrated by a reference to facts. From the statements we have made it appears that the southern country exports about 22,128,000

If they consumed imported articles only in the ratio of their numbers, they would consume to the amount of	19,873,000
Leaving a balance in their favour of	2,255,000
The residue of the exports and imports falling to the eastern states, they would consequently consume of imported articles	17,387,000
And export of domestic productions	15,134,000
Leaving a balance against them of	2,253,000

We may rest satisfied that these results are untrue. For if true their inevitable effect would be in a few years to convert the south into a garden, and the east into a wilderness: whereas the fact is that the eastern states are in every respect in a more flourishing situation than the southern. The truth probably is, that the seductions to the consumption of foreign goods are so great that each portion of the union consumes them in as great a degree as it has domestic productions to give in exchange for them. If this be the fact it will follow that the southern country, consuming them in the ratio of its exports, uses them to the annual amount of 22 millions. Combining then, in one view, the exports and imports, we are presented, on the foregoing data, with the following results.

The whole exports and imports amount to	73,524,000
Of these, according to their relative numbers, there ought to fall to the eastern section	34,774,000
Whereas there does in fact fall only	32,521,000
Leaving	2,253,000
Which shews the degree in which the eastern are less interested in commerce than the southern states.	
Of the whole exports and imports, according to their relative numbers, there ought to fall to the southern states	39,746,000
Whereas there does in fact fall to them	42,001,000
	2,255,000

Shewing the degree in which the southern are more interested than the eastern states in commerce.

It follows most conclusively, in this view of the subject, that the southern section is most deeply interested in commerce, and in a much higher degree than the eastern section of the union.

Such, however, is the equalising effect of our republican institutions, as well as of the ordinances of nature, that the second view of our subject will disclose the possession by the eastern states of a countervailing benefit in the almost exclusive possession of the profit derived from selling the surplus of domestic productions, and the foreign commodities received in exchange.

The eastern section is the great carrier of the union.

The total imports may be valued at 80 millions; and the total exports at the same amount, one half of which are foreign and the other domestic productions.

We have not before us any documents that enable us with precision to state in detail the relative tonnage of the several states; but we cannot materially err in setting down that of the eastern section at two thirds of the whole. The annual profit of a merchant is estimated at about ten per ct. on his capital. He is, in general, enabled to turn this capital twice in one year, viz. If his capital be 10,000 dollars, to export to that amount and to import to the like amount every six months. This will require a capital of about 40 millions for the articles sold and received in exchange. There is to be added for the cost of the shipping and the expence of transportation about 35 millions, making in the whole 75 millions. Two thirds of this trade belonging to the eastern section gives a balance in its favor over the southern section, of 25 millions, the mercantile profit on which at ten per cent. is two millions and a half of dollars, which is two hundred and forty five thousand dollars beyond the balance in favor of the southern section on the aggregate exports and imports.

This result warrants us in the declaration that the two sections of the union are equally interested in the protection of commerce—for what is the sum of two hundred and forty-five thousand dollars on the whole national capital of wealth and industry! It is indeed more than countervailed by the different situations of the southern and eastern people; the latter of whom are only interested, so far as relates to the transportation of goods, in the mercantile profit they make on their sale, while the former, so far as relates to the sale of their productions, actually lose or gain to the extent of the whole of their value.

Where then is the premium of the southern planter to neglect the protection of commerce? Can he be so great a fool as to scuttle the vessel in which he is embarked that his enemy, who is a fellow passenger, may go to the bottom though he will share a like fate? No—the truth is, that he knows and feels himself equally interested with his eastern brethren. The only difference between them is, that the one is friendly to that protection, which is pacific in its character, which is the dictate of prudence and strong good sense, and which long experience has proved to be the source of unrivalled prosperity; while the other is the advocate of a system of which war would be the inevitable offspring, and which would sacrifice the substance for the shadow. For no truth is more clear than that American commerce, for many years to come, can only flourish under the shade of the olive. Expose it to the rude onsets of barbarian violence, carry it on at the cannon's mouth, and it will either totally disappear, or impoverish those who pursue it.

(To be Continued.)

Judgement of the Chief Justic in the case of Commonwealth, vs. William Duane.

Habeas Corpus, directed to the jaoler of Philadelphia to bring the body of the defendant before William Tilghman.

This case comes before me, in consequence of a habeas corpus, directed to the gaoler of the city and county of Philadelphia, commanding him to bring before me the body of Wm. Duane, together with the cause of his being imprisoned—the jailer, in obedience to the writ, has produced the body of Wm. Duane, and returned, that he was detained in prison, by virtue of a warrant of committment from the mayor of Philadelphia. This warrant recites, that Wm. Duane had been charged on the complaint of the Marquis de Casa Yrujo, made thro' the attorney general, and on the oath of William B. Hight, with having on the 19th and 21st of July last in a public newspaper called the Aurora or General Advertiser, edited by the said Wm. Duane, published certain libels on the said Marquis; and that the said Wm. Duane had been required by the said mayor, to enter into a recognizance, as well for his appearance at the next mayor's court, as for his good behavior in the mean time, which he had refused to do; and contains a committment of Wm. Duane until he shall enter into a recognizance as aforesaid, or be delivered by due course of law.

From an examination that has been had before me, it also appears that the said Wm. Duane offered, before the mayor, to enter into a recognizance for his appearance, but refused to enter into one for his good behaviour. So that the only question for my determination is, whether it is proper to insist on a recognizance for the good behaviour of Wm. Duane, between this time and the next mayor's court.

In the consideration of this point, are involved principles of importance, which have agitated the feelings and divided the judgements of many persons both in this and other states of the union.

I have considered it, certainly without passion or prejudice, and with as much attention as the short time allowed for decision would admit.

Surety for good behaviour, may be considered in two points of view. It is either required after conviction of some inditable offence, in which case it forms part of the judgement of the court, and is founded on a power incident to courts of record, by the common law, or it is demanded by judges or justices of the peace, out of court, before the trial of the person charged with an offence in pursuance of authority, derived from a statute, made in the 34th year of Edward 3. It is this last kind of surety we are now to consider. The statute 34 Edward 3, authorises justices of the peace, to take surety for good behaviour of all those that are not of good fame, to the intent that the public may not be troubled by such persons. It is supposed that this statute was made to prevent the disorders which were introduced by the soldiers of Edward the third, numbers of whom, after serving in his armies in France, were discharged in England. The natural meaning of the words "persons not of good fame," seems to be, those who by their general evil course, and habits of life had acquired a bad reputation, and were supposed to be dangerous to the community. In process of time, however, the construction of these expressions has been extended, far beyond their original meaning, and persons are now, commonly held to find surety for their good behaviour, who are not generally of ill fame, but have only been charged with some particular offence. It is laid down by some ancient authors, that libellers may be held to surety for good behaviour. But on searching the English books of reports, I find but few cases, in which courts have given their opinion on this point. The decisions of the English courts prior to our revolution, are, with some exceptions, received as authority in our courts. Now it appears from the cases before the revolution, that it was by no means an established practice, that a man charged with a libel, should before conviction, be held to surety for his good behaviour. In the case of the king v. Shuckburg, in the year 1743—Reported 1 Wilson, 29, the defendant was arrested by virtue of a warrant from the secretary of state, for publishing a blasphemous libel, called "Old England's Te Deum."—Upon being brought up to the court of king's bench, by habeas corpus, in order to be bailed he offered to enter into the common recognizance for his appearance. The attorney general insisted on bail for his good behaviour also. The lord chief justice said, it had often been taken both ways, and he intended to take the opinion of all the judges; he therefore, for the present, took the defendant's recognizance for his appearance only, and made him enter into a rule, to put in bail for his good behaviour if the major part of the judges should be of opinion that he ought. Nothing further appears to have been done in this case—in a marginal note of the report of it by sergeant Wilson, is mentioned the case of the king v. Franklin, 5. George 2d. when the same point was argued before all the judges, but they never gave any opinion. Mr. Heighmore, in his treatise on bail, published in the year 1783, cites the case of the King v. Shuckborg, and seems to consider the law as still unsettled.—It appears from these authorities that the English judges were unwilling to establish a practise, which they might have thought hostile to the genius, and spirit of the nation. Let us now examine how this matter has been considered in America.—The U. S. in general have at all times, been much alive to the liberty of the press, and the right of trial by jury; and their constitutions have shewn great jealousy and sensibility on these points. In prosecutions of libels against the king, and officers of government, it has been usual in England, to prosecute by way of information; a mode of proceeding, by which the defendant is brought to his trial by a petty jury, at the instance of the attorney general, without the previous enquiry by the grand jury. The constitution of Pennsylvania has taken special care to guard against this: Grand juries are not to be dispensed with, except in certain enumerated cases, of which libel is not one. It also provides that every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty. I think the counsel for Mr. Duane has gone too far, in contending that our constitution absolutely prohibits the binding a man to his good behavior for a libel, before conviction. It only provides that a man may freely speak, write and print, at his own peril, being responsible either to the public, or any individual whom he may injure. It is generally understood and I think truly, that this provision was intended to prevent men's writings from being subject to the previous examination and controul of an officer appointed by the government, as is the practice in many parts of Europe, and was once the practice in England: now, a man tho' bound to his good behaviour, may still publish what he pleases, and if he publishes nothing unlawful, his recognizance will not be forfeited. Indeed I consider this point as having been decided, by the supreme court, and ultimately by the high court of errors and appeals, in the case of the commonwealth, vs. Cobbet, which I shall consider more particularly presently. But altho' it has been decided that a recognizance when thus taken, is not void, yet it never has been decided within my knowledge, that it is incumbent on a judge, or, that it is prudent or proper, to call for surety of good behaviour from a person charged with a libel, before trial, and that is the point now before me. Indeed from the charge delivered by C. J. Shippen in Cobbett's case, of which my brother Judge Smith has favored me with a very accurate note, I should not suppose that the chief justice, or either of the other judges, would have thought it proper to call for this kind of surety, except under very extraordinary circumstances.——The case now before me is attended with no extraordinary circumstance, so far as it has come to my knowledge, judicially, and I must confine myself to the evidence procured.—The mayor, who was so obliging as to favor me with an account of what passed at his office, declared that he considered the security for good behaviour as a thing quite of course, and for that reason only, would not dispense with it. And he also declared, that he prepared the recognizance himself, in what he conceived the usual form, without the instruction or direction of the attorney general——Now if this practice is established, two consequences will follow which certainly may be attended with great inconvenience. In the first place the justice who takes the recognizance may fix it in whatever sum he pleases and then if it would be forfeited by libels of the mildest nature, the whole penalty must be recovered, without any power in the court to mitigate the punishment according to the nature of the offence. And in the second place, the defendant may be brought to trial for a libel so far as to be burthened with the forfeiture of his recognizance, without the previous investigation of a grand jury. I considerate man will say, under certain circumstances, these may not be very great evils. No man can exactly calculate, how far a practice of this kind, exercised by wicked and dangerous hands, into which it may sometimes fall, may stifle, or even extinguish, the spirit of honest investigation, and necessary enquiry. And what is the occasion for it?——The party complaining, has a right to the protection of the laws, and will receive it.——The person