

in his elegant declaration of yesterday; little almost nothing, remains for me to say on that subject. As to the law of the case, this has been fully and satisfactorily stated by Mr. Marshall. Permit me however to make a few observations on the necessity of the preservation of the liberty of the press for the protection of those blessings which we now enjoy, and on the important question, whether the press, that great palladium of the rights of Americans, is to be free; or whether it is to yield & bow to the earth before the vindictive spirit of a single individual. In Britain, in Great Britain, that kingdom where monarchy, towering aloft, sways the iron rod of despotism over the trembling citizen, and where aristocracy, stalking in the grim and fallen pride of tyranny, holds in subjection the inoffensive and industrious labourer: In that kingdom, I say, were a measure such as the present, fought for, much less executed, the daring agent in the business would atone for his rashness in a manner that would awfully display the danger, and the inevitable fate, that must always await those who dare trample upon the sacred sanctuary of the press. Immediate destruction would be hurled on his head, and the curses of his country would be the sole mourners of his death. Indeed I am astonished that this has not been the fortune of the person now soliciting the court to enchain the press. Is it possible that here, where liberty truly exists;—where freedom flourishes, and where no voice is known but that of liberty; it is possible, I say, that it should be seriously proposed, nay almost commanded, that the press should receive those fetters, which terror alone produces and tyranny inflicts?—But please the court, by whom is this extraordinary, and I will affirm, unwarrantable position made? By a man enveloped in the cloud of passion, and eager to gratify his vengeance.—By a man who, not three years since appeared as the champion of liberty, zealous to protect from the impure touch of aristocracy, that venerable fabric which he now seeks to destroy! Where then was the bad fame of Callender—of that Callender, at whose name, we are now told, that humanity shudders, and justice frowns with indignation? But let me tell that gentleman, the then advocate of Callender, that at an encroachment on the press, liberty indeed, frowns terrible indignation on those who attack her sacred palladium.

Mr. Hay then interrupted Mr. Rind, and said he did not appear in 1798 the advocate of Callender, but to defend the freedom of the press. "And so do I now (replied Mr. Rind) I do not come here as the advocate of Callender alone; I come here to ward off from the sacred guardian of our rights; those dangers which at present threaten it; and I say again, by that man, by Mr. Hay, who in 1798 appeared as I now do, to defend Callender and to defend the press. Callender and the freedom of the press were then inseparable—they are now inseparable. But I ask Mr. Hay where then was the bad fame of Callender? where then was his notorious name? although at that period he was truly a libeller—albeit he poured torrents of slander and darts of calumny in its bitterest form against the actions of the immortal Washington! Mr. Hay was silent. His tender feelings were not wounded. He did not on that occasion come forward, as he now does, to complain of Callender; he did not then solicit the court to bind up Callender's hands, and prevent him from abusing the name of Washington, the father and saviour of this country; that sacred name which will be recorded, deeply recorded, in the heart of every American, when the names of Hay and Callender will be no longer remembered." Mr. Hay here again interrupted Mr. Rind, by saying, that these words although they might be true, yet they were not very polite; but the court ordered Mr. Rind to proceed. "Yes, calumny was then exhibited in its blackest form, indeed!—But Mr. Hay was silent. Those feelings of his, which are roused at present to vindictive revenge, felt not the smart of Callender's pen, nor were they ruffled by the abuse, the wanton abuse, which was heaped on Washington. The foul pages of the Prospect before Us, and the polluted columns of the Examiner, which teemed with the Billingsgate of Callender, had not the smallest effect upon him." Mr. Rind taking up the Prospect before Us, read the following passage:—The following instance out of many, shews in what way Mr. Washington transacted business. On a question that was to come before the cabinet, he previously asked the opinion of Mr. Jefferson, and after hearing it, observed that his own sentiments had been the same; but by the bye (remarked Mr. Rind) how Callender came by the informant of this anecdote, is more than I know. "When the council met, Hamilton and Knox voted, as usual, upon one side, and Jefferson on the other. "Gentlemen please it to yourselves," were the words of Mr. Washington; and the point was carried by the majority. The extravagant popularity possessed by this citizen, reflects the utmost ridicule on the

discernment of America. He approved of the funding system, the assumption, the national bank, and, in contradiction to his own solemn promise, he authorized the robbery and ruin of the remnants of his army." [Prospect before Us, part 1, page 17.] "Such then was the language," continued Mr. Rind, "used by this same Callender when Mr. Hay appeared as his counsel? for I say again Callender and the press were inseparable, and when Mr. Hay appeared to defend the press, he appeared for Callender. They are now inseparable. Can Mr. Hay separate Callender from the press?—No: like virgin delicacy, the press should be approached with reverential awe: like Caesar's wife, it should not even be suspected; and he who would dare to say the press should be restrained, should be doomed to instant destruction. It is not Callender Mr. Hay wishes to attack; it is the press. Had Callender and Pace not the command of the press; were they not the publishers of the Recorder, they would be beneath his notice, nor would so much of the time of the court yesterday and to day have been occupied by Mr. Hay. It is the press he seeks to wreck his vengeance upon and not Callender. I do not say that Mr. Hay does this intentionally; but if heated by passion and vindictive through revenge, he attacks the press, it amounts to the same purpose. He asks if Callender be a man of good fame. He says, is not Callender the object of universal execration? Is he not a notorious libeller? But I ask him, has he proved that Callender is a man of bad fame; has he proved it before a jury of his peers? No. Must Callender therefore be an object of universal execration; must Callender be a notorious libeller, because he has published a few observations which have displeased Mr. Hay; which have hurt the tenderness of his feelings? No. But the man who attacks the freedom of the press, ought indeed to be the object of universal execration. Must the blessed liberty of America and our glorious bill of rights give way and be laid aside to gratify the pleasure or the caprice of a single individual? God forbid! May that day never arrive, when it shall be said that in Virginia, in that state where liberty first rose, arrayed in all her glory, that the passions of one man were able to defeat and to batter down the liberty of the press.

"Mr. Hay yesterday read to the court, the elegant definition of the liberty of the press, which he has given in Hortentius; but with all due deference to Mr. Hay, there are definitions of the liberty of the press which please me better. The definition which Blackstone has given, in my humble opinion is superior. It admits of a much wider interpretation, and seems to convey a clearer idea of those extensive limits that do not confine but give full scope to the spirit of the press. "The liberty of the press (says Blackstone) is indeed essential to the nature of a free state, but this consists in laying no previous restraint upon publications, and not in freedom, from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity." The sentiments of Junius on this subject also, deserves notice; it has been lately reported, I do not know upon what authority, that the writer of Junius was the celebrated counsellor Dunning, an English lawyer of the first eminence, justly distinguished for talents and legal knowledge, but whether the letters of Junius were written by Dunning or not, they will always be esteemed not only for the pure & chaste elegance of style which they exhibit, but for those opinions of liberty and the freedom of the press which they inculcate. Junius in his preface thus expresses himself, "good men, to whom alone I address myself, appear to me to consult this piety as little as their judgment and experience, when they admit the great and essential advantages accruing to society from the freedom of the press, yet indulge themselves in peevish or passionate exclamations against the abuses of it."—This (said Mr. Rind) I am afraid is too much the case with the gentleman present. "Betraying an unreasonable expectation of benefits pure and entire from any human institution, they in effect arraign the goodness of providence, and confess that they are dissatisfied with the common lot of humanity. In the present instance, they really create in their own minds, or greatly exaggerate the evils they complain of. The laws of England provide as effectually as any human laws can do for the protection of the subject, in his reputation, as well as in his person and property. If the character of private men are insulted and injured, a double remedy is open to them by action and indictment. If through indolence, false shame, or indifference, they will not appeal to the laws of their country, they fail in their duty to society and are unjust to themselves. If, from an unwarrantable distrust of the integrity of juries, the

would wish to obtain justice by any mode of proceeding more summary than a trial by their peers, I do not scruple to affirm, that they are in effect greater enemies to themselves than to the libeller they prosecute."

"Here let me pause! Were ever this language of Junius applicable to any person, it is to that gentleman, who now solicits the court to depart from the usual and proper road of justice, and to adopt a mode more summary than a trial by jury, in order to gratify his private feelings? To use the words of Junius, I do not scruple to affirm that Mr. Hay is a greater enemy to himself, than either to Callender or to Pace. He has said that the execrations of society follow the Editors of the Recorder; but I say, that the execrations of mankind will forever follow him; he has set out, and is now galloping on the high road to political perdition. He has told the court that the Recorder came out in mourning and expressed his wish, that it should mourn forever in sackcloth and ashes;—but let him mourn forever; he shall mourn forever, nor will ever a ray of comfort repose in his breast, after this daring attack which he has made on the sacred palladium of his country."

"This is not the cause of party, I belong to no party, I am not a federalist; I held in abhorrence the measures of the last administration, and I hold them still in abhorrence; I am not a democrat; the democrats say that I am a deserter from them, because I am not inclined to go the same lengths with them and to give my approbation to all their foolish schemes and fancies. There are many of the measures of the present administration, which I disapprove of, and shall always condemn. My country and the cause of freedom alone interest me; these shall always be the object nearest my heart; and in defence of them I this day appear. For to use a forcible expression of Callender, which with fear and trembling I now repeat; were that damnable and most blasphemous doctrine, which Mr. Hay wishes to impose upon the court, sustained, the liberty of America and the freedom of the press would be gone forever. We would be sunk from that fair prospect which we now exhibit to the world, into a vale of dark and gloomy despondence, shaded with the clouds of prejudice and ignorance. The ambitious and the immoral would rise up over us, and the press, in place of exposing truth and detecting falsehood, would be made the instrument of the base and the worthless. I shall request the attention of the court again to the observations of Junius on this subject.—With regard to strictures upon the characters of men in office, and the measures of government, the case is a little different. A considerable latitude must be allowed in the discussion of public affairs, or the liberty of the press will be of no benefit to society. As the indulgence of private malice and personal slander should be checked and repressed by every legal means, to a constant examination into the characters and conduct of ministers and magistrates should be equally promoted and encouraged. They who conceive that our newspapers are no restraint upon bad men, or the impediment to the execution of bad measures, know nothing of this country. In that state of abandoned servility and prostitution, to which the undue influence of the crown has reduced the other branches of the legislature, our ministers and magistrates have in reality little punishment to fear, and few difficulties to contend with beyond the censure of the press, and the spirit of resistance it excites among the people."

"In the letter which Junius addressed to Lord Mansfield, there are several pointed observations to the same purpose:

"The doctrine you constantly delivered in cases of libel (says Junius) is another powerful evidence of a settled plan to contract the legal power of juries, and to draw questions, inseparable from fact, within the arbitrium of the court. Here, my Lord, you have fortune on your side. When you invade the province of the jury in a matter of libel, you in effect attack the liberty of the press, and with a single stroke wound two of your greatest enemies. In some instances you have succeeded, because juries are too often ignorant of their own rights, and too apt to be awed by the authority of a chief justice."

But there is no publication or no arguments which I can advance that shews the danger of restraining the liberty of the press more forcibly than the resolutions of the General Assembly of this state, which were drawn up by Mr. Madison. One of these resolutions contains the following terms:

"That the General Assembly doth particularly protest against the palpable and alarming infractions of the constitution, in the two late cases of the "Alien and Sedition Laws," passed at the last session of Congress; the first of which exercises a power no where delegated to the federal government, and which by uniting legis-

lative and judicial powers to those of executive, subverts the general principles of a free government, as well as the particular organization, and positive provisions of the federal constitution; and the other of which acts exercises in like manner, a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power which more than any other, ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Mr. Hay will certainly not deny that Mr. Madison is authority, nor do I presume that he will dispute the sentiments of the American Envoys on this subject, who were sent to France by President Adams.—They have declared their opinion on the liberty of the press, enjoyed in this country in the most explicit manner, in their letter addressed to Talleyrand.—"The genius of the constitution (says Messrs. Pinckney, Marshall and Gerry) and the opinion of the people of the United States cannot be overruled by those who administer the government. Among those principles deemed sacred in America; among those sacred rights considered as forming the bulwark of their liberty, which the government contemplates with awful reverence and would approach only with the most cautious circumspection, there is no one, of which the importance is more deeply impressed on the public mind, than the liberty of the press: That this liberty is often carried to excess; that it has sometimes degenerated into licentiousness, is seen and lamented; but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be, which might correct without infringing the press, they have never yet been devised in America. No regulations exist which enable the government to suppress whatever calumnies or invectives, any individual may choose to offer to the public eye; or to punish such calumnies and invectives otherwise than by a legal prosecution in courts which are alike open to all who consider themselves injured."

Here again let me pause; the genius of the constitution and the opinions of the people of the United States (say the envoys) cannot be overruled by those who administer the government. But yet they are to be overruled by Mr. Hay. The feelings of this gentleman, it seems are of more consequence than either the genius of the constitution, or the opinions of the people. The envoys tell the French Minister that no regulations exist in America, which enable the government to suppress whatever calumnies or invectives, any individual may choose to offer to the public eye, or to punish such calumnies and invectives otherwise than by a legal prosecution. But Mr. Hay not only tells you otherwise, but commands a different procedure, and has in fact already contrary to the genius of our constitution and the bill of rights, arrested the liberty of the press. A public printer at his request and to gratify his resentment lies at this moment within the walls of your jail. He told the court yesterday that the state of Virginia furnishes not an instance of oppression in a magistrate, but the other day proves the contrary. Mr. Hay asks where would be the mighty mischief if libellers were taken up; he says, there would be nothing but peace—yes, there would be a dreadful silent peace, like that which now governs the press under the First Consul. This would be the mournful state of the country, were his doctrine adopted. The only freedom which could be found in America would be within the walls of a jail. He tells us, that all the cry about the liberty of the press being invaded, comes from Callender, not so, though Callender were silent, and imprisoned as he now is within the walls of a jail; the groans of the press would be heard through every state in the Union, yes, they would be heard, and echoed to, by every man, who feels the spirit of freedom, save Mr. Hay and his counsel.

The court now hears them, I know they hear them; and every individual present, but that unhappy man whom passion and vindictive revenge have blinded and hurried him to commit a deed for which he will ever bitterly lament. I have said that the execrations of mankind will follow him; yes they will follow him, and even pursue his memory, unless he will retract, and convinced of his error, make the fullest and most ample apology for his conduct; but alas! this I despair of; for he has told the court, that he never would be convinced, but that he was acting properly; I know that he will never be convinced. I know his passion and his revenge are such as will forever shut his ears to the voice of reason."

Mr. Hay has told the court that nothing incompatible with the bill of rights or constitution can exist here; so say I. But Mr. Hay has done an action which he now orders the court to approve of, directly in opposition to the constitution, and in the face of the bill of rights. He has thrown a public printer into jail, whom he charges; as a libeller because