RALEIGH REGISTER,
AND
NORTH-CAROLINA WEEKLY ADVERTISER.

"Ours are the Plans of fair delightful Peace,
"Unwarp'd by Party Rage to live like Brothers."

VOL. I. TUESDAY, JUNE 24, 1800. No. 30.

TRIAL OF THOMAS COOPER.

(Continued from our last)

BUT I begin to grow weary of this cauſe; and I feel diſinclined to fatigue myſelf, and you full more, by wading through this collection of unpleaſant and irritating expreſſions: Nor do I think it worth while to employ my time and yours in contending every technical objection. I did not fully expect ſuch frequent interruptions, on a trial of this nature, or to have fought my way, *per tot ambages, per tot diſcrimina rerum.* I ſhall quit, therefore, the paper of extracts I hold in my hand, and quote no more of them. But theſe addreſſes and anſwers are not the only foundation of the aſſertions I made. The French themſelves have complained of this violent language and unjuſt accuſation of their principles and conduct. They have felt the indignity, and have expreſsly made it *an obſtacle to negociation.* In page 19 of the inſtruction of the envoys, &c. publiſhed by the Secretary of State, in conformity to a reſolution of Congreſs of June 22, 1798, thoſe Envoys inform us, that "M. Y. took out of his pocket a French tranſlation of the Preſident's ſpeech, the parts of which objected to by the Directory, were marked, agreeably to our requeſt to M. X. and are contained in exhibit A," (this exhibit I need not read at length: it will be found in page 24 of the book I am quoting). "Then he made us the ſecond ſet of propoſitions, which were dictated by him, and written by M. X. in our preſence, and delivered to us, and which tranſlated from the French are as follow: There is demanded a formal diſavowal in writing, declaring the ſpeech of the Citizen Preſident Barras did not contain any thing offenſive to the government of the United States, nor any thing which deſerved the epithets contained in the whole paragraph."

In another part of the ſame page, the envoys tell us M. Y. informed them that "the directory were extremely irritated on account of ſome parts of the Preſident's ſpeech." Now, Gentlemen of the Jury, that ſpeech is mildneſs itſelf, compared with the extracts I have read, and was prepared to read to you from the addreſſes and anſwers of the Preſident, publiſhed in the ſame month with this very book.

In page 92, the Envoys give us a tranſlation of the letter of M. Talleyrand, the miniſter of foreign relations, to them. In page 97, there is the following paragraph of that letter. "The newſpapers known to be under the indirect control of the cabinet, have, ſince the treaty, redoubled the invectives and calumnias againſt the Republic and againſt her principles, her magiſtrates, & her envoys. Pamphlets openly paid for by the miniſter of Great-Britain, have re-produced in every form thoſe inſults and calumnies, without a ſtate of things ſo ſcandalous ever having attracted the attention of the government which might have repreſſed it. On the contrary, the Government itſelf was intent upon encouraging this ſcandal in it public acts. The Executive Directory has ſeen itſelf denounced in a ſpeech delivered by the Preſident, in the courſe of the month of May laſt (O. S.) as endeavouring to propagate anarchy and diviſion within the United States. The new allies which the republic has acquired, and who are the ſame that contributed to the independence of Americans, have been equally inſulted in the official correſpondencies that have been made public, or in the newſpapers. In fine, one cannot help diſcovering in the tone of the ſpeech and of the publications which have juſt been pointed out, a latent enmity which only waits an opportunity to break out."

Gentlemen of the Jury, after the ſerious manner in which the tone of official expreſſions had been noticed by the French nation—after it was made an avowed obſtacle to negociation—where was the prudence or propriety of a perſevering reiteration of language ſuch as I have read to you? For my own part, I cannot help thinking ſuch conduct in a public character raſh and indecorous, and highly deſerving the reprehenſion I have expreſſed.

The next and laſt point, that which ſeems to be the moſt ſerious of all is, "the interference of the Preſident in the deciſion of a court of Juſtice in the caſe of Jonathan Robbins."

This caſe has received ſuch full, and ſuch *recent* diſcuſſion; it has been ſo much talked of *in* Congreſs, and written of *out* of Congreſs, that I do not think it neceſſary to enter into all the details of evidence and argument which would have been neceſſary, could I have preſumed you unacquainted with the ſubject. I ſhall, however, prove to you, Gentlemen of the Jury, that there has been ſuch an interference on the part of the Preſident, that it was not only without, but againſt precedent and againſt law: and if ſo, you will alſo conclude with me that it was againſt mercy. Here is the meſſage of the Preſident to Congreſs on the caſe of Jonathan Robbins, authenticating the communications of Mr. Pickering. In page 5, Mr. Pickering ſtates, that he had communicated Mr. Liſton's application to the Preſident, and that Nash (Robbins) is charged, as it is underſtood, with piracy and murder committed on board a British frigate on the high ſeas: the Preſident gives his opinion on the ſubject of juriſdiction, and on the conſtruction of the clauſe of the treaty; and authorizes Mr. Pickering to communicate the Preſident's ADVICE and REQUEST that Nash ſhould be delivered up. Now, gentlemen, without entering into any argument on the queſtion of territorial juriſdiction; or the conſtruction of the clauſe of the treaty—without going into the point that the crime of piracy gave juriſdiction to the court here—I reſt my aſſertion that the Preſident interfered improperly on this; that if he had authority to do what he did, he would not have *adviſed and requeſted*, but *required and directed*: an advice may be rejected; a requeſt may be refuſed, without attaching blame to the perſon who by this language is permitted to exerciſe his own judgment and inclination. Either the Preſident had authority to interfere, or he had not; if he had authority, the language ſhould have been peremptory and not ſubject to excuſe or evaſion. If he *had not authority, he ſhould not have interfered at all.* But it is as evident as language can make it, that the Preſident doubted of his own juriſdiction; advice and requeſt is the expreſſion of heſitation and diſtruſt; he felt the impropriety of his conduct at the time, and his language bears the impreſſion of his feelings.

I might have made enquiry by teſtimony into the circumſtances attending the trial of the ſailors from the Hermione, before his honour Judge Chaſe, in New-Jerſey. In thoſe caſes we hear of no ſuch interference, though I have underſtood they were preciſely ſimilar to that under diſcuſſion: but I really feel myſelf too much exhauſted to go into any verbal teſtimony on this head of the charge, though I had much to examine.

Court. Then if you do not mean to examine witneſſes, the gentlemen who attend on this occaſion, need not be detained.

Mr. Cooper. Certainly not now: I muſt relinquiſh my intentions, for I ſhall not be able to go through with them.

Court. Sir, the Court do not want to preſs you; they will wait for an hour if you wiſh it, to give you time to recruit your ſtrength,

Mr. Cooper. I am much obliged to the Court, and to the gentlemen who have attended; but I ſhall proceed and finiſh as ſoon as I can.

I have ſaid this was an interference that the monarch of Great-Britain would have ſhrunk from. Let the caſe be pointed out if it can, *when* a monarch of Great-Britain has made ſuch an attempt. I know of none; and I alſo know enough of the law and of the ſpirit of that country, to be ſatisfied, that no ſuch attempt would be ventured on there,

It is without precedent—I ſay further, it is againſt precedent. I hold in my hands the caſe of the United States vs. Judge Lawrence. The ſubſtance of that caſe is this: Capt. Barré, of the French veſſel Le Perdrix, abandoned his ſhip, became reſident at New-York, was claimed as a deſerter by the Conſul of the French nation, and required to be delivered up under the ninth article of the conſular convention between the United States and France, which authorizes the mutual delivery of deſerters to the Conſuls or Vice Conſuls of the reſpective countries, on demand made in writing to the Courts, Judges, and officers competent; and on proof by the exhibition of the ſhip's roll, that the perſons required were part of the Crew. The French conſul could not produce the original regiſter or role d'equipage, but a copy only: this, Judge Lawrence thought inſufficient evidence under the clauſe of the Convention. The Miniſter of the French Republic then applied to the executive, complaining of the refuſal, and the preſent motion was made in order to obtain the opinion of the Supreme Court of the United States upon the ſubject, for the ſatisfaction of the Miniſter. After counſel were heard in oppoſition to the motion, the Attorney-General, Mr. Bradford, in reply, premiſed "that the Executive of the United States had no inclination to preſs upon the Court any particular conſtruction of the article on which his motion was founded, but as it was the wiſh of our government to preſerve the pureſt faith with all nations, the Preſident could not avoid paying the higheſt reſpect, and the promptéſt attention to the repreſentation of the Miniſter of France, who conceived the deciſion of the Diſtrict Judge involved an infraction of the conventional rights of his republic. *****In the preſent caſe, from the nature of the ſubject, as well as from the ſpirit of our political conſtitution, the Judiciary Department is called on to decide. For it is eſſential to the independence of that department, that judicial miſtakes ſhould be corrected by judicial authority only. The Preſident therefore introduces the queſtion to the conſideration of the court, in order to inſure a punctual execution of the Laws, and at the ſame time to manifeſt to the world the ſolicitude of our government to preſerve its faith and to cultivate the friendſhip and reſpect of foreign nations.

Here then in both caſes, (the conſtitutional powers of General Waſhington and Mr. Adams being the ſame) a foreign Conſul claims a man to be delivered up under a clauſe of a treaty: the claim in both theſe caſes is made to a Diſtrict Judge: in both caſes the Foreign Miniſter afterwards applies for the ſame purpoſe to the Preſident of the United States, and at this point, the ſimilitude ends. For Gen. Waſhington did not hazard an opinion of his own, or exert executive influence in favour of the application from the Miniſter, but *introduced the queſtion for the conſideration of the Court*---Mr. Adams did hazard his own opinion in favour of Mr. Liſton's application, and adviſed and requeſted Judge Bee to conform to it. Gen. Waſhington "had no inclination to preſs upon the Court any particular conſtruction of the clauſe in the Treaty;" Mr. Adams not only inclined, but indulged his inclination in preſſing upon Judge Bee that conſtruction of the clauſe in the Treaty which was moſt favourable to the British claim. Gen. Waſhington deemed it "eſſential to the independence of the Judiciary Department, that judicial miſtakes ſhould be corrected by judicial authority;" Mr. Adams, not ſo tender of judiciary honour and independence, boldly ſatisfied the ſcruples of Judge Bee by executive authority. Gen. Waſhington "from the nature of the ſubject, as well as from the ſpirit of our Political Conſtitution," left the Judiciary department to decide the queſtion;---The nature of the ſubject, and the ſpirit of our Political Conſtitution, were no obſtacles to Mr. Adams; he decided the queſtion himſelf without being reſtrained by the one conſideration or the other. In the caſe of Capt. Barré, Gen. Waſhington had a pretence for interfering, which Mr. Adams had not; for it was the application of the Conſul alone that gave juriſdiction to Judge Lawrence:---whereas the charge of piracy in the caſe of Robbins brought him completely within the juriſdiction of our courts, even though it had been legally eſtabliſhed that he was a native ſubject of the British Monarch. Gen. Waſhington acted in a new caſe: he had no previous deciſion to guide his conduct; he ran counter to no precedent of authority, to no caſe in point; no charge of piracy gave undeniable juriſdiction: even though his good ſenſe *had not* prevented his interference with Judge Lawrence, the miſtake might in him have been forgiven---But Mr. Adams had a precedent to go by; he had law to guide his conduct; the caſe in point was within the compaſs of his information; the example ſet by his predeceſſor.

Gentlemen of the Jury, after theſe obſervations, it will be for you to decide whether I have aſſerted too much in ſaying, that Mr. Adams had interfered without precedent and againſt law---might I not have been juſtified had I gone a little farther? If he did ſo, it was againſt mercy, for the man was hanged.

In this meſſage of the Preſident, there are certificates from certain perſons of the town of Danbury, denying that any man or any family of the name of Robbins had been known for many years *within that town.* There are two or three ſingular circumſtances attending theſe certificates.

Mr. Rawle. This is information ſubſequent to the libel.

Judge Chace. Is not the whole of the Meſſage of the Preſident ſubſequent to the publication charged in the indictment? If ſo, how can it be evidence? Sir, you had not this evidence before you when you wrote that paper.

Mr. Cooper. Sir, the point in queſtion is, the *truth or falſehood* of the charge. I *had* evidence ſufficient before me when I wrote it; ſufficient to ſatisfy my own mind: what if I nave ſtill better evidence now? Is the fact the leſs true becauſe the preſident confirms it? the facts had been publiſhed in almoſt every paper in the United States—they were detailed at length in a publication then before me, and now on the table, by a moſt reſpectable member of the Senate, Mr. Charles Pinckney; which I do not offer in evidence becauſe I know it will be objected to. Beſides this, I have already ſtated that theſe facts are and muſt be to the jury, matters of recent and public notoriety: they are ſo referred to by Mr. Pickering in his own report: they have been given in all the debates in congreſs lately publiſhed, and even now daily publiſhing; and I have a right, as I think, to adduce this meſſage, at leaſt as *additional and corroborative* teſtimony. But the iſſue between us is, TRUE or NOT TRUE; the iſſue is not, had I the *beſt* evidence at the time I wrote or not. Whatever evidence I poſſeſſed at the time I wrote, it is enough for me at this time, to prove that what I wrote was and is true; and the meſſage goes directly to this point.

Gentlemen of the jury, I ſay there are two or three ſingular circumſtances attending theſe certificates. They alſo, are far more liable to this objection than the evidence I have offered; they have been preſſed into the ſervice, long after the publication of Robbin's affidavit that he was a native American. Theſe certificates do not ſtate that no ſuch family as Robbins, was known *in the neighbourhood of Danbury*, as I ſincerely believe may yet be proved. The time of enquiring into this fact is alſo curious: while Robbins was alive, while he claimed (for I again repeat it as a notorious fact, and as a fact referred to by Mr. Pickering himſelf in the firſt page of the report, that he did claim) to be a native American, no enquiry was thought neceſſary: while he could have an opportunity to repel by evidence a counter affidavit, none was made: nay the judge himſelf ſeems to have thrown the conſideration of citizenſhip out of the queſtion—but now, when Robbins has been delivered up and executed, when the enquiry can do him no ſervice, and he is no longer alive to direct or benefit by it, it has become an important queſtion! The induſtry of Mr. Pickering has been exerted to bring us proof from all quarters from Connecticut to Jamaica: the guarded evidence of the wiſe men of Danbury, and the diſintereſted teſtimony of Sir Hyde Parker are ſet in array againſt the claim of Robbins. The Preſident tranſmits this accumulation of irrefragable proof to Congreſs; our Repreſentatives debate upon it; and the citizenſhip of Robbins at length becomes a queſtion moſt material to be aſcertained; if the evidence I have offered is objectionable what ſhall we ſay to Mr. Pickering's authorities? It is well that Congreſs is not ſcrupulous about the admiſſibility of teſtimony: It is well that the evidence contained in the Preſident's meſſage on this part of Robbin's hiſtory, was not ſubjected to as many teſts as I have had to combat.

Gentlemen, I do contend that this is not like a trial on a matter of property, where every technical objection to evidence is admiſſible. That evidence, which does in fact, and ought in reaſon, to decide your political conduct when you are out of that box, is the kind of evidence which ought to decide mine; and it is unreaſonable, in my opinion, on a political trial, to require any other; or to harraſs a defendant by putting him to the enormous trouble and expence of travelling from one end of the continent to the other, to bring forward legal evidence of a fact which nobody doubts beforehand. I do contend, Gentlemen of the Jury, that there are, and may be certain facts of public politics ſufficiently notorious to obviate the neceſſity of legal proof, and whoſe notoriety, is itſelf a matter of fact, which may in all caſes be ſafely left to a Jury to judge of.

The affidavit of Jonathan Robbins ſo often publiſhed, ſo commonly known, whoſe authenticity has never been ſcrupled, though its veracity has lately been denied, is one of thoſe notorious facts that fall within the ſpirit of the preceeding obſervations. While Robbins lived it was uncontradicted by equal evidence; indeed it is ſo ſtill: I had reaſon to give credit to it at the time I wrote, and I believe in the probability of it now.

Gentlemen, I have gone through all the charges; and I am ſatisfied that I have brought in ſupport of my aſſertions, the beſt evidence