

Mr. FENNO, The following copy of an address lately presented to the Legislature of New-Jersey, having accidentally fallen into my hands, and the subject being of general importance to the State, I take the liberty of transmitting it to you for publication in your Gazette.

A JERSEYMAN.

(Concluded from our last.)

It only remains, under this general head, to make a few remarks on criminal law. The importance of this branch of jurisprudence, to the liberty and security of the citizen, is now pretty generally understood and acknowledged. It has of late excited the attention of the ablest writers, both in Europe and America. Much light has been thrown upon the subject, and important improvements suggested. The general principles on which penal laws ought to be founded, are now fully developed and settled. A recurrence to facts and experience has clearly demonstrated, that, to a free people, moderate punishments are more effectual in preventing crimes than severe ones. Reason and humanity approve of this discovery, and a philanthropic and enlightened legislature, has now a fair opportunity of adopting it. Most of the statute law of England, concerning offences, is calculated for the artificial state of property and society, peculiar to that nation; and the punishments it inflicts are almost universally too severe and sanguinary. I presume, therefore, little use will be made of the British statute book, in framing our criminal code.

The common law has well defined the greater part of such offences, as are most frequently perpetrated in that state of society and manners, which prevail in our government, and the common law mode of prosecution, by indictment, freed from all its superfluous exercises, is the most simple, rational, and satisfactory, that can be devised. The punishments which it inflicts, for all inferior misdemeanors, by fine, imprisonment, or corporal chastisement, at the discretion of the judges, seem to require no alteration, except fixing determinate limits to this discretionary power.

As a member of the federal republic, the cognizance of national offences, with all others relating to trade, commerce, and the revenue arising therefrom, has devolved upon the national government. These include a large proportion of the penal laws. The task of our state legislature will, therefore, be considerably lessened by it.

It is, perhaps, premature for the legislature of New-Jersey, to extend the lenity of our penal system as far as some theoretic writers have recommended, by totally abolishing capital punishments. But the example of other states, and the reasonableness of the measure, will fully justify them in confining it to treason and wilful murder. No other crimes should be punished with death: and penitentiary imprisonment is, perhaps, the best substitute, in the higher offences. A further improvement seems highly rational and practicable, in cases of offences immediately injurious to the person or property of individuals: in addition to the punishment inflicted, to establish a summary mode of compensation, or restitution, to the injured party, by directing the jury who try the delinquent, if they find him guilty, to assess the quantum of damages sustained, for which execution may issue, without the delay and expence of a private action.

It will add to the precision and simplicity of our criminal code, to arrange all offences under certain determinate grades or classes. This may easily and conveniently be done, in one general "act for the amendment of the criminal law," distinguishing every grade and species of offences, by separate sections and paragraphs. Treason in most cases must be a national crime. At least, the trial and punishment of it ought to be uniform, throughout the United States, and the national legislature has made provision for this.

Homicide, in all its varieties, is very accurately defined by a series of common law adjudications. Our own statute book contains one act on this subject, entitled "An act to prevent the destroying and murdering of bastard children," copied from the British statute 21 Ja. 1. c. 27. This ought to be repealed, as the principle on which it is founded militates directly against the natural sentiments of the human heart, by making the concealment of infamy evidence of murder. Consequently, it is wholly disregarded in practice at this day, even in England, and ought to be expunged from every criminal code.

The bigamy act, 1 J. 1. c. 11, or something similar, appears necessary in our statute law.

Perjury and subornation of perjury, are, also, well defined at common law. The statute 5 El. c. 9, is seldom used in England; but the statute 23 G. 2. c. 11, which declares it sufficient in prosecutions for these offences, to set forth the substance of the offence, &c. instead of the whole matter, as required at common law, seems proper to be adopted. Forgery at common law, is too limited for the numerous written transactions of the present day. It will be necessary to adopt part of the statute 5 Eliz. c. 14, and to extend this offence to the forging or counterfeiting sundry species of written instruments and paper securities used in this state, in imitation of some modern British statutes on this subject.

The stealing of various species of property, which from being originally adherent to the freehold, upon feudal principles was not larceny at common law, has been made so by a number of British statutes. Something similar to which it will be found necessary to ingraft into our law, as the stealing of grain, fruits and garden vegetables growing, property fixed to a house or building, deeds, bonds, notes and other choses in action.

Some kinds of wilful spoliation, malicious mischief, notorious cheats and impositions, though all clearly misdemeanors at common law, have been specifically prohibited by a variety of statutes in England. These will afford useful hints in drafting our penal code, but, as the objects of them are mostly local, they cannot be expressly adopted.

The acts for suppressing immorality, and other penal laws in our statute book, will, of course, constitute a part of this criminal system.

The prevention of crimes, is the most humane and desirable object in enacting penal laws. The speedy and certain punishment of offences, has a very powerful effect in this respect. It seems, therefore, highly expedient, that Perjury, Forgery, Usury, Larceny, and all inferior misdemeanors in general, should be triable in the quarter sessions.

I shall trouble the Legislature with no further remarks on this head. The revision of our own Statute Book, will require a more minute and particular consideration; but this I shall postpone until some future opportunity.

In thus addressing the representatives of a free people, I have aimed at the decency and plainness of a Republican and a fellow-citizen. And I submit with diffidence, the few observations I have taken the liberty to suggest, to their notice and candid consideration.

To the PRINTER of the Daily Advertiser, SIR,

Please to publish the following extract of a letter from a gentleman in Philadelphia, to his correspondent in this city. A CUSTOMER.

"Philadelphia Dec. 2, 1794.

"DEAR SIR,

"I SEE by a piece in the Minerva that your aristocrats are making use of the success of Mr. Jay's negotiation, the event of which is not yet known, as an argument in favour of chusing anti-republicans at the approaching election for members of Congress—for say they if the Madisonian party had prevailed in the last session, and carried the measures they proposed, this country would certainly have been involved in the war—whereas by the wise moderation and pacific measures of the other party, we shall obtain the possession of our Western Posts, and compensation for the injuries to our trade, &c. without a war; allowing at the same time that these moderate measures might have been unsuccessful, had it not been for the great success of the French against their combined enemies. The above I think is the substance of the reasonings as far as I can recollect them from one slight reading. I shall say nothing of the absurdity of pursuing measures, the success of which were to depend entirely upon events, future, uncertain and over which we could have no agency or controul whatsoever—to wit, the success of the French, who were during the whole winter the subjects of their most bitter Philippics; or of the extreme impropriety of producing as arguments, facts which are still unknown, and which very possibly do not exist. It is true we have reports in the papers that our posts are soon to be delivered up—such reports have been (as occasion required) thrown out for three years past, I suppose by way of amusement, and the present one may have been thrown out merely by way of argument: This is not an impossible case, for I have seen positive accounts in the papers two or three months ago, that the British court had agreed to deliver up our posts, &c.

these must have been entirely unfounded at that time—but the elections for members of Congress coming on in many of the States much earlier than in the State of New-York, might render it impolitic to wait for official information from Mr. Jay, and unfortunately for them this is not yet arrived—What vile arts are made use of to delude people at elections!

"But granting these facts are true, and that Mr. Jay has succeeded in obtaining every thing we had a right to expect, which I, and I believe all the Madisonian party sincerely wish may be the case—for I am convinced they are and have through the whole of this business been as anxious to preserve the peace of the country, as the most pacific of their opposers. I say granting that Mr. Jay should have perfect success in his negotiation, will it prove, what the writer in the Minerva would infer from it, that this success will be owing to the very pacific policy of his party? by no means—for he allows that the success of the French was calculated upon to ensure Mr. Jay's success: Had the French then been unsuccessful, what must have been the consequence? Mr. Jay must have been too, and returned with his demands unsatisfied, and this country must of course have been involved in the war, or let down under an infamy, which the greatest advocates for peace would hardly have submitted to. We may thank Heaven and the Madisonian party, that this is not like to be our case! For notwithstanding the success of the French, which have confounded their enemies in Europe, and converted some of those they had in this country, at least into professors of friendship—had it not been for the spirited measures proposed by the Madisonians in Congress last winter, by which some of the speakers in Parliament told them they might be convinced that America would not be trifled with, Mr. Jay would have returned with his finger in his mouth without the least satisfaction. Interrupted in their commerce with every other part of the world the British court feared a suspension of it with this country; it would have been ruinous to them; it would have endangered their government; they feared regulations of trade, which they had justly provoked; they feared the sequestration of the British property in our hands: To these fears more than to the gallant armies of the French (tho' I am willing to allow them their full weight in the cause) shall we be indebted for all the success of Mr. Jay's negotiations? They feared not a war with us—for the measures pursued by the Madisonian party (who happily for the peace of this country composed a considerable majority of the Congress) shewed that we were sensible we had in our hand a better and safer game than war, and that we were determined to play it if necessary. Had only the measures of the opposite party been pursued, and no others proposed, upon what could they have calculated for their success?

I don't know how we are to find out better than from the Envoy himself, who tells Lord Grenville that we depended upon the MAGNANIMITY, the JUSTICE, the CLEMENCY and MODERATION of the British court. It appears to me that the very mention of these things is sufficient to raise a blush of shame or indignation in every cheek; of shame in the supporters and defenders of the party, and of indignation in every true friend to the honor, peace and independence of the country. What their clemency, their generosity, in N. York and the Jersey prison-ship, those darkest blot that ever stained the character of man, have taught us; of their magnanimity, their filling, without provocation, upon a nation struggling to throw off oppressions which no people ought to bear, single against a world in arms, affords us a most striking picture: And there needs nothing more than the very occasion of Mr. Jay's mission, and present appeal to it, to satisfy any man how little, much dependence was to be placed upon their justice. Could it be rationally expected that a regard to justice would prevail upon a court to make compensation, and that to an immense amount, for injuries so recently authorized by themselves; is it rational to suppose that merely a regard to justice, would induce them to give up the posts, which the ablest negotiators, have not in twelve years been able to get out of their hands. The supposition must appear absurd at the first blush—and yet the Anti-Madisonians were for risking the success of our application, and the peace of the country upon this absurd confidence; and they begin already to discover a confidence still more absurd, if possible—which is that the people of this country, if Mr. Jay's mission should be successful may be prevailed upon to allow them the merit of what

will be so evidently to be ascribed to the spirited measures of their opposers. In this confidence I trust the good sense of the Americans will disappoint them—as also in their late very extraordinary attempts to persuade the public that the Democrats or Republicans are accountable for the late unhappy riots and disturbances in the Western Counties of Pennsylvania, which were evidently the consequences of their own impolitic measures; measures which were opposed by the Republican party at the time, because odious and unpopular, and likely to produce the very consequences which have unhappily flowed from them. The same party lately opposed with better success a stamp act, which had it passed, would very probably have opened a wider field for calumny by extending the scene of tumult and confusion.

"It has been a common assertion that the Madisonian measures were warlike, and those of the opposite party pacific; this assertion has been so often and so confidently repeated, that I think it not improbable that some may have swallowed it down for truth; but it wants but a moments examination to shew its fallacy. The language of the Madisonians to the court of Great Britain was—Deliver up our posts and pay us for the lawless depredations you have made upon our trade; or will you not fight with us to obtain justice, but will make your own people oblige you to do us justice, by breaking off trade with you till you do. The alternative of the other party was—Do us justice, or we will fight you: Who can doubt when thus truly stated, which measures were the most pacific?"

UNITED STATES.

PITTSBURGH.

December 6.

Mr. Scull,

By inserting the following letter and the answer thereto in the Pittsburgh Gazette, you will thereby exhibit the warm and spirited attachment of a Frenchman to our government, and the amiable disposition of the Commander in Chief of the late Militia army; and also the perfidy of men from whom the United States claimed a different conduct.

I have the honor to inform your Excellency that on the 30th of October, having understood that David Bradford, of Washington, was going down the river in a small canoe, by himself, and had passed opposite to Gallipolis but a little while ago, I thought it was my duty, as being a public officer at this post to give orders to stop him. Consequently, I sent three of the spies, and a subaltern officer with orders to take him and deliver him to my possession at Gallipolis, where I intended to keep him under a strong guard till I had been honored with your orders.

My men overtook him on the 31st, about eleven in the morning, 30 miles below the Big Scioto, but unluckily for them he had two hours before got into a boat of the Contractors, where they found 13 men all ready to protect Bradford, and massacre any who would undertake to take him away. My men after having used their best endeavours, and exerted all measures which prudence and inferiority could suggest in such occurrence, compelled to give up to a majority, and follow the boat as long as possible, to try to get a reinforcement from some of the stations on the river, they offered 50 dollars to any man who would turn out with them to take Bradford, but they found the most part of the people disposed in his favor, and declined to serve his cause.

By several reports I have a right to conjecture that Bradford landed at Limestone, and was conducted to some part of the country where he could safely preach his doctrine, and spread the flame of a new insurrection. It will be almost impossible to take him alive in a country where the majority is in his favor, and a matter of great chance if he can be killed without any fatal consequences. I yesterday saw Captain Jolly, of the mouth of Wheeling, who communicated to me the orders issued by your Excellency, to take Bradford, or to kill him, rather than to suffer him to escape. I gave to Captain Jolly all the information which I had, and desired him to proceed to Limestone, where he could receive some directions favorable to his purpose. That boat of the Contractors aboard which Bradford was found, was bound to Fort Washington, under the command of a certain Samuel Duncan, and loaded with coal; there were several passengers on board, who by their hostile disposition appeared to be particularly attached to Bradford. All the information you wish to have on this important subject can be easily obtained at Fort Washington, where S. Duncan delivered his boat.

I am mortified that my undertaking has been unsuccessful, where I would have been happy to have my attachment for this country fully manifested.

And if your excellency thinks that I could be of any service in this affair, and would honor me with some orders they should be performed with the greatest vigilance and punctuality.

I am your Excellency's most humble and obedient servant.

D'HEBECOURT, Captain commanding Militia at Gallipolis.

His Excellency Governor Lee, Commander in Chief of the Army at Pittsburgh.

Head Quarters, Pittsburgh, November 22, 1794.

SIR,

I have received your letter of the 10th inst. and maturely considered its contents. I am concerned that the party in pursuit of Mr. Bradford were unsuccessful in efforts to arrest him, in as much as I fear the late convulsions of this part of the country may in a great degree be ascribed to his councils and efforts I hope at the same time that he will yet be delivered into the hands of justice, that he may expiate by his punishment those offences which he is supposed to have committed against that country from which he derived his existence and support: but while I wish that he should be taken, I wish not that he should be destroyed; on the contrary I should be affected with great concern should I hear that he has been killed, or even treated with unnecessary severity or cruelty. It is the happiness, as it is the pride of America, that no person can be deprived of his property or existence but by law. The principles of justice, on which are founded those of the law, pronounce that before he shall be deprived of the latter, he shall be confronted with his accusers, allowed the benefit of exculpatory testimony, and permitted to urge whatever he may think necessary for his defence.

Conformably to this idea the several offenders who have been seized in this deluded country have been regularly delivered to the civil power which will deal with them according to their merits.

Permit me, therefore, to assure you, sir, that the information you have received that I wished Bradford to be killed rather than suffered to escape, is erroneous, and that I shudder at the idea of hunting to death a fellow being.

If by your exertions he could be sent to this place alive, you would confer an obligation on me, and on the United States, at the same time in that event I should wish him to be treated with every civility consistent with his safe custody.

I am, &c. &c.

HENRY LEE.

D'Hebecourt.

By HENRY LEE, Esq. Governor of the Commonwealth of Virginia Major General thereof and Commander in Chief of the Militia Army in the Service of the United States.

APROCLAMATION.

BY virtue of the powers and authority in Me vested, by the President of the United States, and in obedience to his benign intentions, therewith communicated, I do, by this my proclamation, declare and make known to all concerned, that a full, free, and sincere pardon, (excepting and providing as hereafter mentioned) is hereby granted to all persons residing within the counties of Washington, Allegany, Westmoreland, and Fayette, in the State of Pennsylvania, and in the county of Ohio, in the State of Virginia, guilty of treason, or misprision of treason against the United States, or otherwise directly or indirectly engaged in the wicked and unhappy tumults and disturbances lately existing in those counties; excepting nevertheless from the benefit and effect of this pardon all persons charged with the commission of offences against the United States, and now actually in custody, or held for recognizance to appear and answer for such offences at any judicial court or courts excepting also all persons avoiding fair trial by abandonment of their homes; and excepting moreover the following persons, the atrocity of whose conduct renders it proper to mark them by name for the purpose of subjecting them, with all possible certainty, to the regular course of judicial proceedings, and whom all officers, civil and military, are required to endeavour to apprehend and bring to justice, to wit:

- | | |
|-----------------------------------|------------------|
| Benjamin Paikinson, | Arthur Gardner, |
| John Holcroft, | Daniel Hamilton, |
| Tho. Lapsley, | William Miller, |
| Edward Cook, | Edward Wright, |
| Richard Holcroft, | David Bradford, |
| John Mitchell, | Alex. Fulton, |
| Thomas Spiers, | Wm. Bradford, |
| Geo. Parker, | Wm. Hanna, |
| Edward Maguer, jun. | Thos. Hughes, |
| David Doek, | Eben. Gallagher, |
| Peter Lyle, | John Shields, |
| William Hay, | Wm. M'Enany, |
| Tho. Patton, | Stephen's Jack, |
| Patrick Jankc, & | And. Hildens, |
| of the state of Pennsylvania, and | |
| Wm. Sutherland, | R. Stephenson, |
| William M'Kinley, | John Moore, & |
| John M'Comick, | of Ohio county, |
| in the State of Virginia. | |