approbation, that the effect may be incompatible with some part of their policy? Is it apprehended, that there may eventually be issued from the federal courts, a process which will seriously affect some of their barronial estates?

It would be too much for this cause, to abolish a system which is so evidently formed for the convenient administration of justice.

As a further reason for repealing the act in question, it has been contended, that some of its provisions are unconstitutional. This, however, if true, does not require you to repeal the whole of an act, containing a variety of distinct provisions; although it might be a sufficient cause for amending the act so as to remove from your statute book, such parts as are judged to be not agreeable to the constitution. A single provision, which may be thought exceptionable, does not necessarily contaminate the whole of a system. Gentlemen have spoken as if the act in question had inflicted a wound on the constitution. But will you, to cure a supposed wound, employ the guillotine?

A gentleman from Kentucky (Mr. Davis) has charged the act with being unconstitutional, because it authorised the supreme court to issue writs of mandamus. He founds his charge on the idea, that the jurisdiction of the supreme court is appellate, and that the writ of mandamus must issue from a court of original jurisdiction. Will the gentleman say, that it is legally correct to call the mandamus an original writ? Will he state what is the nature of the writ of mandamus? It is essentially appellate. It is in the nature of an appeal to a superior tribunal for redress, in cases where it is alledged that justice has not been done by a subordinate tribunal or officer. There is no novelty, sir, in allowing to the supreme court the power of issuing writs of mandamus. A provision to this effect is found in the thirteenth section of the original judicial act, passed in 1789. Applications have been repeatedly made to the supreme court for such writs. Allow me to state one of them. It was founded on an act of congress respecting invalids, passed in '92. That act referred it to the judges holding the several circuit courts, to examine the claims to invalid pensioners, and to certify the result, with their opinion in each case, to the secretary at war, who was accordingly to place the names of such applicants on the pension list, except *in any case* where he should have cause to suspect imposition, or mistake. The judges as such did not think the act constitutionally obligatory upon them; but, in several circuits, they agreed to consider themselves as commissioners designated by the act, and, under this character, proceeded to examine the claims. The result, when in favor of a claimant, was certified to the secretary of war. There were questions, however, respecting the whole business; a further act relative to invalids was passed in February 1793; and the secretary did not place any of the persons, whose claims had been allowed by the judges, on the list of pensioners. It was for the purpose of having the names of one of these claimants placed on the pension list, that an application was made to the supreme court. In behalf of the claimant, Mr. Edmund of Connecticut moved for a mandamus. The motion was made in February term 1794. I have an extract from the minutes of the supreme court, certified by the clerk of the court.

'Wednesday, 5th February, 1794.

Present,

The honorable John Jay, chief justice.
William Cushing,
James Wilson,
John Blair, and
William Patterson, } Associate Justices.

"Mr. Edmund, of counsel for John Chandler, a citizen of the state of Connecticut, this day moved for a mandamus to the secretary of war, for the purpose of directing him to cause the said John Chandler to be put on the pension list of the U. States as an invalid pensioner, conformably to the order and adjudication of the honorable James Iredell and Richard Law, esquires, judges of the circuit court of the United States.

"The court informed Mr. Edmund, that when the trial of the cause now before the court should be finished, they would hear him in support of his motion.

'Friday 7th February, 1794.

"The court proceeded to hear Mr. Edmund on the subject of his motion made on the 5th instant, and agreed to hold the same under advisement.

"Thursday 13th February, 1794.

"The court proceeded to hear argument of counsel on the motion of Mr. Edmund, for a mandamus to the secretary of war, made on Wednesday the 5th instant.

FRIDAY, *14th February*, 1794.

The court having taken into consideration the motion of Mr. Edmund of the 5th instant, and having considered the two acts of Congress relating to the same, are of opinion, that *a mandamus cannot issue*, to the Secretary of War, *for the purpose expressed in said motion*.

There does not appear to have been any question respecting the general power of the supreme court, to issue a mandamus to the Secretary of War, or any other subordinate officer. The thirteenth section of the original judicial act expressly gave the "power to issue writs of mandamus, in cases warranted by the principle and usages of law, to any courts appointed, or persons holding offices under the authority of the United States." And the motion for a mandamus was a regular mode for obtaining a decision of the supreme court, respecting the validity of a claim to a pension in the case stated. The decision was against the claim. Of course, a mandamus could not issue for the purpose expressed in the motion.

When such has been the unquestioned usage heretofore, is it not extraordinary that there has not been prudence enough to say less about the case of Marbury against the Secretary of State.—In this case, however, no writ of mandamus has been issued; although there has been a preparatory process of an inferior nature. On motion of Mr. Marbury, at the last term of the supreme court, a rule was made, for the present Secretary of State, to shew cause why a mandamus should not be awarded to him for the delivery of a commission which was claimed by Mr. Marbury, as a justice of the peace in the district of Columbia.—This was but a regular notice, to the secretary, of the application which had been made to the court. If no cause is shewn, the next process is not a peremptory mandamus. For there are two writs of mandamus, which are issued in succession; the first being in the alternative, to do this, or signify reason to the contrary; and then, if no sufficient reason is signified, a peremptory writ may issue. But in the present case, neither of these writs have been awarded. By a rule to shew cause the court has required, that notice shall be given of the purpose for which Mr. Marbury has made his appeal to them. This was not a mandate sent into the executive cabinet, as has been represented. I have a certified copy of the rule of court, comprehending a statement of the principal allegations as they appeared in evidence. It does not make any mention whatever of the present President of the United States. But that a secretary of state is amenable to a writ of mandamus from the supreme court, is a position clearly warranted by principle and precedent. A secretary of war, under a former administration, was not supposed to be exalted above the reach of such a process. He did not consider himself degraded by being called upon in this form where a question of right was to be decided, and a specific relief was the object. Is there any thing, in a case like this, to make a difference between a former Secretary of War, and the present Secretary of State? What are the facts respecting the application of Mr. Marbury? Several of them are stated in the rule of court, which has been published in a variety of papers. Mr. Marbury had been, with the advice & consent of the senate, appointed & commissioned, by the late President of the U. States, as he fully believed to be a magistrate for the county of Washington in this district; and he applied to the Secretary of State for the commission. On principles of ordinary courtesy it would not have been expected, but it appears to have been the fact, and the secretary of state was so far from delivering the commission, that he did not even answer the enquiry of Mr. Marbury, when he requested to be informed whether the commission for him was signed by the late President, and sealed with the seal of the United States.

There are some other circumstances which do not appear on the face of the rule to shew cause; although they are mentioned in the affidavits, of which I have certified copies. After mentioning the demand of the commission, it is stated in one affidavit, "that when the demand was made upon the secretary of state, he referred to his chief clerk, who answered, that the commission was not in the office, and had been delivered to Mr. Lincoln, the attorney-general."

From another affidavit it appears, that Mr. Marbury "applied to Jacob Wagner, chief clerk in the department of state, for an affidavit respecting the commission being sealed with the seal of the United States, and that the said Jacob Wagner declined making a voluntary affidavit, alledging that he did not conceive himself at liberty to make such an affidavit in consequence of his official relation.'

The chief clerk has undoubtedly conducted as became his peculiar situation. It was to be expected that he would consult the secretary of state on the subject. Whatever personal civility might be agreeable to the disposition of Mr. Wagner, it was not proper for him, in a case so circumstanced, voluntarily to contravene the instructions of the head of the department.

[Mr. DANA to be continued.]

Lots for Sale,

Or to Let on GROUND-RENT.

THE Subscriber offers to sell or to lease one hundred Lots, advantageously situated; some in the vicinity of the Capitol, and others near the Navy Yard; for cash, credit or wet or dry goods.

WILLIAM PROUT.

Washington City, April 5, 1802. 2aw

WASHINGTON CITY.

MONDAY, JUNE 21, 1802.

Thomas Jefferson, President of the United States of America, To all whom it may concern:—

The Citizen *Sotin*, having produced to me his commission, I do hereby recognise him as commissary of Commercial Relations of the French Republic for the state of Georgia, to reside at Savannah, and declare him free to exercise such functions, powers and privileges, as are allowed to similar agents of the most favored nations.

In Testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

GIVEN under my hand at the City of Washington, the fifteenth day of June in the year (L.S.) of our Lord one thousand eight hundred and two, and of the Independence of the United States of America the twenty-sixth.

TH: JEFFERSON.

By the President,

JAMES MADISON,
Secretary of State.

Thomas Jefferson, President of the United States of America, To all whom it may concern:—

The Citizen *Joseph Marie Lequinio Kerblay*, having produced to me his commission, I do hereby recognise him as Commissary of Commercial Relations of the French Republic for the state of Rhode-Island, to reside at Newport, and declare him free to exercise such functions, powers and privileges, as are allowed to similar agents of the most favored nations.

In Testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

GIVEN under my hand at the City of Washington, the fifteenth day of June in the year of our Lord one thousand eight hundred and two, and of the Independence of the United States of America the twenty sixth.

TH. JEFFERSON,

By the President,

JAMES MADISON,
Secretary of State.

On the 17th arrived at Baltimore, the sloop of war Courier, capt. Mountfort, a French national ship, from L'Orient, which place she left on the 28th of April; the commander arrived in this city yesterday.

We learn that the object of this vessel's coming here was to apprise admiral Villaret of his being appointed governor of Martinique, with directions to repair to Gaudaloupe and remain there till Martinique should be surrendered.

The Courier brings no news from France.

DIED—On the 4th inst. in Brunswick county, Virginia, the Wife of Thomas Claiborne, Esq. member of Congress.—This lady was exemplary in all the christian, connubial, maternal, and moral duties; and left a character highly venerated and beloved.

The Senate of Massachusetts have concurred with the House, in the Resolve, appropriating 20,000 dollars for erecting a *Statue to George Washington*; with an amendment, that the Statue be of Marble and not of Bronze.

FOR THE NATIONAL INTELLIGENCER.

Mr. SMITH,

In such parts of the late Definitive Treaty of Peace between Great Britain and the French Republic, as relate to the Island and order of Malta, some obscurity has resulted from the French word *langue*, being translated by the English word *language*. To illustrate the meaning of those parts it is necessary to observe, that the order of Malta (the original institution of which is sufficiently well known), consists of knights in the several catholic countries of Europe, or in those countries where *catholicism* still prevails in a certain degree. The number of knights from each country is, when collectively taken, denominated the *langue* of that country;—for instance, the body of Maltese knights from England was called *la langue Angloise*, from France, *la langue Francoise*; from Portugal, *la langue Portugaise*, and so on of the knights of other nations; so that by *langue* must be understood, in this case, such knights of the Maltese order as are natives of this or that country.

It is moreover, proper to observe that the order of Malta had property in the different catholic countries—in France this property was confiscated in the course of the revolution.

Should these observations be deemed worthy of a corner in the National Intelligencer, they are at your service; to some of your curious readers they may be acceptable; those who are unacquainted with these circumstances, might suppose that the Treaty prohibited hereafter the French and English languages to be spoken in the Island of Malta, which is absurd.

A SUBSCRIBER.

Virginia, June 10, 1802.

Among the many useful institutions of France we notice a School for Gardening, for theory and practice, under Lemoine at Paris. The subscribers to the amusements of the city of Lyons, and to the assemblies for dancing, have engaged to promote the public charities, and have received commissioners from the Council General of the administration of charities in the city. General Claude Martin, born at Lyons, who died in India, has left from his immense riches the annual sum of 10,000 francs to Lyons, for the aid of Prisoners for debt, and has added a capital of 600,000 francs to the establishment for charitable purposes.

Extract of a letter dated Hamburgh, March 12th 1802, from professor Ebeling to Dr. Barton.

"The discoveries in Galvanism are pushed forward with vigour. Ritter has published a periodical paper entirely concerning this discovery. The cures made thereby, of blind and deaf persons, as also of other patients for example such as had lost the use of the muscles concerned in speech and swallowing, are astonishing. At Brunswick, the Duke has ordered a particular institution for electrical and galvanic cures. In our neighbourhood eight deaf persons (two, born so) have been restored; at Jever eleven; some relapsed. I myself have likewise experienced some relief from my bad hearing, but discontinued as I could not attend regularly; but I shall begin again this spring. A brother of mine, a physician, had his very acute hearing entirely lost, by only applying for about twenty four hours, two connected pieces of zinc and silver on the mastord-process, which had been deprived of its skin by blistering.

House of Commons, April 27.

Mr. John Nichols gave notice, that on Friday se'night he would move an address to his majesty, to thank him for having removed the right hon. William Pitt from his council.

April 28.

Lord Belgrave said that, understanding an honorable gentleman had given notice of a motion for Friday se'night, to censure the conduct of his right hon. friend, Mr. Pitt, he (Lord B.) unwilling to trouble the house with two days discussion on the same subject, stated his intention to move on the same day,

"That the House should declare their approbation of the administration of his honorable friend."

From the INDEPENDENT CHRONICLE.

An extract of a letter, dated London, May 1, 1802, says:—"I congratulate you on the repeal of the late extraordinary and oppressive law, varying the judiciary system, passed in the last Congress. Every person of discernment saw, at the time this law was enacted, that it was nothing more than a mere political *trick* to embarrass your new administration.—But what will not a dangerous ambition attempt, to secure the continuance of its power and influence!—Your constitution and government never could have acquired its appropriate stability, if a discomfitted faction, in the last moments of its political existence, could be permitted to protract that influence against the public sense, by interfering with establishments which should always be held sacred by every party. The moment the courts of justice become the instruments of a ruling faction, what becomes of their impartiality? Where is their independence? I will venture to say, that such an act of violence never will be perpetrated a second time, against the spirit and even letter of your constitution, now the authority of the law is re-established by this precedent, to be paramount, not only to judicial decisions, which are often arbitrary and cruel, but even over the persons who form your courts.

"A judicial aristocracy of all others would be the very worst, for it would poison the fountains of truth itself, by infusing its own passions and a sense of its own interests in them, instead of its being regulated by that stern, unrelenting and impartial justice, which ought to govern every court of judicature in a free country. It has given me great anxiety, who, you know, have always taken a deep share in every thing that concerns your country, to find many of your state, and even federal judges, in the paroxism of your late delusion, itinerating through their courts, and converting the holy seat of law, reason and equity, into a rostrum, from which they could harangue the populace, under the artful pretence of instructing a grand jury; and excite an alarming fanaticism among them, under the cover of legal authority. Even *here* nothing of this kind has lately happened; I must therefore attribute such dreadful excesses to the early, unsettled nature of your government, before your habits are fixed by time and experience.

"Of all the calamities which can distress a people wishing to be free, that of a judge becoming a violent partizan, is the most to be deprecated. I dare say, under the wise and virtuous administration of Mr. Jefferson, a law will be passed regulating these occasional addresses to the passions of the multitude, and obliging the judges to keep within the bounds of their duty, instead of wandering at large, over the widely extended field of existing political differences, in which there are so many thorns and so few flowers.

"At present I hope every thing and fear but little. I have had a most exalted idea of the habitual good sense of your countrymen, who appear to have acted, on the whole, from the first settlement of New-England, under all circumstances in a manner superior to any example that as yet has been exhibited, as far as I know, in the whole course of human affairs; and I firmly rely, that this important part of the union, which was the first to assert the rights and liberties of men, will be the last to desert that sacred cause.

"I beg pardon for saying so much on this subject, but the feelings I have long had only in account, will, I am sensible, serve as an apology for this intrusion on your patience."

To Rent,

A THREE story brick house on Pennsylvania Avenue, west of the seven Buildings.—Possession may be had the 25th inst. For further particulars enquire of EBENEZER ELIASON, Bladensburg; or Samuel M'Intire, near the premises.

June 21, 1802. 3tawtf

Ten Cents Reward.

RANAWAY from the subscriber, living in the City of Washington, on the 10th of April last, an apprentice lad, named William Jones, about fifteen years of age, bound to the Cabinet and Chair Business. Whoever will secure the said boy so that the subscriber get him again shall receive the above reward, and no charges paid, by

WM. WORTHINGTON, sen.

June 21, 1802. ep3t

For Sale,

A two story frame House, nearly finished, situate and fronting on south N street on sq. 700, adjoining the premises of Mr. R. Frazer.

THE house is twenty five feet front, fifteen feet deep, a parlor and passage below, stairs in the passage, the lower story ready for plaistering; the materials on the spot. The second story nearly ready. The house occupies the whole of the front and runs back ninety five feet to a twenty feet alley, under a lease of ninety nine years, renewable forever. Should the above property not be sold by private contract before the 28th day of July, it will then be offered at public sale. For further information enquire of Mr Thomas Herty, or James Vansanot, New Jersey Avenue.

June 21, 1802. eotJy28

NOTICE.

THERE will be sold at public sale, for cash, on the 17th day of July next, at the dwelling of Richard Lamar, Prince George county, Maryland, four Negroes, viz one woman, two lads or boys, and a girl, the property of Mary Lamar, deceased, of said county, by me

J. LAMAR, Adm'r.

June 18, 1802. 1aw3t

District of Columbia,
County of Washington.

By the Orphan's Court June 8, 1802.

JOHN A. BURFORD and Hugh Densley, having applied for letters of administration on the estate of William Clarke, late of the frigate President, seaman, deceased—It is ordered, That they give notice of their application by inserting a copy of this order once a week four successive weeks, in the National Intelligencer, and that letters issue to them, unless cause to the contrary be shown on or before the 13th day of July next.

Test.

JOHN HEWIT, Regr.

June 16, 1802. 1aw4t

CHARLES VARDEN,

Merchant Taylor, from Philadelphia,

GRATEFULLY acknowledges the favors conferred on him by the gentlemen of this City, and flatters himself that the general satisfaction he has already given will merit a continuation of the same. He has also received a handsome assortment of goods from Philadelphia, consisting of,

Best superfine cloths, Cassimeres, Swansdowns, [illegible], Velveretts, Fancy Cords, Coatings, Flannels, &c.

N. B. Regimentals, Navel Uniforms, and Ladies' Habits, made in the neatest and most fashionable manner, and at the shortest notice—Washington City, New Jersey Avenue, next to Mr Rapine's book store.

Dec. 16, 1801. eptf

TO RENT,

And possession given immediately,

A TWO STORY brick house on F street near the War Office, containing two parlors, six bed rooms, and a kitchen, with [illegible] excellent garden, coach house, stable, &c. The house is newly painted and papered [illegible] was formerly occupied by Mr. Dexter, [illegible] lately by Mr. John Brown. Enquire of C[illegible] ment Dorsey, Esq. George-Town, or of th[illegible] subscriber, who has for sale a well finish[illegible] three story brick house opposite the Six Build[illegible] ings, and a variety of City Lots in [illegible] eligible situations. The above House will [illegible] sold for less than any gentleman could build [illegible] The payments will be made easy on the whole of the above property.

WILLIAM DYER.

April [illegible] eptf

☞ Building Materials will be taken in part payment. W. D.