NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

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FIVE DOLLARS PER ANNUM. FRIDAY, JULY 1[illegible], 1806. PAID IN ADVANCE.

On a liberal credit.

THE subscriber will dispose of at private sale, his estate called Chichester, lying on the eastern branch, immediately opposite the city of Washington. This tract of land containing 697 acres is laid off in lots from 83 to 144 acres for the convenience of purchasers. Plats of the estate and the terms of sale are in the hands of colonel Hanson at the navy yard, and Charles Wayman of George Town. The lots will be shewn by Mr Wedden, living on the premises, near the Eastern Branch bridge.

ANTHONY ADDISON.

Barnaby, 12th June 1805—tf

TO RENT,

THE COMMODIOUS *BRICK STORE near the Capitol,* now in the occupation of Messrs. P. Healy & Co.

Possession to be given on the 1st of May. Enquire of Frederick May.

March 28—tf

STELLE's HOTEL & *CITY TAVERN.*

THE Subscriber takes this method of thanking his friends and the public for their favors whilst on the Capitol Square and begs leave to acquaint them that he has taken the *Spacious Hotel lately erected by Mr. Carroll,* near the Capitol. The hotel being above one hundred feet in front, and containing fifty rooms enables the subscriber to offer every accommodation to members of Congress and travellers which can be expected in a public house.

PONTIUS D. STELLE.

Washington City, March 25—tf

N. B.—P. D. S. will rent the house lately occupied by him on the adjoining square

FOR SALE,

I will sell two Tracts of LAND lying and being in Allegany county in the state of Maryland; one called and known by the name of "Harvey's Meadows" patented 31st December 1805, for 341 acres, near Shellys or Sellys Little Meadows; the other "Mount Parnassus," patented 31st December 1805, for 298 acres; this tract lays on a branch of Savage river about five miles below the Little Meadows. I have never seen these lands, consequently know nothing of their value. Mr. Thomas Beall of Cumberland who is well acquainted with the above land informed me they were as valuable as any in that part of Maryland. Daniel Clark and Robert Cowden Stone, esqs. also informed me that from their acquaintance with the situation of the aforesaid tracts of Land they must be of an excellent quality.

Any person inclined to purchase, it is presumed will view before he contracts. A great bargain may be had for cash, or good paper on a short credit—a good and indisputable title will be given when the land is paid for. For terms apply to the subscriber in Upper Marlborough Prince Georges county.

SAMUEL J. COOLIDGE.

June 23—8w

The legal representatives of Nancy Abernethy deceased, and to all others whom it may concern.

Take notice, that, at the last court of Common Pleas, held at Carlisle for Cumberland county, James Corbet and Margaret his wife, late Margaret Clark, widow and relict of John Clark late of Allen township in Cumberland county, deceased, in right of the said Margaret presented their petition to the said court praying the appointment of commissioners to take the testimony of witnesses, in support of the last will and testament of the said John Clark deceased, in perpetuam rei memoriam. And the said court have appointed the first Monday of August next, as the day upon which all persons concerned may come forward and contest the same, or shew cause, if any they have, why a commission to perpetuate testimony in support of the said will, shall not issue.

By order of the court.

WM. LYON, Prothonotary.

Carlisle, June 23—3w

TO LET.

THREE HOUSES,

One three story & one two story brick, compleatly finished with Coach Houses and Stabling, both situated on Capitol Hill, and one neat two story Frame near the Tyber, on Pennsylvania avenue.

Enquire of Henry Ingle, who has on hand a good assortment of Mahogany Furniture.

June 23—1m

FOR SALE,

AT Bath (Berkeley Springs) Virginia, a HOUSE & LOT thereto belonging (late the property of Thomas Palmer, deceased.) The premises are calculated for a genteel family, or would make an excellent Boarding house, having thereon a smoke house, coach house and stables, with a garden laid out with much taste and inclosed with a good board fence.

Also near the town, are for sale, SEVEN acres of LAND, inclosed with a stone wall.

The whole will be sold very low, or exchanged for property in or near any of the large towns or cities. Apply to John Davidson, Washington city, or to Wm. Alexander, esq Bath, aforesaid.

NOTE—If not sold, it will be let for the season.

April 16—tf

THE SUBSCRIBER

HAS just supplied his shop in F street with a compleat assortment of fresh

Medicines & Drugs,

among which are Spermaceti & Linseed oils—also Paints of every description.

THOMAS PATTERSON.

Washington city, June 23—tf

FROM THE ENQUIRER.

ON THE

DOCTRINE OF CONTRACTS.

There is nothing more abhorrent to the feelings of a republican people, and there cannot exist a more abundant source of oppression than the uncertainty of penal laws. In our state, crimes are for the most part accurately defined, and the corresponding punishments clearly pointed out, so that in most instances it is almost impossible for any man to offend against the laws without knowing that he is guilty of a certain crime, and is liable to a certain punishment. The doctrine of contempts committed against courts of justice, forms perhaps a solitary exception to this honorable and excellent provision in our criminal code. We are obliged to peruse the volumes of the common law of England not only to ascertain in what the crime of "*contempt*" consists, but also to find out what punishment is annexed to it, and the no less important circumstance of the manner in which the punishment shall be inflicted. Indeed after the most attentive perusal of those volumes, we shall still be puzzled to ascertain the extent of the crime, because there is a discretion vested in the courts on this subject which places certainty beyond our utmost reach. That discretion is in my humble judgment repugnant to republican principles, and in less suspicious times may be easily converted into an engine of great oppression.

By referring to the commentaries on the laws of England, we shall find that the contempts which are punishable by the superior courts of justice there, are either direct or consequential, and it is astonishing to observe how many acts are considered as coming within that crime. Perhaps many of the instances which are recited ought in fact to call down the vengeance of the law; but when we recollect that those who are guilty of contempts are to be punished in their persons and their fortunes, in a summary manner, without the intervention of a jury, by a court who are most commonly interested, and who can hardly be removed from office even for the grossest misbehavior, we may surely pause and ask, can there be safety whilst such laws exist. Let us take a short view of the various acts which are punishable in a summary way, and are considered as coming under the description of contempts.

1st. When judges and magistrates of inferior courts act unjustly, oppressively, or irregularly in the discharge of the duties of their office, or when they proceed in a cause which are directed by a superior court not to proceed in, they are considered in all these cases as being guilty of contempt. Under this regulation, a complete mastery is given to the superior courts over the inferior, not only for the purpose of reversing their judgments, but of punishing them for injustice, oppression, and irregularity, and those superior courts have the complete discretion to say what shall be considered as unjust, oppressive, or irregular. Under this regulation a respectable magistrate who may have discharged the duties of his office with fidelity, may under a charge of disobedience to a writ proceeding from a superior court, or of irregular conduct, be dragged before that very court, and without being allowed to defend himself before his peers, be fined and imprisoned according to no measure but that of the judge's discretion. The common law of England is the law of Virginia, and I presume that our superior courts consider themselves as having the same authority over our inferior magistrates, that the court of King's Bench has over the subordinate jurisdictions in England. In this state there are upwards of a thousand magistrates. Is this numerous and respectable class of citizens willing that they should be subject to the discretion, or more properly speaking the whim and caprice of a few judges, however wise, and virtuous they may be? Can any reason be possibly assigned why a magistrate should be deprived of the benefit of a trial by jury, even when he is guilty of oppression? Besides the question necessarily occurs, "*quis custodiet et ipsos custodes?*" If by this short and summary method the inferior judges are to be punished for a violation of law, who are to punish the superior magistrates when they equally offend? They will sometimes act irregularly, unjustly, or oppressively, and in such cases would deserve punishment in as summary a manner as the inferior judges. Let the justices who constitute a considerable portion of our legislature look to this subject, while yet they have the power.

2d. When bailiffs, jailors, sheriffs and other officers of the court abuse the process of the law, or deceive the parties by any acts of oppression, extortion, collusive behavior, or culpable neglect of duty, they are considered as guilty of contempts, and are punishable in the same way. In this instance also, I conceive the power of the courts is considerable. A jury must be infinitely better calculated to judge of these criminal acts, and of the punishment proper to be annexed to them than the court.

3rd. Attornies and solicitors who are guilty of fraud and corruption, injustice to their clients, or other dishonest practices. I see no reason why they should not have the benefit of the trial by jury. Indeed the law of Virginia seems to have altered the common law in this respect. By our statute law, the counsel who practice in the court of appeals, court of chancery, general or district courts, are liable to have their licence suspended or vacated for mal-practices, either in those courts or the inferior ones; but the process against them is not summary, for the party accused is to be summoned to shew cause why an information should not be filed against him, and when the information is filed, a jury is empannelled to ascertain his guilt.

4th. Jurymen who make default when summoned, who refuse to be sworn, or to give any verdict, who eat or drink without leave of the court, or at the expence of either party, &c.

5th. Witnesses who make default when summoned, who refuse to be sworn or examined, or prevaricate in their evidence when sworn; are deemed to be guilty of contempts.

In these two last cases, the legislature seem to have been aware of the danger of trusting too much to the discretion of the courts, and they have for that reason in each instance either specified the sum in which the person offering the contempt shall be fined, or limited it to a certain sum which the court cannot exceed.

6th. There are contempts also offered to courts, by parties to a suit, as by disobedience to any order, or rule of court made during the pendency of a suit, &c. But the attachments which are issued, in consequence of contempts of this sort, are considered rather as civil executions for the benefit of the party, than as a criminal prosecution.

7th. The last species of contempt is that which may be offered by every person, and is fraught with most danger to the citizen on account of the great discretion given to the judge, and the undefined nature of the crime. Some of these contempts may arise in the face of the court, as by rude and contumelious behavior, by obstinacy, perverseness or prevarication, by breach of the peace, or wilful disturbances.—Others may happen in the absence of the party, as by disobeying, or treating with disrespect the writs, or the rules, or the process of the court; by perverting such writ to the purposes of private malice, extortion or injustice; *by speaking or writing contemptuously of the court or judges, acting in their judicial capacity; by printing false accounts or even true ones, without proper permission, of causes then depending in judgment, or by any act which demonstrates a gross want of regard and respect for courts of justice.*

It is certainly proper that courts of justice should be vested with the power of preventing any disturbance, or any act from being done whilst in session which has a tendency to interrupt the important business which it may have to transact, but would not this object be secured by authorising the courts to deliver the party to the custody of the sheriff, there to remain until the end of the court, or for a certain number of days, as completely, as by authorising them to inflict a rigorous fine, and a more lengthened imprisonment? The power of the legislature, over those who interrupt their proceedings, I believe, extends no farther, and to every religious man it may seem as important that an assembly collected for the purpose of worshipping their creator, should have as complete a power to preserve order, and punish contempts against them, as a court of justice. By the Virginia law, if any person wilfully or maliciously disturbs a religious assembly, he may be put under restraint by any magistrate during religious worship, and bound to appear at the next court, where he may be punished with fine and imprisonment to be assessed by a jury. Where is the impropriety, or the danger to the good order of society, in measuring the same justice to a judge as to a preacher of the gospel?

The power however which is entrusted to the courts of punishing contempts offered in the absence of the party, is much more objectionable. If a man speaks or writes contemptuously of judges acting in their official capacity, or if he publishes even true accounts of depending causes without authority, he is liable to be fined and imprisoned by the very court of whom he thus speaks, or writes contemptuously, or whose proceedings he announces to the world. Nay, farther, if he does any thing which in their opinion amounts to a want of respect and regard to them, he equally comes under their lash. Such a power as this, is monstrous and unwarrantable. It may be necessary for a court of Star chamber, which requires that its despotic proceedings should not be exposed to the light of day, and that not even a murmur of discontent should be heard, but surely it is an useless incumbrance for courts who are bound to administer with impartiality salutary laws to a free people. If such a law is suffered to stain our code, in vain may we boast that our constitution secures the freedom of speech and of the press; in vain does it establish the responsibility of public servants; in vain does it establish tribunals for the impartial administration of justice: all of these sacred principles are sacrificed to the ruthless spirit of the common law. Are not the decisions of judges as proper subjects of animadversion and censure, as the laws made by our legislatures? If so, how does it come to pass that it is criminal to speak contemptuously of judges when acting in their official capacity, and not criminal to speak of legislators when acting in their legislative capacity with equal contempt and acrimony? Judges are responsible agents, and although it is difficult to remove them even for misbehavior, yet it ought not to be forgotten that they are considered as amenable to the people for their judicial acts. As such, their motives may be arraigned and their proceedings scrutinized with as much freedom and curiosity as those of other responsible agents. Let us suppose a case to be brought before a court which is of great public moment and which has excited great public curiosity. The court delivers an opinion, or acts in a manner that offends disinterested spectators. In a moment of honest indignation one of them declares that the opinion delivered by the court is contrary to law, and repugnant to the constitution, and that the court must be either foolish or wicked. He delivers his sentiments freely, not in the view of the court, but to a circle of acquaintances; he does not attempt to interrupt the business of the court nor to intimidate it. Ought he to be considered as criminal? Every freeman will pronounce him innocent, but yet the common law pronounces him guilty, and drags him before the very tribunal whose acts he censures. That tribunal is party and judge; it decrees his punishment. But I may be told that the common law on this subject is repugnant to the constitution and therefore void. This may be true, but who are to decide on the unconstitutionality and invalidity of this law? The judges; those very men who (as to this subject) are called on to decide their own causes, are relied on to declare a law void which attaches to their character a degree of sacredness, which belongs to no other class of men. Is it not strange that so much confidence should be reposed in any set of men? Is it not singular that some modification should not be attempted to be made of a law which jeopardizes the liberty of the people, and places them at the mercy of 24 superior, and one hundred inferior courts?

The process directed by law to be used in cases of contempt, is perhaps as objectionable as the nature of the crime and the mode of punishment. An attachment is issued against the party and he is compelled to answer on oath the interrogatories propounded to him. If he refuses to answer, he is guilty of a high contempt. How variant is this mode of proceeding from that generally adopted in criminal proceedings? That no one shall be compelled to condemn himself is a principle engrafted on our code; a witness, in delivering his testimony is not obliged to answer a question which tends to criminate himself, and yet when any reproach or censure is thrown against this favored branch of government, or any of its officers, the ordinary rules of evidence are prostrated, and the party accused is obliged to condemn or acquit himself. If this law should ever be generally enforced, we may expect not only many oppressive acts, but that perjuries will be greatly multiplied.

This law has been more rigidly enforced in Pennsylvania, than perhaps in any other state. We have all heard of the fate of Passmore, who was fined and imprisoned for some contemptuous expressions written not against the judges or their officers, but against his adversary in a law suit. I presume that the judges tortured these expressions into a want of respect and regard for the court. The punishment seems to have been so wanton and oppressive, that if the good people of Pennsylvania had each man placed himself in the situation of Passmore, the judges would surely have been displaced, or the law which gave them such unwarrantable power entirely repealed. I believe that few instances have occurred in Virginia, in which the doctrine of contempt has been completely carried into effect; but it is not to be expected that our judges should always be moderate in the exercise of the discretion which is given to them. In the course of the month of April last, I witnessed one instance in which a district court punished an individual for a contempt. The contempt of that case partly consisted of expressions disapproving of the conduct of the court, in giving a direction to the jury, which was thought by some persons to be illegal, and partly by rude and indecorous language used towards one of the court after they had adjourned. The person accused was not, however, punished by imprisonment; he was bound over to his good behavior for 12 months, and a pecuniary fine was assessed by the court without the aid of a jury. On that occasion the common law doctrine of contempt was, I believe, recognised by the court as the law of Virginia, and although the process of attachment was not used, nor the party compelled to answer interrogatories on oath; yet it is sufficient to shew that the freedom of the citizen does not rest on a firm foundation, until a law shall pass defining the crime of contempt, prescribing its punishment, and regulating the mode by which it shall be inflicted.

A CITIZEN.

CONGRESS.

HOUSE OF REPRESENTATIVES.

MARCH 29.

MR. DANA of Connecticut. Mr. Speaker. It is well known, sir, how highly the public expectation has been excited with respect to the proceedings of congress. Before we assembled in this place there existed a strong sentiment of indignation, in consequence of the injuries and indignities accumulated upon the U. S. The language of the President's communication to Congress at the opening of the session corresponded to this tone of the public mind. The sentiment has been decidedly manifested in the memorials laid before Congress from different parts of the union. The frequency of our deliberations in conclave, the speeches delivered in public, the conversations of gentlemen without the bar, all might be mentioned as evincive of the general conviction, that the state of public affairs imperiously required something to be done—something adequate to the exigencies of our peculiar situation—something worthy of the moderation, the firmness, & the wisdom, which should characterize the representatives of a free, enlightened, magnanimous people.

From the interesting nature and magnitude of the subjects on which the President has given us information, from the general character of the measures which he has officially recommended to our consideration, a serious weight of responsibility has been devolved upon this House. And an ample portion of it, in my apprehension, has rested on those members upon whom the management of business has been more especially devolved in the course of political events, and by the peculiar circumstances of the time. The session has now continued for more than sixteen weeks. During this time the gentlemen have had opportunity to present for consideration, such measures as they have thought proper for liberating the country from evils which are experienced, and for guarding it against such as are to be apprehended. After all the patience of expectation, during so long a period, in waiting for the gentlemen to develope whatever of system they may have formed or adopted for the public welfare, I hope it will not be judged improper if I now request your attention to some of the subjects which have not been considered in the House, although they are mentioned in the President's communication, and are perhaps not less immediately interesting than others, about which there has been so much said in the form of public debate.

With the exception of the reference to affairs with several Indian tribes, and the measures for exploring certain parts of the interior of this continent, the communication of the President principally regards our foreign relations. He gives us information of the state of affairs with the powers of Barbary; but no difficulties on that coast are mentioned as requiring the particular attention of Congress. The prominent topics are our relations with some of the greater powers of Europe. With them we have questions of serious moment.

We have controversies, nominally, with Spain, on account of territorial claims and aggressions, and for spoliations during the former war. With respect to these, we have done nothing in public. Of what has been done in secret I abstain from speaking; as the majority of the House has not yet consented to remove the veil which hides the proceedings in conclave from the eyes of the people.

Between this country and G. Britain there are serious questions relative to the impressment of seamen, and the trade with colonies of her enemies.—With a view to these questions we have had various propositions before us, and the House has adopted such as undoubtedly seemed to the majority most adviseable.

But among all the propositions and resolutions which have been laid on your table, not one has contained any provision relative to some of the grossest outrages mentioned in the President's message—outrages committed by persons under the flags of various belligerent powers, *the British, the French, the Spanish.* I speak of outrages at the entrance of our harbours, on our coasts, and in the West Indies.

"*Our coasts have been infested, and our harbors watched by private armed vessels, some of them without commissions, some with illegal commissions, others with those of legal form, but committing piratical acts beyond the*