cree of the state in all its parts, and adjudged that the Active and her cargo shall be condemned as prize for the sole use of the appellants. A certificate of this decree having been transmitted to the judge of the state court, he was of opinion that the Court of Appeals had no right to set aside the verdict of the jury, and therefore ordered the Marshal to sell the Active and her cargo, and bring the proceeds into his Court, ready to abide his further order. On the 4th January, 1779, Matthew Clarkson, the Marshal, brought into the state court 47,981*l.* [illegible] *d.* Pennsylvania currency, on account of the cargo of the Active, the vessel remaining unsold; and Judge Ross signed an acknowledgment that the Marshal had deposited that sum in his hands, *as judge of the court.* On the 4th January, 1779, the Court of Appeals issued their mandate to Matthew Clarkson, to detain the proceeds of the cargo in his own hands, until their further order should be made known to him; to which mandate he made return, that he had paid the money to Judge Ross, in obedience to his order.

Several proceedings and resolutions relative to this affair, appear on the journals of Congress, and of the legislature of Pennsylvania, which it is unnecessary to mention. They differed in opinion, and the Court of Appeals, for the sake of peace, forbore to make any attempt to carry their decree into execution. The money brought into the state court was loaned to the United States, and certificates of the loan were issued. Judge Ross paid part of these certificates to David Rittenhouse, deceased, treasurer of the state of Pennsylvania, for the proportion of the prize adjudged to the state, and at the same time (1st May, 1779) Rittenhouse gave to Ross his bond in the penalty of 22,000*l.* with condition that the same should be void if the said David Rittenhouse should make repayment of the sum of 11,497*l.* 9*s.* 9*d.* in case the said Ross should, by due course of law be compelled to pay the same, according to the decree of the court of appeals, and if the said Rittenhouse should keep the said Ross fully indemnified, &c. In the condition of this bond it is mentioned that the money was paid to Rittenhouse, treasurer of the state for the use of the state. It is declared in the answer of Elizabeth Sergeant and and Esther Waters to the bill of Olmstead, &c. that on the 21st of Feb. 1793, David Rittenhouse caused the said certificates to be funded "for the benefit of those who might *eventually appear to be entitled to them,*" and received "in lieu, and on account thereof, and for the *benefit and use aforesaid,*" three other certificates, (particularly described in the answer) and that, after the death of the said David Rittenhouse, the said certificates, together with a large sum of money, received by the said David Rittenhouse for interest on the same, came to the hands of the said Elizabeth Sergeant and Esther Waters, his executrixes; that some time in the Autumn of 1801, Abraham Carpenter, *Treasurer of Pennsylvania,* called on the said Elizabeth Sergeant and Esther Waters, and required of them to deliver to him the said certificates, and the interest received on them, upon his giving them a bond of indemnity, which they *refused to do,* being advised that they could not do it with safety. On the 14th Jan. 1803, Richard Peters, Judge of the district court of the U. S. for the district of Pennsylvania, decreed, that the said Elizabeth Sergeant and Esther Waters should transfer and deliver the said certificates, and pay the said interest money to Olmstead, &c. (the libellants) upon the bond of indemnity being cancelled and given up. On the 29th May, 1807, Elizabeth Sergeant and Esther Waters filed in the district court a suggestion that they had paid into the treasury of Pennsylvania the said certificates and interest money in consequence of an act of the Legislature of the said state, passed 2d April, 1803; they further suggested, that the said certificates and money were received by their testator as the treasurer, and officer of the state; and therefore no process ought to issue against them, on the said decree; and that the said decree, so far as it respected the claims, rights, and interests of the said state, was *ex parte* and without jurisdiction. The judge of the district court having delayed to issue process on his decree, a mandamus from the supreme court was received by him on the 18th of March, 1808, to which he made a return, 18th July, 1808, stating the reasons of his delay. At Feb. Term, 1809, the supreme court issued a peremptory mandamus, in obedience to which Judge Peters issued the attachment, by virtue of which Mrs. Sergeant is now held in confinement.

If I order Mrs. Sergeant to be discharged, it must be because the Court of the United States has proceeded in a case in which it had no jurisdiction. If it had jurisdiction, I have no right to inquire into its judgment or interfere with it process. But the counsel of Olmstead have brought forward a preliminary question, whether I have a right to discharge the prisoner, even if I should be clearly of opinion, that the district court had no jurisdiction. I am aware of the magnitude of this question, and have given it the consideration it deserves. My opinion is, with great deference to those who may entertain different sentiments, that in the case supposed, I should have a *right* and it would be my *duty* to discharge the prisoner. This right flows from the nature of our federal constitution, which leaves to the several states, absolute supremacy, in all cases in which it is not yielded to the United States.—This sufficiently appears from the general scope and spirit of the instrument.

The U. States have no power legislative or judicial, except what is derived from the Constitution. When these powers are *clearly* exceeded, the independence of the states, and the peace of the Union demand that the state courts should, in cases brought before them, give redress. There is no law which forbids it—their oath of office exacts it, & if they do not, what course is to be taken? We must be reduced to the miserable extremity of opposing force to force, and arraying citizen against citizen—for it is vain to expect that the states would submit to *manifest* and *flagrant* usurpations of power by the U. States, if (which God forbid) they should every attempt them. If Congress should pass a bill of attainder, or lay a tax or duty, on articles exported from any state, (from both which powers they are expressly excluded,) such laws would be null and void, and all persons who acted under them would be subject to actions in the state courts. If a court of the United States should enter judgment against a *state* which refused to appear in an action brought against it by a citizen of another state, or of a foreign state, such judgment would be *void*, and all persons who act under it would be *trespassers*. These cases appear so plain, that they will hardly be disputed—it is only in considering doubtful cases, that our minds feel a difficulty in deciding—but, if in the plainest case which can be conceived, the state courts may declare a judgment to be *void*, the principle is established. But while I assert the power of state courts, I am deeply sensible of the necessity of exercising it with the greatest discretion. Woe to that judge, who rashly or wantonly attempts to arrest the authority of the U. States; let him reflect *again* & *again*, before he declares that a *law* or a *judgment* have no validity. The counsel for Mrs. Sergeant have, with great candor and propriety, admitted, that when there is reasonable cause for doubt, that doubt should be decisive in favor of the judgment in question. The same principle has been adopted by the judges of the supreme court of the United States, and of our own state, when the questions concerning the validity of laws, have come before them—and it has my hearty approbation.

Having disposed of the preliminary question, I will now consider the point of jurisdiction—If the district court had no jurisdiction, it must either be, on account of the subject of the suit, or the persons who were parties—I will examine them separately. The subject is a matter of prize, which arose before the adoption of the present constitution. By the 2d section of the 3rd article of the constitution, the judicial power of the U. States extends "to all cases of admiralty and maritime jurisdiction." These expressions comprehend all cases which had arisen, or which should arise—and it was no doubt the intent to comprehend them; because otherwise, all antecedent cases would have been left unprovided for. I believe this construction has universally prevailed, nor has it been questioned in the course of the argument in this case. It appears then, that the subject of the libel is directly within the jurisdiction of the court, being a matter of admiralty jurisdiction. It is unnecessary for me to give any opinion concerning the right of the old court of appeals to reverse the decision of juries, contrary to the provisions of the act of the assembly of Pennsylvania, under which the state court of admiralty was instituted. That is the point which occasioned so much jealousy and heart-burning, between several of the states and the old Congress—it divided the opinions of many men of unquestionable talents and integrity, and certainly was a question of no small difficulty.—But the state of Pennsylvania having ratified the present constitution, did thereby virtually invest the courts of the United States with power to decide this controversy. They have decided it, and being clearly within their jurisdiction, I am not at liberty to consider it as now open to discussion. The supreme court of the United States has more than once decided, that the old court of appeals had the power to reverse the verdicts of juries, notwithstanding the law of any state to the contrary. From the establishment of this principle, it irresistibly results, that Gideon Olmstead and his associates were entitled to the whole proceeds of the Active and her cargo, and may pursue them into whatever hands they may have fallen, unless indeed they have fallen into the hands of persons not subject to an action in the courts of the U. States. This leads me to the question concerning the parties to the suit, the only question which has appeared to me to be of real difficulty, and which I was pleased to hear argued with great force and candor by the counsel for Mrs. Sergeant. It is declared by the 11th article of the amendment of the constitution, that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced, or prosecuted, against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state."—The record in this case, shews a suit between citizens of Connecticut and citizens of Pennsylvania. It is therefore not within the words of the amendment. But it is contended, that although not within the words, it is within the spirit, because the suit is brought against persons, representing an officer of the state, who received the property in question for the use of the state. There is weight in the observation, that the inconvenience would be very great, if the plaintiff in any action might, by an evasion, by substituting the officer of the state in the place of the state, compel the state to abandon its property, or contest it, in the courts of the United States. In a case so circumstanced, the argument would be very powerful against the jurisdiction of the federal courts. I cannot say, judging from the facts judicially disclosed to me, (which are all that I can judge from) that the present case is so circumstanced. The certificates were certainly paid to Mr. Rittenhouse, as treasurer of the state. But it is equally certain, that neither he, nor his representatives since his death, did deposit them in the treasury of Pennsylvania; on the contrary they were invested by him in a new fund in his own name, and it appears by his written memorandum, that he did not consider them as the property of the state, but his own property, until the state should give him a certain indemnification, which never was given.—If this evidence is not strong enough to shew that the certificates and money were not in the possession of the state, it requires an additional strength difficult to resist, from the circumstances stated in the answer of Elizabeth Sergeant and Esther Waters, "that they had refused to deliver them to the treasurer of the state, although expressly required so to do." Whether the conduct of Mr. Rittenhouse and his executrixes was right or wrong, is not the point now to be inquired into. The fact is that they did withhold the certificates and interest money, from the treasury, until after the final decree of the district court. Their paying it afterwards cannot affect the question of jurisdiction. How then does the case stand? The property of these certificates and interest money was irrevocably vested in Olmstead, &c. by the decree of the former court of appeals, which the supreme court of the United States, since the adoption of the present constitution, has decided to be conclusive. The possession was not in the state, and the suit was not brought against the state or any of its officers. I do not see then how it can be maintained, even under a liberal construction of the 11th article of the amendments, that the state was a party to the suit, in the district court.—Several acts and resolutions of the legislature of Pennsylvania were read in the course of the argument, concerning which I am not called upon to decide—I exercise the right in common with my fellow citizens, of speaking my sentiments, on political occurrences in private conversations, but it would ill become me on this occasion, to express any opinion concerning the policy which the state has thought proper to pursue. Whatever they have done, I extend to them the same charity which I ask for myself, the belief that they have acted from pure motives. But although I say nothing concerning the policy of the government, I may be allowed, without impropriety, to express my anxious hope, that this long continued controversy will be brought to a termination, without any material interruption of that harmony between this state and the United States, so essential to the prosperity of both.

On the whole of this case, I cannot say, that it clearly appears to me, that the district court of the United States made its decree, in a cause of which it had no jurisdiction.—I must order, therefore, that Mrs. Sergeant remain in the custody of the Marshal.

WASHINGTON CITY.

MONDAY, MAY 1.

The following *Communication* was written before the recent accommodation with Great Britain. Containing facts and views, which, notwithstanding this happy result, ought not to be lost sight of. We are led, even at this day, to insert it. These facts and views are forcibly illustrated by the late speeches of Lord Grenville and Mr. Whitbread in the British Parliament, from which it appears that in the last year there has been a decrease of eleven millions sterling in the exports and imports of England; that the amount of raw materials imported during the same period was only five millions, instead of the usual amount of thirty-two millions; and that out of thirty-two cotton mills hitherto employed at full work at Manchester only six are now employed at half work.

COMMUNICATION.

We are perpetually told that the Embargo has only been injurious to ourselves; that England and France have, in fact, been benefited by it. However natural it may be to hear this vauntingly asserted in the English prints, it is painful to hear it echoed in this country. It has, say they who maintain this opinion, given a monopoly of the trade of the world to England, which cannot fail to increase her prosperity. However plausible this may be on a superficial observation, it will be found, on a more close examination, to be totally fallacious. What degree of injury it has done us is entirely one thing; the injury sustained by England is another.

Nothing can be more fallacious than to measure the degree of prosperity of a nation by the degree of her commerce, as it is very frequently the precursor of her downfall. In the career of almost every distinguished nation, the era of its declension has been coeval with the greatest extension of its commerce. It is not our purpose hence to infer that England has reached this era, although many of her most enlightened writers have not hesitated to avow it; but merely to shew that an accession to her commerce during the past year, if such an accession has actually occurred, is no evidence of an increased prosperity.

To estimate the real influence of the Embargo in England, we must look at its internal operation. This it is proposed, to do in one important point of view—the price of provisions, the influence of which in that country is well known. By the late accounts, we learn that flour is fifteen dollars a barrel. Let us calculate the effects of this enormous price on the people. The ordinary price is about seven dollars and a half. As the augmented price of wheat elevates that of every other species of grain, and of animal food likewise, provisions generally will necessarily rise with the increased value of flour. A late, and it is believed, authentic census & classification of the people of G. Britain and Ireland make them fourteen millions, of which only a fifth part is employed in agriculture. The remaining four-fifths are consequently purchasers of provisions, for the supply of which they are dependent on the government, their estates, or labor. We shall say nothing of the effects of increased prices on the government and the wealthy, except that, so far as relates to the army and navy, there must at least unavoidably arise the necessity of augmented taxes, although that necessity may be averted and concealed for a time, and that, so far as relates to the rich, they must in the mean time sustain much painful privation. But these are small considerations, compared with the effects on the manufacturing, the trading, and generally the laboring class of the community. If this be computed at but one half of those not employed in agriculture, they will be found to amount to above six millions. Reckoning the advanced price paid by each person on provisions at fifteen dollars, which is probably much below the truth, it will follow that this this class of people have actually had imposed upon them an extraordinary burthen of ninety millions of dollars.

And how have they been enabled to counteract its pressure? Not by increased wages—for unfortunately, the same causes that raised provisions diminished their field of employment.

Add to this, the enormous increase in the prices of the raw materials required for her manufactures, or their insufficient supply; and the dreadful effect likely to be produced by a want of flax-seed, the injurious effects of which will probably be irreparable. For sowing in Ireland alone, we are told in the British House of Lords, 50,000 hogsheads are wanted.

One of two things has indisputably occurred. Either the manufactories of England have been carried on at a vast expence beyond that ordinarily incurred, or they have been partially stopped to the great loss of the nation, and the equal injury of the manufacturers. In the first instance, an immense additional capital has been required, which would have otherwise been beneficially employed on other objects; in the second, a great diminution in the quantity of manufactures must have ensued. Time will prove, whether these evils have not been much greater than any benefits which may have been derived from a monopoly of trade.

In a late debate in the British House of Commons, the Secretary at War, in vindicating the Duke of York, stated that he "had given up his own undoubted patronage in allowing the sale of commissions, which had been invariably before in the gift of the Commander in Chief."

Here is an unblushing acknowledgment of the manner in which the public treasure is wrested from the legitimate purposes to which it is applied.

The honorable Secretary, in the same speech, makes the following declaration, which would not, we apprehend, pass current on the opposite side of the channel.

He said, "He was always of the opinion, *which was now universally allowed,* that British courage was not to be equalled in any country."

Virginia Election.—For the district composed of the counties of Fauquier and Culpepper, JOHN LOVE is re-elected, without opposition in one county, and by a great majority in the other.

Dr. W. JONES is also re elected a Representative from the state of Virginia to the next Congress.

The federal ticket in Rhode Island has been successful at the late election by a majority of upwards of 500 votes.

The Contrast. The pride of patriotism may well be gratified, by contrasting the following proceedings of the citizens of New York. On the side of the republicans we behold a prompt, frank, and unlimited approbation of the late measures of the administration, although those measures lead directly to an accommodation with England, with hostilities to which country they have been long libelled. They approve the end, the means, and the men who accomplished it. They justly glory in the lustre it reflects on the American character; or the dignity it confers on their country.

On the other hand, a body of men, of all others, perhaps, the most interested, comes out, it is true, with an approbation of the end accomplished (that they dared not refuse) but with the malignant ascription of it to base motives. Equally lost to gratitude and justice, they invert all reasoning, and attribute, without the least ground, a thing acknowledged to be good in itself to bad motives, and have even the folly to hold it up as a reason for withholding confidence from those who effected it. But all this will not do. The accommodation made will give a death blow to faction. The leaders of opposition may still pursue their course (though many of them, we are persuaded, will be undeceived) but the great body of the federalists, partaking of the general prosperity, and actuated by a pure motives as their democratic brethren, will withdraw their confidence from men so unjust to the faithful guardians of their interests, and bestow it on the government.

At a meeting of several thousands of Federal Republican Electors in the city of New York, convened by public notice at the Circus, in Anthony street, April 24, 1809; CORNELIUS RAY, Esq in the Chair, ROBERT BOGARDUS, Secretary, the following resolutions were unanimously adopted;

Resolved, That we congratulate our fellow citizens on the prospect at last afforded of success in their efforts against the ruinous policy of the administration of the general government, and on the hope which may now be entertained of a speedy return of our national prosperity.

Resolved, That we owe this prospect to the distinguished exertions of the minority in Congress, and to the manly and independent conduct of the people of the Northern and Eastern states, whose spirit and energy have at length controled the partial and temporizing policy of the cabinet at Washington.

Resolved, That since our administration have consented to accept of terms, which were equally in their power previous to the commencement of those fatal projects of which we