

law. The governour of Massachusetts was authorised to give certificates, or licences for the importation of flour into that state; and, under general instructions from the president, without personal suspicion of his own, the collector at Charleston in South Carolina, detained a vessel; which called forth the independent exercise of the judicial power of the circuit court in that state, to controul the president's instructions. I am sensible, the administration and its friends have an arduous task in executing the embargo: difficulties beset them on every side; difficulties inherent in the measure itself, and not be overcome by a multiplying rigorous penalties, and an extension of the executive power. The power to regulate commerce is vested in congress; and by granting it to the president, do we not transfer to him one of the most important and delicate of the legislative powers? What state would have adopted the constitution, if it had been foreseen that this power would be granted to any man however distinguished by office?

I will in this place notice one or two objectionable clauses in the bill not immediately connected with either of the points I have discussed.

By a clause in the 8th section, it is provided, that in a suit on a bond for not re-landing goods, wares and merchandise, and failing to produce a certificate thereof, capture, distress, or any other accident shall not be given in plea or admitted in evidence in any such suit. The doctrine here assumed, that capture, distress or any other accident shall not be pleaded or given in evidence, infringes the first principles of justice, and involves innocence in the punishment of guilt, together with its disgraceful and ruinous consequences. The crime created by the Bill, is that of a person's clearing out a vessel and cargo for a port in the U. States, and voluntarily going contrary to law, to a foreign port. To a case of capture, or being prevented by the act of God, from reaching the destined port, there can be no pretence of crime. And will congress declare an offence by statute, and deny to a party

accused the right of pleading and giving in evidence the only matter of fact that goes to his exculpation? Of what use is the trial by jury, for ages revered as the palladium of innocence against the oppression of power, if it may thus be narrowed down and perverted? And for what cause is this principle to be introduced? Are courts and juries distrusted? And therefore is it that the established usages and rules of trial are to be abandoned? The secretary of the treasury (tis said) may remit and mitigate forfeitures and penalties; and he will give relief. So innocence is to sne, as a favour for relief, from penalties and forfeitures awarded to guilt, from a secretary of the treasury, when it is entitled to an acquittal in a court of justice.

It is made lawful by the 7th section of the bill for collectors to withhold a licence or register for a vessel, when sold, unless a bond shall be given by the owner previous to the sale, that such ship or vessel shall not contravene the embargo acts.

This provision infringes an essential right of property, and is as oppressive as it is unjust. Owners of vessels already deprived of their use by an embargo, are to be prevented from disposing of them in payment of their debts, or for other purposes, unless on condition of becoming bound for the good behaviour of all future owners of the vessel, in respect to the embargo acts, as long as they shall continue.

The sections I have considered, principally affect merchants and sea-faring men in their business, at stores, custom-houses, about wharves, ships, and vessels. But other sections take a wider range, and intrench on the ordinary concerns of the great body of the people; by the powers they give for unreasonable and arbitrary searches for, and seizures of their property.

Collectors of the customs throughout the U. States, by the 10th section, are empowered to take into custody, specie, or any articles of domestic growth, or manufacture, under these circumstances...when deposited in unusual places...in unusual quantities...in places where there