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FROM THE VIRGINIA GAZETTE.

Richmond, January 5.

JAMES T. CALLENDER.

Henrico County Court,

January 3.

PRESIDING MAGISTRATES.

DANIEL HYLTON, BOWLER COCKE,
WM. MAYO, RICHD. ADAMS,
TH. WILLIAMSON, HENRY HENLY,
WM. RANDOLPH.

The Court of Henrico County met at 12 o'clock on Monday the 3d January, when the case of James Thompson Callender came before them.

Mr. George Hay rose and began his speech against Callender, and in vindication of the step which had been taken in binding over Callender and Pace, by observing that the case which now was brought before the court, was not only of the greatest importance to himself, as an individual, but to the community at large. Upon the decision which they would give, depended the safety or the destruction of character. It remained for them to decide, whether the torrent of calumny and slander, which now deluged in a manner, as well as disgraced the United States, should be stopped, or whether it should be allowed to flow with impunity in the channel of virulence, carrying with it, and overwhelming all that was moral and virtuous. He quoted a sentence from Governor M'Kean's speech, which recommended to the Legislature of Pennsylvania to take into consideration the present unbounded licentiousness of the press. He said it was advanced by the counsel of Mr. Callender that the step which had been taken with regard to the editors of the Recorder, was an invasion of the liberty of the press; but he trusted he should prove to the satisfaction of the court, that to protect the freedom of the press, and not to lay any check upon it, was both his zealous desire and most anxious wish. He was actuated upon the present occasion, by motives the most natural and honorable to human mind, the protection of his own feelings and those of his family. Some people he remarked, were such philosophers, or would conceal their thoughts so well, as to bear, with every symptom of indifference, all the attacks which malice or calumny could attempt against them. He owned this was not his situation, that he both felt and was wounded by the slanders of the Recorder. That he was represented by the unprincipled Editor of that paper, as a murderer and an assassin. It published for eight days successively, an opportunity for depriving Callender of existence; and it threatened in the future numbers to rip open, and tear asunder both his professional, his public, and his private character. So far from his being correct, he protested his meeting with Callender was entirely the effect of accident; and that he was solely restrained from punishing him as he deserved, with the apprehension that he should have given him a fatal blow. He argued that if ever the statute under which Callender was bound over, should be acted upon, that there could be no case more proper than the present. Callender Mr. Hay said, was the most unprincipled man in existence; that he was known to the court, known to the numerous audience there present known in short, not only to the city of Richmond, but in every corner of the Union where party prevailed, to be an infamous and notorious libeller. That his whole pleasure consisted, and all his days had been

devoted for the sole purpose of destroying the good reputation of those, against whom he conceived the smallest dislike. This was well known to the court. Three years had not been elapsed since he was publicly convicted by a jury, of a most slanderous libel. It was fresh in the memories of most present, the disturbance and discontent that this same libeller had occasioned in Richmond. Callender had then very nearly brought upon the inhabitants of this town a disgrace that would have plunged into misery, many an inoffensive citizen; he had in short excited the inhabitants to a civil war. What the good fortune of the country had then warded off, might yet happen, if he were permitted to pursue without restraint the abandoned course he was lately following. Were the court to pronounce the illegality of the commitment, Mr. Hay predicted that the vengeance of the community would sooner or later overtake the Editors of the Recorder; and that they would bitterly lament that their hands had not been tied up from committing those deeds, which would terminate in their personal destruction. He made use of that well known and forcible expression of Cato's son.

None, he said, declaimed more loudly about this supposed invasion of the liberty of the press than the libeller Callender; to make that impression still stronger upon the public, he himself went to jail, and the Recorder came forth clad in deep mourning—May that mourning long continue, said Mr. Hay, and, may the Editors of the Recorder mourn forever in sack cloth and ashes for those crimes which they have committed in the malevolence and wantonness of their hearts, and for those interruptions, which they have occasioned to the domestic happiness of families and of individuals. Callender's clamours about the liberty of the press, he said, reminded him of the Italian murderer, who after imbruing his hands in the blood of a neighbor, had sought shelter in one of those sanctuaries which the superstition of the Roman Catholic religion affords in such cases, but being dragged forth by the enraged relations of the deceased, he was the first to bawl about the horrible crime of sacrilege, and the daring audacity of those who had violated by their impure steps the sacred shrine of the altar.

Mr. Hay said, he should have preferred had the counsel of Callender confined their reasoning to the laws of the state of Virginia, without referring to the precedents to be found in the several courts of Great-Britain; but since they had gone abroad in search of law to support their cause, he would follow them there; and argue the cause upon their own grounds.

[He then cited a number of statutes.]

Mr. Hay next read a case from the second edition of the book known by the name of Modern Reports, that was nearly of the same nature of the present. A person who had the répute of a libeller had been obliged to give security to keep the peace, and upon his afterwards publishing certain words which were found to be libellous, his recognizance was forfeited. He thence inferred, that there could not remain the smallest doubt of the propriety of binding over Callender and Pace. That they were men of notorious bad fame. He appealed to the house whether there was one single individual who would come forward and deny this assertion. All were silent he said, they were convinced of the truth of what he stated, and they must also be convinced if Callender was let loose that he would riot more

than ever in the field of calumny.— That the peace of the community would be broken; that the society of the state of Virginia would exhibit a picture of wild disorder, and that the harmony and domestic happiness of private individuals would be interrupted. He declared that when he before stated that the editors themselves would repent if their hands were not bound up from slander, he did not allude to any designs that might be concerted by him for their destruction, but that it would happen that the general indignation would be so excited against them, that vengeance would be hurled on their heads. This, he said, Callender himself was sensible of, and knew it so well, that according to his own confession, he was under the necessity of making a clandestine and precipitate retreat into jail in order to avoid the marks of that public contempt which he had so justly incurred. All parties and all men, said Mr. Hay, however they may differ in their political sentiments, agree in holding Callender in abhorrence. They agree in considering him the vilest of mortals, as a slanderer, at the mention of whose name humanity shudders. What character of respectability does he not dare to calumniate? One he stigmatizes as an assassin, another he charges as a perjured villain. Not a single Recorder has appeared which has not contained some infamous libel, for which both Callender & Pace, were they indicted and tried, would suffer both fine and imprisonment. This is forsooth the mode of punishment which their counsel advise. I am not under the necessity to declare the reasons which have caused me to adopt the mode of binding them over in preference to a prosecution by indictment or civil suit. But for the satisfaction of the court I will freely and candidly confess my motives. Were I to have prosecuted Callender by either of these methods, or both I should, during the period of eighteen months, or perhaps two years, have had all the calumny and venomous slander heaped upon me which the infamous pen of that libeller could have produced. What satisfaction would the fine and imprisonment of Callender at the laps of two years be to me, after I had received all the injury and borne all the abuse which he was capable of inflicting? Individuals are not to wait the tardy and uncertain issue of a law suit and in the meantime have their character and every action of their life, public and private, calumniated, perverted and abused.— Were Callender's pen now set loose, I would be the object of his foul and inveterate rancour for months to come. This he has declared. I do not speak from suspicion, but from the words of the Recorder. He has made no secret of his intentions; he has promised that he would expose my conduct, both public & private, and to use his own virulent expressions, that he was in possession of documents the most blasting and damnatory to my reputation. These documents, by Callender's account, related to a charge of suppressing evidence, of which he has accused me, and by which act Doctor Read has sustained the greatest injury. It happens, however by the most singular coincidence of circumstances, that upon the very day, the 22d of December, when Callender was writing this libel on my character, that Doctor Read, the gentleman whom Callender asserts became the victim of my deceitful conduct, was employed in writing me a letter, requesting me to become the guardian and instructor of his wife's son.— Mr. Hay then read Doctor Read's letter. This gentleman, therefore,

who, by Callender's statement, received the greatest injustice from my hands, had singled me out from among all his acquaintances in Richmond, who entertain the same sentiments with regard to politics with himself, and they are not a few in number, in order to take the fatherly charge of this young man, in order to watch over him during that period, these four important years which the letter mentions, in which youth are most apt to be misled and to err from the path of rectitude.

Callender's counsel, the second on my left hand, (Mr. Rind) expressed his fears, and he declared that if the doctrine advanced should be found to be law, that the liberty of the press was gone, gone forever.— He attempted to intimidate the magistrates, I trust not intentionally by picturing to them in the most dreadful manner, the consequences that would ensue from preventing the miscreant Callender from propagating his slander; he told them, that if a magistrate in the city of London dared to commit a printer to jail for not giving security in a case such as this, that his house would in a few hours be pulled about his ears, and that probably his life would even pay for his temerity. But I trust were this statement of Mr. Rind's even correct, that the court now sitting would not form their judgment from the caprice of a London mob. The laws of England, and the decisions of the courts in that kingdom, are not to be determined by the whims or the actions of men heated by fury, and led on by ignorance.

But the magistrates of a monarchical country and those under a republic are very differently situated. Those of the latter have a much greater discretionary power allowed them, than those of the former—in a monarchy such as Britain every action of the civil magistrates watched by the people with the eye of suspicion.— They know the government are eager to lay hold of every opportunity, that may offer for an usurpation of power, and they are therefore justly jealous of the most trifling invasion of their rights. The smallest deviation from the paths of legal rectitude in an English magistrate is severely punished. There occurred an instance about thirty years since.— I do not precisely at this moment recollect the particulars; but I think damages to the amount of 10,000 sterling were recovered for the granting of an illegal warrant by one of the secretaries of state. In a monarchy the people ought always to be afraid and to guard over the conduct of the magistrate with the watchful eye of jealous suspicion.— In a republic the reverse is the case, there the magistrate feels a dread of incurring the displeasure of the people, there are instances certainly to be found where magistrates in this country through ignorance have erred, I have known such instances myself; although I do not believe in the state of Virginia a single case can be produced.

Here they are timid to an extreme. They never venture upon the most trivial act of authority without being first certain that they are treading in the path of Law. Mr. Foster the Mayor of this city is a striking instance of this extreme caution and timidity of giving offence to the people. When I applied to him for a warrant against Callender, although both Mr. M'Rae and myself assured him of the legality of granting it, & explained to him the law on that head, yet he was not satisfied; he was afraid of exceeding the limits of his authority. The magistrate who at last granted it was equally scrupulous at first, he read the law over & over until he was confident he was