IMPEACHMENT
OF
JUDGE CHASE.

SATURDAY, FEBRUARY 23

MR. MARTIN, *continued.*

According to the laws of England, and as is the law considered in Maryland, to entitle the party to a continuance, he must file an affidavit shewing what witnesses he wants—what he expects to prove by them—that he has used due diligence to procure them, and that he has a reasonable expectation to procure their attendance at some time. Judge Chase, had he wished that Callender should be deprived of a continuance of his cause, would have suffered them to file their general affidavit, but what was his conduct? Desirous, they should not improperly and hastily commit themselves, and lose advantages to which they might be entitled, he gave them a caution, and time till next day to profit by it. On the next day they did, it is true, file a special affidavit; but this special affidavit so drawn up under the caution given them by the court, is not such as can in any degree, stand the test of legal investigation even under the authority, which one of the honorable managers (Mr. Rodney) hath this day introduced. Callender did not in his affidavit state that he expected to be able to procure his witnesses at the next term, the term after, or at any term: He also stated that there were certain books necessary for his defence, but he did not state that he had endeavored to procure them before—or that he expected to get them against the next term. And surely, if when Callender wrote that libel, he founded any part of his charge upon books which had been published, he ought to have had them by him when he wrote and published, and to have kept them by him for his defence whenever he should be called upon to answer for that publication, and could have no right to claim a continuance for the purpose of obtaining such books. One of the honorable managers (Mr. Rodney) has this morning referred us to 6th vol. Bacon's Abridgement, from page 650 to 652, upon the subject in contest, the mode of putting off a trial, and there as he acknowledges, and as the authority enforces, "if there is any cause of suspicion, that delay is the object, the court should be satisfied from circumstances, that the person absent is a material witness—that the person applying has been guilty of no laches or neglect—and that he is in reasonable expectation of being able to procure his attendance at some future time." That the court had in Callender's case just reason to believe that delay was the sole object of the counsel, no person can doubt—Nay, the counsel themselves have upon oath declared, that delay was their object—that they had no hope or expectation that witnesses could be of any service to them—that they considered Callender's cause desperate if the law was constitutional; and that their great object was to continue the cause to another court that it might not be tried before my honorable client, of whose conduct in the case of Fries they had heard, and against whom they had formed, it seems, the most decided prejudices.

This authority then produced by the honorable managers, perfectly justifies the conduct of my client, in refusing upon that affidavit, to continue the cause to the next term. The court was then sitting to hear the charges brought before them—it was their duty to have them determined without unnecessary delay, that if the party was innocent he should be acquitted, if guilty that he should be brought to speedy punishment. The same honorable manager has from the same authority shewn, "that upon the particular circumstances of the case the court will make a rule for putting off the trial of a cause to the second term after the rule for putting off the trial is made." I admit the law, and will therefore readily admit that if an affidavit had been made by Callender stating that he expected to be able to prove certain facts, stating what the facts were, by witnesses, who from their particular situation, could not with any probability be produced before the second term, after the affidavit, and could then probably be had, the court might with propriety, and perhaps ought to have continued the cause to the second court, but no such affidavit was made; therefore not having made out such a case, they had no reason to complain that they had not the benefit of it. They did not even swear that they expected to be able to procure the attendance of their witnesses at any time whatever.

A case has also been referred to in Cowper's reports, where the defendant wanting the testimony of a witness who lived out of the jurisdiction of the court, and the court not having the power to issue a commission to obtain his testimony, the court declared that if the plaintiffs would not consent to have the deposition of such witness taken to be read at the trial, they would continue the cause indefinitely. The honorable manager has further said that though in England the court cannot issue a commission to examine witnesses, yet here the court has a power to issue a commission for that purpose. This honorable court will recollect that the case of Callender was a criminal prosecution, I doubt whether the court has any power in a *criminal* case to issue a commission to examine witnesses for or against the prosecution; I do not know of any law which gives them that power. If the honorable managers know of such a law, they will be so obliging as to refer us to it. But I will take up the objection upon each view, suppose a commission might have been issued, the counsel of Callender did not apply to the court to grant a commission, and to continue the cause till the commission was returned. Suppose a commission could not be issued, Callender's counsel did not apply to the attorney general of the district for his consent, that these witnesses should be examined where they lived, and their deposition be read in evidence on the trial, they did not apply to the court for their determination, that the counsel for this prosecution should consent to this, and that if he refused, the cause should on that ground be continued. Had they prayed a continuance on either of these grounds, and it had been refused, they might have had some pretext under their authorities for complaint, but this ground they never attempted to take.

Had they prayed for a commission, and the law authorised it, it is to be presumed the court would have granted it, if the court could not grant a commission, and the defendant's counsel had proposed that the depositions of absent witnesses should be taken to be read at the trial, it is possible the court would have continued the cause unless the prosecutor would have consented that depositions should be thus taken. Hence therefore on no principle doth it appear that there was any thing improper, incorrect or illegal, in refusing a continuance of the case of Callender.

But, sir there is another ground upon which the conduct of the court was strictly justifiable in requesting to know by the deposition what the absent witnesses were expected to prove, and also, in refusing to continue the cause.—Upon their own statement, the witnesses wanted were only material to a few of the charges in the indictment. Their absence therefore could not be a sufficient reason to put off the trial.—The attorney might have struck out of the indictment those sets of words to which their testimony was wanted, and proceeded to the trial, upon the other part of the charge.—And as the punishment both as to fine and imprisonment was discretionary, not exceeding a certain sum and time—Callender was equally in the power of the court, convicted on a part, as if he had been convicted on the whole of the charges—and the court having the discretion, and having refused a continuance for the want of the testimony suggested, had it in their power, when they passed sentence, to throw out of their consideration, those parts of the charge for which the testimony was wanted.

And on this subject the case put by my respectable colleague (Mr. Key) is perfectly in point; he supposed the case of a person indicted for stealing a horse, saddle and bridle; to delay the trial, the prisoner suggests the want of witnesses, the court compel him to declare in his affidavit what he expects to prove by them. It appears that he only wants to prove that the bridle was his own!—This surely would be no cause for delaying the trial. The prosecutor might instantly strike out of the indictment, the bridle, and there could not be the least pretext for not going to trial upon the residue of the charge, the stealing the horse and saddle. So in Callender's case, the want of witnesses to justify as to a few sets of words, could afford no reasonable cause why he should not be tried upon a dozen or more sets of libellous words, charged in the indictment, as to which he did not pretend to alledge that he wanted a witness.

In Maryland, it has ever been the practice to try criminal prosecutions of what nature soever at the first court, if practicable, and not to continue them unless some legal cause is shewn. Judge Chase had been accustomed to this mode of procedure. It was in Maryland that he acquired the first rudiments of law. It was in that state that his legal knowledge was matured by practice.

Why should capital cases, rather than inferior crimes, be tried the first court? The honorable managers admit that it is the general rule not to continue, but to try at the first term, capital cases.—Surely if indulgence, if delay is necessary in any case, it is in a capital case, where life is at risk; where an injury, if done, is irretrievable?

There are many reasons which shew the propriety that prosecutions of every kind should be decided with as little delay as possible. One of the principles as to criminal jurisprudence, as governor Claiborne has justly observed, is that though punishments should be mild, yet they ought to be *speedy*; by having an immediate decision there is a greater certainty that the criminal shall not elude justice by flight. The expence, whether to the criminal or to the public, is increased by delay; delay also hazards the loss of testimony by the death or absence of witnesses; and therefore diminishes the chance of having justice done, either to the party or to the public the one or the other of whom may be essentially injured for want of testimony, which might have been had if the trial had not been delayed; but even if witnesses live, and can be had at the trial, yet the lapse of time impairs memory, and their testimony cannot be relied upon in the same manner as if they were examined immediately after the transaction, when every circumstance would be fresh in their memory. These, with many other other reasons which might be given, have actuated our courts of justice in Maryland, never to continue criminal prosecutions of any kind, if it can be avoided; and shew the propriety of their conduct.

The next ſpecification, in this article, of improper conduct in the judge, is, that he, "uſed *unusual*, RUDE, and *contemptuous expressions* towards the priſoner's counſel; and inſinuated that they wiſhed to excite the public fears and indignation, and to produce that inſubordination to the law, to which the conduct of the judge did at the ſame time manifeſtly tend." As to this part of the charge, there is but little of a legal nature contained in it, I ſhall therefore haſtily paſs over it. If true, it ſeems to be rather a violation of the principles of politeneſs, than of the principles of law; rather the want of decorum, than the commiſſion of a *high crime and misdemeanor*. I will readily agree that my honorable client has more of the "*fortiter in re*," than the "*suaviter in modo*," and that his character may in ſome reſpects be conſidered to bear a ſtronger reſemblance to that of lord Thurlow than to that of lord Cheſterfield; yet lord Thurlow has ever been eſtemed a great legal character and an enlightened judge.

But let me aſk this honorable court whether there is not great reaſon to believe that the ſentiments my honorable client expreſſed with reſpect to the conduct of the counſel, and their object was juſt and correct? What was the conduct of Callender's counſel? Was it not ſuch as immediately tended to inflame the minds of the byeſtanders, and to excite their indignation againſt the court, and highly inſulting to the judges? In the firſt place, they endeavoured to obtain a continuance of the cauſe to the next court, merely with an intention to procure delay, and to prevent the cauſe being tried before judge Chaſe, acknowledging that they had no hopes or expectation from *any testimony* to ſave their client if the law was determined to be conſtitutional; and yet they brought forward their client to ſwear juſt what they pleaſed, in order to procure this delay, with reſpect to the neceſſity of witneſſes, whoſe teſtimony they acknowledge they were conſcious could, be of no ſervice to them, and yet they wiſhed the byeſtanders to conſider the court acting highly *improper* for not granting that continuance! Was this even to ſerve Callender? No, they avow they did not appear to ſerve him, but to ſerve *the cause*. Sir, it appears from their own evidence that Callender would have ſubmitted to the court, but for their interference, that they volunteered on the occaſion not for *him*, but for *their cause*, and yet the volunteers wanted the court to give them to another to prepare themſelves, and made Callender ſwear what they pleaſed to effect their purpoſe. They ſaid they were not well acquainted with the law upon libels, and therefore wanted time to examine the ſubject; but ſurely when perſons undertake to volunteer their ſervices on any ſubject, they ought to be maſters of it, and are entitled to no indulgence of delay. And as they declare they had formed the determination, on the firſt inſtance of an indictment under the ſedition law, to come forward and volunteered their ſervices for the ſake not of the man, but of their cauſe, common decency to the court, and a proper reſpect for themſelves, ought to have dictated to them in the interim to have made made themſelves fully acquainted with all the law relative to that ſubject in which they had thus determined officiouſly to interpoſe.

In the next place, when the jury were about to be ſworn, they challenged the array in order to ſet aſide the whole pannel. Such challenge can never be made correctly, but for the jury being returned by an officer not authoriſed, or for unfair and partial dealings in the officer who ſummons the jury. The reaſon aſſigned was, that one of the jurors who was returned has expreſſed ſentiments inimical to Callender. This, if true, might be a good cauſe to challenge the individual juror for favor, but no boy, who had read in an office ſix months, would have ſuppoſed this a ſufficient cauſe to have challenged the array, unleſs it had been further alledged that the marſhal knew the juror had expreſſed ſuch ſentiments before he had ſummoned him, and had ſummoned him for that reaſon, which was not ſuggeſted. Is it poſſible to believe that legal characters of ſo great eſtimation, that one of them was then the attorney general of the ſtate of Virginia, another almoſt immediately after appointed attorney general of the United States for the diſtrict of Virginia, and the third, appointed one of the chancellors of that ſtate, ſhould have been ſo utterly ignorant of the law relative to the challenge of the array, as to have made the motion they did? If not, it muſt be preſumed their conduct was influenced by a wiſh to embarraſs the court; to hold up the proſecution as oppreſſive; to excite public indignation againſt the court and the government, who endeavoured to inforce it, by attempting to impreſs a belief on the public mind, that even their marſhal had, in the very beginning, violated his duty to gratify the wiſhes of an oppreſſive government, and that for that purpoſe he had unfairly packed a jury. Was not this immediately, was it not deſignedly done for the purpoſe of exciting public indignation? What was the conduct of the ſame counſel when the court deſired them to reduce to writing the queſtions they meant to propound to col. Taylor? They have declared they heſitated whether they would do it; and before they did comply with the court's direction, they made a direct effort to hold up to the byeſtanders that the court was acting with oppreſſion and partiality to the prejudice of Callender, by impoſing on his counſel difficulties and impoſitions which the court had not impoſed upon the counſel for the proſecution! Whereas in fact the counſel for the proſecution had fairly ſtated the teſtimony he meant to offer, before he produced his witneſſes, having no deſire that the jury ſhould be ſurpriſed with improper evidence,—whereas the counſel for Callender wiſhed to have witneſſes examined to the jury without the leaſt previous diſcloſure to the jury or court, of the evidence meant by them to be given; moſt evidently that they might have teſtimony illegal thus impoſed upon them; and becauſe they were, by the correct interpoſition of the court defeated in this object, they could not conſent even to let this act of the court paſs, without a direct attempt to impreſs upon the byeſtanders, that it was another inſtance of the unfair and oppreſſive conduct of the court, which ought to excite their indignation! And here let this honorable court remember that Callender, in his Proſpect Before Us, had in the moſt ſolemn manner appealed to the ſtate of Virginia, that if ever the time ſhould come, when the government of the United States ſhould attempt to proſecute him and make him a victim under the ſedition law, that ſtate was bound under every principle of intereſt, of juſtice, and of the claims he had upon them, to come forward, and at *all risks* and *by all means* to protect him. Is there not, ſir, great reaſon to believe, that the object of counſel was to ſecond this appeal ſo made by Callender, and to induce the people of Virginia to come forward to ſave their client from the pretended oppreſſion of government,—to reſcue him from their fangs?

One of the gentlemen who was the counſel of Callender, has told us, that whenever a proſecution ſhould be attempted under the ſedition law, he had formed the determination to come forward to prove its unconſtitutionality. That in conſequence of this determination in Callender's caſe, and *only* for that purpoſe, he did appear in order to argue its unconſtitutionality. He has told us further, that he had no hopes of convincing the court, and ſcarcely the fainteſt expectation of inducing the jury to believe that the ſedition law was unconſtitutional; but yet that he wiſhed to argue the queſtion, with a view of making a proper impreſſion upon the public mind; and yet he has diſcloſed to us upon his oath, that when the court had charged him with wiſhing to addreſs himſelf to the populace and not to the court he denied the charge, and told the court he only wanted to addreſs himſelf to and to be heard by the court, and did not wiſh to be heard by the jury and by the byeſtanders! When at the ſame time he knew he could not be heard by the court, without alſo being heard by the jury and the byeſtanders, unleſs they had all been, a thing unknown, ſent out of the court houſe; or what is equally unknown, had their ears ſtuffed with cotton, or filled with wax; and yet the ſame gentleman has ſaid on oath, notwithſtanding that declaration, that it was his chief, almoſt his ſole object upon that ſubject to be heard by the byeſtanders, and on them to make proper impreſſions! What barefaced, what unequalled hypocriſy doth he admit he practiſed on that occaſion! What egregious trifling with the court! But, I would aſk this honorable court, what were the impreſſions which Mr. Hay was ſo ſolicitous to make on the people? Was it merely to convince them that the ſedition law was unconſtitutional, and ought not to be enforced? Had not the legiſlature of his ſtate ſome time before denounced this law as unconſtitutional, and deſtructive to liberty? Had they not circulated the denunciation throughout every part of their own ſtate, & ſent it to every legiſlature in the union? Do not let me here be underſtood to cenſure that honorable body, or to queſtion the propriety of their conduct, or the rectitude of their motives; far be it from me to doubt that they honeſtly believed the law to be unconſtitutional, and fraught with all the evils which they ſuggeſted would flow from its execution; and therefore that they thought it a ſacred duty to act as they did. I am not in the habit of queſtioning the motives which influence public or private bodies; it is my duty to leave that queſtion to their own conſciences and to their God; I myſelf view them in the moſt favorable light. I only mean to ſtate as a fact, a tranſaction of notoriety; but can it poſſibly be ſuppoſed after this, the people of Virginia wanted a ſpeech from Mr. Hay, to induce them to conſider the ſedition law unconſtitutional, or could he expect that thoſe who doubted after being ſo well acquainted with the ſentiments and conduct of their legiſlature, would be made converts by any thing they ſhould hear from him? No, ſir, no perſon can think it. What then was his motive? Was it not to impreſs on the people, that, not only an unconſtitutional, oppreſſive law, was about to be enforced; but alſo that the court, in order to inforce it, was acting in the moſt unfair and oppreſſive manner, as well as the marſhal; and thereby to inflame the reſentment and indignation of the populace againſt the court? I will not ſay that he really wiſhed ſo far to have excited their violence againſt my honorable client as to have endangered his life; but it is impoſſible that I ſhould doubt but that it would have given him pleaſure, that their violence ſhould have been ſo far at leaſt excited, as to have intimidated the court from executing this obnoxious law.

[TO BE CONTINUED.]

WASHINGTON CITY.

FRIDAY, AUGUST 2.

The Biſhop of London has written a circular letter to all the females of faſhion, requiring them to diſcontinue their Sunday parties in future, unleſs they mean to ſubject themſelves to the penalties of the eccleſiaſtical court.

The diſorder, now prevailing a New Haven, is daily becoming more alarming. Some families have removed from the town; the college has been diſmiſſed; the ſtudents have returned to their families, and the ſupreme court, which had juſt commenced its ſeſſion, has adjourned.

The celebrated *Mungo Park*, arrived at the iſland of Goree, on the coaſt of Africa, in March laſt, from England. He is now on his ſecond tour through the interior of that country, and is amply ſupplied by the Britiſh government with every thing neceſſary to render his reſearshes highly uſeful to mankind. At Goree he was joined by a lieutenant, with a detachment of forty men, which, with the botaniſts, draughtſmen, &c. &c. compoſe a company of about ſixty perſons. With this company he had aſcended the river Gambia about five hundred miles, in the month of April; and when the gentleman who furniſhes this information left Africa, Mr. Park was debarking, and about to commence his travels.

JEROME BONAPARTE was at Geneva on the 11th May. His brother the emperor, was then at Milan.

Alexandria, July 31.

Yeſterday morning, as Mr JOHN PETER, one of the clerks in the Bank of Columbia, was on his way from George Town to this place, with between ſixteen and ſeventeen thouſand dollars in notes of the Bank of Alexandria, for the purpoſe of having them exchanged—at the ſmall branch near the hedge of brambles, between the lands of Charles Alexander and Charles Alexander, jun. about one and an hal miles from Alexandria, a man appeared from the ſide of the road who ſeemed to be in the act of croſſing it, but on getting near his horſe he ſeized the bridle and diſcharged a piſtol at ſaid Peter, the contents of which lodged in his ſide; but from preſent appearances, we are happy to mention the wounds are believed not to be mortal. From the beſt information that can be obtained, it appears, that the man who committed the robbery on Mr. Peter, is of middling ſtature, a young man, with a black or blue body coat, white veſt, nankeen pantaloons, and ſhoes, (ſome ſay half boots)—He was at the ſtage office in George Town on Monday evening—croſſed the ferry towards Alexandria the ſame evening, and lodged in a ſmall houſe kept by one Benſon, about four miles from the ferry. After committing the act he ran towards a thicket of wood weſt of the town. He is ſaid to be an active man and of tolerably genteel appearance.

The following is a correct liſt of the notes, &c. taken from Mr. Peter, and of the different banks they belonged to:

A poſt note of the Bank of Virginia, (Richmond) for 800 dollars.

A poſt note of the Bank of Alexandria, 500 dollars.

One other of ſame Bank, 500 dollars

One of ditto, 450 dollars.

One ditto of the Bank of Potomac, 14,965 dollars.

A check on the Bank of Alexandria, ſigned by *R. Higginbotham*, Caſhier of the Union Bank, for 500 dollars.

Beſides the above there were ſome current poſt notes which cannot be deſ-

New-York, July 8.

The brig Sally Tracy (arrived here on Saturday) left Bordeaux on the 5th of June, at which time no new event of importance had occurred on the theatre of European politics. The Rochefort squadron had got safe into port from the West Indies, and had sailed again on a secret expedition.

In conſequence of information having been received at New-York, of an infectious diſeaſe prevailing in the city of New-Haven, the mayor of that city has iſſued his proclamation, directing all veſſels arriving from New-Haven to perform quarantine, and prohibiting the entrance to the city or county of New York, of any perſon who ſhall have been within the ſaid city of New-Haven, within 14 days next preceding. Like meaſures have been taken at Philadelphia.