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Anderson Vs. Dunn

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Decided On : 1821

Appeal No. : 19 U.S. 204

Appellant : Anderson

Respondent : Dunn

Judgement :

Anderson v. Dunn - 19 U.S. 204 (1821)
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Anderson v. Dunn

19 U.S. (6 Wheat.) 204

ERROR TO THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA

SYLLABUS

To an action of trespass against the Sergeant at Arms of the House of Representatives of the United States, for an assault and battery and false imprisonment, it is a legal justification and bar to plead that a Congress was held and sitting during the period of the trespasses complained of, and that the House of Representatives had resolved that the plaintiff had been guilty of a breach of the

privileges of the House, and of a high contempt of the dignity and authority of the same, and had ordered that the Speaker should issue his warrant to the Sergeant at Arms commanding him to take the plaintiff into custody, wherever to be found, and to have him before the said House to answer to the said charge, and that the Speaker did accordingly issue such a warrant, reciting the said resolution and order and commanding the Sergeant at Arms to take the plaintiff into custody, &c.;, and delivered the said warrant to the defendant, by virtue of which warrant the defendant arrested the plaintiff and conveyed him to the bar of the House, where he was heard in his defence touching the matter of the said charge, and the examination being adjourned from day to day, and the House having ordered the plaintiff to be detained in custody, he was accordingly detained by the defendant until he was finally adjudged to be guilty and convicted of the charge aforesaid, and ordered to be forthwith brought to the bar and reprimanded by the Speaker, and then discharged from custody, and, after being thus reprimanded, was actually discharged from the arrest and custody aforesaid.

This was an action of trespass, brought in the Court below, by the plaintiff in error, against the defendant in error, for an assault and battery, and false imprisonment, to which the defendant pleaded the general issue, and a special plea of justification. The

plaintiff demurred generally to the special plea, which was adjudged good, and the demurrer overruled, and judgment upon such demurrer was entered for the defendant, and a writ of error brought by the plaintiff. The question arising upon the demurrer will be best explained by giving the defendant's plea at large, as pleaded and adjudged good upon general demurrer, in the Circuit Court, *viz.:*

"And the said Thomas, by the leave of the Court here first had, further defends the force and injury, when, &c.; And as to the coming with force and arms, or whatsoever is against the peace; and also as to the assaulting, beating, bruising, battering, and ill-treating of the said John, in manner and form as the said John, in his said declaration, hath above supposed to be done, the said Thomas saith that

he is not guilty thereof; and of this he, as before, puts himself upon the country; and as to the imprisonment of the said John, and the keeping and detaining him in confinement, at the time in the said declaration mentioned, to-wit, on the said eighth day of January, in the year one thousand eight hundred and eighteen, and for the space of two months in the said declaration mentioned, the said Thomas saith that the said John ought not to have or maintain his action aforesaid against him, because he saith that long before and at the said time when, &c.; in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, a Congress of the United States was holden at the City of Washington, in the County of Washington, and District of Columbia aforesaid, and was then and there,

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and during all the time aforesaid, assembled and sitting, and that, long before and at the time when, &c.; in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, he the said Thomas was, and yet is, Sergeant at Arms of the House of Representatives (then and there being one of the Houses whereof the said Congress of the United States consisted), and, by virtue of his said office, and by the tenor and effect of the standing rules and orders ordained and established by the said House for the determining of the rules of its proceedings, and by the force and effect of the laws and customs of the said House, and of the said Congress, was then and there, and during all the time aforesaid, and yet is duly authorized and required, amongst other things, to execute the commands of the said House, from time to time, together with all such process issued by authority thereof, as shall be directed to him by the Speaker of the said House; and that long before, and at the time when, &c.; in the introduction of this plea mentioned, and during all the time in the declaration mentioned, one Henry Clay was, and yet is, the Speaker of the said House of Representatives, and by virtue of his said office, and by the tenor and effect of such standing rules and orders as aforesaid, and by the force and effect of such laws and customs as aforesaid, then and there, and during all the time aforesaid, was and yet is, amongst other things, duly authorized and required to subscribe with his proper

hand, and to seal with his seal, all writs, warrants, and subpoenas issued by order of the said House: and that long before and

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at the time when, &c.; in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, one Thomas Dougherty was, and yet is, the Clerk of the said House of Representatives; and by virtue of his said office, and by the tenor and effect of such standing rules and orders as aforesaid, and by the force and effect of such laws and customs as aforesaid, then and there, and during all the time aforesaid, was and yet is, amongst other things, duly authorized and required to attest and subscribe with his proper hand, all such writs, warrants, and subpoenas issued by order of the said house: and that long before, and at the time when, &c.; in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, and ever since, it was and yet is, amongst other things, ordained, established, and practised, by and under such standing rules and orders as aforesaid, and such laws and customs as aforesaid, that all writs, warrants, subpoenas, and other process issued by order of the said House, shall be under the hand and seal of the said Speaker of the said House, and attested by the said Clerk of the said House; and so being under the hand and seal of the said Speaker, and attested by the said Clerk as aforesaid, shall be executed, pursuant to the tenor and effect of the same, by the said "

brk:

Sergeant at Arms; and the said Thomas, the defendant, further saith, that the said Henry Clay, so being such Speaker of the said House of Representatives as aforesaid, and the said Thomas Dougherty, so being such Clerk of the same House as aforesaid, and he the said defendant,

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so being such Sergeant at Arms of the same House as aforesaid, and the said Congress, so being assembled and sitting as aforesaid, heretofore and before the said time when, &c.; in the introduction of this plea mentioned, to-wit, on the

seventh day of January, in the year aforesaid, at Washington aforesaid, in the county and district aforesaid, it was, in and by the said House, for good and sufficient cause to the same appearing, resolved and ordered, pursuant to the tenor and effect of such standing rules and orders so ordained and established as aforesaid, and according to the force and effect of such laws and customs as aforesaid, that the said John had been guilty of a breach of the privileges of the said House, and of a high contempt of the dignity and authority of the same; wherefore, it was then and there, in and by the said house, further resolved and ordered, in the like pursuance of such standing rules and orders as aforesaid, and of such laws and customs as aforesaid, that the said Speaker should forthwith issue his warrant, directed to the Sergeant at Arms, commanding him to take into custody the body of the said John, wherever to be found, and the same forthwith to have before the said House, at the bar thereof, then and there to answer to the said charge, &c.; as by the journal, record, and proceedings of the said resolutions and order in the said House remaining, reference being thereto had, will more fully appear. Whereupon, the said Henry Clay, so being such Speaker as aforesaid, in pursuance of such standing rules and orders as aforesaid, and according to such laws and customs as aforesaid, did, for

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the execution of the resolutions and order aforesaid, afterwards, and before the time when, &c.; in the introduction of this plea mentioned, to-wit, on the said seventh day of January, in the year aforesaid, at Washington aforesaid, in the county aforesaid, as such Speaker as aforesaid, duly make and issue his certain warrant, under his hand and seal, duly directed to the said Thomas, the defendant, as such Sergeant at Arms as aforesaid (to whom, so being such Sergeant at Arms as aforesaid, the execution of such warrant then and there belonged) and by the said Thomas Dougherty, so being such Clerk as aforesaid; in and by said warrant, reciting that the said House of Representatives had, that day, resolved and adjudged, that the said John Anderson had been guilty of a breach of the privileges of the said House, and of a high contempt of its dignity and authority; and that the said House had thereupon ordered the said Speaker to issue his

warrant, directed to the said Sergeant at Arms, commanding him, the said Sergeant, to take into custody the body of the said John Anderson, wherever to be found, and the same forthwith to have before the said House, at the bar thereof, then and there to answer to the said charge; therefore, it was required that the said Thomas, the defendant, as such Sergeant as aforesaid, should take into his custody the body of the said John Anderson, and then forthwith to bring him before the said House, at the bar thereof, then and there to answer to the charge aforesaid, and to be dealt with by the said House, according to the constitution and laws of the United States: and said

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Henry Clay, so being such Speaker as aforesaid, then and there, and before the said time when, &c.; in the introduction of this plea mentioned, delivered the said warrant to the said Thomas, so being such Sergeant as aforesaid, to be executed in due form of law. By virtue, and in execution of which said warrant, the said Thomas, as such Sergeant as aforesaid, afterwards, to-wit, at the said time when, &c.; in the introduction of this plea mentioned, at Washington aforesaid, in order to arrest the said John, and convey him in custody to the bar of the said House, to answer to the charge aforesaid, and to be dealt with by the said House, according to the constitution and laws of the United States, in obedience to the resolutions and order aforesaid, and to the tenor and

brk:

effect of the said warrant, so issued as aforesaid, went to the said John, and then and there gently laid his hands on the said John to arrest him, and did then and there arrest him by his body, and take him into custody, and did then forthwith convey him to the bar of the said House, as it was lawful for the said Thomas to do for the cause aforesaid: and thereupon such proceedings were had, in and by the said House, that the said John was then and there forthwith duly examined, and heard in his defence, before the said House, at the bar thereof, touching the matter of the said charge; and that such examination was, in and by the said House, and by the resolutions and orders of the same, duly adjourned and

continued from day to day, from the said time when, &c.; in the introduction of this plea mentioned, until the sixteenth day of January, in the

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year aforesaid; which said examinations were then so adjourned and continued, as aforesaid, from necessity, in order to go through and conclude the examination and defence of the said John, touching the matter of the said charge, before the said House; neither the said examination, nor the said defence, having been finished or concluded before the day last aforesaid: during all which time, to-wit, from the said time when, &c.; in the introduction of this plea mentioned, until the day last aforesaid, it was, in and by the said House, duly resolved and ordered, from day to day, as the said examination was adjourned and continued as aforesaid, that the said John should be remanded, kept, and detained in the custody of the said Thomas, as such Sergeant as aforesaid, by virtue and in execution of the said warrant, in order to have such his examinations and defence finished and concluded, in due form; and the said Thomas, as such Sergeant as aforesaid, afterwards, to-wit, at and from the said time when, &c.; in the introduction of this plea mentioned, until the said sixteenth day of January, in the year aforesaid, did, in pursuance of the last mentioned resolutions and orders of said House, and by virtue, and in execution of the said warrant, keep and detain the said John in custody as aforesaid, and him did bring and have, from day to day, during the said time, before the said House, at the bar thereof, in order to undergo such examinations as aforesaid, and to be heard in his defence aforesaid, touching the matter of the said charge, to-wit, at Washington aforesaid, in the county aforesaid, as it was also lawful for him, the

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said Thomas, to do for the cause aforesaid: and thereupon afterwards, to-wit, on the said last mentioned sixteenth day of January, in the year aforesaid, such further proceedings were had in and by the said House, that it was then and there finally resolved and adjudged, in and by the said House, that the said John was guilty, and convict of the charge aforesaid, in the form aforesaid; and that he be

forthwith brought to the bar of the said House, and there reprimanded by the said Speaker, for the outrage by the said John committed, and then that he be forthwith discharged from the custody of the said Sergeant at Arms: and thereupon the said John was then and there, in pursuance of the last mentioned resolutions, order, and judgment, forthwith reprimanded by the said Speaker, and then forthwith discharged from the arrest and custody aforesaid; as by the journals, record, and proceedings of the said resolutions, orders, and judgment in the said House remaining, reference being thereto had, will more fully appear: which are the same several supposed trespasses in the introduction of this plea mentioned, and whereof the said John hath, above in his said declaration, complained against the said Thomas, and not other or different: with this, that the said Thomas doth aver that the said John, the now plaintiff, and the said John Anderson, in the said resolutions, orders, warrant, and judgment respectively mentioned, was, and is, one and the same person: and that at the said several times in this plea mentioned, and during all the time therein mentioned, the said Congress of the United States was

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assembled and sitting, to-wit, at Washington aforesaid, in the county aforesaid: and this the said Thomas is ready to verify: wherefore he prays judgment, if the said John ought to have or maintain his aforesaid action thereof against him, &c.;

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

Notwithstanding the range which has been taken by the plaintiff's counsel in the discussion of this cause, the merits of it really lie in a very limited compass. The pleadings have narrowed them down to the simple inquiry whether the House of Representatives can take cognizance of contempts committed

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against themselves under any circumstances? The duress complained of was sustained under a warrant issued to compel the party's appearance, not for the actual infliction of punishment for an offence committed. Yet it cannot be denied, that the power to institute a prosecution must be dependent upon the power to punish. If the House of Representatives possessed no authority to punish for contempt, the initiating process issued in the assertion of that authority must have been illegal; there was a want of jurisdiction to justify it.

It is certainly true, that there is no power given by the constitution to either House to punish for contempts, except when committed by their own members. Nor does the judicial or criminal power given to the United States, in any part, expressly extend to the infliction of punishment for contempt of either House, or any one coordinate branch of the government. Shall we, therefore, decide, that no such power exists?

It is true, that such a power, if it exists, must be derived from implication, and the genius and spirit of our institutions are hostile to the exercise of implied powers. Had the faculties of man been competent to the framing of a system of government which would have left nothing to implication, it cannot be doubted, that the effort would have been made by the framers of the Constitution. But what is the fact? There is not in the whole of that admirable instrument a grant of powers which does not draw after it others, not expressed, but vital to

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their exercise; not substantive and independent, indeed, but auxiliary and subordinate.

The idea is utopian that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility and stated appeals to public approbation. Where all power is derived from the people, and public functionaries, at short intervals, deposit it at the feet of the people, to be resumed again only at their will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little

danger.

No one is so visionary as to dispute the assertion that the sole end and aim of all our institutions is the safety and happiness of the citizen. But the relation between the action and the end is not always so direct and palpable as to strike the eye of every observer. The science of government is the most abstruse of all sciences -- if, indeed, that can be called a science which has but few fixed principles and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment.

But if there is one maxim which necessarily rides over all others in the practical application of government, it is that the public functionaries must be left at liberty to exercise the powers which the people have entrusted to them. The interests and dignity of those who created them, require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with

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the rights of particular individuals any reason to be urged against the exercise of such powers. The wretch beneath the gallows may repine at the fate which awaits him, and yet it is no less certain that the laws under which he suffers were made for his security. The unreasonable murmurs of individuals against the restraints of society have a direct tendency to produce that worst of all despotisms, which makes every individual the tyrant over his neighbour's rights.

That "the safety of the people is the supreme law" not only comports with, but is indispensable to, the exercise of those powers in their public functionaries, without which that safety cannot be guarded. On this principle it is that courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.

It is true, that the courts of justice of the United States are vested, by express statute provision, with power to fine and imprison for contempts; but it does not follow, from this circumstance, that they would not have exercised that power without the aid of the statute, or not, in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution, or a legislative declaration, that the power

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of punishing for contempt shall not extend beyond its known and acknowledged limits of fine and imprisonment.

But it is contended that, if this power in the House of Representatives is to be asserted on the plea of necessity, the ground is too broad, and the result too indefinite; that the executive, and every coordinate, and even subordinate, branch of the Government may resort to the same justification, and the whole assume to themselves, in the exercise of this power, the most tyrannical licentiousness.

This is unquestionably an evil to be guarded against, and if the doctrine may be pushed to that extent, it must be a bad doctrine, and is justly denounced.

But what is the alternative? The argument obviously leads to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may meditate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people and charged with the care of all that is dear to them; composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation; whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which

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unlimited confidence in their wisdom and purity can inspire; that such an assembly should not possess the power to suppress rudeness, or repel insult is a supposition too wild to be suggested. And, accordingly, to avoid the pressure of these considerations, it has been argued that the right of the respective Houses to exclude from their presence, and their absolute control within their own walls, carry with them the right to punish contempts committed in their presence; while the absolute legislative power given to Congress within this District enables them to provide by law against all other insults against which there is any necessity for providing.

It is to be observed that, so far as the issue of this cause is implicated, this argument yields all right of the plaintiff in error to a decision in his favour; for, *non constat,* from the pleadings, but that this warrant issued for an offence committed in the immediate presence of the House.

Nor is it immaterial to notice what difficulties the negation of this right in the House of Representatives draws after it when it is considered that the concession of the power, if exercised within their walls, relinquishes the great grounds of the argument, to-wit, the want of an express grant, and the unrestricted and undefined nature of the power here set up. For why should the House be at liberty to exercise an ungranted, an unlimited, and undefined power within their walls any more than without them? If the analogy with individual right and power be resorted to, it will reach no farther than to exclusion, and it requires no exuberance of imagination

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to exhibit the ridiculous consequences which might result from such a restriction imposed upon the conduct of a deliberative assembly.

Nor would their situation be materially relieved by resorting to their legislative power within the District. That power may, indeed, be applied to many purposes, and was intended by the Constitution to extend to many purposes indispensable to the security and dignity of the General Government; but they are purposes of a

more grave and general character than the offences which may be denominated contempts, and which, from their very nature, admit of no precise definition. Judicial gravity will not admit of the illustrations which this remark would admit of. Its correctness is easily tested by pursuing, in imagination, a legislative attempt at defining the cases to which the epithet contempt might be reasonably applied.

But although the offence be held undefinable, it is justly contended that the punishment need not be indefinite. Nor is it so.

We are not now considering the extent to which the punishing power of Congress, by a legislative act, may be carried. On that subject, the bounds of their power are to be found in the provisions of the Constitution.

The present question is what is the extent of the punishing power which the deliberative assemblies of the Union may assume and exercise on the principle of self-preservation?

Analogy, and the nature of the case, furnish the

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answer -- "the least possible power adequate to the end proposed;" which is the power of imprisonment. It may, at first view, and from the history of the practice of our legislative bodies, be thought to extend to other inflictions. But every other will be found to be mere commutation for confinement; since commitment alone is the alternative where the individual proves contumacious. And even to the duration of imprisonment a period is imposed by the nature of things, since the existence of the power that imprisons is indispensable to its continuance, and although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment.

This view of the subject necessarily sets bounds to the exercise of a caprice which has sometimes disgraced deliberative assemblies when under the influence of strong passions or wicked leaders, but the instances of which have long since

remained on record only as historical facts, not as precedents for imitation. In the present fixed and settled state of English institutions, there is no more danger of their being revived, probably, than in our own.

But the American legislative bodies have never possessed, or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice, under the specious appearance of merited resentment.

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If it be inquired what security is there that, with an officer avowing himself devoted to their will, the House of Representatives will confine its punishing power to the limits of imprisonment, and not push it to the infliction of corporal punishment, or even death, and exercise it in cases affecting the liberty of speech and of the press? The reply is to be found in the consideration that the Constitution was formed in and for an advanced state of society, and rests at every point on received opinions and fixed ideas. It is not a new creation, but a combination of existing materials whose properties and attributes were familiarly understood, and had been determined by reiterated experiments. It is not, therefore, reasoning upon things as they are to suppose that any deliberative assembly constituted under it would ever assert any other rights and powers than those which had been established by long practice, and conceded by public opinion. Melancholy, also, would be that state of distrust which rests not a hope upon a moral influence. The most absolute tyranny could not subsist where men could not be trusted with power because they might abuse it, much less a Government which has no other basis than the sound morals, moderation, and good sense of those who compose it. Unreasonable jealousies not only blight the pleasures, but dissolve the very texture of society.

But it is argued, that the inference, if any, arising under the Constitution is against the exercise of the powers here asserted by the House of Representatives; that the express grant of power to punish their

members respectively, and to expel them, by the application of a familiar maxim, raises an implication against the power to punish any other than their own members.

This argument proves too much, for its direct application would lead to the annihilation of almost every power of Congress. To enforce its laws upon any subject without the sanction of punishment is obviously impossible. Yet there is an express grant of power to punish in one class of cases and one only, and all the punishing power exercised by Congress in any cases, except those which relate to piracy and offences against the laws of nations, is derived from implication. Nor did the idea ever occur to anyone that the express grant in one class of cases repelled the assumption of the punishing power in any other.

The truth is that the exercise of the powers given over their own members was of such a delicate nature that a constitutional provision became necessary to assert or communicate it. Constituted, as that body is, of the delegates of confederated States, some such provision was necessary to guard against their mutual jealousy, since every proceeding against a representative would indirectly affect the honour or interests of the state which sent him.

In reply to the suggestion that on this same foundation of necessity might be raised a superstructure of implied powers in the executive and every other department, and even ministerial officer of the government, it would be sufficient to observe that neither analogy nor precedent would support the assertion

of such powers in any other than a legislative or judicial body. Even corruption anywhere else would not contaminate the source of political life. In the retirement of the cabinet, it is not expected that the executive can be approached by indignity or insult; nor can it ever be necessary to the executive, or any other department, to hold a public deliberative assembly. These are not arguments; they are visions which mar the enjoyment of actual blessings, with the attack or feint of the harpies

of imagination.

As to the minor points made in this case, it is only necessary to observe that there is nothing on the face of this record from which it can appear on what evidence this warrant was issued. And we are not to presume that the House of Representatives would have issued it without duly establishing the fact charged on the individual. And, as to the distance to which the process might reach, it is very clear that there exists no reason for confining its operation to the limits of the District of Columbia; after passing those limits, we know no bounds that can be prescribed to its range but those of the United States. And why should it be restricted to other boundaries? Such are the limits of the legislating powers of that body, and the inhabitant of Louisiana or Maine may as probably charge them with bribery and corruption, or attempt, by letter, to induce the commission of either, as the inhabitant of any other section of the Union. If the inconvenience be urged, the reply is obvious: there is no difficulty in observing

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that respectful deportment which will render all apprehension chimerical.

Judgment affirmed.

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