THE DAILY UNION BANNER.

VOL. 1. SALISBURY, N. C., MONDAY NOVEMBER 20, 1865. NO. 151

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Daily, 1 year,	$10 00
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Weekly, 1 year,	$3 00
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" 1 month,	50

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J. J. STEWART,
EDITOR & PUBLISHER.

THE TRIAL OF JEFF. DAVIS.

WORLD REGARDS IT.

From the London Quarterly Review.

But the other day Jefferson Davis was one of the world's foremost men, admired as a statesman, respected as an earnest Christian, the Washington of another generation of the same race "Now, none so poor as to do him reverence." In this country, happily free from excitement, we can calmly weigh facts which others see for the time through the distorting media of prejudice and passion. Jefferson Davis simply followed the example of George Washington. Both were Southerners, both slave-owners, both levied war against an older government. Washington, a subject of the British Crown, under which he held a commission, committed an act of unquestionable treason. Jefferson Davis was never the subject of Abraham Lincoln. He was the chosen ruler of millions of the American people, twice as many as demanded their independence from this country. Over them he ruled for years under all the most complete forms of constitutional law. That such a man should be hunted down as a felon, is one of the dark spots that will be left by this struggle on the page of American history—of all the darkest. The charge which President Johnson attempted to fasten upon a fallen foe has been scouted on every hand. The assassin of Mr. Lincoln was a stage-stricken fanatic, incapable at the time of seeing that his crime would be ruinous to those he thought to serve. After the surrender of Lee, even if the whole Northern Cabinet had perished, this could only have influenced the result by rendering the irresistible armies of Grant and Sherman more revengeful, and adding to the sufferings of the vanquished. Booth was not a Southerner, had no connection with any State of the Confederacy, had endured no outrage, suffered no loss. It was well known that his father's intellect was disordered, and that he had committed acts of violence. The circumstances of the crime—the theatre, the stage, the flourish, the quotation, the man's life, his letters, his dying request to tell his mother that he had done what he thought for the best—all indicated the individuality of the act, the originator, the intended hero of the tragedy. It is one of the crimes that throughout all history, and with all nations, has invariably accompanied such convulsions. No great disturbance occurs in European history but some one comes forward to play this part. There is hardly a sovereign reigning in Europe whose life has not been attempted, and there are those old enough to remember the conspiracy of Thistlewood, when it was intended to destroy the whole Government of this country at a blow. So far, then, from the event being a rare phenomenon, it was one to be anticipated; indeed, it seems to have been expected by Mr. Seward. As in certain sanitary conditions certain diseases attack the body, so amidst wars and tumults this form of monomania seizes on minds so predisposed. In all this, however deplorable, there is nothing astounding; but astounding it is that a President of the United States should bring a charge of complicity in such a crime against an eminent American statesman and soldier. To make such a charge heedlessly, without evidence of the clearest character, was to bring an ineffaceable stain upon the dignity of his office and the history of his country. It bears the aspect of an attempt to assassinate the reputation of a defenceless man. Among savages it is the practice to gloat over the tortures of the defeated, to make a target of the quivering body, and to transfix it with arrows as a pastime. Civilized nations usually treat the victims of war with humanity, even with generosity. The whole conduct of the Government in this matter of the conspiracy trial is painful in the extreme—the trial of an offence wholly unconnected with war by a court—its President, its reporter, the tittle-tattle received as evidence, and, beyond all, the secrecy attempted—carry us back to the worst usages of the darkest times.

Jefferson Davis is now in the hands of his enemies, and remains to be tried for treason. If he had committed this crime he would then stand on a level with Washington, Kossuth, Garibaldi and others, hitherto the objects of American admiration. Can the same thing be a virtue when others suffer, and the blackest of crimes when it injures ourselves? If he be tried under the present excitement, there can be little doubt as to the verdict; but it cannot be supposed that the American people will commit such an act as to take any man's life for simply following the example of their own idolized hero, and exercising a right they are all taught to claim, "a most sacred right," as Mr. Lincoln declared it to be. And as Mr. Johnson reiterates that treason is the greatest of crimes, we are led to examine how it is regarded by the Constitution of the United States. Here, so far from being thus accounted, it is selected from all other offences, not to be stigmatized, but to be dealt with gently, and hedged round with protections from extreme punishment. Thus, Art. I, sec. 9: "No bill of attainder shall be passed." Art. III, sec. 3: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." In Art. II, sec. 4, it is classed with bribery; and the 6th Amendment of the Constitution requires that the accused shall have the right to "a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed." Art III, sec. 3, ordains that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attained" And if this trial is to be conducted calmly as an affair of State, the difficult task must be encountered of disproving the right of a sovereign State to withdraw from its Union with the others, if any counsel dare to use the argument. It is not generally believed in this country that such a right exists; but Rawle, a competent legal authority, a Northerner and devoted Unionist, asserts, in his work on the Constitution, that the right is inherent in the Federal system. That the States were originally, each of them, a free, sovereign and independent power, is very certain, as they were separately acknowledged by this country in these terms. That their union under the title of the United States did not destroy the sovereignty existing separately in each is also certain, as it is declared in the first Constitution: "Each State retains its sovereignty, freedom and independence." That each State is sovereign under the present Constitution is also certain, as it has been so decided on several occasions by the Supreme Court, a decision from which there is no appeal. Now, if a sovereign State cannot withdraw from its union with other States, there must be some power which prevents it—a power over it, and superior to its own will. If so, its condition is that of inferiority or subjection to that higher power, and therefore cannot be sovereign. No such power is known to the Constitution, for the States are coequal; and what is popularly termed "the Government," is simply the common administration, or Federal agent, to whom certain limited powers were "delegated" by the States. The recipient of a delegated power cannot be superior to those of whom it is the delegate. This would be to put the agent above the principal, or the servant above the master; and where a sovereign State "delegates" limited powers to an agent for certain ends, it is difficult to see that it cannot withdraw them when those ends are not attained. This right to withdraw, "to resume" them, was asserted by Virginia when that State became a party to the Constitution, and it was asserted in the solemn form of an ordinance, (see page 44w of the State.—Virginia, therefore, in seceding from the Union, simply exercises the right which she reserved by law when she entered it. It may be said that this law has no force beyond her limits; but they who accepted her adhesion to the Union, with this reserved right, solemnly proclaimed to the world, cannot now complain that it is exercised; and, indeed, it is difficult to see how any State could have entered into the Federal compact without the power of withdrawing if its terms were broken. This was the only possible means of redress or escape from wrong if committed by the majority. One of the points of the Constitution will illustrate this. The small States insisted that each, whatever its size, should have equal weight in the Senate, and that this should never be altered to the prejudice of any State without its own consent. It results that the little strip of soil, Delaware, has its two members in the Senate equally with New York, a State exceeding in all respects several of the kingdoms of Europe. And if the whole of the other thirty-five States should desire it, they cannot rightfully alter this without the consent of Delaware. But suppose they do so, with or without right, what redress has Delaware? She could not outvote or fight the others, and must either submit to a breach of the compact without redress, or retire from it. This may explain the remarkable statement of Rawle: "This right (that of secession) must be considered an ingredient in the original composition of the general Government, which, though not expressed, was mutually understood." That such an understanding existed with the framers of the Constitution, is proved by the fact, that in the early debates of Congress, under the existing Constitution, the threat of seceding was made more than once, and the right to do so was not questioned. In the Constitution there is no principle that permits the coertion of a State. When suggested, it was deliberately excluded; and if there be nothing that can lawfully coerce a State to remain, what can lawfully prevent its going?

And if, as De Tocqueville held, the right of secession cannot be disproved, it follows that when the event occurs, the State becomes a foreign power as regards the rest; and if war ensue, the acts of its citizens are acts of war, and not of treason. The difference produced by the step is very material. If a citizen of Maryland were now to take up arms against the Federal Government, he would commit an act of treason. But if that state should first secede, and call out its forces to resist invasion, he must then respond to the call, in obedience to the laws of the land. Can he commit treason by acting in obodience to law? According to the Washington theory, the position of the Southern man would be hard, indeed; for if he obeyed the Federal call, and should be found in arms against his State, he would be guilty of treason against the law of that State; and, if he obeyed the State call, he is now charged with treason against the Federal Government.—Such a position cannot be tenable. The law of the States plainly absolves the citizen who has no choice but to obey it.—Against the State itself redress may be desired and demanded; but it cannot be found rightfully in that Constitution from which the coercion of a State was excluded. A traitor, too, takes up arms against the Government that is over him, and attempts to overthrow it. We cannot find that any one attempted to overthrow the Washington Government; on the contrary, strong efforts were made by the South to enter into amicable relations with it. But arguments of this kind are not likely to obtain much attention at a period of such excitement. One that cannot be overlooked is the fact that a state of war was recognized by the Federal Government. It was so adjudged not only by the prize courts, but by the Supreme Court, whose decision cannot be set aside. It was recognized in the exchange of prisoners, and various [illegible] It was admitted in the most striking manner by President Lincoln and his Secretary of State, who went in person to treat with the commissioners of Jefferson Davis. It has been said that all this was done under the pressure of events, leaving original rights in abeyance, which may now be revived. By this kind of argument, almost any breach of faith could be defended.—Whatever the motives, there is the fact. It is impossible to say that President Lincoln went to negotiate with embassors appointed by a traitor. Whoever treats with the embassadors treats with the Government, and with the head of the Government; and, after this, Mr. Johnson has no more right to charge the head of that Government with treason than we had to charge it upon the Emperor of Russia at the close of the Crimean war. We cannot take opposite principles, change them about, reverse them, leave them, return to them, to suit the convenience of the day. No government cannot play fast and loose in matters of life or death.

There are other considerations. For four years Jefferson Davis was the appointed ruler of eleven great States—States, several of which had been acknowledged as free, sovereign and independent powers by the Governments of Europe. His dominion was no mere insurgent district, but a region ample enough for many kingdoms. He sent into the field great armies, made illustrious by brilliant victories, and leaders of enduring renown. Supported by a unanimous people, he ruled in strict conformity with the laws of the land and its Constitution. When vehemently urged, as he was, to suppress the opposition papers, which were ever buzzing and stinging at Richmond, greatly to the profit of the enemy, he resolutely refused to interfere with the freedom of the press. When urged to retaliate the murder of ten men, shot in cold blood at Palmyra, by the Federal McNeil, under circumstances of atrocity that none can read without a shudder, he refused to listen to the voice of natural indignation, and declined to shed one drop of blood except on the open