U. S." What says probability? That "with such knowledge, such an arrangement *would not have been made*."——that the P. U. S. must have been too well acquainted with the risks on such an occasion, and the pretexts which such a fact would have furnished the British government to sacrifice the arrangements to its interests, to have agreed to it.

What course were our Government to take with Mr. J.? To have furnished him with new opportunities of repeating his insinuations——submitted to such indignities—encouraged Mr. J. to repeat them in the course of the negociations——overlooked the respect which is due to the U. States, by suffering him to trample it under his feet——disgraced our national character in the eyes of the world? No. It was really time to shew the Jenkinsons and the Percevals, that we had some little character at stake—that we would enforce the respect which was due us from their understrappers——that we had a sensibility to feel, and a nerve to resist these insults. These men, from the time since they were called to the ministery have never ceased to aggrieve other nations and ourselves. Look at Denmark, Look at their orders of November 1807——at the attack on the Chesapeak——at the state of the diplomatic communications. Every thing seemed to call for some energetic measures of self respect.

Who is it, that has dismissed J. F. Jackson? Mr. Madison- - the man whom you yourselves say has manifested no hatred towards England—and who has even violated the letter of a law, to meet her overtures for accommodation. You do not wish for war with England. He does not either with France or England, if it can be honorably avoided—*We* wish to be at peace with all the world—and to "sit under our own vine and our own fig tree, with none to make us afraid"—Why should such a man reject even Mr Jackson but from the commanding influence of national honor?

Think of these things—unless you learn to behold the British ministry in their true lights——unless you repress their hopes of your divisions——and manfully resist the encroachments of Britain—Insolence or War must be the alternative.

Mr. Jackson seems to have adopted Mr. Canning as his *model in diplomatic courtesy*—Mr. C. turns our laws into jest —and his representative beards our executive to his face. The one charges Mr. Pinkney with misrepresentation—the other gives our President the lie direct. We are happy at last to see *ill manners* receive a salutary lesson. Mr. J. will feel at *least* that it is no "Joke."

LAW INTELLIGENCE.

EMBARGO.

UNITED STATES *vs.* EDWARD PRICE.

At the district court of the United States, for the district of New York, held before his honor judge Tallmadge, which commenced its sessions on the 4th instant, several of those suits which have been instituted to recover penalties under the embargo laws were noticed for trial. Among others the cause of the United States against Edward Price, which was an action of debt to recover against him, as master, or person having charge of the schooner Regulator, or as being knowingly concerned in the loading of the said vessel, penalties for loading in the night time, without a permit and without the inspection of the proper revenue officer.

A great part of the jury which appeared to serve at this court, were from Orange, a county fifty or sixty miles from the city, from whence they had been summoned by the marshal without any official direction of the judge: And were selected by the mere will of the marshal, without any attempt having been made to conform to the mode of forming juries in the courts of this state.

By the judiciary act of the U. S. passed in 1739, "It is enacted that jurors in all cases to serve in the courts of the United States, shall be designated by lot or otherwise in each state respectively, according to the mode of forming juries therein, then practised, so far as the laws of the same should render such designations practicable by the courts or marshals of the U. States; and that the jurors should have the same qualifications as are requisite for jurors by laws of the state of which they are citizens, to serve in the highest courts of law of such state, and should be returned as there should be occasion for them from such parts of the district from time to time as the court should direct, so as should be most favorable to an impartial trial, and so as not to incur an unnecessary expence, or unduly to burthen the citizens of any part of the district with such services.'

This law, as to the mode in which jurors were to be designated, refers to the time when it was passed, but alterations having been afterwards made in the mode of selecting jurors in several of the states, and particularly in our state by an act which provided that jurors in this state should be selected by ballot from a list annually returned to the clerk's office of every county, by certain persons designated in the law. Congress in May, 1800, passed a law, which so far as relates to the mode of selecting jurors, is nearly in the words of the law of 1789, and declares that jurors to serve in the courts of the United States shall be designated by lot, or otherwise in each state or district respectively, according to the mode of forming juries to serve in the highest courts of law therein, *then* practised, so far as the same shall render such designation practicable by the courts or marshals of the U. States. But the United States' law of 1789, so far as it relates to the courts directing from what part of the district the jury shall be taken, remains unaltered.

On Tuesday last, the district attorney moved to bring on the trial of the above mentioned cause, when Mr. Griffin and Mr. Colden, who were counsel for the defendant, filed a challenge to the array, alleging that the jurors were not legally returned, because they had been summoned by the marshal of his mere arbitrary will; that they had not been returned from a part of the district directed by the court.—To this challenge the attorney of the United States demurred ore tenus—that is to say, he made a parole declaration that no legal objections to the jury were shewn by the defendant's challenge.—The counsel for the defendant insisted that the attorney of the United States ought to be compelled to put his demurrer in writing, but the court determined that a parole demurrer was sufficient, and the court also decided that the attorney might immediately proceed to argue on the demurrer whether there was cause of challenge, which they accordingly did.—The attorney of the United States contended that it was impracticable to select the jury by ballot as was practised by the courts in this state, or in any wise to conform to the state laws in this respect.—That the part of the United States' law which provides for the jurors being returned from such part of the state as should be directed by the judge, was a provision merely intended for the ease and convenience of jurors, and gave the parties no rights.—Besides, that though the act of Congress authorised the court to direct from whence the jury was to come, this authority was only to be exercised on application of the party who desired it to be executed, and the defendant having made no application to the court, he was not to be allowed to make the want of its direction an objection to the jury, and lastly, the attorney of the United States insisted that the jury had been summoned according to what had been the practice of the court from its institution.

The counsel for the defendant insisted that as the attorney of the U. States had demurred to the challenge, and took no exception to its form, he admitted the facts. He had admitted therefore, that the jurors had not been elected by ballot according to the state laws as far as was practicable, and that they had not been summoned from a part of the district directed by the court, that therefore the only enquiry was, whether the laws of Congress required that these things should be done, and the defendant had nothing to do but appeal to the statute book.—That if the attorney relied on the impracticability of conforming to the practice under the state laws, he ought to have pleaded to the challenge, or have moved to quash it—but as the court had decided that it was now proper to discuss the points which the attorney had been permitted to state, the defendant's counsel would in behalf of the defendant answer the arguments which had been offered by counsel for the plaintiffs. The defendant's counsel then proceeded to state that as to the manner of electing the jury, it was to be observed, that the act of Congress did not require a full compliance with the state laws—that the great object was to preserve to suitors in the courts of the United States, as far as was practicably the invaluable right of having the jurors elected by ballot—and that this was by no means impracticable—that in every clerk's office in the state, there was a book containing the names of the freeholders in the county qualified to serve on juries, that the judge might have directed from what county the jury should have been summoned, that the marshal might have applied to the clerk of that county for a copy of his list of freeholders, from that list he might have made his ballots, and he might have balloted for the pannel in the presence of the judge or the clerk of this court, which would have been a very near approximation to the mode of electing jurors for the state courts—or the marshal, with the assistance of his deputies, might have made a list of freeholders in any part of the district that the court might have designated, and then there would have been no difficulty in making the ballot. But at any rate no sufficient reason had been offered for the neglect of part of the act which requires the court to direct from what place the jury should be taken. The terms of the law of Congress left no discretion with the court in this respect.—The words of the statute are not that the court *may* but that the court *shall* direct from what part of the district the jurors shall be returned. That it was absurd to say, that the defendant in such cause was to apply for the direction of the court, because jurors were summoned to try all the causes, which might be brought on at a sitting. And if such an application was to be attended to from each defendant, there might be as many pannels returned as there were causes.—That the defendant might not have had an opportunity of making such an application; for that the process to summon the jury might have been issued and executed before he received notice that his cause was to be tried.—Besides that it was a general principle that the plaintiff must take care that the jurors that appeared, as well in respect to the manner of their being chosen as to their qualifications, were proper to try his cause, and if they were not, the defendant might take advantage of it, as was every day's practice for the defendant to do. As to the former practice of the court, the defendant's counsel observed, that that ought to have no influence on his honor's decision, because it was well known that until very lately the causes which were submitted to a jury in this court, were very few, and comparatively of very little consequence, and were seldom of a nature to excite any fears that the jury might have a bias to the one side or the other. That therefore the manner in which jurors had been selected, had never excited any attention, but at this time the case was very different, for it was not an exaggeration to say, that there were now millions depending on the event of suits which had been instituted for breaches of the embargo laws. That it was well known that libels were now upon the records of the court which proceed upon the ground that the President's proclamation of the 19th April last, opening the intercourse with Great Britain was an illegal act, that he had no authority to issue it; that therefore it was a mere nullity, and that of course the non-intercourse act of the 1st of March, with all its denunciations of penalties and forfeitures had always been in full force. That if the courts were to be of his opinion, there was hardly a merchant in the United States who was not at the mercy of the Executive officers of the government, who might not have their property seized, and who might not be prosecuted in suits of this nature for enormous penalties.

It became therefore now of the utmost importance to see that all the cautions which the laws had provided for an impartial selection of jurors should be observed. That the questions between the government and the citizens which were to be decided in this court under the embargo laws, it was well known had greatly excited the public mind. It would hardly be denied that many might be found in the district who were so blinded by their political prejudices, and by their passions, that they would never acquit a political opponent accused of a breach of the embargo laws, which were so dear to those who favor them, at the same time it was not meant to be denied, but that men might also be found as prejudiced against convicting.

If then a marshal might run from one end of his district to the other to select whom he pleased for trials of this nature, it was in fact putting it in the power of an individual to determine who should be convicted and who acquitted in the courts of the U. States.

The counsel of the defendant called the attention of the court to the constitution of the United States and its amendments—the first provided that the trial of all crimes shall be by jury. But it being feared that this *inestimable right* was not sufficiently guarded by this simple provision, the seventh article of the amendments provides, that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an *impartial jury*. The counsel then asked whether it was possible to suppose that the framers of the constitution or of its amendments could have imagined, that notwithstanding these provisions a citizen might be subjected to trial for his life, even by a jury selected at the mere will of a marshal who might be his prejudiced political opponent or his bitterest enemy. Had a defendant, the counsel asked, any security for an impartial jury in cases like this, where the jurors may be selected at the mere will of an officer of the Government, at whose instigation the suit is instituted, and who has an eventual pecuniary interest in the conviction of the defendant; for if the penalties which are demanded in these cases are to be levied on execution, the marshal's share of them will be no inconsiderable fortune. The counsel for the defendant both declared that the attempt they made in this case was merely with a view to secure to suitors in this court the benefits of those provisions of the state laws which were so well calculated to guard against corruption and partiality, and which perhaps was a greater improvement in jurisprudence, than the institution of trial by jury itself. That in what they had said respecting the marshal and jurors they referred entirely to what might be, without intending any insinuation as to what was or has been. That as to the present marshal, they had never heard any thing to his prejudice, and they did not know any thing of the jurors, from a distant part of the district, who were on the pannel.

When the United States attorney had said a few words in reply to the arguments of the defendant's counsel the judge told him it was unnecessary for him to proceed, as the court was satisfied on the subject.

We shall not attempt to detail the reasons his honor give for his decision for fear of mistakes—He however exactly agreed with the attorney of the U States in all points. He thought it was wholly impracticable to have any ballot or to conform in any respect to the state laws—That it was discretionary with the court, to give, or not, at its pleasure, any direction as to the summoning the jury, and that if a defendant was desirous that a direction should be given, it was his business to apply for it—And the judge ordered the clerk to enter on the minutes the demurrer of the attorney of the United States, and that upon hearing counsel hereupon, the court gave judgment in favour of the United States.

WASHINGTON CITY.

FRIDAY, NOVEMBER 24.

The following members of Congress have arrived.

Of the *Senate*, Messrs. Gaillard, Gilman and Pope.

Of the *House of Representatives*. Mr. Varnum, (Speaker) and Messrs, Bacon, R Brown, Chittenden, Cutts, Macon, Poindexter, Porter, Sawyer, Rhea (T.) Thompson.

The following *extraordinary* article is extracted from the Independent American of yesterday:

' The National Intelligencer of yesterday has published Mr. Jackson's circular to the British consuls with the following introduction:

" The following letter, said to be addressed to the British consuls, is taken from the Independent American. We are *authorised* to say that its contents, so far as they contradict the article published in this paper on the 13th instant, relative to the course of the negociation between our government and Mr. Jackson, are unfounded."

' It might be well for Mr. Editor Smith, to inform the public by what authority he makes this declaration. His *we are informed*,—*we are authorised*, &c. are intended to impress an idea on the public mind that he has his intelligence from the office of the Secretary of State. But WE *are authorised to say*, that Mr. Secretary Smith never *authorised* Mr. Editor Smith to make the declaration contained in the above quoted paragraph.'

Solely to guard against misconception, we deem it proper to say, that the declaration made in this paper on the 22nd instant, as quoted above, is strictly correct.

FOR THE NATIONAL INTELLIGENCER.

The paper denominated a "Circular," which Mr. Jackson, the British minister, has just uttered, is an *appeal to the people* of the United States from the decision of their government. The fact is established by the complexion of the production, the statement of particulars in which was altogether unnecessary, if his object had merely been to notify the sub-agents of England resident in this country to address their communications to him at New York.

It is contrary to the law of nations and repugnant to the very nature of the diplomatic function, for a foreign envoy to plead, in his official character, the merits of his cause before the citizens of the country wherein he resides. There can be no dispute as to the impropriety of addressing them in a *direct or indirect* form, in person or by "Circular," because he is prohibited by the attributes of his mission from accosting them as a minister in *any* form. Mr. Jackson is the representative of the government of Great Britain to the government of the U. States; and that is all he is. If he speaks to the American people in any other manner than through the Executive, which is the constitutional organ, he sets himself up as the rival of the Executive and is justly censurable. The transition from addressing the public to *intriguing* with the people against the government by which he is accredited, is easy; and the manifest tendency of his conduct in either case is to subvert the constituted authorities of the republic.—If Mr. Jackson were a private man, he would have no right to controvert and denounce the acts of the President, because he is an alien, and therefore not even a solitary unit of the constituent part of the nation; much less is he justifiable, being a minister, in assuming that freedom, which belongs only to the citizen.

Would Mr. Jackson himself be willing to abide the consequences of an appeal thus made, admitting the worst that could, but which certainly will not happen? Supposing the community to be indignant at his behavior and excited to anger against him, would he be willing to meet the terrible judgment of that people whom he had made the arbiter of his actions? Would he be willing to encounter that spirit of vengeance which he had invited, and which, when roused is awful as the thunder of Heaven and overwhelming as the tumultuous waves of the ocean? Would he not require from that Executive magistrate whom he insults, protection; and would he not demand security & safe-conduct in the name of those very laws of nations which he has outraged?

Mr. Jackson claims consideration as an envoy extraordinary and minister plenipotentiary: In that aspect he is entitled to various important exemptions from restraint, which are denied to private men. In return, he is himself subject to certain restrictions from which individuals are free; and if he breaks through them, he is as guilty in relation to the government as the government would be in relation to him, were it to infringe any of his privileges; for the rights of governments and those of ministers are mutual. The dissemination of Mr. Jackson's "circular" is a gross infraction of the obligations imposed upon him by the nature of his office.

The circulation of the paper in question by Mr. Jackson, even in *manuscript*, was a *publication* of it. Its appearance in *print* is only an aggravation of the original offence. The opposition gazette in which it came forth affords strong evidence in favor of the opinion that it went to the press immediately from himself, or mediately through some of his agents. In either case the misdemeanor is the same; for, let the channels of communication to the public or to the printer have been what they may, the "circular" is the production of the honorable Francis James Jackson.

This act of Mr. Jackson is more conspicuously obnoxious, because it proceeds from the ambassador of a nation whose parliamentary history furnishes an exalted example of just resentment against a similar appeal, from the sovereign to the subjects of the British monarchy. It was Monsieur *De Palm*, the imperial resident at London, who affords an odious parallel to Mr. Jackson. Palm had caused a memorial, which he had previously presented to the British king, to be printed and circulated among the people of England; and this being considered by the parliament an unlawful interference on the part of a foreign envoy, the houses of Commons & of Lords passed several resolutions reprehending the conduct of Palm in very severe terms, "*declaring their utmost abhorrence of this audacious manner of appealing to the people*;" and voted an address to George the first, assuring him that the parliament would stand by and support him against the disturbers of the public tranquility, as well as against those who flattered themselves with hopes "that an obstinate perseverance in their destructive measures could stagger the firmness of the British nation in the defence of their rights and privileges." The circumstances of this case will be found recorded in the Journals of the proceedings of the House of Commons for the year 1726, a period at which the English parliament was a more legitimate organ of the feelings and sentiments of their fellow subjects than at present. The Lords and Commons both viewed the case in its true light, the insult thus offered to the executive branch of the government, was, in reality, an insult to the whole empire, and every person who respected the constitution of the country was bound to repel it. The doctrine of ministerial appeals to the people has never been popular in the U. States. Genet tried the experiment, and met with nothing but indignant