THE NORTH-CAROLINA MINERVA, AND FAYETTEVILLE ADVERTISER.

FAYETTEVILLE:---PUBLISHED EVERY SATURDAY BY HODGE AND BOYLAN.

Vol. IV. | SATURDAY, MARCH 23, 1799. | NUMB. 157.

[The following REPORT was obligingly sent us by the HON. WM. BARRY GROVE, esq. It merits a careful perusal—and in the words of Mr. G. we "hope the sound argument and reason it contains will satisfy *rational men* of all parties, that the laws are necessary, constitutional and wise, and that much of the *fuss* which has been made about them, has sprung from a false jealousy of the federal government, or something worse."]

The Committee, *to whom were referred the Memorials of sundry inhabitants of the counties of Suffolk and Queen, in the state of New-York, of Essex county in New-Jersey; of the counties of Philadelphia, York, Northampton, Mifflin, Dauphin, Washington, and Cumberland, in Pennsylvania; and of the county of Amelia, in Virginia, complaining of the act, intituled "An act concerning aliens," and other late acts of Congress, submit the following*

REPORT,—

IT is the professed object of these petitions to solicit a repeal of two acts passed during the last session of Congress, the one "An act concerning aliens," the other "An act, in addition to An act for the punishment of certain crimes against the United States," on the ground of their being unconstitutional, oppressive, and impolitic.

The Committee cannot, however, forbear to notice, that the principal measures hitherto adopted for repelling the aggressions and insults of France have not escaped animadversion.

Complaints are particularly directed against the laws providing a navy—for augmenting the army—authorizing a provisional army, and corps of volunteers—for laying a duty on stamped vellum, parchment, and paper—assessing and collecting direct taxes;—and authorising loans for the public service.

With these topics of complaint, in some of the petitions, are intermingled invectives against the policy of the government from an early period, and insinuations derogatory to the character of the Legislature, and of the Administration.

While the Committee regret that the public councils should ever be invited to listen to other than expressions of respect, they trust that they have impartially considered the questions referred to their examination, and formed their opinions on a just appreciation of their merits, with a due regard to the authority of government, and the dispassionate judgment of the American people.

The act concerning aliens, and the act in addition to the act, intituled an Act for the punishment of certain crimes, shall be first considered.

Their *constitutionality* is impeached. It is contended, that Congress have no power to pass a law for removing aliens.

To this it is answered, that the asylum given by a nation to Foreigners is mere matter of favor, resumable at the public will. On this point, abundant authorities might be adduced, but the common practice of nations attests the principle.

The right of removing aliens, as an incident to the power of war and peace, according to the theory of the Constitution, belongs to the government of the United States. By the 4th section of the 4th article of the Constitution, Congress is required to protect each state from invasion, and is vested by the 8th section of the 5th article, with power to make all laws, which shall be proper to carry into effect all powers vested by the Constitution in the government of the United States, or in any department, or officer thereof; and to remove from the country, in times of hostility, dangerous aliens, who may be employed in preparing the way for invasion, is a measure necessary for the purpose of preventing invasion, and of course, a measure that Congress is empowered to adopt.

The act is said to be unconstitutional, because to remove aliens, is a direct breach of the Constitution, which provides, "by the 9th section of the 1st article, that the migration, or importation of such persons as any of the states shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808."

To this, it is answered, first, that this section in the Constitution was enacted solely in order to prevent Congress from prohibiting, until after a fit period, the importation of SLAVES, which appears from two considerations. First, that the restriction is confined to the states which were in existence at the time of establishing the Constitution; and secondly, that it is to continue only twenty years, for neither of which modifications could there have been the least reason, had the restriction been intended to apply, not to slaves particularly, but to all emigrants in general.

Secondly, It is answered, that to prevent emigration in general, is a very different thing from sending off, after their arrival, such emigrants as might abuse the indulgence, by rendering themselves dangerous to the peace or safety of the country, and that if the Constitution, in this particular should be so construed, it would prevent Congress from driving a body of armed men from the country, who might land with views evidently hostile.

Thirdly, that as the Constitution has given to the states no power, to remove aliens, during the period of the limitation under consideration, in the mean time on the construction assumed, there would be no authority in the country, empowered to send away dangerous aliens which cannot be admitted; and that on a supposition the aforesaid restrictive clause included every description of emigrants, the different sections must receive such a construction as shall reconcile them with each other; and according to a fair interpretation of the different parts of the Constitution, the section cannot be considered as restrictive on the power of Congress to send away dangerous foreigners in times of threatened or actual hostility. And though the United States at the time of passing this act, were not in a state of declared war, they were in a state of partial hostility, and had the power, by law, to provide, as by this act they have done, for removing dangerous aliens.

This law is said to violate that part of the Constitution which provides that the trial of all crimes, except in cases of impeachment shall be by jury; whereas this act invests the President with power to send away aliens on his own suspicion, and thus to inflict punishment without trial by jury.

It is answered in the first place, that the Constitution was made for CITIZENS, not for ALIENS, who of consequence have no RIGHTS under it, but remain in the country, and enjoy the benefit of the laws, not as matter of right, but merely as matter of favour and permission, which favour and permission may be withdrawn, whenever the government charged with the general welfare shall judge their further continuance dangerous.

It is answered in the second place, that the provisions in the Constitution relative to presentment and trial of offences by juries, do not apply to the revocation of an asylum given to aliens. Those provisions solely respect crimes, and the alien may be removed without having committed any offence, merely from motives of policy, or security. The citizen, being a member of the society, has a right to remain in the country, of which he cannot be disfranchised, except for offences first ascertained, on presentment and trial by jury.

It is answered thirdly, that the removal of aliens, though it may be inconvenient to them, cannot be considered as a punishment inflicted for an offence, but, as before remarked, merely the removal from motives of general safety, of an indulgence which there is danger of their abusing, and which we are in no manner bound to grant or continue.

The "Act in addition to an act, intituled an act for the punishment of certain crimes against the United States," commonly called the sedition act, contains provisions of a twofold nature; first against seditious acts, and, second, against libellous and seditious writings. The first have never been complained of, nor has any objection been made to its validity: The objection applies solely to the second; and on the ground, in the first place, that Congress have no power by the Constitution to pass any act for punishing libels, no such power being expresly given, and all powers not given to Congress, being reserved to the states respectively, or the people thereof.

To this objection, it is answered, that a law, to punish false, scandalous and malicious writings against the government, with intent to stir up sedition, is a law necessary for carrying into effect the power vested by the Constitution in the government of the United States, and in the departments and officers thereof, and consequently such a law as Congress may pass; because the direct tendency of such writings is to obstruct the acts of the government by exciting opposition to them, to endanger its existence by rendering it odious and contemptible in the eyes of the people, and to produce seditious combinations against the laws, the power to punish which has never been questioned: because it would be manifestly absurd to suppose that a government might punish sedition, and yet be void of power to prevent it by punishing those acts, which plainly and necessarily lead to it: And because under the general power to make all laws proper and necessary for carrying into effect the powers vested by the Constitution in the government of the United States, Congress has passed many laws for which no express provision can be found in the constitution, and the constitutionality of which has never been questioned; such as the first section of the act now under consideration, for punishing seditious combinations; the act passed during the present session, for punishing persons who, without authority from the government, shall carry on any correspondence relative to foreign affairs with any foreign government;—the act for the punishment of certain crimes against the United States, which defines and punishes misprision of treason; the 10th and 12th sections, which declare the punishment of accessaries to piracy, and of persons who shall confederate to become pirates themselves, or to induce others to become so;—the 15th section, which inflicts a penalty on those who steal or falsify the record of any court of the United States; the 18th and 21st sections, which provide for the punishment of persons committing perjury in any court of the United States, or attempting to bribe any of their judges; the 22d section, which punishes those who obstruct or resist the process of any court of the United States, and the 23d against rescuing offenders who have been convicted of any capital offence before those courts; provisions, none of which are expresly authorised; but which have been considered as constitutional, because they are necessary and proper for carrying into effect certain powers expresly given to Congress.

It is objected to this act, in the second place, that it is expresly contrary to that part of the constitution, which declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the liberty of the press." The act in question is said to be an "abridgement of the liberty of the press," and therefore unconstitutional.

To this it is answered, in the first place, that the liberty of the press consists not in a license for every man to publish what he pleases, without being liable to punishment if he should abuse this license to the injury of others, but in a permission to publish, without previous restraint, whatever he may think proper, being answerable to the public and individuals, for any abuse of this permission to their prejudice; in like manner as the liberty of speech does not authorize a man to speak malicious slanders against his neighbour, nor the liberty of action justify him in going by violence into another man's house, or in assaulting any person whom he may meet in the streets. In the several states the liberty of the press has always been understood in this manner, and no other; and the constitution of every state, which has been framed and adopted since the declaration of independence, asserts "the liberty of the press," while in several, if not all, their laws provide for the punishment of libellous publications, which would be a manifest absurdity and contradiction, if the liberty of the press meant to publish any and every thing, without being amenable to the laws for the abuse of this license. According to this just, legal, and universally admitted definition of "the liberty of the press," a law to restrain its licentiousness, in publishing false, scandalous, and malicious libels against the government, cannot be considered as "an abridgement" of its "liberty."

It is answered, in the second place, that the liberty of the press did never extend, according to the laws of any state, or of the United States, or of England, from whence our laws are derived, to the publication of false, scandalous and malicious writings against the government, written or published with intent to do mischief, such publications being unlawful, and punishable in every state; from whence it follows, undeniably, that a law, to punish seditious and malicious publications, is not an abridgement of "the liberty of the press," for it would be a manifest absurdity to say, that a man's liberty was abridged by punishing him for doing that which he never had a liberty to do.

It is answered thirdly, that the act in question cannot be unconstitutional, because it makes nothing penal that was not penal before, and gives no new powers to the court, but is merely declaratory of the common law, and useful for rendering that law more generally known, and more easily understood. This cannot be denied, if it be admitted, as it must be, that false, scandalous, and malicious libels against the government of the country, published with intent to do mischief, are punishable by the common law; for by the 2d section of the 3d article of the constitution, the judicial power of the United States is expresly extended to all offences arising under the constitution. By the constitution, the government of the United States is established, for many important objects, as *the government of the country*; and libels against that government, therefore, are offences arising under the constitution, and consequently are punishable at common law by the courts of the United States. The act, indeed, is so far from having *extended* the law, and the power of the court, that it has abridged both, and has enlarged instead of abridging the "liberty of the