major Cushing and myself, in which, in his opin-ion, major Cushing had been disgraced; in revenge for which he conceived it likely that he had used ion, major Cushing had been disgraced; in revenge for which he conceived it likely that he had used this method of jojuring me; that Mr. Davis had seemed surprised at this information, and faid that he never before heard of this quarrel, which, however, accounted to him for the conduct major Cushing had observed towards him upon the subject of the said chain when it was before the House of Reorelentatives; that Mr. Davis added that he and major Cushing had, as that sime, ledged together Representatives: that Mr. Davis added that he and major Cushing had, at that time, lodged together, and that major Cushing had labored to convince him that my claim was unjust—that the appointment of me as aid de camp had been given to me by the commander in chief, not for the good of the service, but merely to serve and grarify me: and that such an appointment never was necessary. That he (Mr. Strother) had replied, that on my arrival he should certainly inform me of this circumstance, for which it was probable major Cushing would be punished.

Of this I was on my arrival here, informed, by Mr. Strother. Of the truth and accuracy of the information I neither have, nor ever had the least doubt. Under a full impression of its truth I acted as has already appeared to the court; and the question to be determined is, whether, under the circumstances of the case, my behaviour was scandalous, infamous, and unbecoming an officer and a gentleman?

To form a correct judgment on this head, it is necessary to examine the specifications, and the proofs; since if the particular charges, and the evidence brought to support them do not designate and prove a behaviour scandalous, infamous and unbecoming an officer and a gentleman, it is not in the power of my accuser to make it so; and the conclusion drawn by him, in order to bring the case within a particular article of the war, mnst fail, and the profecusion with it.

The behaviour imputed to me is charged to consist.

filt,

1A. In writing a note to major Cuthing on the arch of July, containing these words, viz. "For your villainous interference against a just claim which I had before Congress, I am determined to punish you. Thereby falsely infinuating that major Cushing had been guilty of "villainous conduct, and in a style as un-gentleman-like as it is false."

2d. "In resusing to demonstrate that major Cushing had interfered, as stated, after he had denied the fad, and called upon me to prove it."

3d. "In publishing in the Costee House of the City of Philadelphia that major Cushing was a poltroon, and no gentleman, or words to that ef-

fect.

The cause of so much of my behaviour, charged as criminal by this specification, as is warranted by the evidence, has been already mentioned, and is, trust, statisfactorily proved by lieutenant Strother. I had been appointed by the late gallant and patriotic general Wayne one of his aids de camp, in a toilsome and hazardous war, and I had reason to believe, that during hard marshes, and severe campaigns. I had discharged my duty in a manner that was fatisfactory to the general and to all my fellow ioldiers, whose good opinions I was ambitions of obtaining. I had conceived I had a just claim against the United States for services which remained unrequitted, and had exhibited that claim to Congress for its adjustment; I had seen it fanctioned by a vote of a large majority of one branch of the legislature, and, when I least expected it, I had seen it rejected by the other branch. I had no doubt but that the members of that branch, as well as the other had acted impartially, and, in their opinions, justly. Such was, however, the nature of my claim as to leave no doubt, on my mind, but that they had been abused and deceived; and that I had been grossly injured by some lurking enemy, who had sought revenge in the manly way of back bitting and secret misrepresentations. I knew that a diffentions had been industriously and inficiously somented in the army, and I had seen the commander in chief abused and visified in the pubble papers; I knew there had existed in it a party against him, and I also knew that a well intentioned, and well merited attachment to him had rendered many deserving officers as well as mytels, obnoxious to the malcontents. It call my eyes among them in fearch of the author of the injury done me, and my suspense intown. The cause of so much of my behaviour, charged

readymentioned. I could not entertain a moment's doubt of the veracity sither of him, or the honorable Mr. Davis. The former has verified his flatement under the folcma fanction of au oath, adminithered before you, and that of the former I certainly flould procure if I deemed it at all necelfary. Iudge then, I befeech you, what muft my feelings have been when I faw the memory of a general, defervedly dear to every meritorious officer and foldier who had ever fought under him, attempted to be tarnished by a charge of "having appointed me aid de camp merely for the purpose of ferving me, and authous any regard to the good of the fervice! ask yourselves what my beelings must have been at feeing malice, not weeping like Casiar at the death of Pompey, over the grave of its object, but tharpening its edge to mangle all that remained of the officer's and foldiers friend. Here implify alive must my feelings, as a foldier, have been at my feeing my appointment represented by an enemy, whom I had diffraced, as a mere sinecure! as an office given me merely for the purpose of serving me!—and without any regard to the good of the service! and still more so, at finding the same enemy secretly and constantly laboring with a member of Congress before whom my claim had been depending, to convince him that it was unjust, and ought not to have been paid. Yet even all this, it is possible I might have passed over, had it affected me alone; but when I found myself secretly and insidiously charged with living on the public bounty through the corruption of my general—eating its bread without earning it, and to consummate the whole, with exhibiting a claim against the public, which, from the statement, I must know to be altogether unsounded; and when surther I considered that the memory of the general who had appointed me was no less involved than myself in this complicated charge of fraud and corruption upon the public, in must consess that I had no such doubts, and as they could never my ewen seeding to suppress them, and I ferventl

tion between him and Mr. Davis.

But as I had no fuch doubts, and as they could give me no further information than Lieut Strother had done, I deemed the application unnecessary. From one of these I have received a certificate, corresporating Mr. Strother's statement, to the truth of which, he, Lieut Strother, has since sworn.

Permit me now to ask, was it under these circumfances of the case, behaving in a scandalous and instances manner, such as is unbecoming an officer and a grutheman to write, and send the letter by Captain Taylor? I confidently trust it was not; though these not either written at all, or expressed myself in terms more mild. Admitting, for the sake of argument, that I had mistaken, or misapplied the sast stated in my note, or that it had turned out that Licut. Strother's information was unseaned; skill my behavi

fuch a manner as is unbecoming an officir and a gentleman to releat an injury, which you have every tead too to fuppole you have received by the improper sonduct of another? Is it feardalous or infamous to threaten to punish wrongs, and to express yoursels in terms commensurate to the insult which you have such that you have you have such that you have you have such that you have such that

he never had a convertation with him at any time of the fub of his appointment as Aid-de-Carap on the fub can only be judged by his actions.

I have now done with this charge, and am only add that I have taken up more time in refuting it.

REPORT

The next charge is for behaving in a feandalous and famous manner, &c. in refusing to demonstrate that asjor Cushing had interfered as stated, after he had certain MEMORIAL Sand PETITIONS

major Cushing had interfered as stated, after he had denied the saft, and called on me to prove it.

What kind of demonstration the major required I will not pretend to sav: but it is reasonable to suppose it to be nothing short of mathematical, since this is the only kindsof demonstration I have any knowledge of I can, however, assure his innocence.

But be this as it may, I had, on a for mer occasion, been made too well acquainted with the major's mode of explanation, after doing an injury, and being called to an account for it, to consent to meet him for any such purpose. There is but one kind of personal altercation that I can ever agree to have with him, and I know him too well to believe that he will ever agree to that kind of personal altercation with me,—So that our disputes are, probably, drawing to a close.

In addition to this he knew, and I knew, that Mr. Davis had returned to Kentucky, and would not be here for some time. Delays, procrassination, prevarication, and subselties I knew to be his usual weapons of defence—they were not mine. The wound institled on the memory of General Wayne, and on my honor could not remain for months without a probe. I therefore determined on a speedy remedy in a case that would not admit of delay.

In this determination I was certainly justified by the werbal message brought me by captain Taylor from major Cushing, would disgrace me, and that this was the answer he was to bring me."

I will not insult the spirit and seelings of my judges by asking them whether there is any one of them, who, after receiving such a message, would convey an answer the was to bring me."

I will not insult the spirit and seelings of my judges by asking them whether there is any one of them, who, after receiving such a message, would convey an answer through any other medium than the Cossee house books, or a public newspaper; or, if he could bring himself to express in any other language than that made use of by

October 30th.

The court assembled pursuant to adjournnent. Captain Lewis made bis defence, and the court find that the prisoner is not guilty of the charge on which he has been tried, and berefore do acquit him.

> (Signed) MAHLON FORD, Capt. Artillerist & Engineers, and President.

(Signed) CHARLES WILLING HARE, Judge advocate pro bac.

The President of the United States baving fully considered the proceedings of a General Court Martial, which was convened at the city of Trenton, in the state of New-Jersey, y virtue of a warrant issued from the War-Office, and sat from the 20th to the 30th, nelvsive, October 1798, for the trial of capt. Thomas Lewis on the charge and specifications thereof, exhibited in a paper of which the following is a copy, viz.

Philadelphia, 20th July, 1798.

Captain Thomas Lewis, of the army of the Inited States, is bereby ordered in arrest, on the following charge, viz. For behaving in

is unbecoming an officer, and a gentleman:

1st. In writing me a note, on the 18th
instant, July 1798, containing these words, viz .- " For your villainous interference a gainst a just claim which I had before Congress, I am determined to punish you," there-by falsely iusimuating that I had been guilty of villainous conduct, and in a style as ungenlemanlike as it is false.

2d. In refusing to demonstrate that I had interfered, as stated in the above note, after I had denied the fact, and called on him to

3d. In publishing in the coffee house of this city, on this day, (the 20th July 1798) that major Cushing is a paltroon and no gentleman, or words to their effect, all which, together with other specifications as may be given in full trial, will be fully proven by

T. H. CUSHING, Major 1st Reg't of Infantry in the service of the

Together with the defence of capt. Lewis, and the sentence of the court, viz.—" That the prisoner is not guilty of the charge on which he has been tried, and therefore do ac-

I am commanded to make known, that the President approves of the aforesaid sentence, from a conviction that the court could not have done otherwise, than acquit captain Lewis of behaviour that was feandalous and infamous; but is of opinion, that captain Lewis, in the style of his first note to major Cushing, neglected the urbanity and decorum becoming an officer, and in this particular is therefore reprehensible for his error.

Given at the War-Office of the United States, in Philodelphia, this 14th day of January, 1799, and in the 23d year of the Independence of said States.

(Signed) JAMES M. HENRY, Secretary of War. I am commanded to make known, that the

Secretary of War.

THE foregoing resolution of a general Court Martial, which was convened at the city of Trenton, in the state of New-Jersey, by wir ue of a warrant, issued from the War Office, and sat from the 20th to the goth inclusive, October 1793, for the trial of captain Thomas Lewis, and the sentence of the court, together with the desence made by captain Lewis, and the approval of the aforesaid sentence by command of the President, are true copies, from the originals, on file, in the War Office of the United States.

JOHN CALDWELL,
Ch. Clk. War Dptmt.

War Office, 6th Feb. 1799.

War Office, 6th Feb. 1799.

claim was improper." Surely this is a full admission that me gave an indired opinion of its being so therwise he would have denied the one as well as the other.

If I am right in this, I am warranted in saying his conduct was not the less calculated to have its intended effect of doing me an injury, than if it had been conveyed in dired terms, which might have created suspensed in dired terms, which might have created suspensed in the say in the sai in the say in the s

complaining of the act, intitled, " an act " Concerning Aliens,"

And OTHER LATE ACTS of the Congress of the United States.

[Made the order for this day, Feb. 25.] The COMMITTER, to whom were referred be COMMITTER, to whom were referred the Memorials of sundry inhabitants of the counties of Suffolk and Queen, in the state of New-York; of Essex county in New-Jersey; of the counties of Philadelphia, York, Northampton, Mifflin, Dauphin, Washington, and Cumberland, in Pennsylvania; and of the county of Amelia, in Virginia, complaining of the act, entituled an act concerning aliens," and other late acts of Congress, submit the following REPORT. REPORT :-

IT is the professed object of these petitions to solicit a repeal of the two acts passed during the last session of congress, the one "an act concerning aliens," the other "an act, in addition to an act for the punishment of certain crimes against the United States," on the ground of their being unconstitutional, coppositive and impositive al, oppressive and impolitic.

The committee cannot, however, forbear

to notice, that the principal measures hither-to adopted for repelling the aggressions and insults of France have not escaped animad-

Complaints are particularly directed against the laws providing a navy—for augmenting the army—authorising a provisional army, and corps of volunteers—for laying a duty on stamped vellum, parchment, and paper—affesting and collecting direct taxes—and au-

thorifing loans for the public fervice.

With these topics of complaint, in some of the petitions, are intermingled investives gainst the policy of the government from an arly period, and infinuations derogatory to the character of the legislature, and of the

While the committee regret that the public councils should ever be invited to listen to other than expressions of respect, they trust that they have impartially considered the questions referred to their examination, and formed their opinions on a just appreciaion of their merits, with a due regard to he authority of government, and the dispas-ionate judgment of the American people. The act concerning aliens, and the act in didition to the act, intituted an act for the

unishment of certain comes, shall be first Their constitutionality is impeached. It is ontended, that congress have no power to ass a law for removing aliens.

To this it is answered, that the asylum gi-

our would have fallen far fhort of the terms bestowed a scandalous and infamous manner, such as wen by a nation to foreigners is mere matter of favor, refumable at the public will. On this point, abundant authorities might be adduced, but the common practice of nations

attests the principle.

The right of removing allens, as an incident to the power of war and peace according to the theory of the constitution, belongs to the government of the United States. By the 4th section of the 4th article of the constitution, congress is required to protect each state from invasion, and is vested by the 8th section of the 5th article, with power to make all laws, which shall be proper to carry into effect all powers vested by the constitution in the government of the United States, or in any department, or officer thereof; hostility, dangerous aliens, who may be employed in preparing the way for invation, is a measure necessary for the purpose of pre-venting invasion, and of course, a measure that congress is empowered to adopt.

The act is faid to be unconstitutional, be-

ause to remove aliens, is a direct breach of the conflictation, which provides, "by the 9th fection of the 1st article, that the migration, or importation of fuch persons as any of the states shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808."

To this, it is answered, first that this sec-

tion in the conflitution was enacted folely in to prevent congress from prohibiting, until after a fit period, the importation of SLAVES, which appears from two considerations. First, that the restriction is confined to the states which were in existence at the time of establishing the constitution and secondly, that it is to continue only twenty years, for neither of which modifi-cations could there have been the leaftreafon had the restriction been intended to apply not to flaves particularly, but to all emi-grants in general.

Secondly. It is answered, that to prevent

emigration in general, is a very different thing from fending off, after their arrival, fuch emigrants as might abuse the indulfuch emigrants as might abuse the indus-gence, by rendering themselves dangerous to the peace or fasety of the country, and that if the constitution, in this particular should be so construed, it would prevent congress from driving a body of armed men from the country, who might land with views evidently hossile.

Thirdly, That as the Conflitution has given to the states no power, to remove aliens, during the period of the limitation un-der confideration, in the mean time on the conftruction assumed, there would be no authority in the country, empowered to fend away dangerous aliens, which cannot be admitted; and that on a supposition the afore-faid restrictive clause included every description of emigrants, the different fections must recieve such a construction as shall recone le them with each other; and according to a fair interpretation of the different parts of the Constitution, the section cannot be confidered as refrictive on the power of Congress to fend away dangerous foreigners in times of threatened or actual hofility. And though the United States at the time of paffing this act, were not in a flate of declared war, they were in a flate of partial hostility, and had the power, by law, to provide, as by this act they have done,

for removing dangerous aliens.

This law is faid to violate that part of the Constitution which provides that the triment shall be by jury; whereas this act invests the President with power to send away aliens on his own suspicion, and thus to instict punishment without trial by jury.

It is answered in the first place, that the Constitution was made for CITIZENS, not for ALIENS, who of consequence have no RIGHTS under it, but remain in the country, and enjoy the benefits of the laws, not as matter of right, but merely as matter of favour and permission, which favour and per-mission may be withdrawn, whenever the government charged with the general welare shall judge their further continuance dangerous.

It is answered in the second place, that the provisions in the Constitution relative to the provisions in the Constitution relative to presentment and trial of offences by juries, do not apply to the revocation of an asylum given to aliens. Those provisions solely respect crimes, and the alien may be removed without having committed any offence, merely from motives of policy or security. The citizen, being a member of fociety, has a right to remain in the country, of which he cannot be disfranchifed, exc pt or offences first ascertained, on presentment and trial by jury.

It is answered thirdly, that the removal of alieus, though it may be convenient to them, cannot be confidered as a punishment inflicted for an offence, but, as before re-marked, merely the removal from motives: of general fafety, of an indulgence which there is danger of their abnfing, and which we are in no manner bound to grant or continue.

The " Act in addition to an act, iutituled an act for the punishment of certain crimes against the United States" commonly called the fedition act, contains provisions of a twofold nature; first, against feditious acts and, fecond, against libellous and feditious and, second, against libellous and leditious writtings. The first have never been complained of, nor has any objection been made to its validity: The objection applies solely to the second; and on the ground, in the first place, that Congress have no power by the Constitution to pass any act for punishing libels; no such power being averagely ing libels, no fuch power being expressly given, and all powers not given to Congress, being reserved to the states respectively, or the people thereof.

a law as Congress may pass: because the direct tendency of such writings is to obfruct the acts of the government by excit the power to punish which kas never been questioned: because it would be manifely questioned: because it would be manifestly absurd to suppose that a government might punish sediction, and yet be void of power to prevent it by punishing those acts, which plainly and necessarily lead to it: And because under the general power to make all laws proper and necessary for carrying into effect the powers vested by the Constitution in the government of the United States. Congress has passed many laws for which no express provision can be found in the Constitution, and the constitutionality of which flitution, and the conflitutionality of wi has never been questioned; such as the fin for punishing seditious combinations; the act passed during the present session, for punishing persons who, without authority from the government, shall carry on an correspondence relative to foreign affair with any foreign government;—the act the punishment of certain crimes against United States which defines and punish misprison of treason; the 10th and 12 sections, which declare the punishment accessaries to piracy, and of persons when the state of persons which institutes a penalty of the state of th those who steal or fallify the record of an court of the United States; the 18th at 21st fections, which provide for the punit ment of perfors committing perjury in court of the United States, or attempt court of the United States, or attempting to bribe any of their judges; the 22d fection, which punishes those who obstruct or result the process of any court of the United States, and the 23d against rescuing the offenders who have been convicted of any capital offence before those courts; providence of which are transfer authorities. dons, none of which are expressly authorised, but which have been considered as contitutional, because they are necessary and proper for carrying into effect certain powrs expressly given to Congress.

It is objected to this act, in the fecond place, that it is expressly contrary to that part of the coolditution which declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the stree exercise thereof, or abridging the liberty of the press."—The act in question is faid to be an "abridgment of the liberty of the press." f the prefs," and therefore unconflit

To this it is answered, in the first place hat the liberty of the press conside no licence for every man to publish what he bleases, without being liable to punishment if he should abuse this licence to the injury of others; but in a permission to publish without previous restraint, whatever he ma without previous restraint, whatever he may think proper, being answerable to the public and individuals, for any abuse of this permission to their prejudice; in like manner as the liberty of speech does not authorize a man to speak malicious slanders against his neighbour, nor the liberty of action justify him in going by violence into another man's house, or in assaulting any person whom he may meet in the streets. In the whom he may meet in the firects. In the feveral flates the liberty of the press has alno other; and the conflictation of ever flate, which has been framed and adopte flate, which has been framed and adopted fince the declaration of independence, afferts "the liberty of the prefs," while in feveral if not all, their laws provide for the punishment of libellous publications, which would be a manifest abfurdity and contradiction, if the liberty of the press meant to publish any and every thing, without being amena-ble to the laws for the abuse of this licence. According to this just, legal, and universally admitted definition of " the liberty of the prefs," a law to restrain its licentiousness, in publishing false, scandalous, and malicious libels against the government, casnot be considered as " an abridgement" of its liberty."

It is answered, in the second place, that the liberty of the press did never extend, according to the laws of any state, or of the United States, or of England, from whence our laws are derived, to the publication of false, scandalous and malicious writings against the government, written or published with intent to do mischief, such publications being unlawful, and punishable in every state; from whence it follows, undeniably, that a law, to punish seditious and malicious publications, is not an abridgement of "the liberty of the press," for it would be a manifest absurdity to fay, that a man's liberty was abridged by punishing him for doing that which he never had a liberty to do.

It is answered thirdly, that the act in question cannot be unconstitutional, because it makes nothing penal that was not penal before, and gives no new powers to the court, but is merely declaratory of the common law, and ufeful for rendering that law more generally ka wn, and more easily understood. This cannot be denied, and if it be admitted, as it must be, that false, feandalous, and malicious libels against the government of the country, published with intent to do mischief, are punishable by the common law; for by the 2d section of the 3d article of the constitution, the judical power of the United States is expressly extended to all offences arising under the conended to all offences ariting under the constitution. By the constitution, the govern-ment of the United States is established, for many important objects, as the GOVERN-To this objection it is answered, that a law, to punish false, scandalous and malicious writings against the government with intent to stir up sedicion, is a law necessary, for carrying into effect the power vested by the Constitution in the government of the United States, and in the departments and officers thereof, and consequently such states are offences arising under the constitution, and consequently are punishable at common law by the courts of the United States. The act, indeed, is so far from having extended the law, and the power of the court, that it has abridged both, and has enlarged instead of abridging the silberty of the