

American,
AND
Commercial Daily Advertiser

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(PRINTER OF THE LAWS OF THE UNION.)
31, SOUTH GAY-STREET,
NEAR THE CUSTOM HOUSE, BALTIMORE.

MONDAY, JULY 21, 1866

—REMOVAL—

LEVIN P. BARNES,
HAS removed his shop from No. 9, to No. 48, South street, where he continues carrying on the Tailoring Business in its various branches, with neatness and dispatch. He also returns his most sincere thanks to his former friends and customers, and the public in general for past favors, and is in hope that through a strict attention to business, to merit a further continuance of the same.
N. B. Two or three good boys will be taken as apprentices to the above business if immediate application is made.
July 17

Stone Cutters.

THE subscriber offers to stone cutters generous prices for piece work, or one dollar and seventy five cents per day
Geo. Blagden,
Capitol City of Washington
July 8

Just Received,

And for sale by **JOHN BUFFUM,** 81, Bowling-green.
15 bales **RUSSIA SHEETING,** entitled to Debenure,
1 box **CRAPES,** assorted colours.
July 19

Now Landing

From board **C. W. de's Packet at Bowler's wharf,** and will be added tomorrow morning at 10 o'clock,
8,000 casks **CLARET.**
ROBERT GILMOR & SONS.
July 19

Exuma Salt.

ABOUT 1,200 bushels **EXUMA SALT,** on board schr. **Philanthropist,** for sale by
BIGELOW & PROUD.
ALSO,
10 barrels **Fresh LIMES.**
July 19

Cogniac Brandy, Port Wine, &c.

JUST RECEIVED FOR SALE.
25 pipes real Cogniac Brandy, of superior quality,
20 pipes of the very first quality Port Wine, suitable for retailing,
10 boxes white Havana Sugar
4 do. superior Black Tea, and
900 lb. Tamarinds.
JOCOB & WM. NORRIS,
64, Market street.
July 19

For Freight or Charter,

The fast-sailing Brig
HUNTER,
Burthen eight hundred barrels, John Smith, master; in complete order to take in a cargo, lying at Mr. Jackson's wharf. For terms apply to
JOHN SMITH, or
Wm. JACKSON.
July 19

For Philadelphia,

The Schooner
LITTLE WILL,
Horatio Olcott, master;
A good staunch vessel; five or six hundred barrels burthen; in full gear, and will sail in a few days. For freight apply to the master on board, at Frederick-street dock, or to
JOSEPH SMITH,
Harbor Master.
July 19

IMPORTED

In the schooner **Ruby,** and for sale by **D. W.**
30 boxes best quality **SEGARS,**
7 barrels best **Jamaica SUGAR,** and
356 Spanish **Maine HIDES.**
There is a northern captain sent out an adventure of four hinds and seven boxes of salt fish by me; not knowing his name, having sent no bill of lading, nor getting no invoice of them. If he has left any orders with any gentleman in town, I wish them to call on me and get the proceeds.
DAVID WILSON,
King George-street, near Peters's bridge.
July 19

For Sale,

20 qr casks choice **Lisbon Wine,**
40 do. Malaga do. } Entitled to Debenure.
300 pieces **Russia Duck**
50 do. **Havens do.**
270 pieces **Russia Sheet ng**
11 tierces **Rice,**
30 hundred **Soal Leather,**
15 barrels **Cherry Hum,**
300 do. **New York Prime Pork,**
50 kegs **1st quality Lard,** and
A few barrels **Mess Beef, &c.**
Apply to **AMOS A. WILLIAMS,**
No. 9, Bowly's wharf.
July 19

Geo. C. Muller,

Two doors below the Custom House,
HAS received priship Sully, from Hamburg, and a lot of former importation, 38 boxes **GERMAN LINENS,** consisting of
1400 pieces fine **Plattias Royal,**
1100 do. **6-4, 7-4, 8-4**
200 do. **Bouans,**
300 do. **Crees,**
100 do. **Dowlas,**
200 do. **Caracillos,**
500 do. **Estopillas,**
150 do. **Listados,**
90 do. **Bed-ticking,**
60 do. **White Flaxed.**
ALSO,
14 boxes half plat **Tumblers,**
Swedish **Barre Iron,** &c.
Which he offers for sale on accommodation.
July 19

THE Merchants' Coffee House is removed to No. 36, South street, opposite Water street.

FOR THE AMERICAN.

To the Editor.

SIR,
THIS morning my attention was strongly attracted to the first communication in your paper, viz. a letter of the justly celebrated Thomas Paine, on the Yellow Fever. Any thing coming from the pen of Thomas Paine I consider worth perusal, and nothing can be read of more real importance, than a discovery of the origin and cure of the Yellow Fever. It has not unfrequently happened, that a person has made a very striking discovery on a certain subject, and yet on many others showed the most peculiar weakness; indeed it does not seem to be the order of nature, that any one person can be very great upon every subject. It is peculiarly unfortunate for imperfect human nature, that it often neither knows where it is strong nor where it is weak, and that the caeteris scribendi, or a strong desire of appearing in print, is by much too frequent, a disease among the learned, as well as among those pulled up by popular approbation.

The two first publications of the celebrated Thomas Paine, "Common Sense," and "The Rights of Man," raised him high above his fellow men. They showed a clearness of head, an acuteness of intellect, a shrewdness of remark, and a just conception of the principles of civil government; conveyed in such language as was intelligible to the meanest capacity, and abounding in such arguments, as carried conviction to the most enlightened. If Mr Paine had confined his writings to those two pamphlets, or if he had been able to write equally well on any other subject, which he thought worthy of his pen, I for one would have been the man highly gratified the other he had written. Nor should his silence after these two celebrated publications have lessened my esteem of him.

But his Age of Reason, and some later publications, shews to me that it is possible for a great man, to write like a little one. This however I would give credit for, that I have the most decided conviction, that he never wrote for publication, but upon the best principles; his object was the comfort and happiness of the human race.

On the present subject of Yellow Fever he says it always begins in the lowest part of a populous mercantile town near the water, and continues there without affecting the higher parts. The latter part of this remark is not true, for when it begins, it does not confine its life to the lower parts, but in general spreads over the whole city. Such has been the fact with regard to New York, Philadelphia and Baltimore. It is a well known fact, that in the several years with which these three cities have been afflicted with this disease, the citizens have scarcely considered any place safe; every person whose circumstances admitted of it, retired to the country; else why the establishments at Powle's Hook, at New York; why the various establishments in the environs of Philadelphia? Why the necessity of building accommodations for the banks in the neighborhood of Baltimore?

When merchants labour under such great inconveniences, as are the necessary consequences of an attack of yellow fever, in the city to which they belong—is it likely they would abandon their property and trade, if it could be carried on in safety in any part of the city, whether high or low?

What was the state of Baltimore in the year 1800? Did not the disease commence at the Point? Did it not for some weeks continue confined to that district? Was it not hoped and expected that it would not reach the city? Were not efforts made to put a stop to the communication between the city and Point? And what was the result? Did it not gradually and regularly make its progress from street, to street, from avenue, to avenue, until it reached the East side of the Falls, then crossed the water and regularly travelled up in the city, at least as far as Calvert street? And is it not more likely that a stop was put to its progress, by the removal of the citizens to the country, and a total cessation of business, and intercourse among them, than that the ground above Calvert street was native, original ground, such as it came from the hand of nature, and not by its new creation by the hand of man, fitted to be the origin, or organ of communication of yellow fever?

What city proportioned to its population, or indeed what city in the United States, has so much new made ground or embankments against the water as Baltimore? Has New York or Philadelphia a warmer sun? And has not Philadelphia and New York been much oftener afflicted with yellow fever than Baltimore? Will Mr. Paine the natural philosopher unacquainted with the medical art, tell us on his principle the cause of an exemption!

Mr. Paine tells us, that in the state of Jersey no shipping arrives there, consequently there has been no embankments for the purpose of wharves, and the yellow fever has never broke out in Jersey. As Mr. Paine truly says, this does not decide the point. Does it throw any light upon the discussion? Then why was it introduced, merely to give appearance of an argument, when arguments were very scarce? If Mr. Paine had been able to inform us that Jersey had a great many seaports, carried on an extensive trade with the West Indies, and yet in consequence of all its ground and wharves, be-

ing native, original, solid and not made ground, no such thing as yellow fever was ever known to arise; then would Mr. Paine have conveyed us important information, then would he have established his opinion on a tolerably solid basis.

Mr. Paine observes that a person seized with the yellow fever in the alloted part of the town, and brought into the healthy part, or into the country among healthy persons, does not communicate the disease. Therefore he appears to conclude that the disease is not infectious. Does not Mr. Paine know that the most active poisons may be so diluted as to be innocuous—Nay to be salutary? Does he not know that arsenic is a deadly poison, yet it is frequently a cure for intermittent fevers? Does he not know that laurel water is scarcely less deleterious, yet we can use it with safety and pleasure, in a pudding or custard? Does he not know that a quart of rum may be so divided & diluted, by mixing it in a punchon of pure water, as to lose all its intoxicating quality, and be drunk with safety by fifty or one hundred people? Whilst being instantly given to one person, a quart of rum would be fatal.

Although the introduction of a single person laboring under yellow fever among healthy people, whether into a healthy part of the town, or into the country, may not produce a similar disease, is there not a strong presumption that if fifty such diseased persons were brought to a healthy neighborhood, that it would spread and consequently be contagious. Probably Mr. Paine does not know that it is allowed by the highest medical authorities, that however contagious any disease may be, it can only be communicated by the air at very short distances, probably not more than four or five feet, that the chance of being infected by the sick person, by touching him, is not near so great as by having any of his clothes or bedding applied to the body; and that the most contagious fevers shew comparatively speaking little disposition to spread, when the person laboring under them lies in a large well ventilated apartment, and has frequent changes of clean clothing, that the same kind of fever attacking a poor person, in a close, ill ventilated, dirty room, in foul clothing, and bad nursing, will extend its ravages far and near.

No person acquainted with the history of diseases will pretend to deny, that the exhalations arising from damp ground, when exposed to a scorching sun, and scarcely covered with water will produce fevers; but what kind of fever do these miasmata generally produce? Certainly not yellow fever. Touch more in quantity product is intermittent fever, and sometimes what is vulgarly called bilious remittent fever. If the contrary was a fact, that these exhalations were the origin and cause of yellow fever, yellow fever would not be confined to a few of the large seaport towns, but be produced abundantly over the whole extent of territory of the United States; for marshes and stagnant waters are to be found in every district, and intermittent fever as their consequence.

Mr. Paine is singular in his remarks upon the air produced by the muddy bottoms of rivers. Dr. Priestley has long since showed by actual experiment, that contaminated air could be rendered pure, and wholesome, by washing in water. And all medical philosophers agree that the exhalations from running or other water where the bottom is covered by a foot or five feet of water, are by no means so injurious to human health, as that from marshy ground, where a part of the surface is exposed to the operation of the sun, by which effluvia from putrid vegetable and animal substances are raised, in a very noxious state.

The experiment made by Mr. Paine, General Washington and others, at the river near Rocky Hill proves nothing, for although inflammable or hydrogenic air was exhaled, by stirring up the mud; yet it remains for Mr. Paine to shew, that the application of inflammable or hydrogenic air to the human body will produce fever. If Mr. Paine had examined the coal and other mines in England with the same attention as he did the river in Jersey, he would have found, that in many of them inflammable air is very extensively produced, without injuring the health of the miners in the smallest degree; unless by some accident, or carelessness, it is set fire to, when it explodes with such violence as to destroy all the workmen in an instant.

How then is Mr. Paine borne out in the experiment upon the river, and with the gun-barrel, to entitle him to this conclusion—"These two experiments shew [says he] that when vegetable substances are decomposed by water in the mud, and this where the decomposition had been produced by fire without blazing, shew that a species of air injurious to life when taken into the lungs, may be generated from substances which in themselves are harmless." This does not all apply to the subject of yellow fever. We know that nothing contaminates pure air more effectually, and renders what is the chief pabulum of life, a more deadly poison, than the breathing of living animals, and the combustion of fuel and candles, yet it never entered into the head of a philosopher before Mr. Paine, that this contaminated air, was a cause of yellow fever, or any other fever.

July 1. INVESTIGATOR.
[To be Continued.]

From the ENQUIRER.

Should Mr. Madison attend the trial of Ogden?

What has been the doctrine of the English Judicature, on this subject, seems not to have been completely settled. On Judge Chase's Impeachment, this question was started in the course of the pleadings; but it was not very far hunted after, for a very obvious reason. He had refused to grant Callender the necessary time for obtaining the attendance of witnesses, although an affidavit had been offered of their being necessary to his defence; and the refusing of these reasonable applications, was one of the articles of Impeachment against him. But Judge Chase was not impeached for refusing to issue commissions to take the depositions of witnesses; because no such application had been made by Callender's council. The question however was stated on the trial, whether the judge would have had the right to issue these commissions; but Mr. Rodney and Mr. Martin seem to be the only two who touched upon it at all.

Mr. Rodney stated that there was a case in Mr. Cowper's Reports, where the person accused made an affidavit of the absence of a very material witness, who was out of the reach of the process of the court. And the court informed the prosecutor, that unless he would consent that the deposition of the witness should be taken and read in evidence, that they would postpone the case forever. In England, courts of common law have no power to issue commissions to take the depositions of witnesses, unless by consent, and therefore Lord Mansfield declared, that although the court could not oblige the prosecutor to consent, yet they would postpone the trial for ever unless he did. But the statutes of the United States expressly authorize the courts to issue commissions, &c. Page 171 of the Report. In answer to this, Mr. Martin says: "A case has also been referred to in Cowper's Reports, where the defendant wanting the testimony of a witness who lived out of the jurisdiction of the court, and the court not having the power to issue a commission to obtain his testimony, the court declared that if the plaintiff would not consent to have the deposition of such witness taken to be read at the trial they would continue the cause indefinitely. The honorable manager has further said, that though in England, the court cannot issue a commission to examine the witness, yet here the court has a power to issue a commission for that purpose. This honorable court will recollect that the case of Callender was a criminal prosecution. I doubt whether the court has any power in a criminal case to issue a commission to examine witnesses for or against the prosecution. I do not know of any law which gives them that power." Mr. Rodney was certainly mistaken if he asserted that the statutes of the United States expressly authorized the courts to issue commissions in criminal cases; but the case which he cited from the English courts was perfectly correct. This doctrine as laid down by Lord Mansfield in the case of *Mostyn versus Fabrigas*, quoted from Cowper's Reports, is in the following words: "If he wants the testimony of witnesses whom he cannot compel to attend, the court may do what the court did in the case of a criminal prosecution of a woman who had received a pension as an officer's widow; and it was charged in the indictment that she never was married at all. She alleged a marriage in Scotland, but that she could not compel her witnesses to come up, to give evidence. The court obliged the prosecutor to consent that the witnesses might be examined before any of the judges of the court of sessions or any of the barons of the court of Exchequer in Scotland, and that the depositions so taken should be read at the trial."

Our conclusions then are:
That the executive functions of a secretary of state are paramount to any judicial duties, which he may incur:
That he ought not (at least in the present case) to give his personal attendance, where the seat of the court is so far removed from the seat of government:
That a court has a right only to expect his attendance, when it is held within the very district where he resides:
That our laws do not expressly provide for obtaining evidence by the way of a deposition in criminal cases:
That the practice in England seems generally to have been, to refuse the benefits of this process, even with the consent of parties:
But that our case at least had occurred prior to the Declaration of our Independence, where it had been granted with the consent of parties; but that this was in a case, where the court could not compel the attendance of the witness:
In fine; that it is not the duty of Mr. Madison to attend at the trial of Mr. Ogden; but that it may possibly be the right of the judge to issue a commission for taking his deposition.
A want of knowledge of the law prevents us from giving on this point a more positive opinion. But this we may venture to assert, that in a case so unsettled by precedents, but so interesting to the executive department, it becomes the duty of congress

to make the law, and the result of the efforts of the Government in certain, perhaps in all criminal prosecutions.

From the American Citizen.

United States vs. Col Smith—On Monday the 14th inst. the District Court for the District of New York was held pursuant to adjournment; present Judge Patterson and Tallmadge. Judge Patterson having delivered an excellent charge to the Grand Jury, clothed in neat diction, the Court proceeded to the trial of the defendant.

Counsel for the Prosecution.
Mr. Sanford, District Attorney.
Mr. Pierpont Edwards.
For the Defendant.
Mr. Harrison.
Mr. Hoffman.
Mr. Emmet.
Mr. Colten.
Mr. W. Morton.

In our report of this extraordinary case we must content ourselves with laying before the reader, in substance, a statement of the proceedings, and this will perhaps be as acceptable as the necessarily long and tedious details which in another form may hereafter be given. We were in Court from the opening to the determination of the question to which we must now confine ourselves, and if in our statement we have no other merit, we may claim that of faithfulness.

After the Jurors were called, but before they were sworn in to try the defendant, a list of the witnesses was read, on which were the names of James Madison, Secretary of State, H. D. Aborn, Secretary at War, R. Smith, Secretary of the Navy, G. Grainger, Post-Master General, Jacob Wagner, Chief Clerk in the Department of State, William Taftman, an officer in one of the Departments of Government, George Clinton, Junr. a Member of the House of Representatives, and S. R. Bradley of the Senate of the United States. All these witnesses were absent.

The District Attorney, Mr. Sanford, moved the Court to proceed to the trial of the defendant.

Mr. Colten, for the defendant, rose and stated that the absent witnesses named had been regularly subpoenaed, that an officer had in person subpoenaed Mr. Madison, and tendered him a reasonable compensation, to wit, \$20, and that on Mr. Madison's intimating that it would be inconvenient to attend the court at New York in person, the officer enquired whether he objected to the "quality or quantity" of the sum tendered, on which Mr. Madison remarked that it was unnecessary to add any thing on the subject.

Having made this statement, which may be termed the number of the law, Mr. Colten applied to the court for compulsory process against Madison, who according to the defendant's affidavit on the file of the court, was, he said, a material witness; and in support of his application he read article 8 of the amendments to the constitution, and the several sections of the acts of Congress in relation to it. The attachment was this day asked for against Mr. Madison only, Mr. Colten dispensing in his argument with the attendance of all the other absent witnesses but Mr. G. Clinton, junr. and Bradley, who he said were expected the following day.

The District Attorney, and Mr. Pierpont Edwards, replied that the motion to bring on the trial was first in order, and that after that was disposed of they would meet the motion for an attachment. If the object of the counsel for the defendant was to put off the trial, they should avow it; the questions were distinct ones and should not be mixed. If Mr. Madison had been guilty of a contempt, for on that alone could an attachment be granted, the attachment might be issued to purge him of the contempt, and the trial go on.

Judge Patterson observed that he had received a letter from Mr. Madison, Mr. Dearborn, and Mr. Smith, which he read, and of which the following is an exact copy.

"To the Honorable the Judges of the Circuit Court for the District of New York.
"We have been summoned to appear, on the 14th day of this month, before a Special Circuit Court of the United States for the District of New York, to testify on the part of William S. Smith, and Samuel G. Ogden, severally, in certain issues of traverse between the United States and the said William S. Smith, and Samuel G. Ogden. Sensible of all the attention due to the writs of subpoena issued in these cases, it is with respect we have to state to the Court, that the PRESIDENT of the United States, taking into view the state of our public affairs, has specially signified to us that our official duties cannot, consistently therewith, be at this juncture dispensed with. The Court, we trust, will be pleased to accept this as a satisfactory explanation of our failure to give the personal attendance required. And as it must be uncertain whether, at any subsequent period, the absence of heads of departments, at such a distance from the scene of their official duties, may not equally happen to interfere with their respective submitt, whether the object of the parties in this case may not be reconciled with public considerations by a commission issued, with the consent of their Councils, and that of the District Attorney of the United States, for this purpose of