For the National Intelligencer.

No. IV.

The ſecond power, whoſe conſtitutionality is diſputed, is that of paſſing laws which affect the right of conſcience and the liberty of the preſs; of which the Sedition law is alleged to be an inſtance.

The Conſtitution, *as amended*, ſays, "Congreſs ſhall make no law reſpecting an eſtabliſhment of religion, or prohibiting the free exerciſe thereof; or abridging the freedom of ſpeech, or of the preſs; or the right of the people peaceably to aſſemble, and to petition the government for a redreſs of grievances."

The law, commonly called the Sedition Law, paſſed the 14th of July 1798, enacts, "That if any perſon ſhall write, print, utter or publiſh, or ſhall cauſe or procure to be written, printed, uttered or publiſhed, or ſhall knowingly and willingly aſſiſt or aid in writing, printing, uttering or publiſhing any falſe, ſcandalous and malicious writing or writings againſt the government of the United States, or either Houſe of the Congreſs of the United States, or the Preſident of the United States, with intent to defame the ſaid government, or either Houſe of the ſaid Congreſs, or the ſaid Preſident, or to bring them into contempt or diſrepute; or to excite againſt them, or either or any of them, the hatred of the good people of the United States, or to ſtir up ſedition within the United States; or to excite any unlawful combinations therein, for oppoſing or reſiſting any law of the United States, or any act of the Preſident of the United States, done in purſuance of any ſuch law, or of the powers in him veſted by the conſtitution of the United States; or to reſiſt, oppoſe, or defeat any ſuch law or act; or to aid, encourage or abet any hoſtile deſigns of any foreign nation againſt the United States their people or government; then ſuch perſon, being therof convicted before any court of the United States, having juriſdiction thereof, ſhall be puniſhed by a fine not exceeding 2,000 dollars, and by impriſonment not exceeding two years.

In a ſubſequent ſection, the perſon proſecuted is permitted, "To give in evidence in his defence the truth of the matter contained in the publication charged as a libel."

The conſtitutionality of this law has been ſo ably and fully diſcuſſed, and the intereſt excited in the public mind has been ſo lively, that it would ſeem an act of ſupererogation to go over even the leading ideas expreſſed on it. Thoſe who need information will find it copiouſly given in the debates of Congreſs, and in the report of the Virginia Aſſembly. This laſt performance, indeed, is an admirable digeſt of whatever has been ſaid on the ſubject; and as a piece of logical and concluſive reaſoning ſtands almoſt unrivalled. Like all the productions of Mr. Madiſon, by whom it was penned, it is correct and perſpicuous, and entirely free from irritation and declamation.

But, perhaps, the beſt commentary that could be paſſed upon this law, would be a ſtatement of the ſeveral proſecutions inſtituted under it. By comparing theſe, and the manner in which they were conducted, with the ſolemn declaration of the conſtitution, that no law ſhould be paſſed abridging the freedom of ſpeech or of the preſs, it would appear whether, under its execution the freedom of ſpeech and of the preſs had been defended and protected, or whether they had been invaded and infringed.

We ſhall confine ourſelves to the enumeration of a few of theſe caſes.

The firſt is that of Mathew Lyon, who was tried for publiſhing a letter, printed in a Vermont paper on the 31ſt of July 1798, aſcribing corrupt and unworthy motives to the Preſident in his appointments to office, &c. The letter, on which this proſecution was grounded, was written on the 20th of June, by Mr. Lyon, before the paſſage of the law. Whatever therefore may have been its contents, it ought not to have been conſidered as a violation of a law, not exiſting when it was written. Yet the author was ſentenced by judge Paterſon to an impriſonment of four months and fined 1,000 dollars.

Though theſe circumſtances do not throw any light on the unconſtitutionality of the act, they certainly powerfully elucidate the ſpirit with which it was executed.

2. The caſe of Thomas Cooper, charged with publiſhing a libel on the Preſident to this effect: That under his auſpices a permanent navy, a ſtanding army, a loan of 8 per cent. in time of peace, had been reſolved on; that he, by the violence of his official expreſſions might have provoked a juſt war againſt this country; that he had projected embaſſies to Ruſſia, Pruſſia, and the Sublime Porte; that he had interfered with the Judiciary, contrary to all law, precedent and mercy, in the caſe of Jonathan Robbins, &c.

This publication was declared a libel, and Mr. Cooper was impriſoned 6 months, and fined 400 dollars. judge Chaſe preſiding at the trial.

With reſpect to the grounds, whereon this proſecution was founded, it is ſcarcely neceſſary *now* to remark, that they are among the ſtrongeſt reaſons for the change which has lately taken place in the adminiſtration of the government; and that if the publication of Mr. Cooper be a crime, then are the American people participants in his guilt.

3. In the caſe of Charles Holt, Editor of the Bee, in Connecticut, we find an impriſonment of three months, and a fine of 200 dollars impoſed. for calling the army a *ſtanding* army, inſtead of a *proviſional* army.

On this point the reader will obſerve, that the truth or falſity of the charge was a mere matter of opinion. Events only could ſhew whether the army, lately raiſed, would be ſtanding or temporary; for, however, the occaſion might make it proviſional, it might, notwithſtanding, be made abſolutely permanent. It is true, that it was then ſaid that under the federal conſtitution there could not be a *ſtanding army*; but it was replied with equal truth, and more point, that though the conſtitution forbade Congreſs making military appropriations for more than two years, yet there might exiſt a military force correctly denominated a ſtanding army, viz. one not limited in duration by the law that created it; and that in fact ſuch a body did exiſt in England, and was there univerſally called a ſtanding army, though its very exiſtence depended upon the annual paſſage of the mutiny act.

4. Caſe of Anthony Haſwell, Editor of the Vermont Gazette, charged with publiſhing that Matthew Lyon had been denied the privilege of pen, ink and paper, when firſt confined; and with publiſhing a correſpondence between General William Darke of Virginia, and James M'Henry, ſecretary at war of the United States, in the courſe of which the latter mentions "that it would be deſirable to have the volunteers, and the officers elect, of voluntary companies, produce recommendations from known and prominent characters in their vicinity, in order for their being accepted. In anſwer to which Gen. Darke enquires whether he is to underſtand the ſecretary to mean that recommendations muſt come from characters who fought and ſuffered in our revolutionary war, or from prominent old tories, &c.—The ſecretary in reply ſays, in ſubſtance, there are many among thoſe whom you denominate old tories, friends to the adminiſtration of the government of the country, and who being men of probity and honor, I do not ſee why they ſhould not be deemed eligible."

Of theſe letters Mr. Halwell produced certified copies. Mr. Haſwell was found guilty and ſentenced by Judge Patterſon to an impriſonment of two months, and to pay a fine of two hundred dollars.

Theſe are but a few of the caſes, in which proſecutions have been inſtituted, and convictions have followed. They have been ſtated, either becauſe they are the ſtrongeſt caſes, or from the prints of the day furniſhing more correct notices of them than of the others.

From theſe, however, it is preſumed that it muſt clearly appear, that however conſtitutional or unconſtitutional may have been the proviſions of the Sedition Law, however free they may have been, as they ought to have been, from all acts of invaſion on the freedom of ſpeech or of the Preſs, yet that the acts, of which this law was the cover, were invaſions of the freedom of ſpeech and of the preſs; and that they did tend, by the ſanction of ſevere puniſhments, to repreſs free animadverſion on the meaſures of government.

The late change in the adminiſtration of the government confirms, as far as any act of the people can confirm, the truth of theſe ſentiments, and to that extent decides the Sedition Law to have been unconſtitutional—One of the firſt acts of the Executive magiſtrate, viz. the ſuperceding all proſecutions under the Sedition law, ſtrengthens the conviction.

From the foregoing details it appears that two hoſtile opinions exiſt, and have been carried into effect, on the conſtitutionality of the Sedition Law—Which is the true one? Even, if public opinion has decided the queſtion, that deciſion cannot be expected, to repreſs, at ſome future period, a reſort by men of ſimilar principles to the ſame meaſures—It is evident then, that the point can alone be freed from all ambiguity and controverſy by an amendatory article to the Conſtitution.

SOLON.

[*From the Aurora.*]

In order that the acts of the government may be well underſtood, free inveſtigations are admitted by the conſtitutions and laws. It is, however, juſt, that explanations ſhould be admitted with equal readineſs and candor. The following paper, ſigned "*A Pennſylvanian*," was lately preſented to a printer, to repel a few of the charges on the ſubject of removal brought againſt the Preſident. The eſſay was refuſed a place on a plea of want of candor. It is tranſmitted to you without any alteration, addition, or diminution.—Let the public judge what is the ſtate of the preſs, what their chance of fairly hearing the whole, when ſuch a paper is refuſed.

A Pennsylvanian.

For the Lancaſter Journal.

Obſervations on certain act of the Preſident.

There is a fund of good ſenſe in the people of the United States, that will not long be deceived. Many circumſtances however, produce temporary miſtakes and deceptions. Diſpaſſionate repreſentations of *truth*, in ſuch caſes, become a duty in thoſe who poſſeſs a knowledge or recollection of them.

In the laſt Journal is republiſhed from ſome other paper, a liſt of perſons, ſaid to have been removed by the Preſident, "*on account of their political opinions.*" A few of the caſes will be noticed at preſent, with the mere intent to ſhew the error of that aſſertion, and the danger and injuſtice of giving it credit.

As moſt impreſſive in this part of the country, we ſhall begin with the caſe of the late John Wilkes Kittera, eſq. who was attempted to be appointed by Mr. Adams, under the new judiciary law of the United States, to the office of Attorney of the United States for the eaſtern diſtrict of Pennſylvania. Nothing in the leaſt derogating to the virtue, learning, or underſtanding of the deceaſed gentleman [Mr. Kittera] is involved in the queſtion of his removal from office, as it is erroneouſly called. It will be ſhewn, that Mr. Kittera was never removed by Mr. Jefferſon, becauſe he was never inveſted with the office of attorney of the United States, for our eaſtern diſtrict. The federal conſtitution [Art. 1. ſec. 6. paragraph 2] expreſſly prohibits the ſenators and repreſentatives from being appointed to any civil office of the United States which ſhall have been created during the time, for which he was elected. Now it is univerſally known that Mr. Kittera was elected to ſerve in the federal houſe of repreſentatives, until the 4th day of March laſt, and that the office of attorney of the United States, for the eaſtern diſtrict of Pennſylvania, was "created" by a law of the laſt ſeſſion, which commenced in December, and ended on the 3d of March, 1801. The federal conſtitution, therefore, peremptorily forbad his appointment in March, when it was made by Preſident Adams. Either the commiſſion or the conſtitution was to be held of no force or effect. Preſident Jefferſon duly reſpecting the conſtitution decided, that the commiſſion of Mr. Kittera, prohibited as it was by the conſtitution, was null and void from the beginning. The office of attorney then, had not veſted in Mr. Kittera. He was never, in law or in truth, attorney of the United States for the eaſtern diſtrict. He was not, therefore, he could not be removed. It is palpably erroneous and unjuſt then, to ſay, that Mr. Jefferſon removed Mr. Kittera on account of his political opinions. The latter gentleman never could have received a letter or meſſage informing him, that he was removed or diſmiſſed from the executive ſervice of the United States. On the contrary, it is certain and well known, that the commiſſion of the preſent attorney of the United States for the eaſtern diſtrict recited, that the office was vacant; and Mr. Kittera was ſo informed, and not that he was removed. There are in this country federal perſons of judicial and law characters, and others perfectly competent to a ſound opinion upon this point, not one of whom, it is confidently believed, will ſay, that the late John Wilkes Kittera, Eſquire, was ever really and legally inveſted with the new created office of Attorney of the United States.

It is alſo aſſerted, that General Henry Miller was removed from the ſame cauſe that is to ſay, on account of his political opinions. The following facts merit the candid and ſerious attention of the public. General Miller was commiſſioned as ſupervitor the ſummer of 1794. When Mr. Gallatin publiſhed his pamphlet on finances of the United States in the Autumn of the year 1800. General Miller had not once ſettled his accounts. There were 23 or 24 quarterly accounts then due, and not one ſingle ſettlement had been made. The newſpapers of Philadelphia, which circulate extenſively in York, publiſhed ſince General Miller's removal, declare, that he had not then ſettled his accounts. Under ſuch circumſtances, will it be prudent for the people to believe, that General Miller was removed on account of his political opinions, until he ſhall publiſh a certificate that his accounts to the end of 1800 were ſettled in July, and that the ballance then due from him was paid. It is very unfriendly to General Miller for any uninformed federal writer to attack the Preſident about his removal. There is no wiſh on the republican ſide to notice this ſubject ſo as to pain or to injure him. It is done with great and ſincere regret; but the government of the United States ought to be ſupported and defended in its attempts to effect ſettlements of the public accounts, and to enforce the payment into the Treaſury of all monies received, and collected by the revenue officers. The taxes upon ſtills and ſpirits, carriages, ſnuff, refined ſugar, ſtamps, retailers licences, and the direct Tax upon lands and houſes, have paſſed into General Miller's hands, from a number of officers and to a large amount. The Preſident ſeems to have given him from March, till July to pay and ſettle. Are the federal fee holders, farmers diſtillers, and conſumers, willing, that our federal tax officers, who neglect to ſettle, ſhould be kept in office, "on account of their political opinions!"

The caſes of Colonel Whipple, and Colonel Gardner, of Portſmouth, in New-Hampſhire were alſo mentioned in the laſt Journal. Theſe two gentlemen were merely reſtored to their late offices at Portſmouth by Mr. Jefferſon, probably becauſe it appeared that they had been removed on account of their political opinion. Their two offices, taken from them by Mr. Adams in 1798, and conferred on a Mr. Martin, & a Mr. Sheaſe, have been given to them by Mr. Jefferſon again. Nothing is known here, or will be ſaid againſt Mr. Martin, or Mr. Sheaſe, but there are three perſons in this Borough who officially know, that Meſſrs. Whipple and Gardner are well educated and capable men, were punctual, regular, upright and excellent officers.—They are underſtood to have been removed ſoon after refuſing to ſign a very ſtrong, and (to them) unſatisfactory addreſs to Preſident Adams, the contents of which were againſt their judgments.

BOTTLED PORTER.

THE ſubſcriber wiſhing to eſtabliſh himſelf in the bottling of Porter informs the public in general that he at preſent has by him for ſale at his bottling cellar, corner of Bridge ſtreet, oppoſite the Poſt Office,

Fine Philadelphia Porter, in excellent order—Alſo,

TAUNTON ALE of the firſt quality, and CIDER in bottles

The public may depend upon always finding a conſtant ſupply at the cellar as above—and he is thankful for favours received.

R. C. STANLEY.

George Town, Auguſt 6. 1801. ¶1m

LOTS [illegible]

In the City of Washington.

THE SUBSCRIBER offers for Sale a number of valuable Lots beautifully ſituated between the Capitol and the Eaſtern Branch. Alſo a few Lots to be let on leaſe for ninety-nine years in the vicinity of the Navy yard.

WILLIAM PROUT.

City of Waſhington December 12 1800 tf

N B A few Tons of good Meadow Hay, one Kiln of Bricks, and ſome Cord wood

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By virtue of a decree from the Chancery Court of Maryland, will be expoſed to

PUBLIC SALE,

To the higheſt bidder, at Mr William Rhodes's Tavern on the eighth day of September next, at 11 o'clock in the forenoon (the ſame being part of the real eſtate of Abraham Young, deceaſed)

A LOT of ground ſituate in the Diſtrict of Columbia, adjoining the City of Waſhington; whereon is erected a two ſtory brick houſe 32 by 36 feet, unfiniſhed; one ſmall frame houſe in good repair about 12 by 16, one meat houſe 12 by 12, and one ſmall log houſe; ſubject to the widow's right of dower. A credit of 12 months will be given to the purchaſer or purchaſers on giving bond with approved ſecurity, on intereſt.

On the ratification of the ſale by the chanceller and on payment of the purchaſe money, a deed will be made to the perſon or perſons purchaſing conveying all the right, title, intereſt and eſtate belonging to the heirs of Abraham Young deceaſed.

A Plat of the premiſes will be ſhewn on the day of ſale.

HENRY WHETCROFT,
Truſtee.

Waſhington City, Auguſt 14, 1801. ¶7t