(Continued from first page.

Again in the same article felony and breach of the peace are spoken of—how are these to be defined? Only by the common law. In defining a breach of the peace there are many nice distinctions.

Mr. B. said he could cite many other cases but they were not necessary. He would however refer gentlemen to the opinions given in the course of legislation which was a fair mode of construction.

Those who first had the government of the United States in their hands proceeded upon the opinion that the common law was the law of the land. In one place they recognize the right of common law remedy. In the act establishing the Judiciary they say, "The circuit courts shall have concurrent jurisdiction in all suits at common law."

Mr. BAYARD concluded by saying, If I am correct in my position that the common law is the law of the land, the sedition law ought to be continued; because it limits and softens the penalties in cases of libels, which are very harsh according to the common law. The gentleman from Virginia has rightly appreciated my motives in wishing to renew this law, when a different administration is to take charge of the public welfare.

Mr. GALLATIN said it had been his intention not to rise again on this subject, but as the gentleman from Delaware had said that if this law is not continued in force the common law will be the law of the land, he would make a few observations. As to the constitutionality of the law; it is alledged to be necessary for carrying into operation certain defined powers of the constitution. Surely this law cannot be necessary to carry into effect these defined powers if the common law will remain in existence according to the gentleman's opinion. He rests much upon the necessity of it to protect the government from slander. Mr. G. supposed the evils arising from this source were not so much to be dreaded as those which would result from the attempt to punish slander. He wished to know what a false, scandalous and malicious libel is. If punishment could be confined to those only who published as facts what was unsupported by truth, he would not think the law improper. It could not, however, be denied, that recourse must be had merely to the opinions of the judges respecting things of very difficult definition.

The gentleman from Delaware had entered largely into the discussion of what had never been denied that the common law is in some measure the law of the land. But after he had paid every encomium to the common law he allowed it to be harsh in respect to libels.

The sedition act says truth shall be given in evidence, the gentleman supposed, that without that provision the judges would be bound to decide by the common law. He thinks too, that it has gone farther by allowing the jury to determine the law and the fact as in other cases. This supposes they had not this right before. Then as to libels the common law is contradictory to its usual allowance.

In a cause of this kind in England a judge gave it in charge to the jury that they were only to enquire whether a certain paper was printed and published by the accused. As well might he in a case of murder tell them they were only to enquire whether the accused had killed the man without any attention to the criminality of his intention.

Mr. G. did not think the courts of the U. States would at once assume jurisdiction over libels according to the common law in case this act was not revived.

The gentleman from Delaware had mentioned the case of a member of this house who had been punished under the Sedition Law, and considered the vote given for his expulsion as a sanction of the decision of the Judge and Jury. In such instances the constitution declared that two thirds were necessary for a decision—This was provided on the principle that such might be the prevalence of party spirit, that a majority would agree to expel without well grounded reasons. The vote was, therefore, a nullity, as two thirds did not agree to it. Mr. G. considered laws of this kind as the means of introducing party views into courts of justice; and that it was only in such cases that any danger of partiality was to be apprehended. Here it is to be apprehended, unless you can suppose judges become different men merely by being placed on the bench. It is also certain that the jury must be composed of one or the other party, and is therefore incompetent to decide upon opinions. He did not suppose them intentionally doing wrong. He asked if any gentleman in the House would be willing to be tried for a libel by a jury chosen from the members of it who are of different political opinions. He confessed he would not.

The gentleman from S. Carolina had said, that in a certain trial the judge had permitted a book or news-paper to be read altho' it was not legal evidence. This shews that the accused was at the mercy of the judge, since he could not claim it as a right.

The same gentleman had spoken of the impropriety of the president being summoned as a witness. Suppose a person is accused of having written and published a false and malicious libel, in which he states that the president has expressed certain opinions; on the trial he says, I will prove the truth of my assertions—How is it to be done? By printed declarations? No, that is not legal evidence. He cannot summon the president. Thus though truth be on his side, he cannot give it in evidence. This shews how difficult it is to carry such laws into effect without oppression. Thus the provision that truth may be given in evidence is rendered useless.

Finally it is said that as it is upon public opinion our government depends, the public opinion should be guarded from corruption. What he asked, is meant by saying the government depends upon public opinion? Surely, it is not intended to mean, whether there shall be a government or not. It can only relate to the persons who administer the government. It depends wholly on the public opinion, who shall administer the government, but not whether there shall or shall not be a government.

Mr. G. contended that the common law is modified by different governments. To suppose that truth should not be given in evidence was inconsistent with the nature of our government, and if this law did not exist, the common law would be thus modified in this country.

If the existence of this law had been found to correct public opinion it would be well to continue it. In this country, he said, opinions were divided between two sets of men, and the people will vote for those who they conceive will best answer their views. Mr. G. could not see how this law would correct or render pure the channels of information if only certain kinds of libels were punished. How he asked has it been executed? Only by punishing persons of politics different from those of the administration. It has not prevented the corruption of public opinion, according to the explanation which the gentlemen in favour of the law have themselves given of those words. If the sedition law was adopted only as part of defensive measures it is no longer necessary.

Mr. Dana said, a principal part of the arguments of gentlemen in the opposition were calculated to prove that the administration of our country was wilfully corrupt. They had told the house that necessary testimony had been refused, and that various abuses of this kind had actually occurred in our courts, which were actuated by a spirit of party, to the great injury of persons not born in this country.

[Mr. Nicholson—I spoke facts: I did not say the administration was wilfully corrupt, these are the gentleman's own words.]

Mr. Dana. There could be no other implication from the gentleman's words, nor was it in the power of human invention to distinguish between a violation of the principles of justice in the manner represented, and a most wilful and gross corruption. As it would be extremely improper to leave so great a charge in this unqualified manner, Mr. D. would proceed to examine the conduct of the judges of the U. States. Who are those judges? Nominated by the president of the U. States, and chosen by the Senate agreeably to the constitution: How long or at whose pleasure are these judges to continue in their high offices? At the pleasure of no man, nor set of men, but during good behaviour. Surely if there be any part of the government, or any set of men in the United States, who were placed above the spirit of party, and beyond the reach of corruption, it is the judges of the United States: and yet, above all others, these are the men charged with a party spirit, and with corrupt principles—these men who are singled out as men of the most profound wisdom and integrity among us, and who are superior to the dread of removal from office, excepting only by impeachment for misbehaviour. Yet this is the substance of the reasons gentlemen assume why this law should not be continued.

Would not prudence dictate, would not justice, that justice which is due to the character of every man, demand that before these charges would be even suggested, the proof ought to be decisive; that it ought to be "darning?" This has not been produced.

He would not go into the details of the law, but examine it upon general principles. He would admit that there had been much opposition to this law, and that most particularly it had been opposed and condemned by the legislature of one of the largest states in the union. But he was not inclined to judge of a measure, upon the opinions of others; that house ought not to be overawed by the multitude of petitioners, nor by the remonstrances of the legislature of any state whatever; it should act with a spirit of independence.

One of the extravagancies of that state, and many of the people, had been to arraign, to their extremely weak and partial judgment, the common law the existence of it was altogether denied. That common law which most undoubtedly secured to every individual its most endeared rights, and afforded security against every species of legal oppression, whilst it preserves to the government that protection against the licentious and false slanders which polluted some of the presses of the U. States, and maintained upon established principles, the rights of our jurisprudence and our morality. This was the true character of what was termed the common law.

It would seem to him, Mr. Dana said, that no honest man could wish for a liberty to utter defamation and falsehood. It was directly incomprehensible to him how a man who held dear the principles of liberty and of good government could attempt to utter falsehoods against the government. The rights of the people and of the press were held up. How, he would ask gentlemen, could the rights of the people require a liberty to utter falsehood? How could it be right to do wrong? If this was liberty, he had been hitherto totally ignorant of its principles, and wished to remain so. And yet the only crime made by that part of the law, so much the subject of complaint, is the uttering of a scandalous and malicious falsehood, with intent to defame. Most certainly truth is not always the motive of investigating the measures of our government and so far as truth is deviated from, so far is the government libelled, and virtue proportionately becomes beclouded by misrepresentation. Could not public opinion become corrupted? Could no falsehood be disseminated that would gain credit from the people? Then how could gentlemen pretend to suppose that truth must overcome falsehood? how could they suppose that misrepresentation and calumny could do no manner of harm? How often are calumnies and falsehoods published against the government; but when is a contradiction of those falsehoods seen in the same paper? No, falsehoods will have their effect, and even if afterwards contradicted, it is not so until the falsehood has had its effect, and at that time the truth avails but little. Thus though upon general principles truth may be said to be an to antidote falsehood, truth does not always make its appearance in time to prevent the evil intended by the evil disposed. Suppose the reputation of the government to have been attacked, and the affections of the people weaned from it, of what avail will be the remedy? The poison is swallowed beyond the power of expulsion, even by the most powerful antidote. If this then be true, and that it is, is indubitable; a check ought to be provided in due time, whilst yet its qualities may completely prevent any possible harm.

And what danger, Mr. Dana asked could result from this law? As he observed before, it was not the will of the judges, those arbitrary party spirited characters, that could convict. No, every cause is submitted to a jury of twelve honest men, who are sworn to decide upon the fact, and the security is so great that if but one man out of the twelve should be of opinion that the person arraigned is not wilfully an offender, and that he has not traduced the government falsely and maliciously, he must be acquitted of the indictment.

What better barriers to the liberty of an individual can be presented than this? The only answer gentlemen can give is that the juries are packed. But he would, ask whether the juries were not returned as fairly in this as in other cases under the laws of the land? If then there was an evil, it was not solely applicable to this law, but to all laws, and to the general principles upon which juries were selected. He could scarcely conceive that men of character, under the solemnity of their oath, could act so unprincipled.

Upon the whole he could see nothing but unfounded arguments in opposition to this law, and that gentlemen had no other way to get rid of their dilemma but by charging the courts and juries with corruption. And when men began to charge with evil design the sanctuary of justice, it was time to bid adieu to all public happiness and every hope to enjoy the blessings of freedom.

Mr. Huger acknowledged that he had been somewhat surprised, when the report of the committee of revisal and unfinished business was first made, and found it to be their wish to renew and continue in force this act, so well known by the appellation of the sedition law. It had been generally understood, he thought, on all hands, that this act would be allowed to expire in peace, and without further notice, on the 3d of March next. As the subject, however, was again brought forward, he was happy to perceive that gentlemen were inclined to treat it with calmness and moderation. There appeared indeed no great anxiety in the committee to enter largely into the discussion of this qnestion—neither did he feel himself any strong inclination to do so. But as he should in the present instance probably vote in opposition to the sentiments of most of those with whom he was usually in the habit of acting, he would beg leave to state some of the reasons which led him to differ from them on the present occasion. He felt some little pain, however, he acknowledged, at the idea of dissenting from and acting in opposition to his friends on this important and interesting question, because no man had a stronger conviction than himself, of the general correctness of their political views and principles, or was more persuaded of their honest intentions and patriotic views.

Mr. Huger said he would not enter into an investigation of the constitutionality or unconstitutionality of this law. The gentlemen who preceded him had not done it, and it would become him less to do so: for although it was true, he had never given it the sanction of his vote, yet if he felt any doubts as to the constitutionality of this law, it would certainly come with a very ill grace from him to urge them at this late day and in the present state of things.

Waving then, the question of constitutionality, Mr. H. called upon gentlemen to shew the expediency or necessity of renewing this act, and continuing it longer in force. For his part he had heard nothing, nor could he see any reason, which led him to think such a measure either expedient or necessary at the present moment. Granting that congress possessed the constitutional power of laying some restrictions on the licentiousness of the press, and of punishing libels, yet it certainly does not follow of course, that they must necessarily, at all times and on all occasions, carry that power into operation. In time of imminent danger; in the midst of a great crisis, it might be proper to avail ourselves of such a power. And such indeed was the state of things, when this law was originally enacted. Our country was at that time threatened with foreign and perhaps domestic war. We had to guard against the machinations of an artful and well disciplined foe, who was endeavouring to rouse up our citizens against the government, and would no doubt have availed themselves of every possible means to mislead the pub'ic mind, and to spread abroad falsehoods, which might have had the most direful and fatal effects, before it was possible to detect and expose them. At that time, & in the then state of things, he was one of those who was for exerting every nerve, and bringing into operation every means in our power to defeat the schemes of our enemies, and repel the impending danger. Taking it therefore, as one of the measures adopted at that awful period, and regarding it as a part of the general system of defence then deemed necessary, he had always been inclined to view it with a favourable & partial eye, but the state of things was now actually changed. The smiles of peace had again visited our shores, and a convention had lately been concluded, which he trusted, would finally put an end to all our differences with the French nation. Why then renew or continue longer the provisions of this act, when the storm, which gave rise to them, is blown over?

There was another point of view in which the subject presented itself to Mr. H. and which would greatly influence his vote on the present occasion. Without going so far, as to assert with some gentlemen, that nine-tenths or even two-thirds of our citizens had declared themselves decidedly opposed and hostile to this act, he would venture to say, without any fear of being contradicted, that there certainly was a very great difference of opinion and contrariety of sentiment, both as to

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