RALEIGH REGISTER,

AND

North-Carolina State Gazette.

Ours are the plans of fair delightful Peace,
Unwarp'd by party rage, to live like Brothers.

VOL. X. THURSDAY, MAY 11, 1809. No. 503

By Authority.

LAWS OF THE UNITED STATES.

AN ACT authorising an augmentation of the Marine Corps.

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he is hereby authorised to cause the Marine Corps in the service of the United States to be augmented, by the appointment and enlistment of not exceeding one major, two captains, two first lieutenants, one hundred and eighty-five corporals, and five hundred and ninety-four privates, who shall be respectively allowed the same pay, bounty, clothing and rations, and shall be employed under the same rules and regulations to which the said Marine Corps are or shall be entitled and subject.

Sec. 2. *And be it further enacted*, That from and after the passing of this act, all the enlistments in the said corps shall be for the term of five years, unless sooner discharged, any law to the contrary notwithstanding.

J. B VARNUM,
Speaker of the House of Representatives.
JN: MILLEDGE,
President of the Senate pro tempore.
March 3, 1809.—APPROVED,
TH. JEFFERSON.

AN ACT supplemental to the act, entitled "An act for establishing trading-houses with the Indian tribes."

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a sum not exceeding forty thousand dollars, in addition to the sum heretofore appropriated for the purpose of carrying on trade and intercourse with the Indian nations, in the manner prescribed by the act, entitled, "An act for establishing trading-houses with the Indian tribes," be, and the same is hereby appropriated, to be paid out of any monies in the treasury of the United States not otherwise appropriated.

Sec. 2. *And be it further enacted*, That the sum of eight hundred dollars be, and the same is hereby appropriated out of any monies in the treasury of the United States not otherwise appropriated, for an additional clerk in the office of the superintendant of Indian trade.

Sec. 3. *And be it further enacted*, That the proviso to the twelfth section of the act, entitled, "An act for establishing trading-houses with the Indian tribes," be, and the same is hereby repealed.

Sec. 4. *And be it further enacted*, That the act to which this is a supplement, and also this act, shall, from and after the twenty-first day of April next, commence and be continued in force for and during the term of three years and no longer.

J. B. VARNUM,
Speaker of the House of Representatives.
JN. MILLEDGE,
President of the Senate pro tempore.
March 3, 1809 —APPROVED,
TH: JEFFERSON.

AN ACT to extend to Amos Whittmore and William Whittmore, junior, the patent right to a machine for manufacturing Cotton and Wool Cards.

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the privileges and benefits granted to Amos Whittemore, of the state of Massachusetts, in consideration of a machine invented by him for the manufacture of Cotton and Wool Cards in the United States, by a patent issued from the Department of State, and bearing date the fifth day of June, one thousand seven hundred and ninety-seven, be, and the same are hereby extended to Amos Whittemore and William Whittemore, junior, as joint proprietors of the said machine, for and during the term of fourteen years, to commence on the fifth day of June, in the year of our Lord one thousand eight hundred and eleven; any thing in the act, entituled "An act to promote the progress of useful arts; and to repeal the act heretofore made for that purpose," to the contrary notwithstanding.

J. B VARNUM,
Speaker of the House of Representatives.
JN: MILLEDGE,
President of the Senate pro tempore,
March 3, 1809—*Approved*,
TH: JEFFERSON.

AN ACT making a further appropriation towards completing the two wings of the Capitol at the City of Washington, and for other purposes.

BE *it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the following sums of money be, and the same are hereby appropriated, to be applied under the direction of the United States, that is to say:

For improvement and repairs of the House of Representatives, six thousand dollars:

For completing work in the interior of the North Wing, comprising the Senate Chamber, Court Room, &c. twenty thousand dollars.

For completing the stair-case, and providing temporary and adequate accommodations for the Library, in the room now used for that purpose, and in the one in which the Senate now sit, five thousand dollars:

For improvements and repairs of the President's House and Square, including a carriage-house, twelve thousand dollars:

Sec. 2. *And be it further enacted*, That the several sums of money hereby appropriated shall be paid out of any money in the Treasury not otherwise appropriated.

J. B. VARNUM,
Speaker of the House of Representatives.
JN: MILLEDGE,
President of the Senate, pro tempore.
March 3, 1809—Approved,
TH: JEFFERSON.

AN ACT freeing from postage all letters and packets to Thomas Jefferson.

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*. That all letters and packets to Thomas Jefferson, now President of the United States, after the expiration of his term of office and during his life, shall be carried by the mail, free of postage.

J. B. VARNUM,
Speaker of the House of Representatives,
JN. MILLEDGE,
President of the Senate pro tempore.
February 28, 1809—*Approved*,
TH: JEFFERSON.

AN ACT for the relief of Jacob Barnitz.

BE *it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there be allowed to Jacob Barnitz, formerly Ensign in Captain Christian Stoke's company, in Colonel Michael Swope's battalion of the Pennsylvania flying-camp, the sum of one thousand dollars, on account of sufferings, and expences in procuring medical and surgical aid, incurred by wounds received in the revolutionary war with Great-Britain, and that the same be paid to him out of any money remaining in the Treasury not otherwise appropriated.

J. B. VARNUM,
Speaker of the House of Representatives.
JN: MILLEDGE,
President of the Senate pro tempore.
March 3, 1809—Approved,
TH: JEFFERSON.

OLMSTED's CASE.

OPINION

Of the Hon. WILLIAM TILGHMAN, Chief Justice of the State of Pennsylvania, on the Habeas Corpus taken out of the Supreme Court, requiring JOHN SMITH, Esquire, Marshal of the District to bring Mrs. SERGEANT before the Chief Justice.

COMMONWEALTH
vs.
JOHN SMITH, Marshal of the United States, of the district of Pennsylvania. } *Habeas Corpus to produce the body of Elizabeth Sergeant.*

It appears from the return of the Marshal, to the Habeas Corpus, in this case, that he arrested & detained Mrs. Sergeant, to a writ of attachment from the District Court of the United States, issued by the Judge of that Court, in consequence of a Peremptory Mandamus from the Supreme Court of the United States. The sentence in the District Court was founded on a libel filed by Gideon Olmsted and three others, against the said Elizabeth Sergeant and Esther Waters, surviving executrixes of David Rittenhouse; deceased, for the purpose of carrying into effect a decree of the Court of Appeals, in Admiralty Cases, established by the Congress of the United States, before the adoption of our present Federal Constitution, or of the articles of Confederation of the first of March, 1781. This decree of the Court of Appeals has been the subject of long and unpleasant litigation, between the United States and the State of Pennsylvania.—Strong feelings have been excited; opinions taken up in warmth have been supported with violence. Whatever decision, therefore, I may make, on the points now brought before me, I must suppose that many persons will be displeased with it. But I should be unworthy of my station, if I suffered myself to be influenced by that consideration. I have not flattered myself with the *vain*, I had almost said the *guilty* hope, of pleasing all *men* and all *parties*. I must endeavor to secure the approbation of my own conscience, and trust to Providence for the rest.

The facts which have been laid before me, are substantially as follows—on the 14th September, 1776, Thomas Houston, Commander of the State of Pennsylvania's Brigantine of War, "*the Convention*," filed a libel, as well for himself, his officers, mariners and seamen, as for the said State, against the British sloop, "*the Active*," and her cargo, in the Court of Admiralty of the State of Pennsylvania. On the 19th October, 1778, Gideon Olmsted and his three associates filed their *claim* in the Court, praying that Houston's bill might be dismissed, and the Active and her cargo condemned as a prize for the sole benefit of the claimants. The cause was tried before Judge Ross, who, in pursuance of the verdict of the Jury, directed that the Active and her cargo should be sold, and the proceeds distributed between the litigating parties, in the proportions mentioned in his decree. From this decree, Olmsted and his associates appealed to the Committee of Appeals, appointed by Congress, by their Resolutions, in 1777. In December, 1778, the cause was brought before the Court of Appeals who, on the 15th of that month, pronounced their definite decree, by which they reversed the decree of the State in all parts, and adjudged that the Active and her cargo should be condemned as a prize for the sole use of the appellants. A certificate of this decree having been transmitted to the Judge of the State Court, he was of opinion that the Court of Appeals had no right to set aside the Verdict of the Jury, and therefore ordered the Marshal to sell the Active and her cargo, and bring the proceeds into his Court, ready to abide his further order. On the fourth January, 1779, Matthew Clarkson, the Marshal, brought into the State Court 4P,931*l.* 2*s.* 5*d.* Pennsylvania currency on account of the cargo of the said Active, the vessel remaining unsold; and Judge Ross signed an acknowledgement that the Marshal had deposited that sum in his hands, *as Judge of the Court*. On the 4th January, 1779, the Court of Appeals issued their mandate to Matthew Clarkson, to detain the proceeds of the sale in his own hands until their further order should be made known to him; to which mandate he made return that he had paid the money to Judge Ross, in obedience to his order.

Several proceedings and resolutions relative to this affair appear on the Journals of Congress and of the Legislature of Pennsylvania, which it is unnecessary to mention. They differed in opinion, and the Court of Appeals, for the sake of peace, forbore to make any attempt to carry their decree into execution. The money brought into the State Court was loaned to the United States, and certificates of the loan were issued. Judge Ross paid part of these certificates to David Rittenhouse, deceased, Treasurer of the State of Pennsylvania, for the proportion of the prize adjudged to the State, and, at the same time, (May 1, 1782) Rittenhouse gave to Ross his bond in the penalty of £22,000, with condition that the same should be void if the said Rittenhouse should make repayment of the sum of 11,496*l.* 9*s.* 9*d.* in case the said Ross should, by due course of law, be compelled to pay the same, according to the decree of the Court of Appeals, and if the said Rittenhouse should keep the said Ross fully indemnified, &c. In the condition of this bond, it is mentioned that he money was paid to Rittenhouse, Treasurer of the State, for the use of the State. It is declared, in the answer of Elizabeth Sergeant and Esther Waters to the bill of Olmsted, &c. that on the 21st of February, 1793, David Rittenhouse caused the said certificates to be funded, "for the benefit of those who *eventually appear to be entitled to them*," and received "in lieu, and on account thereof, and for the *benefit and use aforesaid*," three other cetificates, (particularly described in the answer) & that, after the death of the said David Rittenhouse, the said certificates, together with a large sum of money received by the said David Rittenhouse, for interest on the same, came into the hands of the said Elizabeth Sergeant & Esther Waters, his executrixes; that some time in the Autumn of 1801, Abraham Carpenter, *Treasurer of Pennsylvania*, called on the said Elizabeth Sergeant and Esther Waters, and required of them to deliver to him the said certificates, and the interest received on them, upon his giving them a bond of indemnity, which they *refused to do*, being advised that they could not do it with safety. On the 14th January, 1803, Richard Peters, Judge of the District Court of the United States, for the District of Pennsylvania, decreed that the said Elizabeth Sergeant and Esther Waters should transfer and deliver the said cetificates, and pay the said interest money to Olmsted, &c. (the libellants) upon the bond of indemnity being cancelled, and given up.

On the 20th May, 1807, Elizabeth Sergeant and Esther Waters filed in the District Court a suggestion that they had paid into the Treasury of Pennsylvania the said certificates and interest money, in consequence of an act of the Legislature of the said State, passed 2d April, 1803; they further suggested that the said certificates and money were received by their testator, as the Treasurer and Officer of the State; and therefore no process ought to issue against them, on the said decree, and that the said decree, so far as it respected the claims, rights & interest of the said State, was, *ex parte* and without jurisdiction. The Judge of the District Court having delayed to issue process on his decree, a mandamus from the Supreme Court was received by him, on the 18th March, 1808, to which he made a return, 18th July, 1808, stating the reasons of his delay. At February term, 1809, the Supreme Court issued a peremptory mandamus, in obedience to which, Judge Peters issued the attachment, by virtue of which Mrs. Sergeant is now held in confinement.

If I order Mrs. Sergeant to be discharged, it must be because the Court of the United States has proceeded in a case in which it had no jurisdiction.—If it had jurisdiction, I have no right to inquire into its judgement or interfere with its process. But the Counsel of Olmsted have brought forward a preliminary question, whether I have a right to discharge the prisoner, even if I should clearly be of opinion that the District Court had no jurisdiction. I am aware of the magnitude of this question and have given it the consideration it deserves. My opinion is, with great deference to those who may entertain different sentiments, that in the case supposed, I should have a *right* and it would be my *duty* to discharge the prisoner. This right flows from our Federal Constitution, which leaves to the several States absolute supremacy, in all cases in which it is not yielded to the United States. This sufficiently appears from the scope and spirit of the instrument.

The United States have no power, legislative or judicial, except what is derived from the Constitution. When these powers are *clearly* exceeded, the Independence of the States, & the peace of the Union demands that the State Courts should in cases brought properly before them, give redress. There is no law which forbids it—their oath of office exacts it, and if they do not, what course is to be taken? We must be reduced to the miserable extremity of opposing force to force, and arraying citizen against citizen—for it is vain to expect that the States will submit to *manifest* and *flagrant* usurpations of power by the United States, if (which God fo bid) they should ever attempt them. If Congress should pass a bill of attainder, or lay a tax or duty, on articles exported from any State, (from both which powers they are expressly excluded) such laws would be null and void, and all persons who acted under them would be subject to actions in the State Courts. If a Court of the United States should enter judgment against a *State* which refused to appear, in an action brought against it by a citizen of another State, or of a foreign State, such judgment would be *void*, and all persons who act under it would be *trespassers*. These cases appear so plain, that they will hardly be disputed—it is only in considering doubtful cases, that our minds feel a difficulty in deciding—but, if in the plainest case which can be conceived, the State Courts may declare a judgment to be *void*, the principle is established. But while I assert the power of the State Courts, I am deeply sensible of the necessity of exercising it with the greatest discretion—Woe to that Judge, who rashly, or wantonly attempts to arrest the authority of the U. States; let him reflect *again* and *again* before he declares that a *Law* or a *Judgment* have no validity, The Counsel for Mrs. Sergeant have, with great candour and propriety admitted, that when there is *reasonable cause for doubt*, that doubt should be decisive, in favor of the judgment in question. The same principle has been adopted by the judges of the Supreme Court of the United States, and of our own State, when questions concerning the validity of laws, hove come before them, and it has my hearty approbation.

Having disposed of the preliminary question, I will now consider the point of jurisdiction. If the District Court had no jurisdiction, it must either be, on account of the *Subject* of the suit, or the *persons* who were *parties*. I will examine them separately. The *subject* is a matter of prize, which arose before the adoption of the present Constitution. By the 2d section of the 3d article of the Constitution, the Judicial power of the United State, extends "to all cases of Admiralty and maritime Jurisdiction." These expressions comprehend all cases whsch *had* arisen, or which *should* arise—and it was no doubt the intent to comprehend them; because otherwise, all antecedent cases would have been left unprovided for. I believe this construction has universally prevailed, nor has it been questioned in the course of the argument in this case. It appears then, that the *subject* of the libel, is directly within the jurisdiction of the Court, being a matter of *Admiralty* jurisdiction. It is unnecessary for me to give any opinion concerning the right of the old Court of Appeals to reverse the decision of juries, contrary to the provisions of the act of Assembly of Pennsylvania, under which the State Court of Admiralty was instituted. That is the point which occasioned so much jealousy and heart-burning, between several of the States and the old Congress—it divided the opinions of many men of unquestionable talents and integrity, and certainly was a question of no small difficulty. But the State of Pennsylvania having ratified the present Constitution, did thereby virtually, invest the Courts of the U. States with power to decide this controversy. They have decided it, and being clearly within their jurisdiction, I am not at liberty to consider it as now open to discussion. The Supreme Court of the U. States, has more than once decided, that the old Court of Appeals had the power to reverse the verdicts of juries, notwithstanding the law of any State to the contrary. From the establishment of this principle, it irresistibly results, that Gideon Olmstead and his associates, were entitled to the whole proceeds of the Active and her cargo, and may pursue them into whatever hands they have fallen, unless indeed they have fallen into the hands of persons, not subject to an action in the Court of the United States. This leads me to the question concerning the *parties* to the suit, the only question which has appeared to me to be of real difficulty, and which I was pleased to hear argued with great force and candour by the Counsel for Mrs. Sergeant It is declared by the 11th article of the amendments of the Constitution that "the judicial power of the United States, shall not be construed to extend to any suit in law or equity, commenced, or prosecuted, against one of tne United States, by citizens of another State, or by citizens or subjects of any Foreign State." The record in this case, shews a suit between citizens of Connecticut, and citizens of Pennsylvania. It is therefore not within the words of the amendment. But it is contended, that although not within the words, it is within the spirit, because the suit is brought against persons, representing an officer of the State, who received the property in question for the *use* of the State.—There is weight in the observation, that the inconvenience would be very great, if the plaintiff in any action might by an *evasion*, by substituting the *officer* of the State in the place of the *State*, compel the State to abandon its property, or contest it, in the Courts of the United States.

In a case so circumstanced, the argument would be very powerful against the jurisdiction of the Federal Courts. But I cannot say, judging from the facts judicially disclosed to me, (which are all that I can judge from) that the present case is so circumstanced. The certificates were certainly paid to Mr. Rittenhouse, as Treasurer of the State. But it is equally certain, that neither he, nor his representatives since his death, did deposit them in the Treasury of Pennsylvania, on the contrary, they were invested by him in a new Fund in his own name, and it appears by his written memorandum, that he did not consider them as the property of the State, but his own property, until the State should give him a certain indemnification, which never was given—If this evidence is not strong enough, to shew that the certificates and money were not in the *possession* of the State, it acquires an additional strength difficult to resist, from the circumstance stated in the answer of Elizabeth Sergeant and Esther Waters, "that they had *refused* to *deliver* them to the *Treasurer* of the State, although expressly required so to do." Whether the conduct of Mr. Rittenhouse and his Executrixes was right or wrong, is not the point now to be inquired into—The fact is that they did *withhold* the certificates and interest money, from the *Treasury*, until after the final decree of the District Court. Their paying it afterwards, cannot affect the question of jurisdiction. How then does the case stand? The *property* of these certificates and interest money, was irrevocably vested in Olmstead, &c. by the decree of the former Court of Appeals, which the Su-