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SATURDAY, NOVEMBER 3, 1792.

[Whole No. 367.]

A CHARGE,

Delivered to the GRAND JURY for the District of Massachusetts, in the Circuit Court of the United States, for the said District, held in the Town of Boston, on the 12th of October, 1792, by

The Hon. JAMES IREDELL, Esq.

One of the ASSOCIATE JUSTICES of the SUPREME COURT of the UNITED STATES.

Gentlemen of the Grand Jury,

IN having the honour to address you for the first time in my judicial capacity, I do it with particular satisfaction, at a period of so much dignity and prosperity to the United States:—Perhaps in no country in the world have been within so few years exemplified such awful and important lessons. We have been taught, not only the value of liberty, but what it was much more difficult to learn, that liberty itself, in order to be truly enjoyed, must submit to reasonable and considerate restraints. The unbounded liberty of the strongest man is tyranny to the weakest: The unlimited sway of a majority is oppression to the minority: Unlicensed indulgence to all the passions of men is an impious rejection of the controul of reason which Providence has given for their government and direction.

True liberty certainly consists in such restraints, and no greater, on the actions of each particular individual as the common good of the whole requires. The exact medium it may be difficult to find, but we have reason to hope it is most likely to be found in that country which can draw forth, by the choice either direct or indirect of the people themselves, those characters for the immediate exercise of public trust, in whose abilities and integrity they can place the greatest confidence. The modifications under which this important good can be effected, we have the most reason to respect, when they have been deliberately formed, and solemnly ratified by a fair and adequate representation of that people for whose welfare they are, and ought alone to be intended. Such have been these governments, as well of the States separately, as of the United States, under which we have the happiness to live.

Many nations, both ancient and modern, have had the glory of acquiring and for some time preserving liberty by the most noble and virtuous exertions. But America, I believe, furnished the first instance of a number of powerful and respectable States, impressed with the highest sense of liberty, voluntarily relinquishing large portions of power which they separately enjoyed, for the sake of forming a more perfect union for their future welfare. The success hath hitherto exceeded the most sanguine expectations. God grant, that no subsequent disappointment may weaken the effect of so magnanimous an example.

In consequence of this great revolution, more wonderful and not less glorious than the first, we have now two governments to which we owe obedience: The respective State Governments in all instances which concern the interests of each State singly: The Government of the United States in all instances which concern the interests of the Union at large. Each of these governments is sovereign and supreme, within the definite sphere of its authority. The common object of both is the happiness of all the citizens equally and without distinction, so far as it is possible for systems of government to secure it. The peculiar object of the government of the United States is to cement by an effective, not a nominal authority, that union to which, under divine Providence, we unquestionably owe all the blessings we now enjoy, and without a preservation of which, we should too probably become a prey to intestine discord, and find ourselves the miserable victims of local and conflicting pursuits.

To consult the welfare of each citizen individually; the welfare of each State separately; the common welfare of the whole jointly; so far as they can all be rendered compatible; are great and noble objects, worthy of our most zealous care, and most unremitting attention. The task is certainly not easy, but we have no reason to fear it is altogether impracticable.—Moderation and good sense, however, are necessary to perpetuate, as they were at first to assist to measures calculated to secure perhaps the greatest blessings ever devised by any human systems. Let each man consider, that his liberty and property cannot be secured without forming a common interest with all the other members of the society to which he belongs; that this common interest can only be protected by the co-operation of common councils, and a submission to laws framed to give them effect; and that as each State naturally and properly is the guardian of its own separate and individual interests, so the United States can alone rightfully determine in cases in which not one State singly, but all the States have a common and united concern. Providence has designed man for society, and those who either from pride or vanity, or any worse motive, refuse to yield to the conditions it indispensably requires, contract so far as in them lies, the provisions of divine wisdom for the good order and government of mankind.

These principles should be ever present to our minds, and to a large majority I flatter

myself they constantly will be, for I am persuaded the more they are attended to, the stronger will be their impression. An enlightened sense of the true interest of each individual, will naturally lead him to a proper estimation of those principles best calculated to secure it. But it is in vain to expect, let us have what form of government we will, that the laws enacted under it, however wise and patriotic, will meet with universal, much less with respectful obedience. In all societies there will be bad men, whom no laws nor any principle can restrain; there will be weak men, easily misled by artful and imposing misrepresentations. Attempts may therefore be expected to undermine, if not to destroy the best constructed government which it is possible for human wisdom to form. When therefore a government is formed, one of the first duties incumbent upon it is to provide for its own preservation, by guarding against the machinations of evil men, either for its total destruction, or for any material injury to it in any of its operations. This gives rise to what is usually termed the Criminal Law; a law which has for its object the punishment of bad actions, by which the security or welfare of the community is in any essential degree endangered.

This being the true and only proper object of the Criminal Law, it should be calculated to meet this danger, and this alone. At the same time that it is efficacious, it should be as mild as the nature of the case will admit of. In providing for the detection and punishment of the guilty, it should be careful to secure the safety, and guard the reputation of the innocent. It being one of the most awful concerns of human legislation, and that in which personal liberty and safety are more immediately interested than any other, the utmost attention ought in a very especial manner to be paid in this case, in order to prevent an abuse of authority entrusted for the most sacred purpose for which any authority can be. Every law on such a subject ought to be passed with the most trembling solicitude, lest any unfortunate individual should become the victim of injustice or oppression.

The Constitution of the United States, distinguished as it is in all its parts for an invariable attention to a true and rational spirit of freedom, has not been inattentive to it in this its most important concern. It is not trusted solely to legislative discretion. Restrictions are imposed, in order to render secure beyond the possibility of attack, the personal safety of the people in cases where it might otherwise be sometimes exposed to no small danger. A latitude of discretion, I believe, has been left in no instance where it could be safely avoided.

There is one crime in particular, which it was justly thought proper the Constitution itself should define. That is, the crime of Treason. This undoubtedly is the highest crime known in the law, because it aims at the subversion of the Government, and of course at the destruction of all the private happiness and public security derived from it. But at the same time, it is a crime in the prosecution of which great abuses are liable to be committed, if the government is left altogether without restraint, because usually the whole arm of power is exerted against the person accused, and therefore resentment may be apt to have too powerful an operation. In Monarchies, where the person of the Monarch is apparently if not directly the sole object of attack, a man under trial for this offence, may frequently expect the sympathy of the people, who in such countries often suppose (and sometimes with great truth) that their interest and that of the Monarch are far from being the same.—But in a Republic, where the Government, the subversion of which is aimed at, is truly the Government of the People, there may be great danger of the person accused being the object of a strong popular prejudice, as well as of a legal prosecution. If therefore there be at such a period any ambiguity in the definition of the crime, or the mode of trial be unfavorable to the security of the person exposed to it, there can be no reason to expect a fair and impartial trial. The Constitution has guarded against the first danger, by a plain and express definition, clearly comprehending real, and not constructive acts of treason. Against the latter, it has not only used the precaution of particularly specifying the evidence which shall alone be sufficient for a conviction; but there is in common with all other crimes, the great and inestimable security of a Trial by Jury.

This excellent method of trial may, in respect to criminal cases, be considered as divided into branches. 1. For the purpose of accusation. 2. For the final decision. The first, Gentlemen, is the high and important character now devolved on you. No person is to be held to answer any capital or other infamous crime of a civil nature, committed within this district against the laws of the United States, except upon your presentment or indictment. Any person, with out distinction, may, upon your authority, be put upon his trial for such. From your impartiality there is the utmost reason to expect that no prosecution will be commenced without grounds, or forborne from any undue motive. As members of the society yourselves, you will not fail to consider the necessity of a

due maintenance of the laws of it: As men who may be affected by your own precedents, you will feel the importance of establishing none that may be applied to an oppressive purpose. These circumstances, in themselves so favorable to impartiality, added to the solemn obligation of duty, will naturally inspire the public with confidence, the guilty with terror, and save the innocent from alarm.

But, Gentlemen, how noble is the thought, how consolatory the reflection, that after you have deliberately weighed, and solemnly presented, an accusation against any man, another trial yet remains, a public one, in the face of the accused; a trial by another jury of his fellow citizens, with the full assistance of counsel, with the right and the opportunity of summoning witnesses for his defence, with the right also, in capital cases, of peremptorily challenging a large number of the jurors, called upon his trial, (in treason thirty-five, in other capital offences, twenty) accompanied also with other privileges, I believe never granted in the same extent in any other laws, the having delivered not only a copy of the indictment and a list of the jury, and witnesses in prosecutions for Treason, but a copy of the indictment and a list of the jury, in other capital prosecutions, a certain time before the trial. In most cases of treason and misprison of treason, all these advantages exist in England, in their fullest extent. But in all other capital cases, (astonishing as it is) at this very day, in that enlightened country, counsel are not allowed to speak to any but questions of law, and it is considered a matter of favor in the court, to permit them even to ask questions for the prisoner. It is indeed a most melancholy consideration, that long after liberty had been contended for, and to a great degree obtained, as to other objects, the personal safety of individuals should have been so little regarded. It was thought to require laws in England, some years after the revolution, in 1688 (one indeed even so late as Queen Anne) to entitle a prisoner to have witnesses examined on oath, in his defence. According to an iniquitous practice originally introduced, as there is great reason to believe, without any colour of law, prisoners had not only been excluded from this privilege, but also from being allowed a full defence by counsel; and this unprincipled practice had so long prevailed, that it at length acquired the pretext of an unimpeachable prescription. Happy are that people whose liberties depend, not on the mercy or discretion of courts, but upon written provisions, too plain to be misunderstood, and protected in the most sacred manner, by guardians too watchful and too powerful to be overcome!

The Constitution itself, together with amendments to it, which have received the requisite consent, secure the invaluable benefits I have mentioned, of a trial by jury, of a public trial in the face of the accused, of having process for witnesses, and the assistance of counsel. The other advantages enumerated, form part of the Criminal Code, derived from the Legislature alone, and partake of that discerning zeal, for the real security and true happiness of all the citizens, which so eminently distinguish a Government, founded on the very basis of freedom and justice.

Another protection, gentlemen, in laws whose spirit of mildness and liberality we cannot too much admire, is a limitation of time for the prosecution of offences. No capital offence (murder or forgery excepted) is to be prosecuted but within three years after the commission of it, nor any prosecution for any offence not capital, or for any fine or forfeiture under any penal statute, but within two years after the commission of the offence, or the incurring of the forfeiture. There is an exception, however, in both instances, of persons fleeing from justice. This also, in its extent, is an improvement, I believe, on former systems.

The crimes, gentlemen, of which you are to enquire, are crimes committed against the United States within this district. These are defined and the punishments prescribed, in certain acts of Congress, passed in virtue of powers contained in the Constitution of the United States. They will be found, I trust, all of them congenial to the spirit of a free people, the principle of whose aim it invariably is, and ought to be, to unite all the energy necessary for the support of Government, with an inflexible attention to the proper security and protection of individuals. It does not appear to me material now to point them out particularly to you, not only because I presume you are well acquainted with most if not all of them, and can have easy access to them, but because I have reason to hope you have no occasion at this time to prevent many, if any particular offences. The very favorable accounts I have every where heard, since I have had the pleasure of being on this Circuit, of the good order and respectful submission to the laws which universally prevail in it, have given me the utmost satisfaction. In addition to my own personal observations, they have impressed me with the highest respect for a people who have had the good sense so happily to combine an invincible spirit of freedom, with an enlightened regard for such a government and such laws as can alone be adequate to secure it. May this ex-

cellent disposition forever prevail! May it be rewarded with as much happiness as it is possible for men to enjoy! And may the true spirit of freedom and order united, actuate all virtuous citizens of the Union, to the end of time!!

FROM THE AMERICAN DAILY ADVERTISER.

MR. DUNLAP,
Be pleased to insert the following, as a Supplemental Note to No. 11, in your paper of the 10th inst.

WHEN the extracts explaining Mr. Jefferson's political principles, respecting the constitution, were sent to the press, with an intimation that the originals should be made accessible if necessary, it was with reason concluded that no man of candor would entertain any doubt of their authenticity.—A writer, under the signature of Catullus (who, notwithstanding his ridiculous transfer of his authorship, is evidently the original writer under the signature of An American) has been so far wanting in this virtue, as to contradict so rational a supposition. To put an end to all possible cavil on this subject, notice is now given, that any gentleman of known honor and delicacy, who shall be named to the Editor of the American Daily Advertiser, shall have an opportunity of examining not only the passages extracted, but the entire contents of the original letters. It fortunately happens, that from the writer's practice of mentioning in every letter the date of the preceding one, it is demonstrated by the letters themselves that they form the whole of this correspondence within the necessary period. The propriety of requiring witnesses in this case of the above description accounts for itself. In the freedom of an extensive correspondence with a confidential friend, it could not but happen that many things must be included not only irrelevant to the subject in question, but to any other of a public nature, and which though unexceptionable in their place, should never leave the depository of private honor. With respect to the letter of July 6, 1788, published in your paper of the 10th instant, this sagacious commentator has been as unlucky, as in all his other inferences from presumptive circumstances. It is neither the letter spoken of by Mr. Pendleton, nor written to the same person. Had the critic, however, been possessed of less sagacity, with the smallest particle of candor, he might easily have reconciled the statement given by Mr. Pendleton with the extract in question. The bill of rights mentioned in the latter might surely be called, either by Mr. Jefferson, in another letter, or by Mr. Pendleton, stating in his own language, the contents of the one he saw, an enumeration of the amendments wished to be secured. Every particular right secured is, in fact, an amendment, and is so designated in the amendatory supplement to the constitution. It is painful to waste a moment in explanations which seem to be so unnecessary; yet, as a specimen of the manner in which the attack on an illustrious patriot is conducted, it may not be unworthy of attention.

Foreign Affairs.

BRUSSELS, August 24.

M. LA FAYETTE was taken in the following manner:—On the 19th, at ten in the evening, a parole, consisting of seven men, belonging to the advanced posts of Rochefort, in Ardennes, in the Bishoprick of Leige, where M. Harnoncourt commands, met with a number of French officers, followed by about twenty domestics. They were on the point of being fired at by the picket guard, but instantly one of the strangers quitted his company, and was conducted to M. Harnoncourt.

This gentleman was M. Bureau de Pusy, officer of engineers. He declared that his friends and himself were French emigrants going to Holland. M. Harnoncourt asked him, how it happened that they were not going to join the Princes? M. Bureau answered, that, differing in opinion from them, they preferred going to Holland. M. Harnoncourt told him, that they must be treated as prisoners of war. Not one of the whole company objected to giving his parole, except M. Alexander Lameth, who began a fine speech on the rights of nations, and said that they were arrested in a neutral country. They were then on the territories of the principality of Leige. M. Harnoncourt answered, that the French had been so extremely clever in confounding all kinds of rights, and the rights of nations in particular, that it was