

# The Gazette.

PHILADELPHIA,

TUESDAY EVENING, FEBRUARY 3.

MR. PENNO,

I send you the address of the minority consisting of 48 members in the House of Delegates in Virginia, which the address of the majority rendered necessary for explaining and justifying the opinions of the minority. This masterly performance, while it does the highest honor to the talents and patriotism of the minority, cannot fail to have the happiest effect in removing the errors and prejudices concerning the general government, which are entertained in Virginia, or in any other state. So found in principles, so strong in argument, so elegant in expression, its eloquence is irresistible; it has given a decisive blow to the antifederal party in that state, whose downfall may be dated from this epoch. The general assembly of Virginia closed its session on the 26th of last month.

ALPHA.

## A D D R E S S.

FELLOW-CITIZENS,

OPPOSING as we did, resolutions of the General Assembly, passed on the 24th day of December, we cannot remain silent under the unprecedented example exhibited in support of them, by a detailed display of those reasons which influenced their adoption. We lament their existence; and we deprecate the deviation from our legislative usage, which their adoption has produced.—If this was the only evil resulting from the system of which they form a conspicuous feature, we should in silence wait your application of the constitutional corrective, which you annually dispense: but considering the happiness united America enjoys, and foreseeing the evils which divided America must inevitably suffer, we cannot shrink from the discharge of the momentous duty to which we are unexpectedly called, and on which we reluctantly enter.

To place the present crisis plainly before you, it is necessary to recur to past transactions.

For the purpose of perpetuating the blessings of our national independence, the people of united America were induced to exchange their first political association for that now existing. The will of the majority produced, ratified and conducts it. This first principle in our federal pact cannot be impaired without proportionate injury to the body politic.

The fallibility of man prohibits the hope of perfection in his works; and the best rule for freemen to adopt, in the opinion of our ancestors, was that which inculcates obedience to laws enacted by a majority of functionaries appointed by the people. Foreseeing the terrible effects which might ensue from differences of opinion on national subjects they added to this first principle two others, which promised immortality to the work of their hands: they declared the compact amendable, and plainly pointed out the ways; they limited powers to fixed periods; recurring to the choice of the people for the delegation of authority.—Under a constitution thus formed, the prosperity of America was great and unexampled. War broke out in another quarter of the globe: the government of the people of the United States bemoaned like the distressed inmate, to a vast portion of the human race; distressed not within their control, and in the termination of which they did not possess even a remote influence. Avoiding the existing carnage, the continuance of our existing happiness, became, as was proper, the primary object of the attention of government. The President of the United States, a citizen the most tried, and the most beloved, weighing all the difficulties to which our relation to the belligerent powers exposed us, promulgated by proclamation, the existing state of things, and warned his fellow-citizens of the pernicious consequences which would follow the dereliction of their neutral condition. An adherence to this situation was enjoined by law, and approved by the general plaudits of our country. Yet, unfortunately for America, and for republican government, a few, openly, and more secretly, lifted their voice against their country's will. A foreign minister's contumacious appeal from the acts of government to the people, whose honor and comfort, alike commanded their support of that government, was maintained with affection to the foreign agent, and with acrimony against the constituted authorities of the nation. The subject became familiar to the whole people; and their voice, spontaneously uttered, sunk into temporary and contemptuous oblivion, the abettors of this wicked effort. Smothered for a while only, the unextinguished fire rekindled as occasion afforded fuel.

The treaty which terminated our revolutionary war, although followed by the immediate possession of the main good, yet held some secondary objects unsettled. The consequence of war is a state of mental ire, which yields only to acts of mutual beneficence, and to time. This state of mental warfare had not ceased, when the unjustifiable conduct of our late foe, especially on the ocean, rekindled our ardor for hostility and revenge. The executive of the United States, uninfluenced by the passions of hatred or affection, continuing to view peace so long as it was to be preserved without dishonor, as his highest duty, in a moment menacing war, made his last effort to avert its miseries from our land. He sent a minister to Great Britain, for the purpose of settling the existing discord. Peace was preferred, with honor. This event, instead of confirming our internal tranquillity, was turned with such dexterity to the renewal of past animosities; the views of Genet were readied in a different dress, and the executive of the union was branded with every epithet of opprobrium, because in preventing war, every good

wish for by one of the parties to the contract of peace had not been obtained. Here the indignation of the American mind was addressed with considerable effect. At length the people, roused by self attention, spoke—all was tranquil; and error, whether resulting from mistaken confidence, or vicious intention, sunk again into oblivion.—France, our ally, to whom our government had, from the beginning of the war, presented repeated proofs of sincere friendship, taught by the bickerings of ourselves, on the subject of the British treaty, re-echoed American reproaches with French views and French objects. Similitude of sentiment, too often begets union in design—our commerce became a prey to French cruizers; our citizens were captured, and all the injuries heretofore received from the British nation, were repeated on our defenceless country; with this striking difference: A former foe, claiming unexpected stipulations, inflicted the first; while the latter proceeded from the hand of a former friend, bound to us by the ties of a solemn treaty, and receiving from us every good in our power to bestow, without violating our neutrality, and thereby committing suicide on our national and individual happiness.

Influenced by the same pacific principle, the President (the same tried and beloved Washington) attempted, as before, by a timely interference to avert the impending war. He sent a minister to France, with full powers to remove by candid explanations mistaken opinions, to renew ancient friendship, and to perpetuate the blessings of mutual peace. This minister was not even received, but was ordered to depart with marks of contumely and threats of imprisonment. The successor of Washington, actuated by the same principles, and anxious for the same beneficent end, made a second effort to restore peace, and paid an unusual compliment to the French government, by sending three envoys extraordinary, with ample powers to hear, to explain, to redress, and to bury every complaint in a fair, honorable and friendly adjustment. This renewed testimony of our desire for peace, was returned by increase of insolence and affront.

Thus situated, we had but to choose between submission to the will of a foreign nation, and the maintenance of our independence. What American could hesitate in the option? The choice being made, self-preservation commanded preparations for self-defence. With this view, and to this end, various defensive measures were adopted by the last congress, the most effectual of which were, the equipment of the fleet, the raising of an army, a provision for the removal of dangerous aliens, and for the punishment of seditious citizens. The two first are charged with the atrocious design of creating a monarchy on the ruins of our free government; and the two last are declared to be usurpations of power in violation of the constitution; while all of them are viewed as parts of a fixed system, tending to the establishment of despotism. This serious accusation, if true, commands your eternal interposition; if untrue, it ought to guard you against the warning of those who from error, or with the most pernicious design, invite you to the adoption of measures baneful to American happiness and fatal to American liberty.

When the most powerful nation in Europe, by whose insidious policy and numerous armies, populous, warlike, and wealthy states have been overturned, whose loss of dominion is insatiable, and whose only rule of conduct is her will, has demanded tribute at our hands, and menaced us with the fate of nations conquered and despoiled, what means could have been adopted more convenient or more likely to secure our defence? The equipment of a fleet, guards the remains of our commerce from their privateers, enables us to incommode any offensive attempts which their enmity might dictate, and to facilitate our exertions for self defence; by facilitating the conveyance of the requisite supplies for military operations in our extensive country. Important already, have been the beneficial consequences to our commerce, flowing from this wise measure, and every benefit to trade, in an increased ratio, enlivens and invigorates agriculture. More important will be its effects in securing our protection, should we be forced to the last appeal in defence of our liberty and property.

Upon so solemn an occasion, what curses would be adequate to the suppositions of our government, if militia were the only resort for safety, against the invasion of a veteran army, flushed with repeated victories, strong in the skill of its officers, and led by distinguished commanders? Should not the American citizen be prepared to meet the eventual combat by those acquirements which place him on an equal footing in the day of battle? Or is he so little esteemed as to be designedly submitted to an unequal conflict? What more than placing him on an equality with his foe is proposed by raising an army? Thus our ancestors acted in the revolutionary war; and suspicious, perverting their intention, like these now disseminated, would have been treated with contempt, or punished as the schemes of men devoted to the enemy. Where is the change in our situation, which authorizes the denunciation of a measure now, then admitted to be wise and indispensable? Does it argue a love of country to paralyze means adopted for its defence? Does it demonstrate affection to our fellow citizens, to reprobate endeavors which bestow upon them equality of skill with their antagonists? Does it evince a wish to disregard and distrust our militia, when an army is formed of citizen soldiers, for that very militia to rally round, and hand and hand, to march to attack the foe? Can that army be called mercenary, which is composed of our brothers and our sons, levied by law, paid by law, and embodied to defend their and our common rights? Would your Washington lead a mercenary army? Is he not again your general? Why then, those unfounded suspicions, and this opprobrious unwarranted epithet, but to entangle your passions, and to mislead your judgements?—Pause, reflect, and say, whether counsel thus

advised can have any good effect; and whether under the pressure of promoting your happiness, it does not lead to an issue disastrous to America, calamitous to Virginia!

Alike erroneous, and alike destructive of the common weal, is the distorted construction of the Alien and Sedition Laws. Nevertheless, these acts are confidently pronounced unconstitutional, so much so, that to many of our fellow citizens, the question may appear to have been completely decided.

In the opinion of some, to deliberate on this subject, is to be criminal, and to pause before we declare that the constituted authorities have knowingly and intentionally violated that sacred charter by which they hold their political existence, is to be inimical to that republican liberty, which constitutes the pride and happiness of our country, and which can only be preserved by preserving that government which is now so boldly arraigned. Had the measures which profess their origin from these laws been confined to ordinary, peaceable and constitutional efforts to effect their repeal; had a decent respect for the real majority of the American people been maintained, no opposition would have been made by those who now address you.—But when a partial irritation in some degree produced by misconception is sought to be excited into general hostility against the government of our country; is seized as affording a fair occasion for proceedings which may sap the foundation of our union, we must in obedience to that duty which gave birth to this reply—submit to our fellow citizens, some reflections on these laws:—

The act concerning aliens makes it lawful for the president of the United States to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or seditious machinations against the government thereof, to depart out of the territory of the United States within such time as shall be expressed in such order.

This law has been declared to be unconstitutional, because—1st. It transcends the powers of congress;—2d. It violates that article which restrains the prohibition of migration till 1808;—3d. It unites legislative, executive and judiciary powers in the chief magistrate;—4th. It deprives aliens of the constitutional right of trial by jury.

Time will not allow a minute investigation of this subject, the several objections will be but briefly reviewed.

1st. It is alleged to be an exercise of a power not delegated. The constitution of the United States, in its organization dissimilar to any scheme of government which has heretofore been devised.

It pretends to us for many purposes an entire nation, and for other purposes several distinct and perfect sovereignties.—Perpetual peace among ourselves; a complete participation of privileges through all the states, and above all safety from abroad were perhaps the strong motives which induced America to unite under one government.—All objects which are general in their nature, which interest all America, which are connected with the general safety; all external objects can only be obtained by the co-operation of the whole, and therefore the powers necessary for their attainment would be naturally vested in the government of the whole. The needs of social and interior regulation can be most beneficially attended to by the state sovereignties, and therefore the government of the union is and ought to be excluded from participating in their formation.

When we examine the situation of the United States, and the objects for which its government must necessarily have been formed, the mind is irresistibly led to the demarcation of a plain line of partition between the general and particular sovereignties.—Since the general and state governments equally represent the people, and are alike accountable to them for misconduct; those powers which are essential to our happiness and protection, may with equal safety be to their abuse be trusted to the one or the other. It is therefore rational to suppose, that they are placed where they can be exercised most beneficially, and that they are given to that government which is destined to effect the particular object for which those powers are calculated.—This obvious principle seems to have actuated those who framed our constitution; the powers of peace, war and commerce, of external intercourse in all its variety of forms, of calling out and directing the force and wealth of the nation, are placed in the general government. They are rightly placed, because to that government we look for protection from enemies of every denomination.

With respect to these objects America is one nation, and therefore the state governments are restrained from interfering with these great acts of sovereignty: the power of protecting the nation from the intrigues and conspiracies of dangerous aliens who may have introduced themselves into the bosom of our country, seems to be of the class with those necessarily delegated to the general government: security to the union from their wicked machinations, cannot otherwise be ensured, and this security is essential to the common good. The means of obtaining intelligence of their plots are in possession only of the general government, nor can any one state do more than expel them from its territory—their right of residence is not unfrequently provided for in treaties, and treaties can only be formed or dissolved by the general government. If in the act of removing them unjustifiable injuries be committed, reparation is demandable by the sovereignty of their nation.

The reparation is demandable not from state but from the United States' government.—All America, therefore, is interested in the manner in which this power shall be exercised, and would consequently choose to place it in the hands which all America clothes and controls.

In conformity then with the general theory of our government the power of protecting us from the conspiracies of aliens should

be associated in the same hands with the nation and the general power of protection from hostility of every kind. Yet it is admitted, that if in the formation of our constitution a different arrangement is made, that arrangement, however inconvenient, must be sacredly obeyed till constitutionally changed.

It behoves us, however, to satisfy ourselves completely in this interesting point.

The government of the United States, is indubitably limited as to its objects, however it may be as to the means of obtaining those objects.—It possesses only delegated powers, and it is proper to enquire whether the power now under consideration be delegated or not. It is necessary in pursuing this inquiry to bear in mind that we are investigating a constitution which must unavoidably be restricted in various points to general expressions, making the great outlines of a subject; and not a law which is capable of descending to every minute detail.

If we construe the former by rules strictly applicable to the latter, the power of fortifying our ports and harbors might well be questioned, nor could the utility of the clause authorizing congress to make all laws necessary and proper for carrying into execution all powers vested by the constitution in the government of the United States, or in any department or officer thereof be readily pointed out.—It would be difficult too to assign a reason for omitting in the 12th amendment to our constitution, which is evidently copied from the second article of the ancient confederation, the very material word *expressly*. That article of the confederation, and the amendment of our constitution, were designed as a plain and explicit admission of the principle, that the powers not delegated are retained. In the confederation all powers not expressly delegated are retained; but in the amendment this very operative word is wisely omitted.

In reviewing then our constitution to decide on the powers vested for general purposes, in our general government, we must examine the whole paper—we must examine it fairly, but liberally.

Congress has power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water"—To make reprisals is a power distinct from, and which not unfrequently precedes war; as a branch of this power those members of congress who are decided in their declarations against the alien law, united in 1794, in support of the bill for sequestering British property. But reprisals may be made on the persons as well as the property of aliens; and as sequestration is the exercise in an inferior degree of the general power of reprisal on property, so may the removal of aliens be considered as the exercise in an inferior degree of the general power of reprisal on persons. If the whole power of reprisal be delegated, the particular degree or manner in which it shall be exercised, is a question of political discretion, and not of constitutional authority.

Congress has power "to define and punish the crimes and offences committed on the high seas, and offences against the laws of nations."

By the law of nations, or by particular treaty, an alien acquires a right of residence in a country at peace with his own, and it is an offence against that law to become dangerous to the peace and safety, or to be concerned in any treasonable or seditious machinations against the government of the country in which he resides. These offences congress may both define and punish.

Congress may call forth the militia, "to suppress insurrections and repel invasions"—and further, "the United States shall guarantee to every state in the union, a republican form of government, and shall protect each of them against invasion."

By this latter clause, something further was intended than merely to repel invasion. Invasion actually made is to be repelled, and for that purpose the militia may be called out.—But congress it is to do more than merely to repel actual invasion. This power having been granted in the 8th section of the first article, the constitution in the 4th section of the fourth article, gives the additional power, and makes it the duty of congress to protect each state against invasion. To protect against an evil, includes the right of taking proper and necessary steps for its prevention. Of these proper and necessary steps, the government possessed of the power, must judge.—To cause to depart from our territory the individuals of a nation from whom invasion was apprehended, is most obviously a measure of precaution dictated by prudence and warranted by justice. It appears then to be fairly deducible, from the theory of the constitution, and from a correct view of its particular parts, that the power of protecting the American commonwealth against dangerous aliens, whether dispersed through the interior of our country, or embodied in arms against us, is an existing efficient power placed with all others necessary for the common safety in the only hands which can bring it into complete and beneficial operation.

2d. The exercise of this power is supposed to have been suspended until the year 1808, by the 9th section of the first article of the constitution.

The words are "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year 1808, but a tax or duty may be imposed on such importation not exceeding ten dollars for each person."

This is obviously designed as an exception to some given power. It would be extravagantly absurd to restrain until the year 1808, the exercise of that power which could not be exercised after that year.—Whatever then is suspended by the article just recited, was considered as an existing thing on which the suspending clause could operate. It is the importation and migration of such persons as any of the states then existing should think proper to admit.—But in this clause then, it would be in the power of congress

to prohibit the migration of aliens into the United States. It will not be easy to find in the constitution a grant of power competent to forbid their entry, which is not equally competent to forbid their continuance in our country. But while this clause furnishes a strong argument in favor of the general power of congress over the subject, it is necessary to show that the exception is that general power which it specifies, do not to modify it as to expose us to the machinations of aliens who, in our bosom may be conferring our destruction.

To forbid indiscriminately the admission of certain classes of persons, and to order individuals of those classes to depart when they become dangerous, are certainly two distinct acts, which may be performed separately, and which do not necessarily interfere with each other. This cannot be questioned—but it is said that the power of ordering suspected aliens to leave our country may be so used as to destroy substantially the power of tolerating their migration, and it is granted that it may be so used but the possibility of abusing a principle is never supposed to be a correct argument against the power of retaining it, nor can it be admitted that the possibility of extracting the last shilling from the purse of every individual, is a sufficient objection to the existence of the power of taxation. The right of ordering aliens to depart from the United States is confined to those who are deemed dangerous; and such a construction of the law as would substantially deprive the states of the benefits resulting from the migration of such persons as they might think proper to admit, would be a perversion, and not an execution of it.

It may also be said with respect to Virginia, that she has not chosen to admit the migration of such persons as the alien law enjoins to depart. No law of this state authorizes the migration into it of persons of the description comprehended in the act of the United States; on the contrary, our laws expressly authorize the executive to apprehend and secure, or compel to depart this commonwealth, all suspicious persons being the subjects of any foreign power or state, from whom the President of the United States shall apprehend hostile designs against the said states. If then the power of ordering certain persons to depart is to be connected with that of admitting their migration, the state of Virginia does not admit, but excludes from her territory all those who are contemplated by the alien law.

3dly. This law is also objected to, because it unites legislative, executive and judiciary powers in the president of the United States.

Legislation is the act of making or giving laws, congress therefore in making this law performed the part of the legislature, nor is there anything legislative in the execution of it. If indeed congress by itself or perhaps by commissioners appointed by itself had executed the law, the charge would have worn some semblance of truth; but the commission of the execution of this law is the person charged by the constitution with the execution of all the laws of the union; certainly in itself unexceptionable.—No does this act transfer to the president powers belonging properly to the judiciary. It does not involve a decision that its object has committed a crime. It is a measure of general safety, in its nature political and not forensic, the execution of which is properly referred to the department which represents the nation in all its interior relations—every law, in its execution, requires some judgment, but the execution of the law is not of that account judicial.

4th. This act deprives the alien of his right to trial by jury. To this extraordinary allegation, it has again and again been answered, that this is a measure of preventive and not of punishing justice—who would require that a jury should be empanelled, in order to decide whether a nation had or had not caused to suspect a particular alien of dangerous designs against its peace?—who would require that the President should unfold to juries throughout the United States all the intelligence he may have received, perhaps from persons within the reach of those employing the aliens, and which establishes in his mind the reality of the danger to be apprehended.—Certainly a vested right is to be taken from no individuals without a solemn trial, but the right of remaining in our country is vested in no alien.—He enters and remains by the courtesy of the sovereign power, and that courtesy may at pleasure be withdrawn.—That Virginia considers the two last objections groundless, is demonstrated by her own act on the same subject. By the second section of the sixty-second chapter of our laws, it is enacted, that "it shall and may be lawful for the governors, with the advice of the council of state, to apprehend and secure, or cause, to be apprehended and secured, or compelled to depart this commonwealth, all suspicious persons, being the subjects of any foreign power or state, who shall have made a declaration of war, or actually commenced hostilities against the said states, from whom the President of the United States shall apprehend hostile designs against the said states; provided information thereof shall have been previously received by the executive from him. And in all such cases the Governor, with the advice of the council of state, shall, and he is hereby empowered, to send for the person and papers of any foreigner within this state, in order to obtain such information as he may judge necessary."

If the alien law of the United States be an union of legislative, executive, and judiciary powers, so is that of Virginia; if one is unconstitutional by depriving an alien of trial by jury, so is the other. This is a question entirely separated from the power of the different governments; because the provisions of the one constitution, are in these respects as explicit as those of the other. This act of our legislature was not passed hastily or inconsiderately.—It was originally en-