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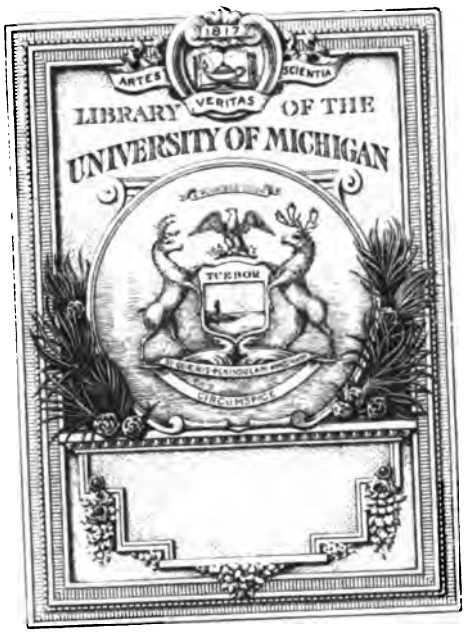

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ANNALS

OF

THE CONGRESS OF THE UNITED STATES.

EIGHTH CONGRESS—SECOND SESSION.

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ANNALS

OF

THE CONGRESS OF THE UNITED STATES.

EIGHTH CONGRESS—SECOND SESSION.

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U. S. Congress

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

EIGHTH CONGRESS—SECOND SESSION.

COMPRISING THE PERIOD FROM NOVEMBER 5, 1804, TO MARCH 3, 1805, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

WASHINGTON:

PRINTED AND PUBLISHED BY GALES AND SEATON.

1852.

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PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE SECOND SESSION OF THE EIGHTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, NOVEMBER 5, 1804.

MONDAY, November 5, 1804.

The second session of the Eighth Congress, conformably to the act passed at the last session, entitled "An act altering the time for the next meeting of Congress," commenced this day; and the Senate assembled at the City of Washington.

PRESENT:

AARON BURR, Vice President of the United States and President of the Senate.

SIMEON OLCOTT and WILLIAM PLUMER, from New Hampshire.

JOHN QUINCY ADAMS, from Massachusetts.

URIAH TRACY, from Connecticut.

CHRISTOPHER ELLERY, from Rhode Island.

STEPHEN R. BRADLEY and ISRAEL SMITH, from Vermont.

JOHN CONDIT, from New Jersey.

SAMUEL WHITE, from Delaware.

SAMUEL SMITH, from Maryland.

ABRAHAM BALDWIN, from Georgia; and

THOMAS WORTHINGTON, from Ohio.

WILLIAM B. GILES, appointed a Senator by the Executive of the Commonwealth of Virginia, in place of Abraham B. Venable, resigned, took his seat, and his credentials were read.

The VICE PRESIDENT gave notice that he had received a letter from WILLIAM HILL WELLS, a Senator from the State of Delaware, resigning his seat in the Senate.

The number of Senators present not being sufficient to constitute a quorum, the Senate adjourned.

TUESDAY, November 6.

JESSE FRANKLIN, from the State of North Carolina, GEORGE LOGAN, from the State of Pennsylvania, and TIMOTHY PICKERING, from the State of Massachusetts, severally attended.

ANDREW MOORE, appointed a Senator by the Executive of the Commonwealth of Virginia, in place of Wilson C. Nicholas, resigned, took his seat, and his credentials were read.

The PRESIDENT administered the oath to Mr. GILES and Mr. MOORE, as the law prescribes.

Ordered, That the PRESIDENT be requested to notify the Executive of the State of Delaware of the resignation of Mr. Wells.

No quorum being present, the Senate adjourned.

WEDNESDAY, November 7.

ROBERT WRIGHT, from the State of Maryland, attended.

Ordered, That the Secretary notify the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business.

A message from the House of Representatives informed the Senate that a quorum of the House of Representatives is assembled and ready to proceed to business. The House of Representatives have appointed a committee on their part, jointly, with such committee as the Senate may appoint, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled and ready to receive any communications that he may be pleased to make to them. The House of Representatives have also passed a resolution that two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly; in which several resolutions they desire the concurrence of the Senate.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled; and concurred therein, and Messrs. SAMUEL SMITH and BALDWIN were appointed the committee on the part of the Senate.

The Senate took into consideration the resolution of the House of Representatives for the appointment of two Chaplains to Congress during the present session, and having agreed thereto, proceeded to the choice of a Chaplain on their part; and the Rev. Mr. McCORMICK was duly elected.

Mr. SAMUEL SMITH reported, from the joint committee, that they had waited on the President of the United States, agreeably to the resolution of this day, and that the President of the United States had informed the committee that he would make a communication to the two Houses tomorrow at 12 o'clock.

Resolved, That each Senator be supplied during the present session with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the usual rate for the annual charge of such papers.

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Resolved, That James Mathers, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant and two horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for that purpose during the session, and for twenty days after.

THURSDAY, November 8.

JONATHAN DAYTON, from the State of New Jersey, and JAMES HILLHOUSE, from the State of Connecticut, severally attended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

To a people, fellow-citizens, who sincerely desire the happiness and prosperity of other nations, to those who justly calculate that their own well-being is advanced by that of the nations with which they have intercourse, it will be a satisfaction to observe, that the war which was lighted up in Europe a little before our last meeting, has not yet extended its flames to other nations, nor been marked by the calamities which sometimes stain the footsteps of war. The irregularities, too, on the ocean, which generally harass the commerce of neutral nations, have, in distant parts, disturbed ours less than on former occasions. But, in the American seas, they have been greater from peculiar causes; and even within our harbors and jurisdiction, infringements on the authority of the laws have been committed, which have called for serious attention. The friendly conduct of the Governments from whose officers and subjects these acts have proceeded, in other respects, and in places more under their observation and control, gives us confidence, that our representations on this subject will have been properly regarded.

While noticing the irregularities committed on the ocean by others, those on our own part should not be omitted, nor left unprovided for. Complaints have been received that persons residing within the United States have taken on themselves to arm merchant vessels, and to force a commerce into certain ports and countries in defiance of the laws of those countries. That individuals should undertake to wage private war, independently of the authority of their country, cannot be permitted in a well ordered society. Its tendency to produce aggression on the laws and rights of other nations, and to endanger the peace of our own, is so obvious that I doubt not you will adopt measures for restraining it effectually in future.

Soon after the passage of the act of the last session authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain. Candid explanations were immediately given, and assurances that, reserving our claims in that quarter as a subject of discussion and arrangement with Spain, no act was meditated in the meantime inconsistent with the peace and friendship existing between the two nations; and that conformably to these intentions would be the execution of the law. That Government, however, thought proper to suspend the ratification of the Convention of 1802. But the explanations which would reach them soon after, and still more the confirmation of them by the tenor of the instrument establishing the port and district, may reasonably be expected to replace them in the dispositions and views of the whole subject which originally dictated the Convention.

I have the satisfaction to inform you that the objections which had been urged by that Government against the validity of our title to the country of Louisiana have been withdrawn; its exact limits, however, remaining still to be settled between us; and to this is to be added, that, having prepared and delivered the stock created in execution of the Convention of Paris, of April 30, 1803, in consideration of the cession of that country, we have received from the Government of France an acknowledgment in due form of the fulfilment of that stipulation.

With the nations of Europe, in general, our friendship and intercourse are undisturbed, and from the Governments of the belligerent Powers especially, we continue to receive those friendly manifestations which are justly due to an honest neutrality, and to such good offices consistent with that as we have opportunities of rendering.

The activity and success of the small force employed in the Mediterranean in the early part of the present year, the reinforcements sent into that sea, and the energy of the officers having command in the several vessels, will, I trust, by the sufferings of war, reduce the barbarians of Tripoli to the desire of peace on proper terms. Great injury, however, ensues to ourselves as well as to others interested, from the distance to which prizes must be brought for adjudication, and from the impracticability of bringing hither such as are not seaworthy.

The Bey of Tunis having made requisitions unauthorized by our treaty, their rejection has produced from him some expressions of discontent. But to those who expect us to calculate whether a compliance with unjust demands will not cost us less than a war, we must leave as a question of calculation for them; also, whether to retire from unjust demands will not cost them less than a war. We can do to each other very sensible injuries by war; but the mutual advantages of peace make that the best interest of both.

Peace and intercourse with the other Powers on the same coast continue on the footing on which they are established by treaty.

In pursuance of the act providing for the temporary government of Louisiana, the necessary officers for the Territory of Orleans were appointed in due time, to commence the exercise of their functions on the first day of October. The distance, however, of some of them, and indispensable previous arrangements, may have retarded its commencement in some of its parts; the form of government thus provided having been considered but as temporary, and open to such future improvements as further information of the circumstances of our brethren there might suggest, it will of course be subject to your consideration.

In the district of Louisiana it has been thought best to adopt the division into subordinate districts, which had been established under its former government. These being five in number, a commanding officer has been appointed to each, according to the provisions of the law, and so soon as they can be at their stations, that district will also be in its due state of organization. In the meantime their places are supplied by the officers before commanding there; and the functions of the Governor and Judges of Indiana having com-

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menced, the government, we presume, is proceeding in its new form. The lead mines in that district offer so rich a supply of that metal as to merit attention. The report now communicated will inform you of their state, and of the necessity of immediate inquiry into their occupation and titles.

With the Indian tribes established within our newly acquired limits, I have deemed it necessary to open conferences for the purpose of establishing a good understanding and neighborly relations between us. So far as we have yet learned, we have reason to believe that their dispositions are generally favorable and friendly, and, with these dispositions on their part, we have in our own hands means which cannot fail us for preserving their peace and friendship. By pursuing an uniform course of justice towards them, by aiding them in all the improvements which may better their condition, and especially by establishing a commerce on terms which shall be advantageous to them, and only not losing to us; and so regulated as that no incendiaries of our own, or any other nation, may be permitted to disturb the natural effects of our just and friendly offices, we may render ourselves so necessary to their comfort and prosperity that the protection of our citizens from their disorderly members will become their interest and their voluntary care. Instead, therefore, of an augmentation of military force proportioned to our extension of frontier, I propose a moderate enlargement of the capital employed in that commerce, as a more effectual, economical, and humane instrument for preserving peace and good neighborhood with them.

On this side the Mississippi an important relinquishment of native title has been received from the Delawares. That tribe, desiring to extinguish in their people the spirit of hunting, and to convert superfluous lands into the means of improving what they retain, has ceded to us all the country between the Wabash and Ohio, south of and including the road from the Rapids towards Vincennes; for which they are to receive annuities in animals and implements for agriculture, and in other necessaries. This acquisition is important, not only for its extent and fertility, but as fronting three hundred miles on the Ohio, and nearly half that on the Wabash, the produce of the settled country descending those rivers will no longer pass in view of the Indian frontier, but in a small portion; and, with the cession heretofore made by the Kaskaskias, nearly consolidates our possessions north of the Ohio, in a very respectable breadth, from Lake Erie to the Mississippi. The Piankeshaws having some claim to the country ceded by the Delawares, it has been thought best to quiet that by fair purchase also. So soon as the treaties on this subject shall have received their Constitutional sanctions they shall be laid before both Houses.

The act of Congress of February 28, 1803, for building and employing a number of gun-boats, is now in a course of execution to the extent there provided for. The obstacle to naval enterprise which vessels of this construction offer for our seaport towns; their utility towards supporting, within our waters, the authority of the laws; the promptness with which they will be manned by the seamen and militia of the place in the moment they are wanting; the facility of their assembling from different parts of the coast to any point where they are required in greater force than ordinary; the economy of their maintenance and preservation from decay when not in actual service; and the competence of our finances to this defensive provision, without any new burden, are considerations which will have due weight with Congress in deciding on the expediency of adding to their number from year to year, as experience shall test their utility, until all our important harbors, by these and auxiliary means, shall be secured against insult and opposition to the laws.

No circumstance has arisen since your last session which calls for any augmentation of our regular military force. Should any improvement occur in the militia system, that will be always seasonable.

Accounts of the receipts and expenditures of the last year, with estimates for the ensuing one, will, as usual, be laid before you.

The state of our finances continues to fulfil our expectations. Eleven millions and an half of dollars, received in the course of the year ending the 30th of September last, have enabled us, after meeting all the ordinary expenses of the year, to pay upwards of three million six hundred thousand dollars of the public debt, exclusive of interest. This payment, with those of the two preceding years, has extinguished upwards of twelve millions of the principal, and a greater sum of interest within that period; and, by a proportionate diminution of interest, renders already sensible the effect of the growing sum yearly applicable to the discharge of the principal.

It is also ascertained that the revenue accrued during the last year exceeds that of the preceding, and the probable receipts of the ensuing year may safely be relied on as sufficient, with the sum already in the Treasury, to meet all the current demands of the year, to discharge upwards of three millions and a half of the engagements incurred under the British and French Conventions, and to advance in the further redemption of the funded debt as rapidly as had been contemplated. These, fellow-citizens, are the principal matters which I have thought it necessary, at this time, to communicate for your consideration and attention. Some others will be laid before you in the course of the session; but, in the discharge of the great duties confided to you by our country, you will take a broader view of the field of legislation. Whether the great interests of agriculture, manufactures, commerce, or navigation, can, within the pale of your Constitutional powers, be aided in any of their relations; whether laws are provided in all cases where they are wanting; whether those provided are exactly what they should be; whether any abuses take place in their administration, or in that of the public revenues; whether the organization of the public agents, or of the public force, is perfect in all its parts: In fine, whether anything can be done to advance the general good, are questions within the limits of your functions, which will necessarily occupy your attention. In these and all other matters which you in your wisdom may propose for the good of our country, you may count with assurance on my hearty co-operation and faithful execution.

TH. JEFFERSON.

NOVEMBER 8, 1804.

The Message was read, and with the documents therein referred to, ordered to be printed for the use of the Senate.

FRIDAY, November 9.

THOMAS SUMTER, from the State of South Carolina, attended.

A message from the House of Representatives

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informed the Senate that the House have appointed the Rev. WILLIAM BENTLEY a Chaplain to Congress on their part during the present session.

MONDAY, November 12.

WILLIAM COCKE, from the State of Tennessee, and DAVID STONE, from the State of North Carolina, severally attended.

Resolved, That Messrs. TRACY, BALDWIN, and FRANKLIN, be a committee to inquire whether copies of the laws of the United States have been procured pursuant to an act passed at the last session of Congress, entitled "An act to provide for a more extensive distribution of the laws of the United States;" and if procured, to report a mode for the disposal of those copies which are by said act reserved for the disposal of Congress.

TUESDAY, November 13.

The Senate assembled, but no business was transacted.

WEDNESDAY, November 14.

The Senate assembled, but transacted no business.

THURSDAY, November 15.

SAMUEL MACLAY, from the State of Pennsylvania, and JOHN SMITH, from the State of New York, severally attended.

FRIDAY, November 16.

The Senate spent the day in the consideration of Executive business.

MONDAY, November 19.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making a further appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. TRACY gave notice that he should, to-morrow, ask leave to bring in a bill for the repeal of the two first sections, and to alter and amend the last section, of the act passed at the last session of Congress, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers."

TUESDAY, November 20.

A message from the House of Representatives informed the Senate that the House have passed a "resolution expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers and crew of the United States ketch Intrepid, in attacking in the harbor of Tripoli and destroying a Tripolitan frigate of forty-four guns," in which they desire the concurrence of the Senate.

The resolution last mentioned was read and passed to the second reading.

The bill, entitled "An act making a further appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," was read the second time, and referred to Messrs. BALDWIN, TRACY, and LOGAN, to consider and report thereon to the Senate.

WEDNESDAY, November 21.

The PRESIDENT laid before the Senate a report from the Secretary for the Department of Treasury, in obedience to the act, entitled "An act to establish the Treasury Department;" and the report was read and ordered to lie for consideration, and be printed for the use of the Senate.

Mr. LOGAN presented the petition of the Directors of the Library Company of Philadelphia, praying the relinquishment of the duties charged on certain books, the donation of Samuel Preston, of Great Britain, to said company; and the petition was read, and ordered to lie on the table.

Mr. BALDWIN, from the committee to whom was referred, on the 20th instant, the bill sent from the House of Representatives for concurrence, entitled "An act making a further appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," reported it without amendment.

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House of Representatives have passed a joint resolution to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana; in which they desire the concurrence of the Senate.

The resolution was read, and passed to the second reading.

THURSDAY, November 22.

The resolution of the House of Representatives expressive of the sense of Congress of the gallant conduct of Capt. Stephen Decatur, the officers, and crew of the United States' ketch Intrepid, was read the second time, and referred to Messrs. BRADLEY, BALDWIN, and GILES, to consider and report thereon to the Senate.

The resolution of the House of Representatives to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, was read the second time, and referred to Messrs. LOGAN, WRIGHT, and ELLERY, to consider and report thereon to the Senate.

The bill sent from the House of Representatives for concurrence, entitled "An act making a further appropriation for carrying into effect the

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Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," was read the third time, and passed.

FRIDAY, November 23.

The PRESIDENT laid before the Senate the credentials of JAMES A. BAYARD, appointed a Senator by the Legislature of the State of Delaware, in place of William Hill Wells, resigned, and the credentials were read.

SAMUEL L. MITCHILL, appointed a Senator by the Legislature of New York, in place of John Armstrong, whose seat has become vacant by his mission to France, took his seat in the Senate, and produced his credentials, which were read, and the oath was administered to him by the PRESIDENT, as the law prescribes.

Mr. LOGAN, from the committee to whom was referred, on the 22d instant, the resolution of the House of Representatives to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, reported the resolution without amendment; and the further consideration thereof was postponed until Monday next.

Ordered, That Perez Morton have leave to withdraw his petition, presented on the 17th of March last, in behalf of himself and others therein named.

MONDAY, November 26.

The resolution to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, was considered, and ordered to the third reading.

Mr. BRADLEY, from the committee to whom was referred, on the 22d instant, the resolution of the House of Representatives expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers, and crew, of the United States' ketch Intrepid, reported it without amendment, and it was agreed, by unanimous consent, to dispense with the rule, and the resolution was read the third time, and passed.

TUESDAY, November 27.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act declaring the assent of Congress to the act of the General Assembly of the State of North Carolina;" in which they desire the concurrence of the Senate.

The bill last mentioned was read and ordered to the second reading.

The resolution to authorize the President of the United Statee to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, was read the third time, and the further consideration thereof postponed until the second Monday in December next.

WEDNESDAY, November 28.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read the second time.

A message from the House of Representatives informed the Senate that the House have appointed the Reverend Mr. PARKINSON, Chaplain to Congress on their part, during the present session, in place of the Reverend Mr. Bentley, who has declined his appointment. The House of Representatives have passed a bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five;" in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

Mr. WORTHINGTON gave notice that he should to-morrow ask leave to bring in a bill making provision for the application of money appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic. to the Ohio river, in conformity with an act of April 30th, 1802.

THURSDAY, November 29.

The bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five," was read the second time, and referred to Messrs. STONE, GILES, and CONDIT, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," and the bill was referred to Messrs. COCKE, BRADLEY, and FRANKLIN, to consider and report thereon to the Senate.

On motion, that it be

Resolved, That a committee be appointed to prepare and report proper rules of proceedings to be observed by the Senate in cases of impeachment:

It was agreed that this motion lie for consideration.

FRIDAY, November 30.

JOHN SMITH, from the State of Ohio, and JOHN BRECKENRIDGE, from the State of Kentucky, severally attended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before you copies of the treaties concluded with the Delaware and Piankeshaw Indians, for the extinguishment of their title to the lands therein described; and I recommend to the consideration of Congress the making provision by law for carrying them into execution. TH. JEFFERSON.

NOVEMBER 30, 1804.

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The Message was read, and, with the treaties therein referred to, ordered to lie for consideration.

The Senate resumed the motion made yesterday, "That a committee be appointed to prepare and report proper rules and proceedings to be observed by the Senate in cases of impeachment;" and having agreed thereto, Messrs. GILES, BALDWIN, BRECKENRIDGE, STONE, and ISRAEL SMITH, were appointed the committee.

On motion,

"That a committee be appointed to examine the act, entitled 'An act to enable the people of tho eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," and that they have leave to report, by bill or otherwise, the manner, in their opinion, the money appropriated by the said act ought to be applied:"

It was agreed that this motion lie for consideration.

Mr. STONE, from the committee to whom was referred, yesterday, the bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year 1805, reported the bill without amendment.

Ordered, That this bill pass to a third reading.

MONDAY, December 3.

BENJAMIN HOWLAND, appointed a Senator by the Legislature of the State of Rhode Island, in the place of Samuel J. Potter, deceased, took his seat and produced his credentials; which were read, and the oath was administered to him by the PRESIDENT, as the law prescribes.

Mr. TRACY, from the committee appointed on the twelfth of November last, to inquire whether copies of the laws of the United States have been procured, and, if procured, to report a mode for the disposal of them, asked and obtained leave to report by bill. He accordingly reported a bill for the disposal of certain copies of the laws of the United States; which was read, and ordered to the second reading.

The Senate resumed the motion, made on the 30th November, for a committee to be appointed to examine the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," and that they have leave to report, by bill or otherwise, the manner, in their opinion, the money appropriated by the said act ought to be applied; and the motion was adopted, and Messrs. WORTHINGTON, GILES, BRADLEY, BRECKENRIDGE, and TRACY, were appointed the committee.

The bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five," was read the third time, and passed.

Mr. ADAMS, in behalf of William A. Barron, asked and obtained leave to withdraw his petition, and papers annexed, presented the 10th of February last.

Mr. PICKERING gave notice that, to-morrow, he should ask leave to offer a resolution for the purpose of amending the Constitution of the United States in such manner that Representatives and direct taxes may be apportioned among the several States according to their free inhabitants respectively.

TUESDAY, December 4.

JAMES JACKSON, from the State of Georgia, attended.

The bill for the disposal of certain copies of the laws of the United States was read the second time.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," in which they desire the concurrence of the Senate. Mr. PARKINSON having declined the appointment, the House of Representatives have elected the Rev. Mr. LAURIE a Chaplain in his stead.

The bill last mentioned was read, and ordered to the second reading.

WEDNESDAY, December 5.

The bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," was read the second time, and referred to Messrs. S. SMITH, MITCHILL, and BRADLEY, to consider and report thereon to the Senate.

Mr. WORTHINGTON presented the petition of James May and others, citizens and inhabitants of that district of the Indiana Territory situate north and east of a west line, extending to the southern bend of Lake Michigan, praying that said district may be divided into a separate Territory, extending north of the above mentioned line; and the petition was read and referred to Messrs. WORTHINGTON, BRECKENRIDGE, and GILES, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill for the disposal of certain copies of the laws of the United States, and sundry amendments were proposed; which were ordered to lie for consideration.

THURSDAY, December 6.

JOSEPH ANDERSON, from the State of Tennessee, attended.

Mr. S. SMITH, from the committee to whom was referred, on the 5th instant, the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," reported the bill with an amendment.

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Ordered, That the report lie for consideration.

The Senate took into consideration the amendments yesterday proposed to the bill for the disposal of certain copies of the laws of the United States; which were adopted.

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House of Representatives have appointed managers to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and have directed the said managers to carry to the Senate the articles agreed upon by the House to be exhibited in maintenance of their impeachment against the said Samuel Chase.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a report of the Surveyor of the Public Buildings at Washington, on the subject of those buildings, and the application of the moneys appropriated for them.

TH. JEFFERSON.

DECEMBER 6, 1804.

The Message and report therein referred to were read, and ordered to lie for consideration.

Mr. WORTHINGTON presented the petition of "the democratic republicans of the county of Wayne, in the Territory of Indiana," signed by their chairman, Robert Abbot, praying a division of said Territory, for reasons therein stated; and the petition was read, and referred to the committee appointed yesterday, to whom was referred the petition of James May and others, on the same subject, to consider and report thereon to the Senate.

FRIDAY, December 7.

Mr. GILES, from the committee appointed on the 30th of November last, "to prepare and report proper rules of proceeding to be observed by the Senate in cases of impeachment," made report; which was read, and ordered to lie for consideration.

Resolved, That the Senate will, at one o'clock this day, be ready to receive articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to be presented by the managers appointed by the House of Representatives. [A full Report of this Trial will be found at the conclusion of the Proceedings and Debates of the Senate, *post*.]

Agreeably to notice given on the 3d instant, Mr. PICKERING introduced a resolution for the purpose of amending the Constitution of the United States in such manner that representatives and direct taxes may be apportioned among the several States according to the number of their free inhabitants, respectively;" and the resolution was read, and ordered to lie for consideration.

The Senate resumed the amendment reported by the committee to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," and the amendment was adopted and a new section was proposed.

Ordered, That the consideration thereof be postponed until Monday next.

The bill for the disposal of certain copies of the laws of the United States was read the third time and passed.

MONDAY, December 10.

The Senate resumed the consideration of the resolution respecting the lead mines in the Territory of Louisiana; and it was postponed to Monday next.

The bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," was resumed, and the new section proposed on Friday last was amended and adopted; and the bill ordered to the third reading as amended.

TUESDAY, December 11.

The bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," was read the third time.

Resolved, That this bill do pass, with amendments.

Mr. S. SMITH gave notice that he should, tomorrow, ask leave to bring in a bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes."

Mr. WORTHINGTON, from the committee to whom was referred, on the 5th instant, the petition of James May and others, citizens of the Indiana Territory, asked and obtained leave to report by bill.

WEDNESDAY, December 12.

The VICE PRESIDENT laid before the Senate a letter from the Mayor of Alexandria, signed Elisha C. Dick, enclosing resolutions of the sense of that town and county on the proposition made in the House of Representatives of the United States for receding certain portions of the District of Columbia to the States of Virginia and Maryland; which were read.

Agreeably to notice given yesterday, Mr. S. SMITH asked and obtained leave to bring in a bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and the bill was read, and passed to the second reading.

THURSDAY, December 13.

Mr. COCKE, from the committee to whom was referred, on the 29th of November last, the bill, entitled "An act declaring the assent of Congress

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to an act of the General Assembly of the State of North Carolina," reported it without amendment.

The bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes," was read the second time, and referred to Messrs. S. SMITH, ANDERSON, and JACKSON, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac;" in which they desire the concurrence of the Senate.

FRIDAY, December 14.

The bill yesterday brought up from the House of Representatives for concurrence, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac," was read, and ordered to the second reading.

Mr. S. SMITH, from the committee to whom was yesterday referred the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes," reported the bill without amendment.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;" and on motion to amend the bill by adding a proviso thereto, it was agreed that the further consideration of this subject be postponed until Monday next.

Mr. WORTHINGTON, from the committee to whom sundry petitions on the subject were referred, reported a bill to divide the Indiana Territory into two separate Governments; which was read, and ordered to the second reading.

After the consideration of Executive business, and proceedings as the High Court of Impeachments, the Senate adjourned.

MONDAY, December 17.

The credentials of WILLIAM B. GILES, appointed a Senator by the Legislature of the Commonwealth of Virginia, in the room of Wilson C. Nicholas, resigned, and the credentials of ANDREW MOORE, appointed a Senator by the Legislature of the Commonwealth of Virginia, in the room of Abraham B. Venable, resigned, were severally read, and the oath was administered to them, respectively, as the law prescribes.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;" and on motion that the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," together with the said act of the State of North Carolina and the act of the State of Tennessee, passed in pursuance thereof, be referred to a select committee; that said committee be instructed to inquire what have been the acts and proceedings of the States of North Carolina and Tennessee in relation to the lands claimed by the United States within the State of Tennessee, under the deed of cession from the State of North Carolina, executed in December, 1789, to state facts and make a report thereon; and that the amendment proposed on the 14th instant to the bill now under the consideration of the Senate, be referred to the same committee. A division of the question was called, and it was agreed that the bill now under the consideration of the Senate be committed; and on the question to agree to the other division of the motion as an instruction to the committee, it was determined in the affirmative; and Messrs. BRADLEY, ANDERSON, and GILES, were appointed the committee.

The Senate resumed the consideration of the resolution to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana; and the consideration thereof was further postponed.

Mr. S. SMITH gave notice that he would, to-to-morrow, ask leave to bring in a bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia."

The bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac," was read the second time, and referred to Messrs. S. SMITH, GILES, and ADAMS, to consider and report thereon.

TUESDAY, December 18.

Agreeably to notice given yesterday, Mr. S. SMITH had leave to bring in a bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia;" and the bill was read, and ordered to the second reading.

The bill to divide the Indiana Territory into two separate Governments was read the second time, and ordered to lie for consideration.

The Senate resumed the second reading of the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and on motion to insert a proviso thereto, it was agreed that the consideration of the bill and the amendment be postponed.

Mr. LOGAN presented the petition of Thomas Ketland, of Philadelphia, merchant, stating that he, with John Ketland and James Williamson, were, in June, 1799, owners of the ship Washington, during a voyage to Batavia, and praying the allowance of a drawback on exportation of certain merchandise, in the said ship imported, for rea-

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sons stated in the petition; and the petition was read, and ordered to lie on the table.

WEDNESDAY, December 19.

The bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia," was read the second time, and referred to Messrs. SUMTER, S. SMITH, and BRADLEY, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and

Ordered, That the consideration thereof be further postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to provide for completing the valuation of lands and dwelling-houses and the enumeration of slaves in South Carolina, and for other purposes;" a bill entitled "An act to amend the act, entitled 'An act for the government and regulation of the seamen in the merchants' service;" and a bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire;" in which bills they desire the concurrence of the Senate.

The bills were read and ordered to the second reading.

The Senate resumed the second reading of the bill to divide the Indiana Territory into two separate governments; and ordered that the bill pass to the third reading.

THURSDAY, December 20.

The bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," was read the second time and referred to Messrs. FRANKLIN, BALDWIN, and SAMUEL SMITH, to consider and report thereon, to the Senate.

The bill entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire," was read the second time and referred to Messrs. JOHN SMITH, of Ohio, WHITE, and BRECKENRIDGE, to consider and report thereon to the Senate.

The bill, entitled "An act to provide for the completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes," was read the second time, and referred to Messrs. SUMTER, BRADLEY, and JACKSON, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and the bill, and amendment thereunto proposed, was referred to Messrs. SAMUEL SMITH, GILES, and BRECKENRIDGE, to consider and report thereon to the Senate.

The bill to divide the Indiana Territory into two separate governments was read the third time, and the further consideration thereof postponed.

Mr. ADAMS gave notice that on Monday next he should ask leave to bring in a bill, in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," passed March 3, 1803.

After proceedings as the High Court of Impeachments, the Senate adjourned.

FRIDAY, December 21.

The Senate resumed the third reading of the bill to divide the Indiana Territory into two separate governments; and, on motion to amend the bill, it was agreed that the consideration thereof be further postponed.

On motion, that the President of the Senate and Speaker of the House of Representatives be, and they are hereby, authorized to adjourn the respective Houses on this day to Monday the last day of this month, it was agreed that the consideration of this motion be postponed until Monday next.

After proceedings as the High Court of Impeachments, the Senate adjourned.

MONDAY, December 24.

The Senate resumed the third reading of the bill to divide the Indiana Territory into two separate governments, and having amended the same,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to divide the Indiana Territory into two separate governments."

Agreeably to notice on the 20th instant, Mr. ADAMS asked and obtained leave to bring in a bill, in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" and the bill was read and ordered to the second reading.

After proceedings as the High Court of Impeachments, the Senate adjourned.

WEDNESDAY, December 26.

JOHN BROWN, from the State of Kentucky, attended.

The bill, in addition to "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read the second time and referred to Messrs. ADAMS, BALDWIN, and BROWN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for establishing rules and articles for the government of the armies of the United States;" a bill, entitled "An act declaring

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Cambridge, in the State of Massachusetts, to be a port of delivery;" and a bill, entitled "An act to regulate the clearance of armed merchant vessels;" in which bills they desire the concurrence of the Senate. They have passed the bill, sent from the Senate for concurrence, entitled "An act for the disposal of certain copies of the laws of the United States," with amendments; in which they desire the concurrence of the Senate.

The three first bills mentioned in the message were read and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to their bill, entitled "An act for the disposal of certain copies of the laws of the United States; and the further consideration thereof was postponed.

FRIDAY, December 28.

The bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery," was read the second time and referred to Messrs. MITCHILL, PICKERING, and ADAMS, to consider and report thereon.

The bill, entitled, "An act to regulate the clearance of armed merchant vessels," was read the second time.

Mr. MITCHILL presented the memorial of the Chamber of Commerce of the city of New York, signed by their President, showing cause why merchantmen should be permitted to arm in certain cases, and respectfully stating the principles on which a bill on the subject should pass; and the memorial was read.

Ordered, That the bill last read be referred to Messrs. MITCHILL, BALDWIN, GILES, BRECKENRIDGE, and LOGAN, to consider and report thereon.

The bill, entitled "An act for establishing rules and articles for the government of the armies of the United States," was read the second time and referred to Messrs. JACKSON, BRADLEY, SUMTER, ANDERSON, and SMITH, of New York, to consider and report thereon.

A message from the House of of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

Mr. WORTHINGTON, from the committee to whom, on the 3d instant, the subject was referred, reported a bill concerning certain public roads; and the bill was read, and ordered to the second reading.

Mr. WORTHINGTON gave notice that he should, on Monday next, ask leave to bring in a bill concerning the mode of surveying the public lands of the United States,

The Senate resumed the consideration of the amendments of the House of Representatives to their bill, entitled "An act for the disposal of certain copies of the Laws of the United States," and concurred therein.

Mr. BRECKENRIDGE gave notice that he should, on Monday next, ask leave to bring in a bill to extend jurisdiction in certain cases to the State and Territorial Courts.

After proceedings as the High Court of Impeachments, the Senate adjourned.

MONDAY, December 31.

The bill concerning public roads was read the second time, and ordered to lie for consideration.

The bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," was read the second time, and referred to Messrs. MITCHILL, BALDWIN, and BRADLEY, to consider and report thereon.

Mr. MITCHILL, from the committee to whom was referred, on the 28th instant, the bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery," reported the bill without amendment.

Agreeably to notice given on the 28th instant, Mr. WORTHINGTON asked and obtained leave to bring in a bill concerning the mode of surveying the lands of the United States, and the bill was read and ordered to the second reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of John Steele;" and a bill, entitled "An act to amend the charter of the town of Alexandria;" in which bills they desire the concurrence of the Senate.

The bills mentioned in the message were read, and ordered to the second reading.

Mr. GILES presented the memorial of the planters, merchants, and others, inhabitants of Louisiana, remonstrating against certain laws which contravene their rights, and respectfully petitioning for redress.

Agreeably to notice given on the 28th instant, Mr. BRECKENRIDGE asked and obtained leave to bring in a bill to extend jurisdiction in certain cases to the State and Territorial Courts; and the bill was read, and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The enclosed letter, written from Malta by Richard O'Brien, our late Consul at Algiers, giving some details of transactions before Tripoli, is communicated for the information of Congress. TH. JEFFERSON.

DECEMBER 31, 1804.

The Message and letter therein referred to were read and ordered to lie for consideration.

The PRESIDENT laid before the Senate a letter from the Attorney General of the United States, in reply to the order of the Senate, of the 15th of April, 1802, on the subject of the lands of the United States within the State of Tennessee; which was read and referred to the committee appointed on the 16th instant, on the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," to consider and report thereon.

After the consideration of the Executive busi-

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ness, and proceedings as the High Court of Impeachments, the Senate adjourned.

TUESDAY, January 1, 1805.

The Senate transacted no business to-day.

WEDNESDAY, January 2.

The bill, entitled "An act for the relief of John Steele," was read the second time.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act giving further time to register the evidences of titles to land south of the State of Tennessee;" and a bill, entitled "An act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five;" in which bills they desire the concurrence of the Senate.

After proceedings as the High Court of Impeachments, the Senate adjourned.

THRUSDAY, January 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage;" and a bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The bill, entitled "An act making an appropriation for the support of the Navy of the United States during the year 1805," also, the bill, entitled "An act giving further time to register the evidences of titles to land south of the State of Tennessee," brought up on the 2d instant from the House of Representatives for concurrence, were read, and ordered to the second reading.

After proceedings as the High Court of Impeachments, the Senate adjourned.

FRIDAY, January 4.

The Senate resumed the second reading of the bill, entitled "An act for the relief of John Steele," and it was referred to Messrs. TRACY, ANDERSON, and SMITH of Ohio, to consider and report thereon.

The PRESIDENT communicated a letter from PIERCE BUTLER, Esquire, late a Senator from the State of South Carolina, dated the 15th of December last, notifying the resignation of his seat in the Senate.

The bill, entitled "An act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five," was read the second time, and referred to Messrs. BALDWIN, FRANKLIN, and SMITH of Maryland, to consider and report thereupon.

The bill, entitled "An act to amend the charter of Alexandria," was read the second time, and referred to Messrs. BALDWIN, BRADLEY, and CONDIT, to consider and report thereon.

Mr. MITCHILL, from the committee to whom was referred on the thirty-first of December last, the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," reported the bill with amendments; which were read and ordered to lie for consideration.

Mr. ADAMS, from the committee to whom was referred, on the twenty-sixth of December last, the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," reported the bill without amendment.

The bill, entitled "An act giving further time to register the evidences of titles to lands south of the State of Tennessee," was read the second time, and referred to Messrs. BRADLEY, BRECKENRIDGE, and BALDWIN, to consider and make a report thereon.

The bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," was read the second time, and referred to Messrs. SMITH of Maryland, MITCHILL, and ELLERY, to consider and report thereon.

The bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," was read the second time, and referred to Messrs. FRANKLIN, BALDWIN, and ADAMS, to consider and report thereon.

The bill concerning the mode of surveying the public lands of the United States was read the second time, and referred to Messrs. WORTHINGTON, BROWN, and BRECKENRIDGE, to consider and report thereon.

Mr. SMITH of Ohio, from the committee to whom was referred, on the twentieth of December last, the bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire," reported the bill with amendment.

The bill to extend jurisdiction in certain cases, to the State and Territorial Courts, was read the second time, and referred to Messrs. BRECKENRIDGE, BALDWIN, and GILES, to consider and report thereon.

Mr. FRANKLIN, from the committee to whom was referred on the twentieth of December last, the bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," reported the bill with amendment.

On motion, the petition of the merchants, planters, and others, inhabitants of Louisiana, presented on the thirty-first of December last, was read, and referred to Messrs. GILES, FRANKLIN, ANDERSON, TRACY, and BALDWIN, with liberty to report by bill or otherwise.

The Senate resumed the second reading of the bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery."

Ordered, That it pass to the third reading.

Mr. BRECKENRIDGE gave notice that he should, on Monday next, ask leave to bring in a bill for

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ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana.

MONDAY, January 7.

The letter of PIERCE BUTLER, Esq., announcing the resignation of his seat in the Senate, was read.

Mr. SMITH of Maryland, from the committee to whom was referred on the twentieth of December last, the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes," together with the amendments thereto proposed, reported them without amendment.

The Senate took into consideration the amendment reported on the fourth instant, to the bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire;" and the consideration thereof was postponed until to-morrow.

Mr. MITCHILL, from the committee to whom was referred, on the twenty-eighth of December last, the bill, entitled "An act to regulate the clearance of armed merchant vessels," reported amendments thereto, which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed the bill sent from the Senate for their concurrence, entitled "An act to divide the Indiana Territory into two separate governments," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments reported on the fourth instant to the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," and, after debate, the consideration thereof was postponed.

Mr. SMITH of Maryland, from the committee to whom was referred on the seventeenth of December last the bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," reported amendments thereto, which were read and ordered to lie for consideration.

The Senate resumed the second reading of the bill in addition to "An act making provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," and after having amended the bill, the consideration thereof was further postponed.

The Senate took into consideration the amendment reported on the fourth instant to the bill, entitled, "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," and having agreed thereto, the bill was ordered to a third reading as amended.

A motion was made as follows:

"*Resolved*, That the journals of the proceedings of the Senate sitting for the purpose of trying the impeachments in the cases of William Blount, John Pickering, and Samuel Chase, be published as an appendix to the Legislative Journals of the Senate, for the present session."

The Senate resumed the second reading of the bill concerning certain public roads, and an amendment thereto was read and submitted for consideration.

The bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery," was read the third time, and passed.

The amendment of the House of Representatives to the bill, entitled "An act to divide the Indiana Territory into two separate governments," was read, and submitted for consideration.

Agreeably to notice given on the fourth instant, Mr. BRECKENRIDGE asked and obtained leave to bring in a bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana; and the bill was read and ordered to the second reading.

TUESDAY, January 8.

Mr. BRADLEY, from the committee to whom was referred on the 17th of December last the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, together with the said act of the State of North Carolina, and the act of the State of Tennessee, to inquire what have been the acts and proceedings of said State, in relation to the lands claimed by the United States within the State of Tennessee, made report; which was read, and ordered to lie for consideration.

The following resolutions were read and submitted for consideration.

"*Resolved*, That one or more land offices be opened for the sale of the public lands of the United States, on which the Indian title may have been extinguished, in the State of Tennessee."

"*Resolved*, That Commissioners be appointed, with ample powers, to settle all disputes relative to the lands ceded by North Carolina to the United States, and to quiet all claims agreeable to the conditions of the cession."

"*Resolved*, After satisfying all just claims, and the expenses incident thereto, that one —— part of all the public lands belonging to the United States ought to be appropriated for the use of a college or university in said State, forever; one —— part for the use of schools for the instruction of children, forever; and five per cent. on the net proceeds of the sales of the public lands, for the purpose of making roads: *Provided*, the State of North Carolina shall consent to the appropriations aforesaid."

The Senate resumed the consideration of the amendment of the House of Representatives to the bill, entitled "An act to divide the Indiana Territory into two separate governments," and concurred therein.

Mr. WORTHINGTON, from the committee to whom was referred on the 4th instant, the bill concerning the mode of surveying the public lands of the United States, reported it without amendment.

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Mr. SUMTER, from the committee to whom was referred on the 19th of December last, the bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia," reported it without amendment.

The Senate resumed the consideration of the amendment reported to the bill, entitled 'An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," and on motion to agree to the amendment, a division of the question was called for, and that it should be taken on striking out; which passed in the negative.

Ordered, That the consideration of this bill be postponed until to-morrow.

WEDNESDAY, January 9.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," and after debate, the bill was committed to Messrs. BALDWIN, FRANKLIN, and MACLAY, to consider and report thereon.

The bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," was read the third time.

Resolved, That this bill do pass with an amendment.

The Senate resumed the second reading of the bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire," and on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

Mr. BALDWIN, from the committee to whom was referred on the 4th instant, the bill, entitled "An act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five," reported an amendment thereto, which was read, and ordered to lie for consideration.

THURSDAY, January 10.

Mr. JACKSON, from the committee to whom was referred, on the 28th of December last, "An act for establishing rules and articles for the government of the armies of the United States," reported the bill with amendments; which were read, and ordered to lie for consideration.

The bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, was read the second time, and referred to Messrs. BRECKENRIDGE, SMITH of Vermont, and ANDERSON, to consider and report thereon.

The Senate took into consideration the amendment proposed to the bill to amend the act, entitled "An act for imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and having adopted the report, the bill was ordered to the third reading as amended.

The amendment reported to the bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," was resumed; and it was agreed that the further consideration thereof should be the order of the day for Monday next.

The Senate took into consideration the amendment reported to the bill, entitled "An act to regulate the clearance of armed merchant vessels," and, after debate, the Senate adjourned.

FRIDAY, January 11.

Mr. BALDWIN, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," reported the bill with an amendment.

The bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships and vessels, and for other purposes," was read the third time and passed.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act to regulate the clearance of armed merchant vessels," and, on motion to adopt the first amendment reported, which goes to increase the penalty of the bond, by insertion, after the word "furniture," of the words "and also in the additional sum of ten thousand dollars," it passed in the negative—yeas 12, nays 18, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Condit, Franklin, Jackson, Logan, Maclay, Moore, Sumter, and Worthington.

NAYS—Messrs. Adams, Bradley, Brown, Dayton, Ellery, Hillhouse, Howland, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, and Wright.

Ordered, That the further consideration of the bill and amendments be postponed until Monday next.

MONDAY, January 14.

Mr. SUMTER, from the committee to whom was referred, on the 20th December last, the bill, entitled "An act to provide for the completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes," reported the bill without amendment.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 10th instant, the bill to extend jurisdiction in certain cases to the State and Territorial Courts, reported the bill with amendments; which were read and ordered to lie for consideration.

Mr. LOGAN presented the memorial and petition of the Board of Directors of the Philadelphia Typographical Society, praying an additional duty on the importation of foreign books; which was read and ordered to lie on the table.

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The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels," together with the amendments reported thereto; and the bill and amendments were referred to Messrs. SMITH of Maryland, BALDWIN, GILES, TRACY, and BRECKENRIDGE, to consider and report thereon.

Mr. FRANKLIN, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," reported the bill with amendments.

On motion, it was

Resolved, That the members of the Senate, from a sincere desire of showing every mark of respect to the honorable SAMUEL J. POTTER, deceased, late a member thereof, will go into mourning for him one month, by the usual mode, of wearing a crape round the left arm.

TUESDAY, January 15.

The VICE PRESIDENT being absent, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and the honorable JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the honorable JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

JAMES A. BAYARD, from the State of Delaware, attended. His credentials having been presented and read on the 23d of November last, the oath was administered to him by the President, as the law prescribes, and he took his seat in the Senate.

Mr. TRACY, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act for the relief of John Steele," reported it without amendment.

Mr. FRANKLIN notified the Senate that he should, to-morrow, ask leave to bring in a bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington."

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes;" also, a bill, entitled "An act further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" in which bills they desire the concurrence of the Senate.

The bills were read and ordered to a second reading.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," and, having disagreed thereto,

Ordered, That the bill pass to the third reading.

WEDNESDAY, January 16.

The bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes," was read the second time and referred to Messrs. MITCHILL, LOGAN, and WORTHINGTON, to consider and report thereon.

The bill, entitled "An act further to amend an act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the second time and referred to Messrs. JACKSON, BRADLEY, and FRANKLIN, to consider and report thereon.

Agreeably to the notice given yesterday, Mr. FRANKLIN asked and obtained leave to bring in a bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington; and the bill was read and ordered to the second reading.

The Senate took into consideration the amendment reported on the 11th instant to the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen;" and the amendment was adopted, and the bill ordered to the third reading as amended.

The bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," was read the third time and passed.

The Senate resumed the second reading of the bill concerning certain public roads, together with the amendment proposed thereto; and, after debate, the Senate adjourned.

THURSDAY, January 17.

Mr. MITCHILL presented the petition of sundry merchants of the city of New York, praying that the period for the payment of bonds given for the duties on goods imported from South America and the West Indies, may be extended, for reasons stated therein; and the petition was read and referred to the committee appointed on the 4th instant, to consider the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," to report thereon to the Senate.

The bill giving the assent of Congress to an act of the Legislature of North Carolina, passed the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," was read the second time, and referred to Messrs. FRANKLIN, STONE, and BRADLEY, to consider and report thereon.

Mr. MITCHILL, from the committee to whom

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was referred, on the 16th instant, the bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes," reported the bill without amendment.

The Senate resumed the second reading of the bill concerning certain public roads; and having agreed to sundry amendments, the further consideration of the bill was postponed until to-morrow.

The bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," was read the third time, further amended, and the blank filled with the words "two hundred;" and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 20, nays 8, as follows:

YEAS—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Sumter, Worthington, and Wright.

NAYS—Messrs. Adams, Baldwin, Dayton, Hillhouse, Olcott, Plumer, and Tracy.

So it was *Resolved*, That this bill do pass as amended.

FRIDAY, January 18.

The Senate resumed the second reading of the bill concerning certain public roads: and, on motion to strike out of section 1st, line 5th, the words "one twentieth part," and insert, "remaining two per cent," a division was called for, and the question was taken on striking out:—which passed in the affirmative—yeas 16, nays 10 as, follows:

YEAS—Messrs. Adams, Baldwin, Bayard, Bradley, Brown, Condit, Ellery, Franklin, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Stone, and Sumter.

NAYS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Logan, Moore, Smith of Maryland, Smith of Ohio, Worthington, and Wright.

On the question, to insert the words "remaining two per cent:" it passed in the affirmative—yeas 14, nays 11, as follows:

YEAS—Messrs. Adams, Baldwin, Bayard, Condit, Ellery, Franklin, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Stone, and Sumter.

NAYS—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Dayton, Moore, Smith of Maryland, Smith, of Ohio, Worthington, and Wright.

Ordered, That the consideration of the bill be further postponed until Monday next.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of Government for the year 1805," in which they desire the concurrence of the Senate. They agree to the amendment of the Senate to the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," with an amendment; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read and ordered to the second reading.

The Senate took into consideration the amendment to their amendment to the bill last mentioned in the message; and concurred therein.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," reported an amendment thereto; which was read and ordered to lie for consideration.

Mr. SMITH also reported, from the last mentioned committee, to whom was yesterday referred the petition of certain merchants of the city of New York, that it would be inexpedient to comply with the prayer of the petition.

Mr. FRANKLIN, from the committee to whom was referred yesterday the bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," reported it without amendment.

Mr. DAYTON presented the petition of Benjamin Hovey, in behalf of himself and associates, praying a grant of the pre-emption right of one hundred thousand acres of land in the Indiana Territory, for the encouragement of the association, having undertaken to open a passage from the head to the foot of the rapids of the Ohio river; and the petition was read and referred to Messrs. DAYTON, SMITH, of Ohio, and BROWN, to consider and report thereon.

The Senate resumed the second reading of the bill concerning the mode of surveying the public lands of the United States; and on motion adjourned.

MONDAY, January 21.

Mr. MOORE reported, from the committee, that they this day examined and found duly enrolled the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen."

The bill, entitled "An act making appropriations for the support of Government for the year 1805," was read the second time, and referred to Messrs. BALDWIN, BROWN, and SMITH, of Maryland, to consider and report thereon.

Mr. LOGAN presented the petition of Henry and William Stewart, calico printers, praying that the allowance of drawback may be extended to the exportation of India muslins, which they print and dye, in like manner as is provided on the exportation of white India muslins; and the petition was read, and ordered to lie on the table.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to amend the charter of Georgetown," in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading o the

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bill concerning the mode of surveying the public lands of the United States; and on motion, it was agreed that this bill be the order of the day for Wednesday next.

Mr. LOGAN presented a petition signed Thomas Morris, clerk, on behalf of the meeting of the representatives of the people called Quakers, in Pennsylvania, New Jersey, &c., stating that the petitioners, from a sense of religious duty, had again come forward, to plead the cause of their oppressed and degraded fellow-men of the African race; and on the question, Shall this petition be received? it passed in the affirmative—yeas 19, nays 9, as follows:

YEAS—Messrs. Adams, Bayard, Brown, Condit, Franklin, Hillhouse, Howland, Logan, Maclay, Mitchill, Olcott, Pickering, Plumer, Smith of Ohio, Smith of Vermont, Stone, Sumter, White, and Worthington.

NAYS—Messrs. Anderson, Baldwin, Bradley, Cocke, Jackson, Moore, Smith of Maryland, Smith of New York, and Wright.

So the petition was read.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 14th instant, the bill, entitled "An act to regulate the clearance of armed merchant vessels," reported the bill with amendments.

TUESDAY, January 22.

The PRESIDENT laid before the Senate a letter from the Treasurer of the United States, with his account from the first of October, 1803, to October 1, 1804; also the accounts of the War and Navy Departments for the same period; which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville in North Carolina, to Charleston in South Carolina;" also, a bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1805," in which bills they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The bill, entitled "An act to amend the charter of Georgetown," was read the second time, and referred to Messrs. ADAMS, LOGAN, and FRANKLIN, to consider and report thereon.

The Senate resumed the second reading of the bill supplementary to the act, entitled "An act to provide for the organization of the militia in the District of Columbia;" and having amended the bill, on the question, Shall this bill pass to the third reading as amended? it was determined in the negative. So the bill was lost.

The Senate took into consideration the amendment reported on the 9th instant, to the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year 1805;" and having agreed thereto, the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington;" and the bill was ordered to a third reading.

The Senate resumed the second reading of the bill, giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th December, 1804, entitled "An act for the relief of foreign seamen, brought into the port of Wilmington;" and the bill was recommitted to the committee to whom it was referred on the 17th instant, further to consider and report thereon.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," together with the amendment reported on the 8th instant; and it was agreed that they be the order of the day for Monday next.

The Senate took into consideration the amendments reported on the 14th instant, to the bill entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation with Spain," and having agreed to the amendments,

Ordered, That the bill pass to the third reading as amended.

WEDNESDAY, January 23.

Mr. MITCHILL presented the memorial of a number of inhabitants of the city of New York, stating that inconvenience arises from depositing the revenue bonds for collection in the Bank of the United States and its branches, and praying the interposition of Congress on the subject; and the memorial was read, and referred to Messrs. MITCHILL, BALDWIN, and SMITH, of Maryland, to consider and report thereon.

The bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville in North Carolina, to Charleston in South Carolina," was read the second time, and referred to Messrs. SMITH of New York, BRADLEY, and JACKSON, to consider and report thereon.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1805," was read the second time, and referred to Messrs. BALDWIN, JACKSON, and SMITH, of Vermont, to consider and report thereon.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 10th instant, the bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, reported the bill without amendment.

The bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1805," was read the third time as amended.

Resolved, That this bill do pass with an amendment.

The bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of

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Friendship, Limits, and Navigation, with Spain," was read the third time as amended, and passed.

The bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes," was read the third time; and, on motion, the bill was amended, and passed with an amendment.

The Senate resumed the second reading of the bill concerning the mode of surveying the public lands of the United States; and the bill was ordered to a third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the widow and orphan children of Robert Elliott;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading of the bill concerning certain public roads, and agreed to an amendment. The bill was then recommitted to Messrs. WORTHINGTON, BROWN, FRANKLIN, SMITH of Ohio, and BRECKENRIDGE, to consider and report thereon.

THURSDAY, January 24.

The bill, entitled "An act for the relief of the widow and orphan children of Robert Elliott," was read the second time, and referred to Messrs. MACLAY, BRADLEY, and BALDWIN, to consider and report thereon.

The Senate took into consideration the amendment reported, on the 18th instant, to the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage;" and, having adopted the amendment, the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act to provide for the completing of the valuation of lands and dwelling-houses, and the enumeration of slaves in South Carolina, and for other purposes;" and the bill was ordered to a third reading.

The Senate took into consideration the motion made on the 7th of January last, "That the Journals of the proceedings of the Senate sitting for the purpose of trying impeachments in the case of William Blount, John Pickering, and Samuel Chase, be published as an appendix to the Legislative Journals of the Senate for the present session;" and it was referred to Messrs. GILES, ADAMS, and BALDWIN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Alexander Murray;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The bill concerning the mode of surveying the public lands of the United States was read the third time, and passed.

The Senate resumed the second reading of the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" and the further consideration thereof was further postponed.

The Senate resumed the consideration of the amendments reported on the 10th instant, to the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States;" and the amendments were amended, and in part adopted; and the consideration of the remainder thereof postponed.

FRIDAY, January 25.

The bill, entitled "An act for the relief of Alexander Murray," was read the second time, and referred to Messrs. SMITH of Maryland, MITCHELL, and WHITE, to consider and report thereon.

The bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," was read the third time as amended, and passed.

The bill, entitled "An act to provide for the completing the valuation of lands and dwelling-houses, and the enumeration of slaves in South Carolina, and for other purposes," was read the third time, and passed.

A Message was received from the President of the United States, by Mr. Coles, his Secretary.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act for establishing the rules and articles for the government of the armies of the United States," which were amended and adopted; and, having agreed to sundry amendments to the bill, it was recommitted to Messrs. ADAMS, WRIGHT, and WHITE, further to consider and report thereon.

SATURDAY, January 26.

The Message received yesterday from the PRESIDENT OF THE UNITED STATES was read, as follows:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, the report of the Director of the Mint, of the operations of that institution during the last year.

JAN. 25, 1805. TH. JEFFERSON.

Ordered, That the Message and report lie for consideration.

Mr. SMITH, of Maryland, from the committee to whom was yesterday referred the bill, entitled "An act for the relief of Alexander Murray," reported it without amendment.

Mr. SMITH, of New York, from the committee to whom was referred, on the twenty-third instant, the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina," reported the bill with an amendment.

The Senate took into consideration the amendments reported, on the fourteenth instant, to the

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bill to extend jurisdiction, in certain cases, to the State and Territorial Courts; and the amendments were disagreed to; and on motion, the bill was amended, and ordered to the third reading as amended.

Mr. WORTHINGTON, from the committee to whom was recommitted, on the 23d instant, the bill concerning certain public roads, reported it with amendments.

The Senate resumed the second reading of the bill, entitled "An act for the relief of John Steele," and it was ordered to the third reading.

Mr. WRIGHT gave notice that he should, on Monday next, ask leave to bring in a bill to regulate fees and proceedings in the Courts of the United States in certain cases, and for other purposes.

The Senate resumed the second reading of the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" and on motion, the second and third sections were rejected; and the first section having been amended, on the question, Shall this bill pass to the third reading as amended? it was determined in the affirmative—yeas 12, nays 11, as follows:

YEAS—Messrs. Adams, Anderson, Brown, Cocke, Condit, Giles, Hillhouse, Jackson, Pickering, Smith of Maryland, Sumter, and Wright.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Franklin, Howland, Maclay, Mitchill, Olcott, Plumer, Smith of New York, and Smith of Vermont.

MONDAY, January 28.

Mr. DAYTON, from the committee to whom was referred, on the eighteenth instant, the petition of Benjamin Hovey, made report; which was read, and ordered to lie for consideration.

Mr. BALDWIN, from the committee to whom was referred, on the fourth instant, the bill, entitled "An act to amend the charter of Alexandria," reported it without amendment.

Mr. MACLAY, from the committee to whom was referred, on the twenty-fourth instant, the bill, entitled "An act for the relief of the widow and orphan children of Robert Elliot," reported the bill without amendment.

Agreeably to notice given on the twenty-third instant, Mr. WRIGHT asked and obtained leave to bring in a bill to regulate fees and proceedings in the Courts of the United States, in certain cases, and for other puposes; and the bill was read, and ordered to the second reading.

Mr. WORTHINGTON presented the petition of the inhabitants of the county of Greene, in the State of Pennsylvania, stating that if a road passes through New Geneva, or near it, the most eligible route thence is through the town of Waynesburgh to the mouth of Grave creek; and the petition was read, and ordered to lie on the table.

The bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," was read the third time; and, on motion to amend the bill, it was agreed that the consideration therof be postponed until to-morrow.

The bill to extend jurisdiction in certain cases to the State and Territorial Courts was read the third time, and passed.

The bill, entitled "An act for the relief of John Steele," was read the third time, and passed.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Alexander Murray;" and

Ordered, That it pass to the third reading.

A message from the House of Representatives informed the Senate that the House of Representatives have elected Mr. Clarke a manager to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, in the place of Mr. Nelson, who hath been excused that service.

On motion,

"That —— be directed to procure and lay before the Senate, at their next session, tables of the fees and compensation paid to attorneys at law, the prothonotaries, registers, and clerks of judicial courts, to sheriffs and coroners, to grand and petit jurors, and to witnesses, in the several States."

Ordered, That this motion lie for consideration.

A motion was made, that it be

Resolved, That the President of the United States be requested to cause to be laid before the Senate such documents and papers, or other information, as he shall judge proper, relative to complaints aginst arming the merchant ships and vessels of the United States, or the conduct of the captains and crews of such as have been armed."

And on the question, will the Senate agree to this resolution; it passed in the affirmative—yeas 30, nays 1, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Giles, Hillhouse, Howland, Logan, Maclay, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Stone, Sumter, Tracy, White, and Worthington.

Mr. WRIGHT voted in the negative.

So the resolution was adopted.

Ordered, That Messrs. GILES and TRACY be a committee to lay the foregoing resolution before the President of the United States.

TUESDAY, January 29.

The Senate took into consideration the resolution proposed yesterday, respecting the fees and compensations to the officers of the judicial courts; which was agreed to, as follows:

Resolved, That the Attorney General of the United States be directed to procure and lay before the Senate, at their next session, tables of the fees and compensation paid to attorneys at law, prothonotaries, registers, and clerks of judicial courts, to sheriffs and coroners, to grand and petit jurors, and to witnesses, in the several States.

The bill to regulate fees and proceedings in the courts of the United States in certain cases, and

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for other purposes, was read the second time, and referred to Messrs. WRIGHT, BALDWIN, and BRECKENRIDGE, to consider and report thereon.

Mr. BALDWIN, from the committee to whom was referred, on the 21st instant, the bill, entitled "An act making appropriations for the support of Government for the year 1805," reported the bill with amendments; which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the discharge of John York from his imprisonment," in which bill they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The bill entitled "An act for the relief of Alexander Murray," was read the third time and passed.

Mr. GILES, from the committee to whom was referred, on the 4th instant, the petition of the merchants, planters, and other inhabitants of Louisiana, reported a bill further providing for the government of the Territory of Orleans; and the bill was read, and ordered to the second reading.

The bill is as follows:

A Bill further providing for the government of the Territory of Orleans.

Be it enacted, &c., That the President of the United States be and he is hereby authorized to establish within the Territory of Orleans, a government in all respects similar (except as is herein otherwise provided) to that now exercised in the Mississippi Territory, and shall, in the recess of the Senate, but to be nominated at their next meeting, for their advice and consent, appoint all the officers necessary therein, in conformity with the ordinance of Congress, made on the 20th day of July 1787, and that from and after the establishment of the said government, the inhabitants of the Territory of Orleans shall be entitled to and enjoy all the rights, privileges, and advantages, secured by the said ordinance, and now enjoyed by the people of the Mississippi Territory.

SEC. 2. *And be it further enacted,* That so much of the said ordinance of Congress as relates to the organization of a General Assembly, and prescribes the power thereof, shall, from and after the —— day of —— next, be in force in the said Territory of Orleans; and in order to carry the same into operation, the Governor of the said Territory shall cause to be elected twenty-five representatives, for which purpose he shall lay off the said Territory into convenient election districts, on or before the —— day of —— next, and give due notice thereof throughout the same and first appoint the most convenient place, within each of the said districts, for holding the elections; and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected. All subsequent elections shall be regulated by the Legislature; and the number of representatives shall be determined, and the apportionment made in the manner prescribed by the said ordinance.

SEC. 3. *And be it further enacted,* That the representatives to be chosen as aforesaid, shall be convened by the Governor, in the city of Orleans, on the —— day of —— next. The General Assembly shall meet at least once in every year, and such meeting shall be on the —— Monday in —— annually, unless they shall by law appoint a different day. Neither House, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two branches are sitting.

SEC. 4. *And be it further enacted,* That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

SEC. 5. *And be it further enacted,* That the second paragraph of the said ordinance, which regulates the descent and distribution of estates; and also the sixth article of compact which is annexed to and makes part of said ordinance, are hereby declared not to extend to, but are excluded from all operation within the said Territory of Orleans.

SEC. 6. *And be it further enacted,* That the Governor, Secretary, and Judges, to be appointed by virtue of this act, shall be severally allowed the same compensation which is now allowed to the Governor, Secretary, and Judges, of the Territory of Orleans. And all the additional officers authorized by this act shall respectively receive the same compensations for their services, as are by law established for similar offices in the Mississippi Territory, to be paid quarterly out of the revenues of import and tonnage, accruing within the said Territory of Orleans.

SEC. 7. *And be it further enacted,* That whenever it shall be ascertained by an actual census or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of inhabitants included therein shall amount to at least —— thousand souls, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons, the inhabitants of the said Territory, upon application to Congress for that purpose, and upon producing satisfactory proof that the number of souls included therein, ascertained as aforesaid does actually amount to at least —— thousand, shall thereupon be authorized to form for themselves a constitution and State government, and be admitted into the Union upon the footing of the original States, in all respects whatever, conformably to the provisions of the third article of the Treaty concluded at Paris, on the 30th of April, 1803, between the United States and the French Republic: *Provided,* That the constitution so to be established, shall be republican, and not inconsistent with the Constitution of the United States, nor inconsistent with the ordinance of the late Congress, passed the 13th day of July 1787, so far as the same is made applicable to the Territorial government hereby authorized to be established: *Provided, however,* That Congress shall be at liberty, at any time prior to the admission of the inhabitants of the said Territory to the rights of a separate State, to alter the boundaries thereof as they may judge proper: except only, that no alteration shall be made which shall procrastinate the period for the admission of the inhabitants thereof to the rights of a State Government, according to the provision of this act.

SEC. 8. *And be it further enacted,* That so much of an act, entitled, "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," as is repugnant with this act, shall, from and after the —— day of —— next, be repealed.

WEDNESDAY, January 30.

The bill, entitled "An act authorizing the discharge of John York from his imprisonment,"

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was read the second time, and referred to Messrs. LOGAN, OLCOTT, and COCKE, to consider and report thereon.

The PRESIDENT laid before the Senate the petition of Andrew Jackson, Major General, and sundry others, militia officers and other citizens of the State of Tennessee, praying Congress to amend the articles and rules for the future government of the Army, in respect to certain parts of their dress and uniform; and, on the question, Shall this petition be referred to the committee appointed on the 25th instant, who have under consideration the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States?" it passed in the affirmative—yeas 16, nays 15, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Cocke, Condit, Franklin, Hillhouse, Maclay, Mitchill, Olcott, Pickering, Plumer, Stone, and Worthington.

NAYS—Messrs. Breckenridge, Brown, Dayton, Giles, Howland, Jackson, Logan, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, White, and Wright.

THURSDAY, January 31.

JOHN GAILLARD, appointed a Senator by the Legislature of the State of South Carolina, in the room of Pierce Butler, resigned, took his seat in the Senate, and the oath prescribed was administered to him by the PRESIDENT.

Mr. SMITH, of Vermont, gave notice that he should to-morrow ask leave to bring in a bill for the government of the District of Columbia.

Mr. LOGAN, from the committee to whom yesterday was referred the bill, entitled "An act authorizing the discharge of John York from his imprisonment," reported the bill without amendment.

Mr. BALDWIN, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States for the year 1805," reported the bill without amendments.

The bill further providing for the government of the Territory of Orleans was read the second time; and it was agreed that the consideration thereof be postponed.

A Message was received from the President of the United States.

FRIDAY, February 1.

The Message received yesterday from the PRESIDENT OF THE UNITED STATES was read, as follows:

To the Senate of the United States:

According to the desire expressed in your resolution of the 28th instant, I now communicate a report of the Secretary of State, with documents relative to complaints against arming the merchant ships and vessels of the United States, and the conduct of the captains and crews of such as have been armed.

JAN. 31, 1805. TH. JEFFERSON.

Ordered, That the Message and papers accompanying it lie for consideration; and that, in the meantime they be printed for the use of the Senate.

The Senate resumed the second reading of the bill further providing for the government of the Territory of Orleans; and having agreed to an amendment, the further consideration thereof was postponed.

SATURDAY, February 2.

Agreeably to notice given on Thursday last, Mr. SMITH, of Vermont, asked and obtained leave to bring in a bill to provide for the government of the Territory of Columbia, and to repeal the acts of Congress therein mentioned; and the bill was read, and ordered to the second reading.

Mr. ADAMS, from the committee to whom was referred, on the 22d of January last, the bill, entitled "An act to amend the charter of Georgetown," reported the bill with amendments; which were read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill further providing for the government of the Territory of Orleans; and the consideration thereof was postponed until Monday next.

The bill, in addition to "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read the third time, and passed.

Mr. GILES, from the committee to whom was referred, on the 24th of January last, the motion, "That the Journals of the proceedings of the Senate, sitting for the purpose of trying impeachments, in the cases of William Blount, John Pickering, and Samuel Chase, be published as an appendix to the Legislative Journals of the Senate, for the present session," made report; which was read, and ordered to lie for consideration.

Mr. WRIGHT presented the memorial of George Scoone, stating, that he was wounded in the battle near Camden, in the year 1781, and that he hath been for some time on the pension list, and praying that his pension may be continued and the arrears thereof paid up; and the memorial was read, and referred to Messrs. WRIGHT, TRACY, and FRANKLIN, to consider and report thereon.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," and the further consideration thereof was postponed.

The Senate resumed the second reading of the bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana; and the bill was ordered to a third reading.

The Senate resumed the consideration of the amendments reported by the committee to whom was referred the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina;" and having disagreed to the amendment, the bill was ordered to the third reading.

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MONDAY, February 4.

Mr. SMITH, of Ohio, presented the petition of Jeremiah Hunt and Ethan Stone, praying the pre-emption right of certain gores of public lands in the town of Cincinnati, for reasons mentioned in the petition; also, the petition of Joseph Prince, President of the select Council of Cincinnati, on the same subject; and the petitions were read, and referred to Messrs. SMITH, of Ohio, BALDWIN, and BROWN, to consider and report thereon.

Mr. ANDERSON presented the petition of George Dougherty, in behalf of himself and the officers and men who accompanied him as volunteers to Natchez, in the Mississippi Territory, praying that twelve thousand dollars deducted from their compensation may be restored to them, for reasons stated in the petition; and the petition was read, and referred to Messrs. ANDERSON, SMITH of Maryland, and TRACY, to consider and report thereon.

TUESDAY, February 5.

The PRESIDENT communicated a report of the Postmaster General, of the roads which have not produced one third part of the expenses of carrying the mail upon them during the last year; and the report was read, and ordered to lie for consideration.

Mr. WRIGHT, from the committee to whom was referred the bill to regulate fees and proceedings in the courts of the United States in certain cases, and for other purposes, reported the bill without amendment.

Mr. BRADLEY, from the committee to whom was referred the bill, entitled "An act giving further time to register the evidences of titles to land south of the State of Tennessee, reported it without amendment.

The amendment reported to the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was resumed and adopted; and the bill ordered to the third reading as amended.

The Senate resumed the consideration of the amendment reported to the bill, entitled "An act to regulate the clearance of armed merchant vessels," which goes to strike out the whole of said bill, after the enacting clause, for the purpose of inserting an amendment; and a division was called for, and the question was taken on striking out, which was passed in the negative—yeas 13, nays 16, as follows:

YEAS—Messrs. Adams, Bayard, Dayton, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Smith of Vermont, Tracy, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Gaillard, Howland, Jackson, Maclay, Moore, Smith of New York, Sumter, and Worthington.

On motion to expunge from first section of the original bill the words "in a sum equal to double the value of said vessel, her arms, ammunition, tackle, apparel, and furniture," in order to insert "seven thousand dollars:" it passed in the negative—yeas 12, nays 22, as follows:

YEAS—Messrs. Adams, Bayard, Dayton, Hillhouse, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Tracy, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Gaillard, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of New York, Smith of Vermont, Stone, Sumter, and Worthington.

And, on motion, it was agreed to postpone the further consideration of this bill.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The Secretary of State has lately received a note from the Danish Chargé des Affaires, claiming, in the name of his Government, restitution, in the case of the brigantine Henrick, communicated to Congress at a former session, in which note were transmitted sundry documents, chiefly relating to the value and neutral character of the vessel, and to the question whether the judicial proceedings were instituted and conducted without the concurrence of the Captain of the Henrick. As these documents appear to form a necessary appendage to those already before Congress, and throw additional light on the subject, I transmit copies of them herewith. TH. JEFFERSON.

FEBRUARY 5, 1805.

The Message and documents therein referred to were read, and ordered to lie for consideration.

The PRESIDENT laid before the Senate the report of the Commissioners of the Sinking Fund, stating, that the measures which have been authorized by the board, subsequent to the 4th of February, 1804, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to the said board, dated the 4th day of the present month, and in the statements therein referred to; and the report was read, and ordered to lie for consideration.

Ordered, That the Secretary inform the House of Representatives that the Senate are going to their public Chamber, to proceed further on the trial of Samuel Chase, one of the Associate Justices of the Supreme Court.

WEDNESDAY, February 6.

The bill to provide for the government of the Territory of Columbia, and to repeal the acts of Congress therein mentioned, was read the second time, and referred to Messrs. MITCHILL, SMITH of Vermont, and ANDERSON, to consider and report thereon.

Mr. ANDERSON gave notice that he should tomorrow ask leave to bring in a bill further providing for the government of the Territory of Louisiana.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels;" and, on motion to expunge, from the first section of the original bill, these words: "that after due notice of this act at the several custom-houses," it passed in the negative—yeas 13, nays 20, as follows:

YEAS—Messrs. Adams, Bayard, Dayton, Ellery, Hillhouse, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Tracy, White, and Wright.

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NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Gaillard, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of New York, Smith of Vermont, Sumter, and Worthington.

And having agreed to sundry amendments,

Ordered, That the consideration of the bill be further postponed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction;" also, a bill, entitled "An act to continue in force an act declaring the consent of Congress to an act of the State of Maryland, passed the 28th day of December, 1793, for the appointment of a health officer;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina," was read the third time; and, being amended, on the question, Shall this bill pass? it was determined in the affirmative—yeas 26, nays 6, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bayard, Breckenridge, Brown, Cocke, Dayton, Ellery, Franklin, Giles, Hillhouse, Howard, Jackson, Logan, Maclay, Mitchill, Moore, Pickering, Smith of Maryland, Smith of Ohio, Stone, Sumter, Tracy, Worthington, and Wright.

NAYS—Messrs. Bradley, Condit, Olcott, Plumer, Smith of New York, and Smith of Vermont.

So it was *Resolved*, That this bill do pass as amended.

A motion was made that a committee be appointed, to join with such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session; and the motion was read, and ordered to lie for consideration.

Mr. FRANKLIN presented the memorial of the mayor, and members of the Corporation, of the city of New Orleans, stating their situation, their wants, and their claims, for which they solicit the authentic sanction of Congress, in order that the municipality of that city may have at their disposal the means of improving it and its establishments; and the memorial was read, and ordered to lie for consideration.

THURSDAY, February 7.

Agreeably to notice given yesterday, Mr. ANDERSON asked and obtained leave to bring in a bill further providing for the government of the Territory of Louisiana; and the bill was read, and ordered to the second reading.

The Senate resumed the second reading of the bill, entitled "An act to continue in force 'An act declaring the consent of Congress to an act of the State of Maryland passed the 28th of December, 1793, for the appointment of a health officer," and it was referred to Messrs. SMITH of Maryland, WRIGHT, and MITCHILL, to consider and report thereon.

Mr. SMITH, of Maryland, from the committee, reported the above-mentioned bill without amendment.

The bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was read the second time, and referred to Messrs. DAYTON, SMITH of Maryland, and GILES, to consider and report thereon.

The bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, was read the third time, and amended.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana."

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States in the town of Brooklyn, in the State of New York," in which bill they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1805;" and having amended the bill, it was ordered to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels," and having further amended the bill, the consideration thereof was postponed.

The Secretary notified the House of Representatives that the Senate are now going to their public Chamber to proceed further on the trial of Samuel Chase, one of the Associate Justices of the Supreme Court.

FRIDAY, February 8.

The bill yesterday brought up from the House of Representatives for concurrence, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York," was read, and ordered to the second reading.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States for the year 1805," was read the third time.

Resolved, That this bill do pass with an amendment.

The bill further providing for the government of the Territory of Louisiana was read the second time, and referred to Messrs. ANDERSON, GILES, and BRECKENRIDGE, to consider and report thereon.

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A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats," in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and ordered to the second reading.

The Senate took into consideration the motion made on the 6th instant, that a joint committee be appointed to consider and report what business is necessary to be done by Congress in the present session; and, on the question to agree to this motion, it was determined in the negative.

Mr. BRECKENRIDGE submitted the following resolution, which was read, and ordered to lie for consideration:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as part of the said Constitution, viz:

"The judicial power of the United States shall not be construed to extend to controversies between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects."

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read the third time. And the question on the final passage of this bill was determined in the negative.

After proceedings as the High Court of Impeachments, the Senate adjourned.

SATURDAY, February 9.

Mr. JACKSON, from the committee to whom was referred, on the 16th of January last, the bill, entitled "An act further to amend an act, entitled 'An act regulating the grants of land, and providing for the disposal of the public lands of the United States south of the State of Tennessee," reported the bill without amendment.

The bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York," was read the second time, and referred to Messrs. MITCHILL, WHITE, and WRIGHT, to consider and report thereon.

The bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats," was read the second time, and referred to Messrs. SMITH of Maryland, DAYTON, and MITCHILL, to consider and report thereon.

MONDAY, February 11.

The Senate took into consideration the amendments reported, on the 29th of January last, to the bill, entitled "An act making appropriations for the support of Government, for the year 1805," which were in part adopted, and the further consideration of the bill was postponed.

TUESDAY, February 12.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 9th instant, the bill, entitled, "An act to appropriate a sum of money for the purpose of building gun-boats," reported the bill without amendment.

Resolved, That the Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday the 13th instant, February, at noon, for the purpose of being present at the opening and counting the votes for PRESIDENT and VICE PRESIDENT of the UNITED STATES. That one person be appointed a teller on the part of the Senate, to make a list of the votes for President and Vice President of the United States, as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the journals, and, if it shall appear that a choice hath been made agreeably to the Constitution, such entry on the journals shall be deemed a sufficient declaration thereof.

Ordered, That the Secretary do carry this resolution to the House of Representatives.

Mr. MITCHILL, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act to authorize the erection of a bridge across a mill pond and marsh in the navy-yard belonging to the United States, in the town of Brooklyn, in the State of New York," reported the bill without amendment.

Mr. SMITH, of Ohio, from the committee to whom the petitions of Ethan Stone, Jeremiah Hunt, and others, were referred, on the 4th instant, reported a bill to authorize the President of the United States to sell a certain lot of land; and the bill was read, and ordered to the second reading.

The Senate resumed the second reading of the bill further providing for the government of the Territory of Orleans; and it was ordered to the third reading.

The Senate resumed the consideration of the bill, entitled "An act making appropriations for the support of Government for the year 1805;" and, having agreed to sundry amendments, the bill was ordered the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," in which bill they desire the concurrence of the Senate. They have passed a resolution that a committee be appointed on the part of the House of Representatives, to join such committee as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected of their election, and to regulate the time, place, and manner, of administering the oath of office to the President.

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The bill brought up for concurrence was read, and ordered to the second reading.

The Senate considered the resolution mentioned in the message, and disagreed thereto.

WEDNESDAY, February 13.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In the message to Congress at the opening of the present session, I informed them that treaties had been entered into with the Delaware and Piankeshaw Indians, for the purchase of their right to certain lands on the Ohio. I have since received another, entered into with the Sacs and Foxes, for a portion of the country on both sides of the river Mississippi. These treaties having been advised and consented to by the Senate have accordingly been ratified, but, as they involve conditions which require Legislative provision, they are now submitted to both branches for consideration. TH. JEFFERSON.

FEBRUARY 13, 1805.

The Message was read, and, together with the treaties therein referred to, ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a resolution that they will attend in the Chamber of the Senate this day at noon, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States, and have appointed tellers to act jointly with the teller who may be appointed on the part of the Senate to make a list of the votes for President and Vice President of the United States as they shall be declared.

The resolution mentioned in the message was read, and, on motion,

Ordered, That Mr. SMITH, of Maryland, be a teller of the votes for the President and Vice President of the United States on the part of the Senate.

Ordered, That the Secretary notify the House of Representatives that the Senate are now ready to meet them in the Senate Chamber, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States.

COUNTING OF ELECTORAL VOTES FOR PRESIDENT AND VICE PRESIDENT.

About twelve o'clock the Senators took their seats; and immediately after the SPEAKER and members of the House of Representatives entered; the SPEAKER and Clerk occupying seats on the floor on the right side of the PRESIDENT of the Senate, and the members of the House being seated in front.

Mr. SAMUEL SMITH, teller on the part of the Senate, and Mr. JOSEPH CLAY, and Mr. ROGER GRISWOLD, tellers on the part of the House, took seats at a table placed in front of the Chair, in the area between the Senate and House.

The Secretary of the Senate read the resolutions of the two Houses, previously agreed to.

The PRESIDENT (Mr. BURR) stated that, pursuant to law, there had been transmitted to him several packets, which, from the endorsements upon them, appeared to be the votes of the Electors of a President and Vice President; that the returns forwarded by the mail, as well as the duplicates sent by special messengers, had been received by him in due time. You will now proceed gentlemen, said he, to count the votes as the Constitution and laws direct; adding that, perceiving no cause for preference in the order of opening the returns, he would pursue a geographical arrangement, beginning with the Northern States.

The PRESIDENT then proceeded to break the seals of the respective returns, handing each return, and its accompanying duplicate, as the seals of each were broken, to the tellers through the Secretary; Mr. S. SMITH reading aloud the returns, and the attestations of the appointment of the Electors, and Mr. J. CLAY and Mr. R. GRISWOLD comparing them with the duplicate return lying before them.

According to which enumeration, the following appeared to be the result:

STATES.	President.		V. Pres'dt.	
	Th. Jefferson.	C. C. Pinckney.	Geo. Clinton.	Rufus King.
New Hampshire - -	7	–	7	
Massachusetts - - -	19	–	19	
*Rhode Island - - -	4	–	4	
Connecticut - - -	–	9	–	9
Vermont - - -	6	–	6	
New York - - -	19	–	19	
New Jersey - - -	8	–	8	
Pennsylvania - - -	20	–	20	
Delaware - - -	–	3	–	3
Maryland - - -	9	2	9	2
Virginia - - -	24	–	24	
North Carolina - -	14	–	14	
South Carolina - -	10	–	10	
†Georgia - - -	6	–	6	
Tennessee - - -	5	–	5	
Kentucky - - -	8	–	8	
‡Ohio - - - -	3	–	3	
Total - - -	162	14	162	14

* In this return, after stating the whole number of votes given for Thomas Jefferson and George Clinton, each Elector certifies distinctly his vote for Thomas Jefferson as President, and for George Clinton, as Vice President.

† The return certifies the votes to have been given as stated in an enclosed paper.

‡ In this return, the votes are not certified to have been given by ballot, but agreeably to law.

After the returns had been all examined, with-

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out any objection having been made to receiving any of the votes, Mr. S. SMITH, on behalf of the tellers, communicated to the PRESIDENT the foregoing result, which was read from the Chair; when, the VICE PRESIDENT said, upon this report it becomes my duty to declare, agreeably to the Constitution, that THOMAS JEFFERSON is elected President of the United States, for the term of four years from the third day of March next, and that GEORGE CLINTON is elected Vice President of the United States, for the term of four years from the third day of March next.

[Previous to the above proceedings, a short debate arose in the Senate on the keeping the doors open or shut during the counting of the votes. Mr. WRIGHT submitted a motion for their being kept open, which, after some opposition, was agreed to.]

Ordered, That the Secretary notify the House of Representatives that the Senate will be in their public Chamber at half past two o'clock, to proceed further on the trial of the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court.

On motion that a committee be appointed to direct the forms in which the records of the pending impeachment shall be made up from time to time, it was agreed that this motion should lie for consideration.

A message from the House of Representatives informed the Senate that the House have come to a resolution that a committee be appointed on their part, to join such committee as may be appointed on the part of the Senate, to inquire and report whether any, and, if any, what, further measures ought to be adopted for the accommodation of the President of the United States for the term commencing on the fourth day of March next, and have appointed a committee on their part.

Mr. ANDERSON, from the committee to whom was referred, on the 8th instant, the bill further providing for the government of the district of Louisiana. reported it with amendments; which were read, and ordered to lie for consideration.

THURSDAY, February 14.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to inquire and report whether any, and what, further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing on the fourth day of March next; and, having agreed thereto,

Ordered, That Messrs. BALDWIN and FRANKLIN be the committee on their part.

The Senate took into consideration the amendments reported to the bill further providing for the government of the district of Louisiana; and the further consideration was postponed.

The Senate took into consideration a motion made on the 8th instant, for an alteration of the rule precluding debate while sitting as a Court of Impeachments; which was amended as follows:

"*Resolved*, That, in the course of the trial, upon a question being referred to the decision of the Senate, in case it be required by a majority of the members present, the Senate shall return to their Chamber; whereupon, the question to be decided shall be stated by the President, and each member shall be at liberty to state the reasons of his opinion, but shall not be allowed to speak more than once. After the members have delivered their opinions, the Senate shall return to their judicial Chamber, where the question shall be determined by ayes and noes."

And, on the question to agree to this resolution, it passed in the negative—yeas 9, nays 22, as follows:

YEAS—Messrs. Adams, Bayard, Giles, Hillhouse, Olcott, Pickering, Plumer, Smith of New York, and Tracy.

NAYS—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Gaillard, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of Ohio, Smith of Vermont, Stone, Sumter, Worthington, and Wright.

On motion, it was

Resolved, That the President of the United States be requested to cause to be transmitted to GEORGE CLINTON, Esq., of New York, Vice President elect of the United States, notification of his election to that office; and that the President of the Senate do make out and sign a certificate in the words following, viz:

"Be it known, that the Senate and House of Representatives of the United States of America, being convened at the City of Washington, on the second Wednesday in February, in the year of our Lord, 1805, the underwritten Vice President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the Electors for a President and Vice President of the United States; whereupon, it appeared that Thomas Jefferson, of Virginia, had a majority of the votes of the Electors as President, and George Clinton, of New York, had a majority of the votes of the Electors as Vice President; by all which it appears that Thomas Jefferson, of Virginia, has been duly elected President, and George Clinton of New York, has been duly elected Vice President of the United States, agreeably to the Constitution.

"In witness whereof, I have hereunto set my hand and seal this 14th day of February, 1805."

And that the PRESIDENT of the Senate do cause the certificate aforesaid to be laid before the President of the United States, with this resolution.

The bill, entitled "An act making appropriations for the support of Government for the year 1805, was read the third time and further amended.

Resolved, That this bill do pass as amended.

The motion made on the thirteenth, respecting the forms of the record of the pending impeachment was resumed and adopted, and Messrs. BRADLEY, BRECKENRIDGE, and GILES, were appointed.

FRIDAY, February 15.

A message from the House of Representatives informed the Senate that the House have passed

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a resolution for the appointment of a joint committee to wait on the President of the United States and to notify to him his re-election, and have appointed a committee on their part.

The resolution was read, and ordered to lie for consideration.

The bill further providing for the government of the Territory of Orleans was read the third time; and a motion was made to strike out the first section of the bill, for the purpose of inserting an amendment; and a division was called for. The further consideration of the bill was postponed.

SATURDAY, February 16.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States to notify him of his re-election; and, having agreed thereto, Messrs. BALDWIN, and SMITH of Maryland, were appointed the committee on their part.

A motion was made,

"That a call of the Senate take place every morning at the hour to which the Senate is adjourned, and that absent members be not permitted to take their seats until a satisfactory excuse be made, or the opinion of the Senate be had thereon."

Ordered, That this motion lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," in which bill they desire the concurrence of the Senate.

The Senate took into consideration the amendments yesterday proposed to the bill further providing for the government of the Territory of Orleans, which was amended as follows:

Strike out of the first section of the bill all that follows the enacting clause, and insert:

"That, for the purpose of enabling the people of Louisiana to enjoy the right of self-government, the President of the United States is hereby authorized to cause the territory ceded by the Republic of France to the United States, by the treaty concluded at Paris on the 30th of April, 1803, to be laid off on or before the —— day of —— into convenient election districts, having reference to population and location, and not exceeding the number of —— districts; and to appoint the most convenient time thereafter, as well as place, within each of said districts, for holding an election; and to appoint in each district a proper person or persons, inhabitants of the same, respectively to preside at and to conduct the election which is hereinafter described; of all which he shall cause due notice to be given throughout each district. And on the day and at the place thus appointed, the people of every district who are hereinafter described as qualified voters, shall meet and elect for their districts, respectively, one person, to meet in Convention for the purpose of forming a constitution of government for the people of said Territory. And the President of the United States is hereby authorized to appoint time and place for the meeting of said Convention, of which he shall cause due notice to be given before the choice of the members thereof."

Strike out the residue of said bill, and insert in lieu thereof the following:

"SEC. 2. *And be it further enacted*, That a majority of the members chosen pursuant to this act, to meet in Convention as aforesaid, shall constitute a quorum to do business; and the Convention, when organized, may form one or two governments within said Territory, as to them shall appear most conducive to the general welfare of the people thereof; and if they form two governments they shall define the boundaries of each.

"SEC. 3. *And be it further enacted*, That all free white male persons, who have arrived at the age of twenty-one years, and who are, at the time of the election, *bona fide* inhabitants of the district where they shall offer to vote, and who have been so during the period of —— next before, shall be entitled to vote at the elections authorized by this act. And the person or persons presiding at the respective elections are hereby authorized to determine whether the votes shall be taken *viva voce*, or by ballot, and upon all questions respecting the qualifications of voters.

"SEC. 4. *And be it further enacted*, That, when the Convention aforesaid shall have formed a government or governments for the people of said Territory, they shall appoint a time for commencement of the operations thereof, but the time of said commencement shall be at a period so distant as to afford sufficient time to transmit the result of their deliberations to the seat of Government of the United States, and for Congress to act upon the same, if in session, or at their next session thereafter, and likewise afford time for Congress to give notice to the people of Louisiana of their determination thereon.

"And the said Convention shall, immediately upon their forming a government or governments, as aforesaid, transmit a copy thereof, duly authenticated, to the President of the United States, and, likewise, a certificate of the time they shall have fixed upon for the commencement of operations, as aforesaid; and the President shall cause the same to be laid before Congress immediately, if in session, or at the opening of the next session thereafter, that Congress may be enabled to approve or disapprove of the government or governments so formed, and further to provide for any exigencies which the nature of the case may require. And if Congress shall approve of said government or governments, so formed as aforesaid, such government or governments shall be valid, to all intents and purposes.

"SEC. 5. *And be it further enacted*, That all laws and regulations now in force in the Territories of Orleans and Louisiana, or either of them, shall continue in force, unless altered, modified, or repealed, by the respective authorities enacting the same; or until altered, modified, or repealed, by the local Legislatures which may be established in virtue of this act.

"SEC. 6. *And be it further enacted*, That the sum of —— dollars be, and the same is hereby, appropriated, payable out of any money in the Treasury not otherwise appropriated, to defray the expense of laying off said Territory into election districts, and of giving the several notifications directed by this act. For which services the President of the United States is hereby authorized to direct the payment of such sums as to him shall appear reasonable."

And a division was required, and the question was taken on striking out; which passed in the negative—yeas 8, nays 24, as follows:

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YEAS—Messrs. Adams, Bayard, Hillhouse, Jackson, Olcott, Pickering, Tracy, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington, and Wright.

MONDAY, February 18.

The bill brought up on Saturday last, for concurrence, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase," was read, and, by unanimous consent, the bill was read the second time, and referred to Messrs. BALDWIN, ANDERSON, and BAYARD, to conside and report thereon.

The Senate resumed the third reading of the bill further providing for the government of the Territory of Orleans, and it was amended.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act further providing for the government of the Territory of Orleans."

The bill, entitled "An act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," was read the second time, and referred to Messrs. TRACY, ADAMS, and SMITH, of Maryland, to consider and report thereon.

The bill authorizing the President of the United States to sell a certain lot of land, was read the second time, and referred to Messrs. BROWN, SMITH, of Ohio, and WRIGHT, to consider and report thereon.

Mr. BROWN, gave notice that he should, to-morrow, ask leave to bring in a bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States."

TUESDAY, February 19.

A message from the House of Representatives informed the Senate that the House have passed a resolution for the appointment of a joint committee to consider and report what business is necessary to be done by Congress during the present session; in which they desire the concurrence of the Senate. They have passed a bill, entitled "An act to authorize the Secretary of War to issue military land warrants, and for other purposes;" in which they desire the concurrence of the Senate.

The bill and resolution last mentioned were read, and ordered to a second reading.

Agreeably to notice given yesterday, Mr. BROWN asked and obtained leave to bring in a bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States;" and the bill was read, and ordered to the second reading.

Mr. FRANKLIN, from the committee to whom was recommitted, on the 22d of January last, the bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," reported the bill without amendment.

Mr. BROWN, from the committee to whom was yesterday referred the bill authorizing the President of the United States to sell a certain lot of land, reported it with an amendment.

Mr. SMITH, of New York, gave notice that he should, to-morrow, ask leave to bring in a bill freeing from postage all letters and packets to and from AARON BURR.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels; and, on motion to insert the following amendment, in lieu of the second section of the original bill struck out:

"That all unlawful acts committed on the high seas by any person or persons on board such armed vessels, against the citizens or subjects of any Government in amity with the United States, or against the property of such Government, or any of its citizens or subjects, shall be punished in like manner as if the same was committed within the exclusive jurisdiction of the United States:"

It passed in the negative—yeas 16, nays 18, as follows:

YEAS—Messrs. Baldwin, Breckenridge, Brown Condit, Cocke, Condit, Franklin, Gaillard, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of New York, Sumter, and Worthington.

NAYS—Messrs. Adams, Anderson, Bayard, Bradley, Dayton, Ellery, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Smith of Vermont, Tracy, White, and Wright.

And the bill being further amended, it was ordered to the third reading, as amended.

WEDNESDAY, February 20.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a letter of September 18th, from Commodore Preble, giving a detailed account of the transactions of the vessels under his command, from July the 9th, to the 10th of September last past.

The energy and judgment displayed by this excellent officer, through the whole course of the service lately confided to him, and the zeal and valor of his officers and men, in the several enterprises executed by them, cannot fail to give high satisfaction to Congress and their country, of whom they have deserved well.

TH. JEFFERSON,

FEBRUARY 20, 1805.

The Message and papers therein referred to were read, and ordered to lie for consideration.

The bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States," was read the second time, and it was agreed, by unanimous consent, that the bill now pass to the third reading.

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The bill to authorize the Secretary of War to issue military land warrants, and for other purposes, was read the second time, and referred to Messrs. WORTHINGTON, FRANKLIN, and TRACY, to consider and report thereon.

Mr. BALDWIN, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase, and for other purposes," reported the bill with an amendment.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to consider and report what business is necessary to be done by Congress during the present session; and, having agreed thereto, Messrs. GILES, JACKSON, and BRADLEY, were appointed the committee on their part.

Agreeably to notice given yesterday, Mr. SMITH, of New York, asked and obtained leave to bring in a bill freeing from postage all letters and packets to and from AARON BURR: and the bill was read, and ordered to the second reading.

The Senate took into consideration the amendments reported to the bill, entitled "An act to amend the charter of Georgetown; which were in part adopted, and the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill concerning public roads; and the further consideration thereof was postponed.

The Senate resumed the consideration of the motion for printing the Journals of their proceedings, while sitting for the purpose of trying impeachments; and agreed thereto as follows:

Resolved, That the proceedings of the Senate, while sitting for the purpose of trying impeachments, shall be published in the same manner in which the Legislative proceedings are now published; and this resolution shall have relation to all proceedings in trials of impeachments which have heretofore taken place.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the State of Maryland, passed the 28th day of December, 1796, for the appointment of an health officer;" and the bill was ordered to the third reading.

THURSDAY, February 21.

The bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States," was read the third time, and passed.

FRIDAY, February 22.

The bill freeing from postage all letters and packets to and from AARON BURR, was read the second time.

The bill, entitled "An act to regulate the clearance of armed merchant vessels," was read the third time, and further amended; and, on the question to agree to the final passage of the bill, it was determined in the affirmative—yeas 20, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Cocke, Condit, Ellery, Franklin, Giles, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Worthington, and Wright.

NAYS—Messrs. Adams, Bayard, Dayton, Hillhouse, Olcott, Pickering, Plumer, and Sumter.

So it was *Resolved*, That this bill do pass with amendments.

SATURDAY, February 23.

Mr. LOGAN gave notice that he should, on Monday next, ask leave to bring in a bill to prohibit the granting clearances to vessels bound to St. Domingo.

Mr. SMITH, of Ohio, gave notice that he should, on Monday next, ask leave to bring in a bill for the relief of Nancy Flinn.

Mr. WORTHINGTON, from the committee to whom was referred, on the 20th instant, the bill to authorize the Secretary of War to issue military land warrants, and for other purposes, reported amendments thereto.

MONDAY, February 25.

Mr. BALDWIN, from the joint committee appointed on the 14th instant, respecting the further accommodations of the President of the United States, made a report; which was read, and ordered to lie for consideration.

Mr. ADAMS, from the committee to whom was recommitted, on the 25th of January last, the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States, reported the bill amended.

Agreeably to notice given on Saturday last, Mr. SMITH, of Ohio, asked and obtained leave to bring in a bill making provision for the widow and orphan children of Thomas Flinn; and the bill was read, and ordered to the second reading.

Mr. JACKSON laid on the table a motion expressive of the high sense Congress entertain of the gallant and meritorious services of Commodore Edward Preble, and the officers, seamen, and marines, under his command; and the motion was read; and it was agreed that it be referred to a select committee.

The PRESIDENT laid before the Senate the credentials of JAMES A. BAYARD, appointed a Senator by the Legislature of the State of Delaware, for the term of six years, commencing on the 4th day of March next, which were read.

TUESDAY, February 26.

Mr. GILES, from the joint committee appointed for the purpose, reported a statement of the business under the consideration of Congress; and the report was read, and ordered to lie for consideration.

The Senate proceeded to ballot for the committee agreed to yesterday, on the motion respecting Commodore Preble; and Messrs. JACKSON, BRADLEY, and BAYARD, were appointed.

The PRESIDENT laid before the Senate the re-

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port of the Secretary for the Department of the Treasury, on the emoluments of the officers of the customs for the year 1804; which was read, and ordered to lie for consideration.

Mr. ADAMS, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act to establish the districts of Genesee, of Buffalo Creek, and of Miami; and to alter the port of entry of the district of Erie," reported the bill without amendment.

WEDNESDAY, February 27.

Mr. DAYTON, from the committee to whom was referred, on the 7th instant, the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," reported the bill with amendments.

Agreeably to notice given on the 23d instant, Mr. LOGAN asked leave to bring in a bill to suspend trade and intercourse with the Island of St. Domingo; and, on the question, Shall leave be given? it was determined in the negative.

The bill making provision for the widow and orphan children of Thomas Flinn was read the second time, and referred to Messrs. SMITH of Ohio, FRANKLIN, and SMITH of New York, to consider and report thereon.

The bill, entitled "An act to continue in force an act declaring the consent of Congress to an act of the State of Maryland, passed the 28th day of December, 1793, for the appointment of a health officer, was read the third time and passed.

The Senate resumed the second reading of the bill, entitled "An act to amend the charter of Alexandria;" and the further consideration of the bill was postponed until the first Monday of December next.

The Senate resumed the second reading of the bill, entitled "An act further to amend an act, entitled 'An act regulating grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.

Ordered, That this bill pass to a third reading.

The Senate resumed the second reading of the bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

The Senate resumed the second reading of the bill, entitled "An act giving further time to register the evidences of titles to lands south of the State of Tennessee;" and the further consideration thereof was postponed to the first Monday in December next.

The Senate resumed the second reading of the bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York;" and the bill was ordered to a third reading.

The Senate resumed the second reading of the bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats;" and it was ordered to a third reading.

The Senate took into consideration the amendments reported, on the 22d instant, to the bill to authorize the Secretary of War to issue military land warrants, which were in part adopted; and the bill was ordered to a third reading as amended.

The Senate resumed the second reading of the bill freeing from postage all letters and packets to and from AARON BURR; and, on the question, Shall this bill pass to the third reading? it was determined in the affirmative—yeas 18, nays 9, as follows:

YEAS—Messrs. Adams, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Franklin, Gaillard, Giles, Jackson, Mitchill, Moore, Smith of Maryland, Smith of Ohio, Smith of Vermont, and Wright.

NAYS—Messrs. Ellery, Hillhouse, Howland, Logan, Olcott, Pickering, Plumer, Sumter, and Worthington.

The Senate took into consideration the amendments reported on the 25th instant, to the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States;" and the further consideration of the bill was postponed until the next session of Congress.

THURSDAY, February 28.

The VICE PRESIDENT being indisposed, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and the Hon. JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the Hon. JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before Congress a statement of the militia of the United States, according to the returns last received from the several States. It will be perceived that some of these are not recent dates, and that from the States of Maryland, Delaware, and Tennessee, no returns are stated. As far as appears from our records, none were ever rendered from either of these States.

TH. JEFFERSON.

FEBRUARY 28, 1805.

To the Senate and House of Representatives of the United States:

I now render to Congress the account of the fund established by the act of May 1st, 1802, for defraying the contingent charges of Government. No occasion having arisen for making use of any part of the balance of $18,560, unexpended on the 31st day of December, 1803, when the last account was rendered by Message, that balance has been carried to the credit of the surplus fund.

TH. JEFFERSON.

FEBRUARY 28, 1805.

The messages and documents therein referred to were severally read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill, entitled "An act for the relief of the widow

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and orphan children of Robert Elliott;" and it was ordered to a third reading.

Mr. WRIGHT, from the committee to whom the subject was referred, on the second instant, reported a bill for the relief of George Scoone, a wounded corporal in the Revolutionary war; which was twice read by unanimous consent.

On motion,

"That the Secretary of State be directed to lay before the Senate, at the next session of Congress, such laws of Great Britain as impose any higher or greater duties on the exportation of certain goods to the United States than are charged on exportation to other nations;"

It was agreed that this motion lie for consideration.

On motion,

"That the Secretary of the Treasury be directed to lay before the Senate, at the next meeting of Congress, a statement showing the value of Irish linens, &c., imported into the United States;"

It was agreed that this motion should lie for consideration.

The bill authorizing the discharge of John York from his imprisonment was ordered to the third reading.

A message from the House of Representatives informed the Senate that the House have passed the bill, sent from the Senate for concurrence, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," with amendments, in which they desire the concurrence of the Senate.

The amendments to the bill, entitled "An act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana," were considered and agreed to.

The bill to regulate fees and proceedings in the Courts of the United States, in certain cases, and for other purposes, was resumed, and the further consideration thereof postponed until the first Monday in December next.

The bill, entitled "An act to amend the charter of Georgetown," was read the third time.

Resolved, That this bill do pass with amendments.

The bill, entitled "An act to authorize the Secretary of War to issue military land warrants, and for other purposes," was read the third time and passed, with amendment.

The bill, entitled "An act further to amend an act, entitled 'An act regulating grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee,'" was read the third time and passed.

The bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York," was read the third time and passed.

The bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats," was read the third time and passed.

Mr. SMITH, of Ohio, from the committee to whom was yesterday referred the bill making provision for the widow and orphan children of Thomas Flinn, reported it without amendment.

The bill freeing from postage all letters and packets to and from AARON BURR was read the third time; on motion to postpone the further consideration thereof until the first Monday in December next, it passed in the negative—yeas 12, nays 18, as follows:

YEAS—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, and Sumter.

NAYS—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Worthington, and Wright.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 18, nays 13, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, White, and Wright.

NAYS—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, Sumter, and Worthington.

So it was *Resolved*, That this bill do pass, that it be engrossed, and that the title thereof be "An act freeing from postage all letters and packets to and from Aaron Burr."

The amendment reported on the 20th instant to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase," was considered, and the bill ordered to a third reading.

The amendments reported on the 13th instant to the bill further providing for the government of the district of Louisiana, were considered and disagreed to; and the bill ordered to a third reading.

The second reading of the bill authorizing the President of the United States to sell a certain lot of land was resumed, and the bill ordered to the third reading as amended.

The bill giving the assent of Congress to an act of the Legislature of North Carolina, passed the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," was resumed and amended.

Ordered, That it pass to the third reading as amended.

On motion for an alteration of one of the rules in cases of impeachments, it was agreed that this motion lie for consideration.

FRIDAY, March 1.

Mr. SMITH, of Maryland, gave notice that he should this day ask leave to bring in a bill supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty.

A message from the House of Representatives

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informed the Senate that the House concur in the bill, sent from the Senate, entitled "An act further providing for the government of the Territory of Orleans," with an amendment, in which they desire the concurrence of the Senate. They have passed the bill, entitled "An act further to alter and establish certain post roads, and for other purposes;" also, a bill, entitled "An act for the relief of Richard Taylor;" in which they desire the concurrence of the Senate.

The bills last brought up for consideration were read, and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act for ascertaining and adjusting the titles and claims to the land within the Territory of Orleans and the district of Louisiana;" and agreed thereto.

Agreeably to notice given, Mr. SMITH, of Maryland, asked and obtained leave to bring in a bill supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty;" which was read, and, by unanimous consent, the bill was read the second time.

Ordered, That it pass to a third reading.

The bill further providing for the government of the district of Louisiana was read the third time, and further amended; and passed.

The bill authorizing the sale of a certain lot of land was read the third time and passed.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, passed on the 19th day of December, 1804, entitled 'An act for the relief of foreign seamen brought into the port of Wilmington," was read the third time; and on the question to agree to the final passage thereof, it passed in the negative.

The bill for the relief of George Scoone, a wounded corporal in the Revolutionary war, was considered and amended, and ordered to the third reading as amended.

The bill making provision for the widow and orphan children of Thomas Flinn, was considered and ordered to the third reading.

The bill, entitled "An act authorizing the discharge of John York from his imprisonment," was read the third time and passed.

The bill, entitled "An act for the relief of the widow and orphan children of Robert Elliot," was read the third time and passed.

The bill, entitled "An act to establish the districts of Genesee, Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," was considered and ordered to the third reading.

SATURDAY, March 2.

The bill last brought up for concurrence was read, and, by unanimous consent, the bill was read the second time and referred to Messrs. ADAMS, BRECKENRIDGE, and BROWN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" in which they desire the concurrence of the Senate.

Mr. JACKSON, from the committee appointed on the motion expressive of the sense Congress entertain of the gallant conduct of Commodore Preble, his officers and seamen, reported amendments, which were adopted, and sundry resolutions were entered into accordingly.

The bill, entitled "An act further to alter and establish certain post roads, and for other purposes," was read the second time and ordered to a third reading.

The bill, entitled "An act for the relief of Richard Taylor," was read the second time, and ordered to a third reading.

The bill supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States and His Britannic Majesty, was read the third time and passed.

The bill making provision for the widow and orphan children of Thomas Flinn was read the third time and passed.

The bill, entitled "An act to establish the districts of Genesee, Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," was read the third time and passed.

The bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," was read the third time as amended.

Resolved, That this bill do pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled an act to provide for the accommodation of the President of the United States;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and, by unanimous consent, the bill was read the second and third time.

Ordered, That this bill do pass.

The bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was resumed, and sundry amendments were proposed.

Ordered, That this bill pass to a third reading.

On motion, the committee to whom was referred the bill to provide for the government of the Territory of Columbia, and to repeal the acts of Congress therein mentioned, was discharged, and the bill postponed until the first Monday in December next.

Mr. ADAMS, from the committee to whom was referred, this day, the bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," reported an amendment, which was adopted; and the bill ordered to a third reading as amended.

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BURR'S ADDRESS.

The VICE PRESIDENT took an affectionate leave of the Senate, in substance as follows:

"Mr. BURR began by saying that he had intended to pass the day with them, but the increase of a slight indisposition (sore throat) had determined him then to take leave of them. He touched lightly on some of the rules and orders of the House, and recommended, in one or two points, alterations, of which he briefly explained the reasons and principles.

"He said he was sensible he must at times have wounded the feelings of individual members. He had ever avoided entering into explanations at the time, because a moment of irritation was not a moment for explanation; because his position (being in the chair) rendered it impossible to enter into explanations without obvious danger of consequences which might hazard the dignity of the Senate, or prove disagreeable and injurious in more than one point of view; that he had, therefore, preferred to leave to their reflections his justification; that, on his part, he had no injuries to complain of; if any had been done or attempted, he was ignorant of the authors; and if he had ever heard, he had forgotten, for, he thanked God, he had no memory for injuries.

"He doubted not but that they had found occasion to observe, that to be prompt was not therefore to be precipitate; and that to act without delay was not always to act without reflection; that error was often to be preferred to indecision; that his errors, whatever they might have been, were those of rule and principle, and not of caprice; that it could not be deemed arrogance in him to say that, in his official conduct, he had known no party, no cause, no friend; that if, in the opinion of any, the discipline which had been established approached to rigor, they would at least admit that it was uniform and indiscriminate.

"He further remarked, that the ignorant and unthinking affected to treat as unnecessary and fastidious a rigid attention to rules and decorum; but he thought nothing trivial which touched, however remotely, the dignity of that body; and he appealed to their experience for the justice of this sentiment, and urged them in language the most impressive, and in a manner the most commanding, to avoid the smallest relaxation of the habits which he had endeavored to inculcate and establish.

"But he challenged their attention to considerations more momentous than any which regarded merely their personal honor and character—the preservation of law, of liberty, and the Constitution. This House, said he, is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

"He then adverted to those affecting sentiments which attended a final separation—a dissolution, perhaps forever, of those associations which he hoped had been mutually satisfactory. He consoled himself, however, and them, with the reflection, that, though they separated, they would be engaged in the common cause of disseminating principles of freedom and social order. He should always regard the proceedings of that body with interest and with solicitude. He should feel for their honor and the national honor, so intimately connected with it, and took his leave with expressions of personal respect, and with prayers, and wishes," &c.

Whereupon, the Senate proceeded to the choice of a President, *pro tempore*, as the Constitution provides; and the honorable JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the honorable JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary notify the same to the House of Representatives.

Resolved, unanimously, That the thanks of the Senate be presented to AARON BURR, in testimony of the impartiality, dignity, and ability, with which he has presided over their deliberations; and of their entire approbation of his conduct in discharge of the arduous and important duties assigned him as President of the Senate.

Ordered, That Messrs SMITH, of Maryland, and WHITE, be a committee to communicate to him this resolution.

The bill, entitled "An act further to alter and establish certain post roads, and for other purposes," was, by unanimous consent, read the third time, and amended.

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House concur in the amendments of the Senate to the bill, entitled "An act to regulate the clearance of armed merchant vessels," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to their amendment to the bill, entitled "An act to regulate the clearance of armed merchant vessels;" and concurred therein.

The bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," was, by unanimous consent, read the third time as amended and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to the bill first mentioned in the message; and non-concurred therein.

A message from the House of Representatives informed the Senate that the House insist on their amendment, disagreed to by the Senate, to the bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" they ask a conference thereon, and have appointed managers on their part.

The Senate proceeded to consider the message

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of the House of Representatives, asking a conference on the bill, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," and, having agreed to the said conference, Messrs. BRADLEY, and SMITH, of Maryland, were appointed managers at the same on their part.

The Senate took into consideration the motion made on the 28th February last, on the subject; and,

Resolved, That the Secretary of State be directed to lay before this House, at the next meeting of Congress, such laws of Great Britain as impose any higher or greater duties on the exportation of goods, wares, and merchandise, to the United States, than are imposed on similar goods, wares, and merchandise, when exported to the nations of Europe; and also to report the amount, in sterling money, of the exports to the United States, from Great Britain and Ireland, for the years 1802, 1803, 1804, on which such duties are charged.

The Senate resumed the consideration of the motion made on the 28th February, that a statement be exhibited of the amount of certain imported articles; and,

Resolved, That the Secretary of the Treasury be directed to report to the House, at the next meeting of Congress, a statement, showing the value (agreeably to the prime cost) in sterling money, of Irish linens, and all other manufactures of linen, of sail duck, nails, hats, looking-glasses, plated and glass wares, ribands, silks of all kinds, printed linen and cotton, and the quality of British salt and rum, imported into the United States from Great Britain and her dependencies, during the years 1802, 1803, and 1804; and, also, the value of linens imported into the United States from all other foreign nations.

SUNDAY, March 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse," in which they ask the concurrence of the Senate. They disagree to the amendments of the Senate to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase."

The bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was read the third time as amended.

On motion, to strike out the first section of the bill, as follows:

"*Be it enacted, by the Senate and House of Representatives, of the United States of America in Congress assembled*, That whensoever any treason, felony, misprision of treason, or of felony, misdemeanor, breach of peace, or of the revenue laws of the United States, shall hereafter be committed, within the jurisdiction of the United States, and the case shall be cognizable by, or under their authority, if the person committing the same shall be on board any foreign armed vessel, in any other port or harbor of the United States, or in the waters within their jurisdiction, it shall be the duty of any judge or justice of any court of the United States, upon satisfactory proof thereof to him made, to issue his warrant, specifying the nature of the offence, and directed to a marshal, commanding him to take the body of the offender and bring him before the said judge or justice, to be dealt with according to law. And if the said marshal shall deem the ordinary *posse comitatus* insufficient to insure the execution of the said warrant, he shall apply to the said judge or justice, who shall immediately issue his order directed to any officer having command of militia, or any other having command of regular troops, or of armed vessels of the United States, in the vicinity, requiring him to aid the said marshal with all the force under his command, or such part as may be necessary in executing the warrant aforesaid. And the said marshal, conforming himself in all things to the instructions which he shall receive from the President of the United States, or from any other person authorized by the President, shall first demand the surrender of the person charged with the offence; and, if delivery be not made, or if the marshal be obstructed from making the demand, he shall use all the means in his power, by force and arms, to arrest the offender, and all others who are with him giving him aid and countenance in evading the arrest, and he shall convey the said offender and all others arrested as aforesaid, and deliver them to the civil authority, to be dealt with according to law. If death ensue to the person ordered to be arrested, or to any of those giving him aid and countenance, it shall be justified, but, if to the marshal, or any of those supporting him in his discharge of duty, the persons engaged in resisting the civil authority shall be punished as in cases of felonious homicide."

It passed in the negative—yeas 2, nays 25, as follows:

YEAS—Messrs. Logan and Wright.

NAYS—Messrs, Adams, Anderson, Bradley, Brown, Cocke, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Howland, Jackson, Maclay, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Sumter, and White.

And on the question, Shall this bill pass? It was determined in the affirmative—yeas 25, nays 3, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Brown, Cocke, Condit, Dayton, Ellery, Giles, Hillhouse, Howland, Jackson, Maclay, Mitchill, Moore, Olcott, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, White, and Wright.

NAYS—Messrs. Adams, Logan, and Plumer.

So it was, *Resolved*, That this bill pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Robert Patton and others;" in which they desire the concurrence of the Senate. They have passed the bill sent from the Senate, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial Courts," with amendments; in which they ask the concurrence of the Senate.

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A message was received from the House of Representatives informing the Senate that the House have passed a bill, entitled "An act to revive and make permanent the act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses, passed the third day of January, one thousand seven hundred and ninety-eight, and in addition to the same," in which they desire the concurrence of the Senate. They agree to the "Resolution expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," with an amendment; in which they ask the concurrence of the Senate.

Mr. BRADLEY from the managers appointed on the part of the Senate to confer on the bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," reported that they could come to no agreement with the managers appointed on the part of the House of Representatives. Whereupon,

Resolved, That the Senate do adhere to their disagreement to the amendments insisted on by the House of Representatives.

Mr. SMITH of Maryland, from the committee appointed for that purpose, reported that they had waited on the VICE PRESIDENT, agreeably to the resolution of yesterday to which he made the following reply.

To the Senate of the United States:

GENTLEMEN: Next to the satisfaction derived from the consciousness of having discharged my duty, is that which arises from the favorable opinion of those who have been the constant witnesses of my official conduct; and the value of this flattering mark of their esteem is greatly enhanced by the promptitude and unanimity with which it is offered.

I pray you to accept my respectful acknowledgments, and the assurance of my inviolable attachment to the interests and dignity of the Senate.

MARCH 3, 1805. A. BURR.

The Senate took into consideration the amendments disagreed to by the House of Representatives on the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase;" and

Resolved, That they do insist on their said amendments, ask a conference thereon, and that Messrs. GILES and BRADLEY be the managers on their part.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to provide for a light-house on Watch Hill Point, in the State of Rhode Island; in which they ask the concurrence of the Senate.

The bill, entitled "An act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse," was read three several times, by unanimous consent, and passed.

The bill, entitled "An act to provide for a light-house on Watch Hill Point, in the State of Rhode Island," was read the first and second times by unanimous consent, and

On the question, shall this bill be read the third time by unanimous consent; it was objected to, so the bill was lost.

The bill, entitled "An act to revive and make permanent the 'Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses,' passed the third day of January, 1798, and in addition to the same;" was read the first and second time by unanimous consent; and

On the question, shall this bill be read the third time by unanimous consent; it was objected to, so the bill was lost.

The bill, entitled "An act for the relief of Robert Patton and others," was read three several times by unanimous consent, and passed.

The Senate proceeded to consider the amendments of the House of Representatives to the "Resolution expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron;" and agreed thereto, with an amendment to their amendments.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act to extend jurisdiction in certain cases to the State and Territorial Courts;" and agreed thereto.

A message from the House of Representatives informed the Senate that the House agree to the conference requested by the Senate on the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase," and have appointed managers on their part.

Mr. GILES, from the managers appointed on the part of the Senate, to confer on the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," reported. Whereupon,

Resolved, That the Senate do adhere to their amendments disagreed to by the House of Representatives.

A message from the House of Representatives informed the Senate that the House adhere to their disagreement to the amendments of the Senate to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase."

On motion,

Resolved, That Messrs. ADAMS, and SMITH, of Maryland, be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States, and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Ordered, That the Secretary acquaint the

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House of Representatives therewith, and desire the appointment of a committee on their part.

Mr. ADAMS, from the committee, reported that they had waited upon the President of the United States, who informed them that he had no further communications to make to the two Houses of Congress.

The Secretary was then directed to inform the House of Representatives that the Senate, having finished the business before them, are about to adjourn. Whereupon, the Senate adjourned.

MARCH 4, 1805.

INAUGURAL SPEECH.

On Monday, at 12 o'clock, THOMAS JEFFERSON, President of the United States, took the oath of office, and delivered the following Inaugural Speech, in the Senate Chamber, in the presence of the members of the two Houses, and a large concourse of citizens:

PROCEEDING, fellow-citizens, to that qualification which the Constitution requires before my entrance on the charge conferred on me, it is my duty to express the deep sense I entertain of this new proof of confidence from my fellow-citizens at large, and the zeal with which it inspires me so to conduct myself as may best satisfy their just expectations.

On taking this station, on a former occasion, I declared the principles on which I believed it my duty to administer the affairs of our commonwealth. My conscience tells me I have, on every occasion, acted up to that declaration, according to its obvious import, and to the understanding of every candid mind.

In the transaction of your foreign affairs, we have endeavored to cultivate the friendship of all nations, and especially of those with which we have the most important relations. We have done them justice on *all occasions*; favor, where favor was lawful, and cherished mutual interests and intercourse on fair and equal terms. We are firmly convinced, and we act on that conviction, that with nations, as with individuals, our interests, soundly calculated, will ever be found inseparable from our moral duties; and history bears witness to the fact, that a just nation is trusted on its word, when recourse is had to armaments and wars to bridle others.

At home, fellow-citizens, you best know whether we have done well or ill. The suppression of unnecessary offices, of useless establishments and expenses, enabled us to discontinue our internal taxes. These, covering our land with officers, and opening our doors to their intrusions, had already begun that process of domiciliary vexation, which, once entered, is scarcely to be restrained from reaching, successively, every article of property and produce. If, among these taxes, some minor ones fell, which had not been inconvenient, it was because their amount would not have paid the officers who collected them; and because, if they had any merit, the State authorities might adopt them instead of others less approved.

The remaining revenue, on the consumption of foreign articles, is paid chiefly by those who can afford to add foreign luxuries to domestic comforts. Being collected on our seaboard and frontiers only, and incorporated with the transactions of our mercantile citizens, it may be the pleasure and the pride of an American to ask, what farmer, what mechanic, what laborer, ever sees a tax-gatherer of the United States? These contributions enable us to support the current expenses of the Government; to fulfil contracts with foreign nations; to extinguish the native right of soil within our limits; to extend those limits; and to apply such a surplus to our public debts, as places, at a short day, their final redemption; and that redemption, once effected, the revenue thereby liberated may, by a just repartition of it among the States, and a corresponding amendment of the Constitution, be applied, *in time of peace*, to rivers, canals, roads, arts, manufactures, education, and other great objects, within each State. *In time of war*, if injustice by ourselves, or others, must sometimes produce war, increased, as the same revenue will be, by increased population and consumption, and aided by other resources reserved for that crisis, it may meet, within the year, all the expenses of the year, without encroaching on the rights of future generations, by burdening them with the debts of the past. War will then be but a suspension of useful works; and a return to a state of peace, a return to the progress of improvement.

I have said, fellow-citizens, that the income reserved had enabled us to extend our limits; but that extension may possibly pay for itself before we are called on; and, in the mean time, may keep down the accruing interest: in all events, it will replace the advances we shall have made. I know that the acquisition of Louisiana has been disapproved by some, from a candid apprehension that the enlargement of our territory would endanger its union. But who can limit the extent to which the federative principle may operate effectively? The larger our association, the less will it be shaken by local passions: and, in any view, is it not better that the opposite bank of the Mississippi should be settled by our own brethren and children, than by strangers of another family? With which should we be most likely to live in harmony and friendly intercourse?

In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the General Government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the Constitution found them, under the direction and discipline of the Church or State authorities acknowledged by the several religious societies.

The aboriginal inhabitants of these countries I have regarded with the commiseration their history inspires. Endowed with the faculties and the rights of men, breathing an ardent love of liberty and independence, and occupying a country which left them no desire but to be undisturbed, the stream of overflowing population from other regions directed itself on these shores. Without power to divert, or habits to contend against it, they have been overwhelmed by the current, or driven before it. Now reduced within limits too narrow for the hunter state, humanity enjoins us to teach them agriculture and the domestic arts; to encourage them to that industry which alone can enable them to maintain their place in existence; and to prepare them in time for that state of society which, to bodily comforts, adds the improvement of the mind and morals. We have therefore liberally furnished them with the implements of husbandry and household use; we have placed among them instructers in the arts of first necessity; and they are covered with the ægis of the law against aggressors from among ourselves.

But the endeavors to enlighten them on the fate

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which awaits their present course of life, to induce them to exercise their reason, follow its dictates, and change their pursuits with the change of circumstances, have powerful obstacles to encounter. They are combatted by the habits of their bodies, prejudices of their minds, ignorance, pride, and the influence of interested and crafty individuals among them, who feel themselves something in the present order of things, and fear to become nothing in any other. These persons inculcate a sanctimonious reverence for the customs of their ancestors; that whatsoever they did, must be done through all time; that reason is a false guide, and to advance under its counsel in their physical, moral, or political condition, is perilous innovation; that their duty is to remain as their Creator made them; ignorance being safety, and knowledge full of danger. In short, my friends, among them, also, is seen the action and counteraction of good sense and of bigotry. They, too, have their anti-philosophists, who find an interest in keeping things in their present state; who dread reformation, and exert all their faculties to maintain the ascendency of habit over the duty of improving our reason, and obeying its mandates.

In giving these outlines, I do not mean, fellow-citizens, to arrogate to myself the merit of the measures—that is due, in the first place, to the reflecting character of our citizens at large, who, by the weight of public opinion, influence and strengthen the public measures. It is due to the sound discretion with which they select from among themselves those to whom they confide the Legislative duties. It is due to the zeal and wisdom of the characters thus selected, who lay the foundations of public happiness in wholesome laws, the execution of which alone remains for others; and it is due to the able and faithful auxiliaries, whose patriotism has associated them with me in the Executive functions.

During this course of Administration, and in order to disturb it, the artillery of the press has been levelled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution, so important to freedom and science, are deeply to be regretted, inasmuch as they tend to lessen its usefulness, and to sap its safety. They might, indeed, have been corrected by the wholesome punishments reserved to, and provided by, the laws of the several States against falsehood and defamation; and public duties, more urgent, press on the time of public servants, and the offenders have therefore been left to find their punishment in the public indignation.

Nor was it uninteresting to the world, that an experiment should be fairly and fully made, whether freedom of discussion, unaided by power, is not sufficient for the propagation and protection of truth? Whether a Government, conducting itself in the true spirit of its Constitution, with zeal and purity, and doing no act which it would be unwilling the whole world should witness, can be written down by falsehood and defamation? The experiment has been tried. You have witnessed the scene. Our fellow-citizens looked on cool and collected. They saw the latent source from which these outrages proceeded. They gathered around their public functionaries; and when the Constitution called them to the decision by suffrage, they pronounced their verdict honorable to those who had served them, and consolatory to the friend of man, who believes that he may be trusted with the control of his own affairs.

No inference is here intended, that the laws provided by the States against false and defamatory publications, should not be enforced. He who has time, renders a service to public morals and public tranquillity, in reforming these abuses by the salutary coercions of the law. But the experiment is noted to prove, that, since truth and reason have maintained their ground against false opinions, in league with false facts, the press, confined to truth, needs no other legal restraint. The public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press, and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion.

Contemplating the union of sentiment now manifested so generally, as auguring harmony and happiness to our future course, I offer to our country sincere congratulations. With those, too, not yet rallied to the same point, the disposition to do so is gaining strength. Facts are piercing through the veil drawn over them: and our doubting brethren will at length see that the mass of their fellow-citizens, with whom they cannot yet resolve to act, as to principles and measures, think as they think, and desire what they desire: that our wish, as well as theirs, is, that the public efforts may be directed honestly to the public good; that peace be cultivated; civil and religious liberty unassailed; law and order preserved; equality of rights maintained; and that state of property, equal or unequal, which results to every man from his own industry, or that of his father's. When satisfied of these views, it is not in human nature that they should not approve and support them. In the mean time, let us cherish them with patient affection; let us do them justice, and more than justice, in all competitions of interest; and we need not doubt that truth, reason, and their own interests, will at length prevail; will gather them into the fold of their country, and will complete that entire union of opinion which gives to a nation the blessing of harmony, and the benefit of all its strength.

I shall now enter on the duties to which my fellow-citizens have again called me, and shall proceed in the spirit of those principles which they have approved. I fear not that any motives of interest may lead me astray. I am sensible of no passion which could seduce me, knowingly, from the path of justice; but the weaknesses of human nature, and the limits of my own understanding, will produce errors of judgment, sometimes injurious to your interests. I shall need, therefore, all the indulgence which I have heretofore experienced from my constituents. The want of it will certainly not lessen with increasing years. I shall need, too, the favor of that Being in whose hands we are; who led our fathers, as Israel of old, from their native land, and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence, and our riper years with His wisdom and power; and to whose goodness I ask you to join in supplications with me, that He will so enlighten the minds of your servants, guide their councils, and prosper their measures, that, whatsoever they do, shall result in your good, and shall secure to you the peace, friendship, and appprobation of all nations.

After which, the Chief Justice of the United States administered to him the oath of office prescribed by the Constitution; and the oath was, in like manner, administered to GEORGE CLINTON, Vice President of the United States; after which, the PRESIDENT and VICE PRESIDENT retired.

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TRIAL OF SAMUEL CHASE,

AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,

IMPEACHED BY THE HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND MISDEMEANORS, BEFORE THE SENATE OF THE UNITED STATES.

[TAKEN IN SHORT-HAND BY SAMUEL H. SMITH AND THOMAS LLOYD.]

[The following report of the trial of SAMUEL CHASE has been drawn up with the greatest care. To guard against misconception or omission, two individuals, one of whom is a professional stenographer, were constantly engaged during the whole course of the trial; and the arguments of the managers and counsel have in most instances, and whenever it was attainable, been revised by them. It is with some satisfaction that the editor of this impression is enabled, under these circumstances, to submit to the public a tract, whose fidelity and comprehensiveness, he hopes will amply reward the interest so deeply excited by the progress and issue of this important trial.—*Editor National Intelligencer.*]

MEASURES PRELIMINARY TO THE TRIAL.

On the fifth day of January 1804, Mr. J. RANDOLPH, a member of the House of Representatives of the United States, rose and addressed that body to the following effect:

He observed "That no people were more fully impressed with the importance of preserving unpolluted the fountain of justice than the citizens of these States. With this view the Constitution of the United States, and of many of the States also, had rendered the magistrates who decided judicially between the State and the offending citizens, and between man and man, more independent than those of any other country in the world, in the hope that every inducement, whether of intimidation or seduction, which should cause them to swerve from the duty assigned to them, might be removed. But such was the frailty of human nature, that there was no precaution by which our integrity and honor could be preserved, in case we were deficient in that duty which we owed to ourselves. In consequence, sir," said Mr. Randolph, "of this unfortunate condition of man, we have been obliged, but yesterday, to prefer an accusation against a judge of the United States, who has been found wanting in his duty to himself and his country. At the last session of Congress, a gentleman from Pennsylvania did, in his place, (on a bill to amend the judicial system of the United States,) state certain facts, in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business. Finding my attention, however, thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as those whom I represent, to investigate the charges then made and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

"*Resolved*, That a committee be appointed to inquire into the official conduct of SAMUEL CHASE, one of the Associate Judges of the Supreme Court of the United States, and to report their opinion, whether the said SAMUEL CHASE hath so acted in his judicial capacity as to require the interposition of the Constitutional power of this House."

A short debate immediately arose on this motion, which was advocated by Messrs. J. RANDOLPH, SMILIE, and J. CLAY; and opposed by Mr. ELLIOT. Several members supported a motion to postpone it until the ensuing day, which was superseded by an adjournment of the House.

The House, on the next day, resumed the consideration of Mr. RANDOLPH's motion, which was supported by Mr. SMILIE, and, on the motion of Mr. LEIB, so amended as to embrace an inquiry into the official conduct of Richard Peters, district judge for the District of Pennsylvania. On the motion, thus amended, further debate arose, which occupied the greater part of this and the ensuing day. It was supported by Messrs. FINDLEY, JACKSON, NICHOLSON, HOLLAND, J. RANDOLPH, EUSTIS, EARLY, SMILIE, and EPPES; and opposed by Messrs. LOWNDES, R. GRISWOLD, ELLIOT, DENNIS, GRIFFIN, THATCHER, HUGER, and DANA. Some ineffectual attempts were made to amend the resolution, when the final question was taken on the resolution, as amended, in the following words:

"*Resolved*, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania, and to report their opinion, whether the said Samuel Chase and Richard Peters, or either of them, have so acted in their judicial capacity, as to require the interposition of the Constitutional power of this House."

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And resolved in the affirmative—yeas 81, nays 40, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jr., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thos. Sandford, Ebenezer Seaver, Tompson J. Skinner, Jas. Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Samuel L. Mitchill, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Whereupon, Messrs. J. RANDOLPH, NICHOLSON, J. CLAY, EARLY, R. GRISWOLD, HUGER, and BOYLE, were appointed a committee pursuant to the foregoing resolution.

On the 10th of January, the committee were authorized by the House to send for persons, papers, and records; and on the 30th day of the same month they were authorized to cause to be printed such documents and papers, as they might deem necessary, previous to their presentation to the House.

On the 6th day of March, Mr. RANDOLPH, in the name of the committee, made a report, "That 'in consequence of the evidence collected by them, 'in virtue of the powers with which they have 'been invested by the House, and which is here-'unto subjoined, they are of opinion, 1st. That 'Samuel Chase, Esq., an associate justice of the 'Supreme Court of the United States, be im-'peached of high crimes and misdemeanors.

"2d. That Richard Peters, district judge of the 'district of Pennsylvania, has not so acted in his 'judicial capacity as to require the interposition 'of the Constitutional power of this House."

This report, accompanied by a great mass of printed documents, embracing various depositions taken before the committee, as well as at a distance, was made the order of the day for the Monday following.

On that day the House took up the report, and after a short debate concurred in the first resolution by the following votes—yeas 73, nays 32, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittendon, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Thomas Griffin, Gaylord Griswold, Roger Griswold Seth Hastings, William Helms, Benjamin Huger, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thos. Plater, Samuel D. Purviance, John Cotton Smith, John Smith of Virginia, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

The second resolution was agreed to unanimously.

Whereupon, it was ordered, that Mr. JOHN RANDOLPH and Mr. EARLY be appointed a committee to go to the Senate, at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach Samuel Chase, one of the associate justices, of the Supreme Court of the United States, of high crimes and misdemeanors; and acquaint the Senate that the House of Representatives will in due time, exhibit particular articles of impeachment against him, and make good the same. It was also ordered, that the committee do demand, that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment.

On the 13th of March, Messrs. J. RANDOLPH, NICHOLSON, J. CLAY, EARLY, and BOYLE, were appointed a committee to prepare and report articles of impeachment against Samuel Chase, and invested with power to send for persons, papers, and records.

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On the 14th, a message was received from the Senate, notifying the House, that they would take proper order on the impeachment, of which due notice should be given to the House.

On the 26th, Mr. RANDOLPH, from the committee appointed for that purpose, reported articles of impeachment against Samuel Chase. No order was taken on the report during the remainder of the session, which terminated the next day.

At the ensuing session of Congress, on the 6th of November 1804, on the motion of Mr. J. RANDOLPH, the articles of impeachment were referred to Messrs. J. RANDOLPH, J. CLAY, EARLY, BOYLE, and J. RHEA, of Tennessee.

On the 30th of November, Mr. RANDOLPH reported the following articles of impeachment against Samuel Chase, in substance, not dissimilar from those reported at the last session, with the addition of two new articles:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors:

ARTICLE 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give:

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard by counsel in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which, ultimately, rest the liberty and safety of the American people.

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial because he had made up his mind as to the publication from which the words charged to be libellous in the indictment were extracted; and the said Basset was accordingly sworn and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

ART. 3. That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend:

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

5. In an indecent solicitude manifested by the said Samuel Chase for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

ART. 5. And whereas it is provided by the act of Congress, passed on the 24th day of September, 1789, entitled "An act to establish the judicial courts of the United States," that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found: and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to

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appear and answer such presentment at the next court, yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

ART. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas, by the laws of Virginia it is provided, that, in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

ART. 7. That, at a circuit court of the United States for the district of Delaware, held at Newcastle in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in 'the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most 'seditious printer, unrestrained by any principle of virtue, and regardless of social order—that the name of 'this printer was"—but checking himself, as if sensible of the indecorum he was committing, added, "that it 'might be assuming too much to mention the name of 'this person, but it becomes your duty, gentlemen, to 'inquire diligently into this matter," or words to that effect; and that, with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and, by a strict examination of them, to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming, in a Judge of the Supreme Court of the United States; and moreover that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partizan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any farther articles, or other accusation, or impeachment, against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice.

This report was made the order for the 3d of December. On that and the ensuing day the House took the articles into consideration, to all of which they agreed, according to the following votes:

	Yeas.	Nays.		Yeas.	Nays.
Art. 1	83	34	Art. 6	73	42
2	83	35	7	73	42
3	84	34	8 1st sec.	74	39
4	84	34	8 2d sec.	78	32
5	72	45			

On the 5th, the House proceeded to the choice, by ballot, of seven managers to conduct the impeachment; and on counting the votes, Messrs. J. RANDOLPH, RODNEY, NICHOLSON, EARLY, BOYLE, NELSON, and G. W. CAMPBELL, appeared to be elected.

On a subsequent day, Mr. NELSON having declined his appointment, on account of absence, Mr. CLARK was chosen in his place.

The following resolution was then adopted:

Resolved, That the articles agreed to by this House be exhibited in the name of themselves, and of all the people of the United States, against Samuel Chase, in maintenance of their impeachment against him, for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the said impeachment.

The Senate having appointed the 7th of December for receiving the articles of impeachment, the

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managers repaired on that day, at 1 o'clock, to the Senate Chamber. Having taken seats assigned them within the bar, and the Sergeant-at-Arms having proclaimed silence, Mr. J. RANDOLPH read the foregoing articles: whereupon the President of the Senate informed the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives. The managers delivered the articles of impeachment at the table and withdrew.

On the 10th of December, the Senate, sitting as a High Court of Impeachments, adopted the following resolution:

Resolved, That the Secretary be directed to issue a summons to Samuel Chase, one of the associate justices of the Supreme Court of the United States, to answer certain articles of impeachment exhibited against him by the House of Representatives on Friday last: That the said summons be returnable the 2d day of January, and be served at least fifteen days before the return day thereof.

On the 24th and 31st of December, the Senate adopted the following rules of proceeding, to be observed in cases of impeachment.

1. Whensoever the Senate shall receive notice from the House of Representatives, that managers are appointed on their part, to conduct an impeachment against any person, and are directed to carry such articles to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives, that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to the said notice.

2. When the managers of an impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against any person, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation; who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, articles of impeachment against ——;" after which the articles shall be exhibited, and then the President of the Senate shall inform the managers, that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives,

3. A summons shall issue, directed to the person impeached, in the form following:

The United States of America, ss.

The Senate of the United States, to ——, greeting:

Whereas, the House of Representatives of the United States of America, did, on the —— day of —— exhibit to the Senate, articles of impeachment against you, the said ——, in the words following, viz: [here recite the articles] and did demand that you the said —— should be put to answer the accusations as set forth in said articles; and that such proceedings, examinations, trials, and judgments, might be thereupon had, as are agreeable to law and justice: You, the said ——, are therefore hereby summoned, to be, and appear before the Senate of the United States of America, at their Chamber in the City of Washington, on the —— day of ——, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders and judgments as the Senate of the United States shall make in the premises, according to the Constitution and laws of the United States. Hereof you are not to fail.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of —— in the year of our Lord, —— and of the independence of the United States, the ——.

Which summons shall be signed by the Secretary of the Senate, and sealed with their seal, and served by the Sergeant-at-Arms to the Senate, or by such other person as the Senate shall specially appoint for that purpose; who shall serve the same, pursuant to the directions given in the form next following:

4. A precept shall be endorsed on said writ of summons, in the form following, viz:

United States of America, ss:

The Senate of the United States, to ——, greeting:

You are hereby commanded to deliver to, and leave with ——, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept, at his usual place of residence, and in whichsoever way you perform the service, let it be done at least —— days before the appearance day mentioned in said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Which precept shall be signed by the Secretary of the Senate, and sealed with their seal.

5. Subpœnas shall be issued by the Secretary of the Senate, upon the application of the managers of the impeachment, or of the party impeached, or his counsel, in the following form, to wit:

To ——, greeting:

You, and each of you, are hereby commanded to appear before the Senate of the United States, on the —— day of ——, at the Senate Chamber, in the City of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——. Fail not.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Which shall be signed by the Secretary of the Senate, and sealed with their seal.

Which subpœnas shall be directed, in every case, to the Marshal of the district, where such witnesses respectively reside, to serve and return.

6. The form of direction to the Marshal, for the service of the subpœna, shall be as follows:

The Senate of the United States of America, to the Marshal of the district of ——:

You are hereby commanded to serve and return the within subpœna, according to law.

Dated at Washington, this —— day of ——, in the

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year of our Lord ——, and of the Independence of the United States, the ——.

Secretary of the Senate.

7. The President of the Senate shall direct all necessary preparations in the Senate Chamber, and all the forms of proceeding, while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial, not otherwise specially provided for by the Senate.

8. He shall also be authorized to direct the employment of the Marshal of the District of Columbia, or any other person or persons, during the trial, to discharge such duties as may be prescribed by him.

9. At twelve o'clock of the day appointed for the return of the summons against the person impeached, the Legislative and Executive business of the Senate shall be suspended and the Secretary of the Senate shall administer an oath to the returning officer, in the form following, viz: "I, ——, do solemnly swear, that the return made and subscribed by me, upon the process issued on the —— day of ——, by the Senate of the United States, against ——, is truly made, and that I have performed said services as therein described. So help me God." Which oath shall be entered at large on the records.

10. The person impeached shall then be called to appear, and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly, if by himself, or if by agent or attorney; naming the person appearing, and the capacity in which he appears. If he does not appear, either personally, or by agent or attorney, the same shall be recorded.

11. At twelve o'clock of the day appointed for the trial of an impeachment, the Legislative and Executive business of the Senate shall be postponed. The Secretary shall then administer the following oath or affirmation to the President:

"You solemnly swear, or affirm, that in all things appertaining to the trial of the impeachment of ——, you will do impartial justice according to the Constitution and laws of the United States."

12. And the President shall administer the said oath or affirmation to each Senator present.

The Secretary shall then give notice to the House of Representatives, that the Senate is ready to proceed upon the impeachment of ——, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

13. Counsel for the parties shall be admitted to appear, and be heard upon an impeachment.

14. All motions made by the parties, or their counsel, shall be addressed to the President of the Senate, and if he shall require it, shall be committed to writing, and read at the Secretary's table; and all decisions shall be had by yeas and nays, and without debate, which shall be entered on the records.

15. Witnesses shall be sworn in the following form, to wit: "You —— do swear, (or affirm, as the case may be,) that the evidence you shall give in the case now depending between the United States and ——, shall be the truth, the whole truth, and nothing but the truth. So help you God." Which oath shall be administered by the Secretary.

16. Witnesses shall be examined by the party producing them, and then cross-examined in the usual form.

17. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

18. If a Senator wishes a question to be put to a witness, it shall be reduced to writing and put by the President.

19. At all times, whilst the Senate is sitting upon the trial of an impeachment, the doors of the Senate Chamber shall be kept open.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, January 2, 1805.

The Court having been opened by proclamation,

The return made by the Sergeant-at-Arms was read, as follows:

"I, James Mathers, Sergeant-at-Arms to the Senate of the United States, in obedience to the within summons to me directed, did proceed to the residence of the within named Samuel Chase, on the 12th day of December, 1804, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment annexed, with him the said Samuel Chase.

"JAMES MATHERS."

After which the Secretary administered to him the oath as follows:

"You, James Mathers, Sergeant-at-Arms to the Senate of the United States, do solemnly swear, that the return made and subscribed by you, upon the process issued on the 10th day of December last, by the Senate of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court, is truly made, and that you have performed said services as therein described. So help you God."

SAMUEL CHASE, having been solemnly called, appeared.

The President of the Senate (Mr. BURR) informed Mr. CHASE, that having been summoned to answer to the articles of impeachment exhibited against him by the House of Representatives, the Senate were ready to receive any answer he had to make to them.

Mr. CHASE requested the indulgence of a chair,* which was immediately furnished.

After being seated for a short time, Mr. CHASE rose, and commenced the following address to the Senate, which he read from a paper that he held in his hand:

"Mr. President: I appear, in obedience to a summons from this honorable Court, to answer articles of impeachment exhibited against me, by the honorable the House of Representatives of the United States.

"To these articles, a copy of which was delivered to me with the summons, I say that I have committed no crime or misdemeanor whatsoever, for which I am subject to impeachment according to the Constitution of the United States. I deny, with a few exceptions, the acts with which I am charged; I shall contend, that all acts admitted to have been done by me were *legal;* and I deny, in every instance, the *improper* intentions with which the acts charged are alleged to have

* We understand, that in correspondence with the Parliamentary practice of England, no chair was, previously to the introduction of Mr. Chase, assigned him; but that an informal intimation was made to him, that, on his requesting it, it would be allowed.

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been done, and in which their supposed criminality altogether consists."

The PRESIDENT reminded Mr. Chase that this was the day appointed to receive any answer he might make to the articles of impeachment.

Mr. CHASE said his purpose was to request the allowance of further time to put in his answer.

The PRESIDENT desired him to proceed.

Mr. CHASE proceeded in his address:

"But in charges of so heinous a nature, urged by so high an authority, a simple denial is not sufficient. It behooves me, for the legal justification of my conduct, and for the vindication of my character, to meet *each* charge with a full and particular answer; to explain and refute at length every principle urged against me; to state the evidence by which I am to disprove every fact relied on in support of the accusation; and to detail all the facts and arguments on which my defence is to rest. The necessity of an answer embracing all these objects, in cases of impeachment, is obvious; and the right to make it, is secured by law and sanctioned by uniform practice.

'Such an answer it is my intention to make. It is my purpose to submit the *whole* ground of my defence to the view of this honorable Court, of my country, of the world, and of those who are to conduct the prosecution. So will my judges come to the trial with that full knowledge of the whole matter in dispute, which is essential for enabling them to understand and apply the testimony and the arguments; and the honorable managers will be better prepared to refute such parts of my defence as they may think untenable."

The PRESIDENT here interrupted Mr. Chase; and asked if the paper he was reading was intended for his answer; if so, it would be put on file. If it was the prelude to a motion he meant to make, praying to be allowed further time for putting in his answer, he would confine himself strictly to what had relation to that object. From the tenor of what had been urged it had appeared to him as intended for an answer to the articles of impeachment.

Mr. CHASE said it was not his answer that he was reading; but that he was assigning reasons, why he could not now answer, in order to show that he was entitled to further time to prepare and put in his answer.

PRESIDENT.—You, who are so conversant in the practice of courts of law, know very well that a motion for time must not be founded on mere suggestions, but must be founded on some facts to prove the propriety of the motion.

Mr. CHASE said he meant to show the impracticability of his answering at this time, from the articles themselves, and it was for that purpose he had made an allusion to them.

The PRESIDENT said, with the caution he had given, he might proceed, provided no objection were made by any gentleman of the Senate.

Mr. CHASE proceeded in his address:

"But in a case of this kind, where the accusation embraces so great a variety of charges, of principles, and of facts, it is manifest, that preparing such an answer, as I have a right to make and as my duty to myself, my family, my friends and my country, requires at my hand, a considerable time must be necessary.

"Many of the principles involved in this impeachment, are very important not only to me, but to the liberties of every American citizen, and to the cause of free government in general. These principles ought to be maturely considered, and clearly explained. They present a wide field of legal investigation; many of them require laborious and extensive research, and although some of them have accompanied the prosecution from its commencement, and have thus been for a considerable time subjected to my consideration; some, on the other hand, have been very recently introduced.

"Of this description is the principle, whereon the 5th and 6th articles rest: relative to the extent in which the courts of the United States are to be governed, not only in their *decisions*, but in their *proceedings* by the State laws. A principle which was not brought into view until a few weeks ago, and the explanation of which will require a careful consideration, of the conduct and proceedings of the supreme and circuit courts of the United States, from the first establishment of our federal system.

"The same articles involve the construction of two State laws of Virginia, which I am charged with having infringed in the trial of Callender, which were not mentioned on the trial, or during any of the introductory proceedings, and of which I never heard until these articles were reported a few weeks ago. It is manifest that in order to fix the true construction of these laws, about which professional men have differed in opinion, recourse must be had to the decisions of the courts of that State, as explained by their records; or in case those records should be silent, to the recollection and opinion of professional men, accustomed to preside or attend in the courts where those laws are enforced. It is manifest that such an investigation cannot be accomplished in a short time.

"The facts on which this prosecution rests, except the last article, are alleged to have taken place more than four years ago; some of them at Philadelphia, some at Wilmington, in the State of Delaware, and some at Richmond, in Virginia. These facts are very numerous, and the greater part of them are of such a nature, as to depend, for their criminality or innocence, on minute circumstances, or slight shades of testimony, and often on the different manner in which the same circumstances may affect different spectators, all equally disposed to represent truly what they observed. The most material facts are alleged to have happened in Richmond and Philadelphia. In the former of these places I am an utter stranger, having never been there but once; and in the latter, I know personally but very few individuals. These circumstances render it very difficult for me to ascertain the persons who witnessed the various transactions in question, and are able, after this lapse of time, to give accurate testimony concerning them; and this difficulty is very much

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increased, by the distance of those places from that of my residence. I assure this honorable court, that from the moment when this prosecution assumed a serious appearance and a definitive form, at the last session of Congress, I have turned my attention to the subject of my defence, and my answer, and have exerted myself in finding out and procuring the requisite testimony; but the difficulties which I have stated, added to my ill state of health during a great part of the last year, have prevented me from making such progress as to afford me the hope of being able to obtain the object in a very short time. I have done much, but much, very much, remains to be done, even in those parts of the prosecution where I had some notice by the proceedings of last session. In those very material parts which have originated during the present session, everything is still to be done.

"It may perhaps be thought, that although these preparations might be necessary for the trial, they are not so for the answer. But such an opinion, I trust, would on examination be found erroneous.

"The answer, in cases of impeachment, must disclose the whole defence, and the defence must be confined to the matters stated in the answer. Otherwise the prosecutors might be surprised at the trial, by objections which with previous notice, it would be in their power to refute or explain. The accused, therefore, before he puts in his answer, ought to have time sufficient for making himself thoroughly master of his defence, of the grounds on which it rests, and of the facts and evidence by which it is to be supported. He ought to be completely prepared for the trial; between which and the answer no delay need to take place, except such as may be necessary for convening the witnessess.

"In so material a part of his preparation for defence, as the drawing up of his answer, it will not, I presume, be denied, that he ought to have an opportunity of obtaining the best *professional* assistance which it may be in his power to procure. This assistance is rendered peculiarly necessary to me, by the very precarious state of my health; which affords me, at this season of the year, especially, but short and uncertain intervals of fitness for mental or bodily exertion. Should my answer be required in a short time, I have no reason to suppose that I shall be able to obtain such assistance of this kind as I so much need, and as probably, I shall otherwise have in my power. Professional gentlemen, engaged extensively in business, are at all times too liable to interruption, and too much occupied to devote themselves exclusively to an affair of this nature, so as to complete it within a short period; and at this season of the year, they are for the most part particularly and indispensably engaged.

"These reasons in favor of a liberal allowance of time for preparing the answer, derive great additional force from one further consideration, which I hope that I may, without impropriety, present to the view of this honorable Court. Reputation ought to be more dear to every man, and is more dear to me than the honors or the emoluments of office. In cases of impeachment, the facts which appear, the explanations which are given, and the arguments which are urged, at the trial, are sometimes wholly omitted in the statements given to the public, and often misrepresented, or stated too indistinctly to be generally understood. It is to the answer that the world must look for the justification of the accused. It is by his answer alone, that he can furnish a clear, concise, and authentic explanation of his conduct and his motives, supported by such a statement of his proofs, as can be extensively read, clearly understood, and easily remembered. He may, therefore, claim from justice, and expect from the high dignity and responsible character of this honorable tribunal, such time for preparing this very important document, as may enable him to bestow on it all the care and labor which it requires, and to give it all the force of which it may be susceptible.

"In stating these considerations, Mr. President, in support of my request for a continuance of this case, I disclaim all intention of affected delay. Feeling a consciousness of my integrity, and a just pride of character, which place me far above the fear of events, I am anxious to meet this accusation, and I rejoice in an opportunity of refuting it. I know that my conduct, though liable to a full portion of human error, has at all times been free from intentional impropriety. I know that, in all the instances selected as the grounds of accusation, I have discharged my official duties, with a sacred and inviolate regard to my oath, my character, the laws of my country, and the rights of my fellow-citizens. I know that I can prove my innocence as to all the matters alleged against me. And acrimonious as are the terms in which many of the accusations are conceived; harsh and opprobrious as are the epithets wherewith it has been thought proper to assail my name and character, by those who were '*pulling in their nurses' arms,' whilst I was contributing my utmost aid to lay the groundwork of American liberty;* I yet thank my accusers, whose functions as members of the Government of my country I highly respect, for having at length put their charges into a definitive form, susceptible of refutation; and for having thereby afforded me an opportunity of vindicating my innocence, in the face of this honorable Court, of my country, and of the world."

On using the expressions marked in *italics*,

The PRESIDENT interrupted Mr. Chase, and said that observations of censure or recrimination were not admissible; it would be very improper for him to listen to observations on the statements of the House of Representatives before an answer was filed.

Mr. CHASE said he had very few words more to add, which would conclude what he had to say at the present time.

With the permission of the President he proceeded:

"But this vindication, situated as I am, and as this case is, cannot be the work of a few weeks. Much time has been employed in preparing the

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accusation; less will be required for the defence; but a short time will not suffice. I am far from presuming to prescribe to this honorable Court, whose sense of justice and disposition to grant every proper indulgence, I cannot doubt; but it may, perhaps, not be improper to suggest that, by the first day of next session, the answer could be prepared and put in; and that the trial might then take place as soon afterwards as the witnesses could be collected. I declare that it will be impossible for me to prepare my answer in such time as to commence the trial during this session with any prospect of bringing it to a close before the session must end; and were I to omit that full answer, which I wish to give, it would be impossible for me, in the course of this session, (only two months of which now remain,) to ascertain fully all the facts necessary for my defence; to find out and bring to this place, the witnesses and written testimony; or to make arrangements relative to that assistance of counsel which my case requires, my age and infirmities render essential, and a longer time would enable me to procure.

"I hope, Mr. President, I may be permitted to observe, that my *private* and *professional* reputation for probity and honor has never been called in question. I have sustained a high judicial character for above sixteen years, and during the first six I presided at the trial of more criminals than any other judge within the United States. During this whole period of time my *official* conduct has never been arraigned, except only in the trial of Cooper, Fries, and Callender, above four years ago. For the truth of these assertions, I appeal to all who know me; and particularly to the two honorable Senators from Maryland.

"In respect to the present prosecution, I will make but one remark: That I am impeached for giving, on the trial of Callender, several judicial opinions, in which Judge Griffin, my associate concurred; my opinions are held to be criminal, or that they flowed from partiality, and an intention to oppress Callender; but the *same* opinions given by my associate have been considered perfectly innocent.

"I have now only to solicit this honorable Court to allow me until the first day of the next session to put in my answer, and to prepare for my trial; and I submit myself as to the further proceedings in this case to the discretion of this honorable Court, in whose integrity, impartiality, and independence, I repose the highest confidence. I will not for a moment believe that the spirit of party can ever enter and pollute these walls, or that popular prejudice or political motives will be harbored in the bosom of any member in this honorable body.

"On the contrary, I hope and expect, that all its decisions will be governed by the immutable principles of justice, and a sacred regard to the Constitution and the law of the land, which every member of this Court is bound by duty, and the obligations of a Christian judge, to support and observe."

Mr. CHASE having finished his address, was desired by the President, if he had any motion to make, to reduce it to writing, and hand it to the Secretary.

Whereupon, Mr. CHASE submitted the following motion:

"I solicit this honorable Court to allow me until the first day of the next session, to put in my answer, and to prepare for my trial."

The PRESIDENT informed Mr. Chase, that the Court would take time to consider his motion.*

The Senate withdrew to a private apartment, where debate arose on the question, whether it was not incumbent on the Senators to take the oath required by the Constitution, before they took into consideration the motion of Mr. Chase, which issued in the adoption of the following resolution:

Resolved, That, on the meeting of the Senate, tomorrow, before they proceed to any business on the articles of impeachment before them, and before any decision of any question, the oath prescribed by the rules, shall be administered to the President and members of the Senate.

On the ensuing day, previously to the entrance of the Senate into the public room, considerable debate took place on the motion of Mr. Chase, without any decision being made.

THURSDAY, January 3.

The Court was opened by proclamation about two o'clock.

The oath prescribed was administered to the President by the Secretary.

The PRESIDENT administered the oath prescribed to the following members:

Messrs. Adams, Anderson, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Giles, Hillhouse, Howland, Jackson, Mitchill, Moore, Olcott, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Tracy, White, Worthington, and Wright.

And the affirmation was administered to Messrs. Logan, Maclay, and Plumer.

The PRESIDENT stated that he had received a letter from the defendant, enclosing an affidavit that further time was necessary for him to prepare for trial; which affidavit was read, as follows:

City of Washington, ss:

Samuel Chase made oath on the Holy Evangels of Almighty God, that it is not in his power to obtain information respecting the facts alleged in the articles of impeachment to have taken place in the city of Philadelphia in the trial of John Fries; or of the facts alleged to have taken place in the city of Richmond, in the trial of James T. Callender, in time to prepare and put in his answer, and to proceed to trial, with any probability that the same could be finished on or before the fifth day of March next. And further, that it is not in his power to procure information of the names of the witnesses, whom he thinks it may be proper and necessary for him to summon, in time to obtain their attendance, if his answer could be prepared in time

* During these proceedings, neither the managers nor the House of Representatives were present.

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sufficient for the finishing of the said trial, before the said fifth day of March next; and the said Samuel Chase further made oath, that he believes it will not be in his power to obtain the advice of counsel, to prepare his answer, and to give him their assistance on the trial, which he thinks necessary, if the said trial should take place during the present session of Congress; and that he verily believes, if he had at this time full information of facts, and of the witnesses proper for him to summon, and if he had also the assistance of counsel, that he could not prepare the answer he thinks he ought to put in, and be ready for his trial, within the space of four or five weeks from this time. And further, that his application to the honorable the Senate, for time to obtain the information of facts, in order to prepare his answer, and for time to procure the attendance of necessary witnesses, and to prepare for his defence in the trial, and to obtain the advice and assistance of counsel, is not made for the purpose of delay, but only for the purpose of obtaining a full hearing of the articles of impeachment against him, in their real merits.

SAMUEL CHASE.

Sworn to, this third day of January, 1805, before
SAMUEL HAMILTON.

Whereupon, the following motion was made by Mr. BRADLEY:

"*Ordered*, That Samuel Chase file his answer, with the Secretary of the Senate, to the several articles of impeachment exhibited against him, by the House of Representatives, on or before the —— day of ——."

A motion was made by Mr. GILES to amend the motion, and to strike out all that follows the word "*Ordered*," and insert "That —— next shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase."

Mr. HILLHOUSE called for a division of the question. And the yeas and nays being taken on striking out, it passed in the affirmative—yeas 20, nays 10, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, and Worthington.

NAYS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, White, and Wright.

On motion, to insert the amendment proposed, the yeas and nays being taken, it passed in the affirmative—yeas 22, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter and Worthington.

NAYS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, Tracy, White, and Wright.

On motion, by Mr. TRACY, to fill the blank with the words "the first Monday of December next," the yeas and nays being taken, it passed in the negative—yeas 12 nays 18, as follows:

YEAS—Messrs. Bradley, Dayton, Hillhouse, Logan, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Smith of Vermont, Tracy, and White.

NAYS—Messrs. Adams, Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Maclay, Mitchill, Moore, Smith of New York, Sumter, Worthington and Wright.

On motion, by Mr. BRECKENRIDGE, to fill the blank with the words "the fourth day of February next" the yeas and nays being taken, it passed in the affirmative—yeas 22, nays 8, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington, and Wright.

NAYS—Messrs. Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy and White.

On motion, to agree to the order, as amended, the yeas and nays being taken, it passed in the affirmative—yeas 21, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington and Wright.

NAYS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy and White.

So it was *Ordered*, That the fourth day of February next shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase.

Ordered, That the Secretary notify the House of Representatives, and Samuel Chase, thereof.

[Between this day, and that assigned for receiving the answer of Mr. Chase, the Senate Chamber was fitted up in a style of appropriate elegance. Benches, covered with crimson, on each side, and in a line with the chair of the President, were assigned to the members of the Senate. On the right and in front of the chair, a box was assigned to the Managers, and on the left a similar box to Mr. Chase, and his counsel, and chairs allotted to such friends as he might introduce. The residue of the floor was occupied with chairs for the accommodation of the members of the House of Representatives; and with boxes for the reception of the foreign Ministers, and civil and military officers of the United States. On the right and left of the Chair, at the termination of the benches of the members of the Court, boxes were assigned to stenographers. The permanent gallery was allotted to the indiscriminate admission of spectators. Below this gallery, and above the floor of the House, a new gallery was raised, and fitted up with peculiar elegance, intended primarily for the exclusive accommodation of ladies. But this feature of the arrangement made by the Vice President, was at an early period of the trial abandoned, it having been found impracticable to separate the sexes! At the termination of this gallery, on each side, boxes were specially assigned to ladies attached to the families of public characters. The preservation of order was devolved on the Marshal of the District of Columbia, who was assisted by a number of deputies.]

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TRIAL OF SAMUEL CHASE.

MONDAY, February 4, 1805.

About a quarter before ten o'clock the Court was opened by proclamation, all the members of the Senate, thirty-four, attending.

The Chamber of the Senate, which is very extensive, was soon filled with spectators, a large portion of whom consisted of ladies, who continued, with little intermission, to attend during the whole course of the trial.

The oath prescribed was administered to Mr. BAYARD, Mr. COCKE, Mr. GAILLARD, and Mr. STONE, members of the Court, who were not present when it was before administered.

Ordered, That the Secretary give notice to the House of Representatives that the Senate are in their public chamber, and are ready to proceed on the trial of Samuel Chase; and that seats are provided for the accommodation of the members.

In a few minutes the Managers, viz: Messrs. J. RANDOLPH, RODNEY, NICHOLSON, BOYLE, G. W. CAMPBELL, EARLY, and CLARK, accompanied by the House of Representatives in Committee of the Whole, entered and took their seats.

SAMUEL CHASE being called to make answer to the articles of impeachment, exhibited against him by the House of Representatives, appeared, attended by Messrs. HARPER, MARTIN, and HOPKINSON, his counsel; to whom seats were assigned.

The PRESIDENT, after stating to Mr. CHASE the indulgence of time which had been allowed, inquired if he was prepared to give in his answer?

Mr. CHASE said, he had prepared it, as well as circumstances would permit; and submitted the following motion:

"Samuel Chase moves for permission to read his answer, by himself and his counsel, at the bar of this honorable Court."

The PRESIDENT asked him if it was the answer on which he meant to rely? to which he replied in the affirmative.

The motion being agreed to by a vote of the Senate, Mr. CHASE commenced the reading of his answer, (in which he was assisted by Messrs. HARPER, and HOPKINSON,) as follows:

This respondent, in his proper person, comes into the said Court, and protesting that there is no high crime or misdemeanor particularly alleged in the said articles of impeachment, to which he is, or can be bound by law to make answer; and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of the said articles, and each of them, and to the defects therein appearing in point of law, or otherwise; and protesting also, that he ought not to be injured in any manner, by any words, or by any want of form in this his answer; he submits the following facts and observations by way of answer to the said articles.

The first article relates to his supposed misconduct in the trial of John Fries, for treason, before the circuit court of the United States at Philadelphia, in April and May 1800; and alleges that he presided at that trial, and that "unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them faithfully and impartially, and without respect to persons," he did then, "in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust."

This general accusation, too vague in itself for reply, is supported by three specific charges of misconduct:

1st "In delivering an opinion, in writing, on the question of law, on the construction of which, the defence of the accused materially depended:" which opinion, it is alleged, tended to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his favor.

2d. "In restricting the counsel for the said John Fries, from recurring to such English authorities, as they believed apposite; or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client."

3d. "In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give."

This first article then concludes, that in consequence of this irregular conduct of this respondent, "the said John Fries was deprived of the right secured to him by the eighth article amendatory of the Constitution, and was condemned to death, without having been heard by counsel, in his defence."

By the eighth article amendatory of the Constitution, this respondent supposes is meant the sixth amendment to the Constitution of the United States, which secures to the accused, in all criminal prosecutions, the right to have the assistance of counsel for his defence.

In answer to these three charges, the respondent admits that the circuit court of the United States, for the district of Pennsylvania, was held at Philadelphia, in that district, in the months of April and May, in the year of our Lord, one thousand eight hundred, at which court John Fries, the person named in the said first article, was brought to trial on an indictment for treason against the United States; and that this respondent then held a commission as one of the associate justices of the Supreme Court of the United States, by virtue of which office he did, pursuant to the laws of the United States, preside at the above-mentioned trial, and was assisted therein by Richard Peters, Esq., then, and still district judge of the United States for the district of Pennsylvania; who, as directed by the laws of the United States, sat as assistant judge at the said trial.

With respect to the opinion, which is alleged to have been delivered by this respondent, at the above-mentioned trial, he begs leave to lay before this honorable Court the true state of that

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transaction, and to call its attention to some facts and considerations, by which his conduct on that subject will, he presumes, be fully justified.

The Constitution of the United States, in the third section of the third article, declares that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

By two acts of Congress, the first passed on the third day of March, 1791, and the second on the eighth day of May, 1792, a duty was imposed on spirits distilled within the United States, and on stills; and various provisions were made for its collection.

In the year 1794, an insurrection took place in four of the western counties of Pennsylvania, with a view of resisting, and preventing by force the execution of these two statutes; and a circuit court of the United States, held at Philadelphia, for the district of Pennsylvania, in the month of April, in the year 1795, by William Patterson, Esq., then one of the associate justices of the Supreme Court of the United States, and the above mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, two persons, who had been concerned in the above-named insurrection, namely, Philip Vigol and John Mitchel, were indicted for treason, of levying war against the United States, by resisting and preventing by force the execution of the two last mentioned acts of Congress; and were, after a full and very solemn trial, convicted of the indictments and sentenced to death. They were afterwards pardoned by George Washington, then President of the United States.

In the first of these trials, that of Vigol, the defence of the prisoner was conducted by very able counsel, one of whom, William Lewis, Esq., is the same person who appeared as counsel for John Fries, in the trial now under consideration. Neither that learned gentleman, nor his able colleague, then thought proper to raise the question of law, "whether resisting and preventing by armed force, the execution of a particular law of the United States, be a 'levying of war against the United States," according to the true meaning of the Constitution? Although a decision of this question in the negative, must have acquitted the prisoner. But in the next trial, that of Mitchell, this question was asked on the part of the prisoner, and was very fully and ably discussed by his counsel; and it was solemnly determined by the court, both the judges concurring, "that to resist or prevent by armed force, the execution of a particular law of the United States, is a levying of war against the United States, and consequently is treason, within the true meaning of the Constitution." The decision, according to the best established principles of our jurisprudence, became a precedent for all courts of equal or inferior jurisdiction; a precedent which, although not absolutely obligatory, ought to be viewed with very great respect, especially by the court in which it was made, and ought never to be departed from, but on the fullest and clearest conviction of its incorrectness.

On the 9th of July, an act of Congress was passed, providing for a valuation of lands and dwelling-houses, and an enumeration of slaves throughout the United States; and directing the appointment of commissioners and assessors for carrying it into execution: and on the 4th day of July, in the same year, a direct tax was laid by another act of Congress of that date, on the lands, dwelling-houses, and slaves, so to be valued and enumerated.

In the months of February and March, A. D. 1799, an insurrection took place in the counties of Bucks and Northampton, in the State of Pennsylvania, for the purpose of resisting and preventing by force, the execution of the two last mentioned acts of Congress, and particularly that for the valuation of lands and dwelling-houses. John Fries, the person mentioned in the article of impeachment now under consideration, was apprehended and committed to prison, as one of the ringleaders of this insurrection; and at a circuit court of the United States, held at Philadelphia, in and for the district of Pennsylvania, in the month of April, A. D. 1799, he was brought to trial for this offence, on an indictment for treason, by levying war against the United States, before James Iredell, Esq., then one of the associate justices of the Supreme Court of the United States, who presided in the said court, according to law, and the above-mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, who sat in the said circuit court as assistant judge.

In this trial, which was conducted with great solemnity, and occupied nine days, the prisoner was assisted by William Lewis and Alexander James Dallas, Esqs., two very able and eminent counsellors; the former of whom, William Lewis, is the person who assisted, as above mentioned, in conducting the defence of Vigol, on a similar indictment. These gentlemen, finding that the facts alleged were fully and undeniably proved, by a very minute and elaborate examination of witnesses, thought proper to rest the case of the prisoner on the question of law which had been determined in the cases of Vigol and Mitchel, above-mentioned, and had then been acquiesced in, but which they thought proper again to raise. They contended, "that to resist by force of arms a particular law of the United States, does not amount to levying war against the United States, within the true meaning of the Constitution, and therefore is not treason, but a riot only." This question they argued at great length, and with all the force of their learning and genius; and after a full discussion at the bar, and the most mature deliberation by the court, the learned and excellent judge who then presided, and who was no less distinguished by his humanity and tenderness towards persons tried before him, than by his extensive knowledge and great talents as a lawyer, pronounced the opinion of himself and his colleague, "that to resist, or prevent by force, the execution of a particular law of the United States, does amount to levying war against them, within the true meaning of the Constitution, and does,

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therefore, constitute the crime of treason:" thereby adding the weight of another and more solemn decision to the precedent which had been established in the above-mentioned cases of Vigol and Mitchel.

Under this opinion of the court on the question of law, the jury, having no doubt as to the facts, found the said John Fries guilty of treason on the above-mentioned indictment. But a new trial was granted by the court, not by reason of any doubt as to the correctness of the decision on the question of law, but solely on the ground, as this respondent hath understood and believes, that one of the jurors of the petit jury, after he was summoned, but before he was sworn on the trial, had made some declaration unfavorable to the prisoner.

The yellow fever having appeared in Philadelphia in the Summer of the year 1799, the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania, did, according to law, appoint the next circuit court of that district, to be held at Norristown therein: Pursuant to which appointment, a circuit court was held at Norristown aforesaid, in and for the said district, on the 11th day of October, in the last mentioned year, before Bushrod Washington, Esq., then one of the associate justices of the Supreme Court of the United States, and the above mentioned Richard Peters; at which court no proceedings were had on the aforesaid indictment against John Fries, because, as this respondent hath been informed and believes, the commission of the marshal of the district had expired before he summoned the jurors to attend at the said court, and had not been renewed; by reason of which no legal panel of jurors could be formed.

On the 11th day of April, 1800, and from that day until the 2d day of May in the same year, a circuit court of the United States was held at Philadelphia, in and for the district of Pennsylvania, before this respondent, then one of the associate justices of the Supreme Court of the United States, and the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania. At this court the indictment on which the said John Fries had been convicted as above-mentioned, was quashed *ex officio* by William Rawle, Esq., then attorney of the United States for the district of Pennsylvania, and a new indictment was by him preferred against the said John Fries, for treason of levying war against the United States, by resisting and preventing by force in the manner above set forth, the execution of the above-mentioned acts of Congress, for the valuation of lands and dwelling-houses, and the enumeration of slaves, and for levying and collecting a direct tax. This indictment, of which a true copy, marked No. 1, is herewith exhibited by this respondent, who prays that it may be taken as part of this his answer, being found by the grand jury on the 16th day of April, 1800, the said John Fries was on the same day arraigned thereon, and plead not guilty. William Lewis and Alexander James Dallas, Esqrs., the same persons who had conducted his defence at his former trial, were again at his request assigned by the court as his counsel; and his trial was appointed to be had on Tuesday the 22d day of the last mentioned month of April.

After this indictment was found by the grand jury, this respondent considered it with great care and deliberation, and finding from the three overt acts of treason which it charged, that the question of law arising upon it was the same question which had already been decided twice in the same court, on solemn argument and deliberation, and once in that very case, he considered the law as settled by those decisions, with the correctness of which, on full consideration, he was entirely satisfied; and by the authority of which he should have deemed himself bound, even had he regarded the question as doubtful in itself. They are moreover in perfect conformity with the uniform tenor of decisions in the courts of England and Great Britain, from the Revolution in 1688 to the present time, which, in his opinion, added greatly to their weight and authority.

And surely he need not urge to this honorable Court, the correctness, the importance, and the absolute necessity of adhering to principles of law once established, and of considering the law as finally settled, after repeated and solemn decisions by courts of competent jurisdiction. A contrary principle would unsettle the basis of our whole system of jurisprudence, hitherto our safeguard and our boast; would reduce the law of the land, and subject the rights of the citizen to the arbitrary will, the passions, or the caprice, of the judge in each particular case, and would substitute the varying opinions of various men, instead of that fixed, permanent rule, in which the very essence of law consists. If this respondent erred in regarding this point as settled, by the repeated and solemn adjudications of his predecessors in the same court and in the same case; if he erred in supposing that a principle established by two solemn decisions was obligatory upon him, sitting in the same court where those decisions had been made; if he erred in believing that it would be the highest presumption in him to set up his opinion and judgment over that of his colleague, who had twice decided the same question, and of two of his predecessors, who justly rank among the ablest judges that have ever adorned a court; if in all this he erred, it is an error of which he cannot be ashamed, and which he trusts will not be deemed criminal in the eyes of this honorable Court, of his country, or of that posterity by which he, his accusers, and his judges, must one day be judged.

Under the influence of these considerations this respondent drew up an opinion on the law, arising from the overt acts stated in the said indictment, which was conformable to the decisions before given as above-mentioned, and which he sent to his colleague the said Richard Peters for his consideration. That gentleman returned it to this respondent, with some amendments affecting the form only, but not in any manner touching the substance.

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The opinion, thus agreed to, this respondent thought it proper to communicate to the prisoner's counsel; several reasons concurred in favor of this communication. In the first place this respondent considered himself and the court as bound by the authority of the former decisions, especially the last of them, which was on the same case. He considered the law as settled, and had every reason to believe that his colleague viewed it in the same light. It was not suggested or understood that any new evidence was to be offered; and he knew that if any should be offered, which could vary the case, it would render wholly inapplicable both the opinion and the former decisions on which it was founded. And he could not and did not suppose that the prisoner's counsel would be desirous of wasting very precious time, in addressing to the court an useless argument on a point which that court held itself precluded from deciding in their favor. He therefore conceived that it would be rendering the counsel a service and a favor to apprize them beforehand of the view which the court had taken of the subject, so as to let them see in time the necessity of endeavoring to produce new testimony, which might vary the case, and take it out of the authority of former decisions.

Secondly, there were more than one hundred civil causes then depending in the said court, as appears by the exhibit marked No. 1, which this respondent prays may be taken as part of this, his answer. Many of those causes had already been subjected to great delay, and it was the peculiar duty of this respondent, as presiding judge, to take care that as little time as possible should be unnecessarily consumed, and that every convenient and proper dispatch should be given to the business of the citizens. He did believe that an early communication of the court's opinion might tend to the saving of time, and consequently to the dispatch of business.

Thirdly, as the court held itself bound by the former decisions, and could not therefore alter its opinion in consequence of any argument; and as it was the duty of the court to charge the jury on the law in all cases submitted to their consideration, he knew that this opinion must not only be made known at some period or other of the trial, but must at the end of the trial be expressly delivered to the jury by him in a charge from the bench: and he could not suppose and cannot yet imagine, that an opinion, which was to be thus solemnly given in charge to the jury at the close of the trial, could make any additional impression on their minds from the circumstance of its being intimated to the counsel before the trial began, in the hearing of those who might be afterwards sworn on the jury.

And lastly, it was then his opinion, and still is, that it is the duty of every court of this country, and was his duty on the trial now under consideration, to guard the jury against erroneous impressions respecting the laws of the land. He well knows that it is the right of juries in criminal cases to give a general verdict of acquittal, which cannot be set aside on account of its being contrary to law, and that hence results the power of juries to decide on the law as well as on the facts in all criminal cases. This power he holds to be a sacred part of our legal privileges, which he never has attempted, and never will attempt to abridge or to obstruct. But he also knows, that in the exercise of this power, it is the duty of the jury to govern themselves by the laws of the land, over which they have no dispensing power; and their right to expect and receive from the court all the assistance which it can give for rightly understanding the law. To withhold this assistance in any manner whatever; to forbear to give it in that way which may be most effectual for preserving the jury from error and mistake, would be an abandonment or forgetfulness of duty, which no judge could justify to his conscience or to the laws. In this case, therefore, where the question of law arising on the indictment had been finally settled by authoritative decisions, it was the duty of the court, and especially of this respondent as presiding judge, early to apprize the counsel and the jury of these decisions, and their effect, so as to save the former from the danger of making an improper attempt to mislead the jury in a matter of law, and the jury from having their minds preoccupied by erroneous impressions.

It was for these reasons that on the 22d day of April, 1800, when the said John Fries was brought into court, and placed in the prisoners' box for trial, but before the petit jury were empanelled to try him, this respondent informed the abovementioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas not being then in court, "that the court had deliberately considered the indictment against John Fries for treason, and the three several overt acts of treason stated therein: That the crime of treason was defined by the Constitution of the United States. That as the Federal Legislature had the power to make, alter, or repeal laws, so the judiciary only had the power, and it was their duty, to declare, expound and interpret the Constitution and laws of the United States. That it was the duty of the Court, in all criminal cases, to state to the petit jury their opinion of the law arising on the facts; but the petit jury, in all criminal cases, were to decide both the law and the facts, on a consideration of the whole case. That there must be some constructive exposition of the terms used in the Constitution, "levying war against the United States." That the question, what acts amounted to levying war against the United States, or the Government thereof, was a question of law, and had been decided by Judges Patterson and Peters, in the cases of Vigol and Mitchel, and by Judges Iredell and Peters, in the case of John Fries, prisoner at the bar, in April 1799. That Judge Peters remained of the same opinion, which he had twice before delivered, and he, this respondent, on long and great consideration, concurred in the opinion of Judges Patterson, Iredell, and Peters. That to prevent unnecessary delay, and to save time on the trial of John Fries, and to prevent a delay of justice, in the great number of civil causes depending

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for trial at that term, the court had drawn up in writing, their opinion of the law, arising on the overt acts stated in the indictment against John Fries; and had directed David Caldwell, their clerk, to make out three copies of their opinion, one to be delivered to the attorney of the district, one to the counsel for the prisoner, and one to the petit jury, after they shall have been empanelled and heard the indictment read to them by the clerk, and after the district attorney should have stated to them the law on the overt acts alleged in the indictment, as it appeared to him."

After these observations, this respondent delivered one of the above-mentioned copies to the aforesaid William Lewis, then attending as one of the prisoner's counsel; who read part of it, and then laid it down on the table before him. Some observations were then made on the subject, by him and the above-mentioned Alexander James Dallas, who had then come into court; but this respondent doth not now recollect those observations, and cannot undertake to state them accurately.

And this respondent further saith, that the paper marked exhibit No. 2, and herewith exhibited, which, he prays leave to make part of this his answer, is a true copy of the original opinion, drawn up by him and concurred in by the said Richard Peters, as above set forth, which original opinion is now in the possession of this respondent, ready to be produced to this honorable Court. He may have erred in forming this opinion, and in the time and manner of making it known to the counsel for the prisoner. If he erred in forming it, he erred in common with his colleague and with two of his predecessors; and he presumes to hope that an error which has never been deemed criminal in them, will not be imputed as a crime to him, who was led into it by their example and their authority. If he erred in the time and manner of making known his opinion, he feels a just confidence, that when the reasons which he has alleged for his conduct, and by which it seemed to him to be fully justified, shall come to be carefully weighed, they will be sufficient to prove, if not that this conduct was perfectly regular and correct, yet that he might sincerely have considered it as right; and that in a case where so much doubt may exist, to have committed a mistake, is not to have committed a crime.

And this respondent further answering insists, that the opinion thus delivered to the prisoner's counsel, viz: that "any insurrection or rising of any body of people within the United States, for the purpose of resisting or preventing by force or violence, under any pretence whatever, the execution of any statute of the United States, for levying or collecting taxes, or for any other object of a general or national concern, is levying war against the United States, within the contemplation and true meaning of the Constitution of the United States." is a legal and correct opinion, supported not only by the two previous decisions above-mentioned, but also by the plainest principles of law and reason, and by the uniform tenor of legal adjudications in England and Great Britain, from the Revolution in 1688 to this time. It ever was, and now is his opinion, that the peace and safety of the National Federal Government must be endangered by any other construction of the terms "levying war against the United States," used by the Federal Constitution; and he is confident that no judge of the Federal Government, no judge of a superior State court, nor any gentleman of established reputation for legal knowledge, would or could deliberately give a contrary opinion.

If, however, this opinion were erroneous, this respondent would be far less censurable than his predecessors, by whose example he was led astray, and by whose authority he considered himself bound. Was it an error to consider himself bound by the authority of their previous decisions? If it were, he was led into the error by the uniform course of judicial proceedings, in this country and in England, and is supported in it, by one of the fundamental principles of our jurisprudence. Can such an error be a crime or misdemeanor?

If, on the other hand, the opinion be in itself correct, as he believes and insists that it is, could the expression of a correct opinion on the law, wherever and however made, mislead the jury, infringe their rights, or give an improper bias to their judgments? Could truth excite improper prejudice? Could the jury be less prepared to hear the law discussed, and to decide on it correctly, because it was correctly stated to them by the court? And is not that a new kind of offence, in this country at least, which consists in telling the truth, and giving a correct exposition of the law?

As to the second specific charge adduced in support of the first article of impeachment, which accuses this respondent, "of restricting the counsel for the said Fries, from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client," this respondent admits that he did, on the above-mentioned trial, express it as his opinion to the aforesaid counsel for the prisoners, "that the decisions in England, in cases of indictments for treason at common law, against the person of the King, ought not to be read to the jury, on trials for treason under the Constitution and statutes of the United States; because such decisions could not inform, but might mislead and deceive the jury: that any decisions on cases of treason, in the courts of England, before the Revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit decisions in the courts of England or of Great Britain, since the said Revolution, to be read to the court or jury, for the purpose of showing what acts have been considered by those courts, as a constructive levying of war against the King of that country, in his legal capacity, but not against his person; because levying war against *his Government* was of the same nature as levying war against *the Government of the United States:* but that such decisions, nevertheless,

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were not to be considered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great respect, as having been delivered after full consideration, by men of great legal learning and ability.

These are the opinions which he did, on that occasion, deliver to the counsel for the prisoner, and which he then thought, and still thinks, it was his duty to deliver. The counsellors admitted to practice in any court of justice are, in his opinion, and according to universal practice, to be considered as officers of such courts, and ministers of justice therein, and as such subject to the direction and control of the court, as to their conduct in its presence, and in conducting the defence of criminals on trial before it. As counsel, they owe to the person accused, diligence, fidelity, and secrecy, and to the court and jury, due and correct information, according to the best of their knowledge and ability, on every matter of law which they attempt to adduce in argument. The court, on the other hand, hath power, and is bound in duty, to decide and direct what evidence, whether by record or by precedents of the decisions in courts of justice, is proper to be admitted for the establishment of any matter of law or fact. Consequently, should counsel attempt to read to a jury, as a law still in force, a statute which had been repealed, or a decision which had been reversed, or the judgments of courts in countries whose laws have no connexion with ours, it would be the duty of the court to interpose, and prevent such an imposition from being practised on the jury. For these reasons, this respondent thinks that his conduct was correct, in expressing to the counsel for Fries, the opinions stated above. He is not bound to answer here for the corectness of those principles, though he thinks them incontestable; but merely for the correctness of his motives in delivering them. A contrary opinion would convert this honorable Court, from a Court of Impeachment into a Court of Appeals; and lead directly to the strange absurdity, that whenever the judgment of an inferior court should be reversed on appeal or writ of error, the judges of that court must be convicted of high crimes and misdemeanors, and turned out of office: that error in judgment is a punishable offence, and that crimes may be committed without any criminal intention. Against a doctrine so absurd and mischievous, so contrary to every notion of justice hitherto entertained, so utterly subversive of all that part of our system of jurisprudence, which has been wisely and humanely established for the protection of innocence, this respondent deems it his duty now, and on every fit occasion, to enter his protest and lift up his voice; and he trusts that in the discharge of this duty, infinitely more important to his country than to himself, he shall find approbation and support in the heart of every American, of every man throughout the world, who knows the blessings of civil liberty, or respects the principles of universal justice.

It is only, then, for the correctness of his motives in delivering these opinions, that he can now be called to answer; and this correctness ought to be presumed, unless the contrary appear by some direct proof, or some violent presumption, arising from his general conduct on the trial, or from the glaring impropriety of the opinion itself. For he admits that cases may be supposed, of an opinion delivered by a judge, so palpably erroneous, unjust, and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake.

Do the opinions now under consideration bear any of these marks? This honorable Court need not be informed that there has existed in England no such thing as treason at common law, since the year 1350, when the statute of the 25th Edward III. chap. 2, declaring what alone should in future be judged treason, was passed. Is it perfectly clear that decisions made before that statute, four hundred and fifty years ago, when England, together with the rest of Europe, was still wrapped in the deepest gloom of ignorance and barbarism —when the system of English jurisprudence was still in its infancy—when law, justice, and reason, were perpetually trampled under foot by feudal oppression and feudal anarchy—when, under an able and vigorous monarch, everything was adjudged to be treason which he thought fit to call so, and, under a weak one, nothing was considered as treason which turbulent, powerful, and rebellious nobles thought fit to perpetrate—is it perfectly clear that decisions, made at such a time, and under such circumstances, ought to be received by the courts of this country as authorities to govern their decisions, or lights to guide the understanding of juries? Is it perfectly clear that decisions made in England, on the subject of treason, before the Revolution of 1688, by which alone the balance of the English constitution was adjusted, and the English liberties were fixed on a firm basis; decisions made either during the furious civil wars in which two rival families contended for the Crown; when in the vicissitudes of war, death and confiscation, in the forms of law, continually walked in the train of the victors, and actions were treasonable or praiseworthy, according to the preponderance of the party by whose adherents they were perpetrated; during the reigns of three able and arbitrary monarchs who succeeded this dreadful conflict, and relaxed or invigorated the law of treason, according to their anger, their policy, or their caprice; or during those terrible struggles between the principles of liberty, not yet well defined or understood, on one hand, and arbitrary power, insinuating itself under the forms of the constitution, on the other; struggles which presented at some times the wildest anarchy, at others, the extremes of servile submission, and, after having brought one king to the scaffold, ended in the expulsion of another from his throne;—is it clear that decisions on the law of treason, made in times like those, ought not only to be received as authorities in the courts of this country, but also to have great influence on their decisions? Is it clear that decisions made in England, as to what acts will amount to levying war against the king, personally, and not against his government, are applicable to the Constitution and laws of this country?

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Is it clear that such English decisions on the subject of treason as are applicable to our Constitution and laws, are to be received in our courts, not merely as the opinions of learned and able men, which may enlighten their judgment, but as authorities which ought to govern absolutely their decisions? Is all this so clear that a judge could not honestly and sincerely have thought the contrary? that he could not have expressed an opinion to the contrary without corrupt and improper motives? If it be not thus clear, then must it be admitted that this respondent, sincerely and honestly, and in the best of his judgment, considered these decisions as wholly inadmissible, or admissible only for the purposes and to the extent which he pointed out.

And if he did not so consider them, was it not his duty to prevent them from being read to the jury, except under those restrictions, and for those purposes? Would his duty permit him to sit silently, and see the jury imposed on and misled? To sit silently and hear a book read to them as containing the law, which he knew did not contain the law? Such silence would have rendered him a party to the deception, and would have justly subjected him to all the contumely which a conscientious and courageous discharge of his duty has so unmeritedly brought on his name.

With respect to the statutes of the United States, which he is charged with having prevented the prisoner's counsel from citing on the aforesaid trial, he denies that he prevented any act of Congress from being cited either to the court or jury on the said trial, or declared at any time that he would not permit the prisoner's counsel to read to the jury or to the court any act of Congress whatever. Nor does he remember or believe that he expressed on the said trial any disapprobation of the conduct of the circuit court, before whom the said case was first tried, in permitting the act of Congress relating to crimes less than treason, commonly called the *Sedition Act*, to be read to the jury. He admits indeed that he was then and still is of opinion that the said act of Congress was wholly irrelevant to the issue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them. This opinion may be erroneous, but he trusts that the following reasons on which it was founded will be considered by this honorable court as sufficiently strong to render it possible, and even probable, that such an opinion might be sincerely held and honestly expressed: 1. That Congress did not intend by the Sedition law to define the crime of treason by "levying war." Treason and sedition are crimes very distinct in their nature, and subject to very different punishments—the former by death, and the latter by fine and imprisonment. 2. The Sedition law makes a combination or conspiracy, with intent to impede the operation of any law of the United States, or the advising or attempting to procure any insurrection or riot, a high misdemeanor, punishable by fine and imprisonment; but a combination or conspiracy with intent to prevent the execution of a law, or with intent to raise an insurrection for that purpose, or even with intent to commit treason, is not treason by "levying war" against the United States, unless it be followed by an attempt to carry such combination or conspiracy into effect, by actual force or violence. 3. The Constitution of the United States is the fundamental and supreme law, and, having defined the crime of treason, Congress could not give any Legislative interpretation or exposition of that crime, or of the part of the Constitution by which it is defined. 4. The Judicial authority of the United States is alone vested with power to expound their Constitution and laws.

And this respondent further answering saith, that after the above-mentioned proceedings had taken place in the said trial, it was postponed until the next day, (Wednesday, April 23, 1800,) when, at the meeting of the court, this respondent told both the above-mentioned counsel for the prisoner, that, "to prevent any misunderstanding of any-'thing that had passed the day before, he would 'inform them, that, although the court retained 'the same opinion of the law, arising on the overt 'acts charged in the indictment against Fries, yet 'the counsel would be permitted to offer arguments 'to the court, for the purpose of showing them 'that they were mistaken in the law; and that the 'court, if satisfied that they had erred in opinion, 'would correct it; and also that the counsel would 'be permitted to argue before the petit jury that 'the court were mistaken in the law." And this respondent added, that the court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the court, "that they did not any longer consider themselves as the counsel for John Fries, the prisoner." This respondent then asked the said John Fries, whether he wished the court to appoint other counsel for his defence? He refused to have other counsel assigned; in which he acted, as this respondent believes and charges, by the advice of the said William Lewis and Alexander James Dallas: whereupon, the court ordered the trial to be had on the next day, Thursday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were sworn, they were, by the direction of the court, severally asked on oath, whether they were in any way related to the prisoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be punished? Three of them answering in the affirmative, were withdrawn from the panel. The said John Fries was then informed by the court, that he had a right to challenge thirty-five of the jury, without showing any cause of challenge against them, and as many more as he could show cause of challenge against. He did accordingly challenge peremptorily thirty-four of the jury, and the trial proceeded. In the evening, the court adjourned till the next day, Friday, the 25th of April; when after the district attorney had stated the principal facts proved by the witnesses, and had applied the law to those

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facts, this respondent, with the concurrence of his colleague, the said Richard Peters, delivered to the jury the charge contained and expressed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his answer.

Immediately after the petit jury had delivered their verdict, this respondent informed the said Fries, from the bench, that if he, or any person for him, could show any legal ground, or sufficient cause to arrest the judgment, ample time would be allowed him for that purpose. But no cause being shown, sentence of death was passed on the said Fries, on Tuesday, the 2d day of May, 1800, the last day of the term; and he was afterwards pardoned by John Adams, then President of the United States.

And this respondent further answering saith, that if the two instances of misconduct, first stated in support of the general charge, contained in the first article of impeachment, were true as alleged, yet the inference drawn from them, viz: "that the said Fries was thereby deprived of the benefit of counsel for his defence," is not true. He insists that the said Fries was deprived of the benefit of counsel, not by any misconduct of this respondent, but by the conduct and advice of the above-mentioned William Lewis and Alexander James Dallas, who having been, with their own consent, assigned by the court as counsel for the prisoner, withdrew from his defence, and advised him to refuse other counsel when offered to him by the court, under pretence that the law had been prejudged, and their liberty of conducting the defence, according to their own judgment, improperly restricted by this respondent; but in reality because they knew the law and the facts to be against them, and the case to be desperate, and supposed that their withdrawing themselves under this pretence, might excite odium against the court; might give rise to an opinion that the prisoner had not been fairly tried; and in the event of a conviction, which from their knowledge of the law and the facts they knew to be almost certain, might aid the prisoner in an application to the President for a pardon. That such was the real motive of the said prisoner's counsel, for depriving their client of legal assistance on his trial, this respondent is fully persuaded, and expects to make appear, not only from the circumstances of the case, but from their own frequent and public declarations.

As little can this respondent be justly charged with having, by any conduct of his, endeavored to "wrest from the jury their indisputable right 'to hear argument, and determine upon the ques-'tion of law as well as the question of fact in-'volved in the verdict which they were required 'to give." He denies that he did at any time declare that the aforesaid counsel should not at any time address the jury, or did in any manner hinder them from addressing the jury on the law as well on the facts arising in the case. It was expressly stated in the copy of his opinion delivered as above set forth to William Lewis, that the jury had a right to determine the law as well as the fact; and the said William Lewis and Alexander James Dallas were expressly informed, before they declared their resolution to abandon the defence, that they were at liberty to argue the law to the jury. This respondent believes that the said William Lewis did not read the opinion delivered to him as aforesaid, except a very small part at the beginning of it, and of course, acted upon it without knowing its contents; and that the said Alexander James Dallas read no part of the said opinion until about a year ago, when he saw a very imperfect copy, made in court by a certain W. S. Biddle.

And this respondent further answering, saith, that according to the Constitution of the United States, *civil officers* thereof, and no other persons, are subject to impeachment; and they only for treason, bribery, corruption, or other high crime or misdemeanor, consisting in some act done or omitted, in violation of some law forbidding or commanding it; on conviction of which act, they *must* be removed from office; and may, after conviction, be indicted and punished therefor, according to law. Hence, it clearly results, that no civil officer of the United States can be impeached, except for some offence for which he may be indicted at law: and that no evidence can be received on an impeachment, except such as on an indictment at law, for the same offence, would be admissible. That a judge cannot be indicted or punished according to law, for any act whatever, done by him in his judicial capacity, and in a matter of which he has jurisdiction, through error of judgment merely, without corrupt motives, however manifest his error may be, is a principle resting on the plainest maxims of reason and justice, supported by the highest legal authority, and sanctioned by the universal sense of mankind. He hath already endeavored to show, and he hopes with success, that all the opinions delivered by him in the course of the trials now under consideration, were correct in themselves, and in the time and manner of expressing them; and that even admitting them to have been incorrect, there was such strong reason in their favor, as to remove from his conduct every suspicion of improper motives. If these opinions were incorrect, his mistake in adopting them, or in the time or manner of expressing them, cannot be imputed to him as an offence of any kind, much less as a high crime and misdemeanor, for which he ought to be removed from office; unless it can be shown by clear and legal evidence, that he acted from corrupt motives. Should it be considered that some impropriety is attached to his conduct, in the time and mode of expressing any of these opinions; still he apprehends, that a very wide difference exists between such impropriety, the casual effect of human infirmity, and a high crime and misdemeanor for which he may be impeached, and must, on conviction, be removed from office.

Finally, this respondent, having thus laid before this honorable Court a true state of his case, so far as respects the first article of impeachment, declares, upon the strictest review of his conduct during the whole trial of John Fries for treason, that he was not on that occasion unmindful of

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the solemn duties of his office as judge; that he faithfully and impartially, and according to the best of his ability and understanding, discharged those duties towards the said John Fries; and that he did not in any manner, during the said trial, conduct himself arbitrarily, unjustly, or oppressively, as he is accused by the honorable the House of Representatives.

And the said Samuel Chase, for the plea to the said first article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said first article is alleged; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The second article of impeachment charges, that this respondent, at the trial of James Thompson Callender for a libel, in May 1800, did, "with 'intent to oppress and procure the conviction of 'the said Callender, overrule the objection of John 'Basset, one of the jury, who wished to be ex-'cused from serving on the said trial, because he 'had made up his mind as to the publication from 'which the words, charged to be libellous in the 'indictment, were extracted."

In answer to this article, this respondent admits that he did, as one of the associate justices of the Supreme Court of the United States, hold the circuit court of the United States, for the district of Virginia, at Richmond, on Thursday the 22d day of May, in the year 1800, and from that day, till the 30th of the same month; when Cyrus Griffin, then district judge of the United States for the district of Virginia, took his seat in the said court; and that during the residue of that session of the said court, which continued till the —— day of June, in the same year, this respondent and the said Cyrus Griffin held the said court together. But how far any of the other matters charged in this article, are founded in truth or law, appear from the following statement; which he submits to this honorable court, by way of answer to this part of the accusation.

By an act of Congress passed on the 4th day of May, A. D. 1798, it is among other things enacted, "That if any person shall write, print, utter 'or publish, or shall knowingly and wittingly as-'sist and aid in writing, printing, uttering or pub-'lishing, any false, scandalous and malicious wri-'ting or writings against the President of the Uni-'ted States, with intent to defame or to bring him 'into contempt or disrepute, such person, being 'thereof convicted, shall be punished by fine, not 'exceeding two thousand dollars, and by impris-'onment, not exceeding two years:" and "that if 'any person shall be prosecuted under this act, it 'shall be lawful for him to give in evidence in his 'defence, the truth of the matter contained in the 'publication charged as a libel; and the jury shall 'have a right to determine the law and the fact, 'under the direction of the court, as in other 'cases," as in and by the said act, commonly called the *sedition law*, to which this respondent begs leave to refer this honorable Court, will more fully appear.

At the meeting of the last above-mentioned circuit court, this respondent, as required by the duties of his office, delivered a charge to the grand jury; in which, according to his constant practice, and to his duty as a judge, he gave in charge to them several acts of Congress for the punishment of offences, and among them, the above-mentioned act, called the sedition law; and directed the jury to make particular inquiry concerning any breaches of these statutes or any of them, within the district of Virginia. On the 24th day of May, 1800, the said jury found an indictment against one James Thompson Callender, for printing and publishing, against the form of the said act of Congress, a false, scandalous, and malicious libel, called "The Prospect before Us," against John Adams, then President of the United States, in his official conduct as President; as appears by an official copy of the said indictment, marked exhibit No. 4, which this respondent begs leave to make part of this his answer.

On Wednesday, the 28th day of the same month, May 1800, Philip Norbonne Nicholas, Esq., now attorney general of the State of Virginia, and George Hay, Esq., now district attorney of the United States, for the district of Virginia, appeared in the said circuit court as counsel for the said Callender; and on Thursday the 3d of June following, his trial commenced, before this respondent, and the said Cyrus Griffin, who then sat as assistant judge. The petit jurors being called over, eight of them appeared, namely, Robert Gamble, Bernard Mackham, John Barrell, William Austin, William Richardson, Thomas Tinsley, Matthew Harvey, and John Basset; who, as they came to the book to be sworn, were severally asked on oath, by direction of the court, "whether they had ever formed or delivered any opinion respecting the subject-matter then to be tried, or concerning the charges contained in the indictment?" They all answered in the negative, and were sworn in chief to try the issue. The counsel for the said Callender declaring that it was unnecessary to put this question to the other four jurymen, William Mayo, James Hayes, Henry S. Shore, and John Prior, they also were immediately sworn in chief. No challenge was made by the said Callender or his counsel, to any of these jurors; but the said counsel declared, that they would rely on the answer that would be given by the said jurors, to the question thus put by order of the court.

After the above-mentioned John Basset, whom this respondent supposes and admits to be the person mentioned in the article of impeachment now under consideration, had thus answered in the negative to the question put to him by order of the court, as above-mentioned, which this respondent states to be the legal and proper question to be put to jurors on such occasions, he expressed to the court his wish to be excused from serving on the said trial, because he had made up his mind, or had formed his opinion, "that the publication, called 'The Prospect before Us,' from which the words charged in the indictment as libellous were said to be extracted, but which he had never seen, was, according to the representa-

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tion of it, which he had received, within the Sedition law." But the court did not consider this declaration by the said John Basset as a sufficient reason for withdrawing him from the jury, and accordingly directed him to be sworn in chief.

In this opinion and decision, as in all the others delivered during the trial in question, this respondent concurred with his colleague, the aforementioned Cyrus Griffin, in whom none of these opinions have been considered as criminal. He contends that the opinion itself was legal and correct; and he denies that he concurred in it, under the influence of any "spirit of persecution and injustice," or with any "intent to oppress and procure the conviction of the prisoner;" as is most untruly alleged by the second article of impeachment. His reasons were correct and legal. He will submit them with confidence to this honorable Court; which, although it cannot condemn him for an incorrect opinion, proceeding from an honest error in judgment, and ought not to take on itself the power of inquiring into the correctness of his decisions, but merely that of examining the purity of his motives; will, nevertheless, weigh his reasons, for the purpose of judging how far they are of sufficient force, to justify a belief that they might have appeared satisfactory to him. If they might have so appeared, if the opinion which he founded on them be not so palpably and glaringly wrong, as to carry with it internal evidence of corrupt motives, he cannot in delivering it have committed an offence.

This honorable Court need not be informed, that it is the duty of courts before which criminal trials take place, to prevent jurors from being excusedfor light and insufficient causes. If this rule were not observed, it would follow, that as serving on such trials as a juror, is apt to be a very disagreeable business, especially to those best qualified for it, there would be a great difficulty, and often an impossibility, in finding proper juries. The law has, therefore, established a fixed and general rule on this subject, calculated not to gratify the wishes or the unreasonable scruples of jurors, but to secure to the party accused, as far as in the imperfection of human nature it can be secured, a fair and impartial trial. The criterion established by this rule is, "that the juror stands indifferent between the Government and the person accused, as to the matter *in issue*, on the indictment." This indifference is always, according to a well-known maxim of law, to be presumed, unless the contrary appear; and the contrary may be alleged by way of excuse by the juror himself, or by the prisoner by way of challenge. Even if not alleged, it may be inquired into by the court of its own mere motion, or on the suggestion of the prisoner, and it may be established by the confession of the juror himself, on oath, or by other testimony.

But in order to show that a juror does not stand indifferent between the accuser and the accused, *as to the matter in issue*," it is not sufficient to prove that he has expressed a general opinion, "that such an offence as that charged by the indictment ought to be punished;" or "that the party accused, if guilty of the offence charged against him, ought to be punished;" or "that a book, for printing and publishing which the party is indicted, comes within the law on which the indictment is founded." All these are general expressions of opinion, as to the criminality of an act of which the party is accused, and of which he *may* be guilty; not declarations of an opinion that he actually is guilty of the offence with which he stands charged. It is impossible for any man in society to avoid having, and extremely difficult for him to avoid expressing, an opinion, as to the criminality or innocence of those acts, which, for the most part, are the subjects of indictments for offences of a public nature; such as treason, sedition, and libels against the Government. Such acts always engage public attention, and become the subject of public conversation; and if to have formed or expressed an opinion as to the general nature of those acts, were a sufficient ground of challenge to a juror, when alleged against him, or of excuse from serving when alleged by himself, it would be in the power of almost every offender to prevent a jury from being empannelled to try him, and of almost every man, to exempt himself from the unpleasant task of serving on such juries. The magnitude and heinous nature of an offence would give it a greater tendency to attract public attention, and to draw forth public expressions of indignation, and would thus increase its chance of impunity.

To the present case this reasoning applies with peculiar force. The "Prospect before Us" is a libel so profligate and atrocious, that it excited disgust and indignation in every breast not wholly depraved. Even those whose interest it was intended to promote, were, as this respondent has understood and believes, either so much ashamed of it, or so apprehensive of its effects, that great pains were taken by them to withdraw it from public and general circulation. Of such a publication, it must have been extremely difficult to find a man of sufficient character and information to serve on a jury, who had not formed an opinion, either from his own knowledge, or from report. The juror in the present case had expressed no opinion. He had formed no opinion as to the facts. He had never seen the "Prospect before Us," and, therefore, could have formed no fixed or certain opinion about its nature or contents. They had been reported to him, and he had formed an opinion that if they were such as reported, the book was within the scope and operation of a law for the punishment of "false, 'scandalous and malicious libels, against the President in his official capacity, written or published 'with intent to defame him." And who is there, that having either seen the book, or heard of it, had not necessarily formed the same opinion?

But this juror had formed no opinion about the guilt or innocence of the party accused; which depended on four facts wholly distinct from the opinion which he had formed. First, whether the contents of the book were really such as had been represented to him? Secondly, whether they should, on the trial, be proved to be true?

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Thirdly, whether the party accused was really the author or publisher of this book? And fourthly, whether he wrote or published it "with intent to defame the President, or to bring him into contempt or disrepute, or to excite against him the hatred of the good people of the United States?" On all these questions, the mind of the juror was perfectly at large, notwithstanding the opinion which he had formed. He might, consistently with that opinion, determine them all in the negative; and it was on them that the issue between the United States and James Thompson Callender depended. Consequently, this juror, notwithstanding the opinion which he had thus formed, did stand indifferent as to the matter in issue, in the legal and proper sense, and in the only sense in which such indifference can ever exist; and therefore his having formed that opinion, was not such an excuse as could have justified the court in discharging him from the jury.

That this juror did not himself consider this opinion as an opinion respecting the "matter in issue," appears clearly from this circumstance, that when called upon to answer on oath, "whether he had expressed any opinion as to the matter in issue?" he answered that he had not. Which clearly proves that he did not regard the circumstance of his having formed this opinion, as a legal excuse, which ought to exempt him of right from serving on the jury; but merely suggested it as a motive of delicacy, which induced him to wish to be excused. To such motives of delicacy, however commendable in the persons who feel them, it is impossible for courts of justice to yield, without putting it in the power of every man, under pretence of such scruples, to exempt himself from those duties which all the citizens are bound to perform. Courts of justice must regulate themselves by legal principles, which are fixed and universal; not by delicate scruples, which admit of endless variety, according to the varying opinions and feelings of men.

Such were the reasons of this respondent, and he presumes of his colleague the said Cyrus Griffin, for refusing to excuse the said John Basset, from serving on the jury above-mentioned. These reasons, and the decisions founded on them, he insists were legal and valid. But if the reasons should be considered as invalid, and the decision as erroneous, can they be considered as so clearly and flagrantly incorrect, as to justify a conclusion that they were adopted by this respondent, through improper motives? Are not these reasons sufficiently strong, or sufficiently plausible, to justify a candid and liberal mind in believing, that a judge might honestly have regarded them as solid? Has it not been conceded, by the omission to prosecute Judge Griffin for this decision, that his error, if he committed one, was an honest error? Whence this distinction between this respondent and his colleague? And why is that opinion imputed to one as a crime, which in the other is considered as innocent?

And the said Samuel Chase, for plea to the said second article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said second article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The third article of impeachment alleges that 'this respondent "with intent to oppress and pro-'cure the conviction of the prisoner, did not per-'mit the evidence of John Taylor, a material wit-'ness in behalf of the said Callender, to be given 'in, on pretence that the said witness could not 'prove the truth of the whole of one of the charges 'contained in the indictment, although the said 'charge embraced more than one fact."

In answer to this charge, this respondent begs leave to submit the following facts and observations.

The indictment against James Thompson Callender, which has been already mentioned, and of which a copy is exhibited with this answer, consisted of two distinct and separate counts, each of which contained twenty distinct and independent charges, or sets of words. Each of those sets of words was charged as a libel against John Adams, as President of the United States, and the twelfth charge embraced the following words, "He (meaning President Adams) was a professed aristocrat; he proved faithful and serviceable to the British interest." The defence set up was confined to this charge, and was rested upon the truth of the words. To the other nineteen charges no defence of any kind was attempted or spoken of, except such as might arise from the supposed unconstitutionality of the sedition law; which, if solid, applied to the twelfth charge as well as to the other nineteen. It was to prove the truth of these words that John Taylor, the person mentioned in the article of impeachment now under consideration was offered as a witness. It can hardly be necessary to remind this honorable Court, that when an indictment for a libel contains several distinct charges, founded on distinct sets of words, the party accused, who in such cases is called the "traverser," must be convicted, unless he makes a sufficient defence against every charge. His innocence on one, does not prove him innocent on the others. If the sedition law should be considered as unconstitutional, the whole indictment, including this twelfth charge, must fall to the ground, whether the words in question were proved to be true or not. If the law should be considered as constitutional, then the traverser, whether the words in the twelfth charge were proved to be true or not, must be convicted on the other nineteen charges, against which no defence was offered. This conviction on nineteen charges would put the traverser as completely in the power of the court, by which the amount of the fine and the term of the imprisonment were to be fixed, as a conviction upon all the twenty charges. The imprisonment could not exceed two years, nor the fine be more than two thousand dollars. If then this respondent were desirous of procuring the conviction of the traverser, he was sure of his object without rejecting the testimony of John Taylor. If his temper towards the traverser were so vindictive as to make

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him feel anxious to obtain an opportunity and excuse for inflicting on him the whole extent of punishment permitted by the law, still a conviction on nineteen charges afforded this opportunity and excuse as fully as a conviction on twenty charges. One slander more or less, in such a publication as the "Prospect before Us," could surely be of no moment. To attain this object, therefore, it was not necessary to reject the testimony of John Taylor.

That the court did not feel this vindictive spirit is clearly evinced by the moderation of the punishment, which actually was inflicted on the traverser, after he was convicted of the whole twenty charges. Instead of two thousand dollars, he was fined only two hundred, and was sentenced to only nine months' imprisonment, instead of two years. And this respondent avers that he never felt or expressed a wish to go further; but that in this decision, as well as in every other given in the course of the trial, he fully and freely concurred with his colleague, Judge Griffin.

As a further proof that his rejection of this testimony did not proceed from any improper motive, but from a conviction in his mind that it was legally inadmissible, and that it was therefore his duty to reject it, he begs leave to state that he interfered in order to prevail on the district attorney to withdraw his objection to those questions, and consent to their being put; which that officer refused to do, on the ground "that he did not feel himself at liberty to consent to such a departure from legal principles."

Hence appears the utter futility of a charge, which attributes to this respondent a purpose as absurd as it was wicked; and without the slightest proof, imputes to the worst motives in him the same action, which in his colleague is considered as free from blame. But this respondent will not content himself with showing that his conduct in concurring with his colleague in the rejection of John Taylor's testimony, could not have proceeded from the motives ascribed to him; but he will show that this rejection, if not strictly legal and proper, as he believes and insists that it is, rests on legal reasons of sufficient force to satisfy every mind, that a judge might have sincerely considered it as correct.

The words stated as the ground of the twelfth charge above-mentioned, are stated in the indictment as one entire and indivisible paragraph, constituting one entire offence. This respondent considered them at the trial, and still considers them as constituting one entire charge and one entire offence; and that they must be taken together in order to explain and support each other. It is clear that no words are indictable as libellous, except such as expressly, or by plain implication, charge the person against whom they are published with some offence, either legal or moral. To be an "aristocrat," is not in itself an offence, either legal or moral, even if it were a charge susceptible of proof; neither was it an offence, either legal or moral, for Mr. Adams to be "faithful and serviceable to the British interest," unless he thereby betrayed or endangered the interests of his own country which does not necessarily follow, and is not directly alleged in the publication. These two phrases, therefore, taken separately, charge Mr. Adams with no offence of any kind; and, consequently, could not be indictable as libellous: but taken together, they convey the implication that Mr. Adams, being an "aristocrat," that is, an enemy to the republican Government of his own country, had subserved the British interest against the interest of his own country; which would, in his situation, have been an offence both moral and legal; to charge him with it was, therefore, libellous.

Admitting, therefore, these two phrases to constitute one distinct charge, and one entire offence, this respondent considers and states it to be law, that no justification which went to part only of the offence, could be received. The plea of justification must always answer the whole charge, or it is bad on the demurrer, for this plain reason, that the object of the plea is to show the party's innocence; and he cannot be innocent if the accusation against him be supported in part. Where the matter of defence may be given in evidence, without being formally pleaded, the same rules prevail. The defence must be of the same nature, and equally complete, in one case as in the other. The only difference is in the manner of bringing it forward. Evidence, therefore, which goes only to justify the charge in part, cannot be received. It is not, indeed, necessary that the whole of this evidence should be given by one witness. The justification may consist of several facts, some of which may be proved by one person, and some by another. But proof, in such cases, must be offered as to the whole, or it cannot be received.

In the case under consideration, no proof was offered as to the whole matter contained in the twelfth article. No witness except the above-mentioned John Taylor was produced or mentioned. When a witness is offered to a court and jury, it is the right and duty of the court to require a statement of the matters intended to be proved by him. This is the invariable practice of all our courts, and was done most properly by this respondent and his colleague, on the occasion in question. From the statement given by the traverser's counsel of what they expected to prove by the said witness, it appeared that his testimony could have no possible application to any part of the indictment, except the twelfth charge above-mentioned, and but a very weak and imperfect application even to that part. The court, therefore, as it was their right and duty, requested that the questions intended to be put to the witness, should be reduced to writing, and submitted to their inspection, so as to enable them to judge more accurately, how far those questions were proper and admissible. This being done, the questions were of the following tenor and effect:

1st. "Did you ever hear Mr. Adams express any sentiments favorable to monarchy, or 'aristocracy,' and what were they?"

2d. "Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

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3d. "Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?"

The second question, it is manifest, had nothing to do with the charge; for Mr. Adams's approbation or disapprobation of the funding system could not have the most remote tendency to prove that he was an aristocrat, or had proved faithful and serviceable to the British interest. In that part of the publication which furnishes the matter of the thirteenth charge in the indictment, it is indeed stated that Mr. Adams, "when but in a secondary station, censured the funding system," but these words are in themselves wholly immaterial; and no attempt was made, nor any evidence offered or spoken of, to prove the truth of the other matter contained in the thirteenth charge. It was from their connexion with that other matter that these words could alone derive any importance; and consequently their truth or falsehood was altogether immaterial, while that other matter remained unproved. This question, therefore, which went solely to those immaterial words, was clearly inadmissible. The third question was in reality as far as the second from any connexion with the matter in issue, although its irrelevancy is not quite so apparent. Mr. Adams's having voted against the two measures alluded to in that question, if he did in fact vote against them, could by no means prove that he was "faithful and serviceable to the British interest," in any sense, much less with those improper and criminal views, with which the publication in question certainly meant to charge him. He might, in the honest and prudent performance of his duty towards his Government and his country, incidentally promote the interests of another country; but it was by no means competent for a jury to infer from thence, that he was "faithful" to that other country, or, in other words, that he held the interests of that other country chiefly in view, and was actuated in giving his vote by a desire to promote them, independently of, or without regard to, the interests of his own country. Such an inference could not be made from the fact, admitting it to be true. The fact, if true, was *no* evidence to support such an inference, therefore the fact was immaterial; and as it is the province and duty of the court, in such circumstances, to decide on the materiality of facts offered in evidence, it follows clearly that it was the right and duty of the court, in this instance, to reject the third question; an affirmative answer to which could have proved nothing in support of the defence.

The first question, therefore, and the only remaining one proposed to be put to this witness, stood alone; and an affirmative answer to it, if it could have proved anything, could have proved only a part of the charge; namely, that Mr. Adams was an aristocrat. But evidence to prove a part only of an entire and indivisible charge was inadmissible for the reasons stated above.

If, on the other hand, the phrases in question, "that Mr. Adams was an aristocrat," that "he had proved faithful and serviceable to the British interest," were distinct and divisible, and constituted two distinct charges, which may perhaps be the proper way of considering them, still the above-mentioned questions were improper and inadmissible, in that point of view.

The first charge in that case is, that Mr. Adams "was an aristocrat." To be an aristocrat, even if any precise and definite meaning could be affixed to the term, is not an offence either legal or moral; consequently, to charge a man with being an aristocrat is not a libel; and such a charge in an indictment for a libel, is wholly immaterial. Nothing is more clear, than that immaterial matters in legal proceedings ought not to be proved, and need not be disproved. In the next place, the term "aristocrat" is one of those vague indefinite terms, which admit not of precise meaning, and are not susceptible of proof. What one person might consider as aristocracy, another would consider as republicanism, and a third as democracy. If indictments could be supported on such grounds, the guilt or innocence of the party accused must be measured not by any fixed or known rule, but by the opinions which the jurors appointed to try him might happen to entertain, concerning the nature of aristocracy, democracy, or republicanism. And, lastly, the question itself was as vague, and as void of precise meaning, as the charge of which it was intended to furnish the proof. The witness was called upon to declare "whether he had heard Mr. Adams express any and what opinions, favorable to aristocracy or monarchy?" How was it to be determined, whether an opinion was favorable to aristocracy or monarchy? One man would think it favorable and another not so, according to the opinions which they might respectively entertain, on political subjects. The first question, therefore, was inconclusive, immateral, and inadmissible.

The second, as has already been remarked, was wholly and manifestly foreign from the matter in issue. Mr. Adams's dislike of the funding system, if he did in fact dislike it, had nothing to do with his aristocracy or his faithfulness to the British interest. There is no pretence for saying, that such a question ought to have been admitted.

As to the third, "whether Mr. Adams had not voted against the sequestration of British property, and the suspension of commercial intercourse with Great Britain," it has already been shown to be altogether improper; on the ground that such votes, if given by Mr. Adams, were no evidence whatever of his having been "faithful and serviceable to the British interest." If he had been so, provided it were, in his opinion, at the same time useful to the interests of his own country, which it well might be, and the contrary of which is not alleged by this part of the publication, taken separately, it was no offence of any kind; and to charge him with it was not a libel. The charge was, therefore, immaterial and futile, and no evidence for or against it could properly be received. And, finally, if the charge had been

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material, and the giving of these votes had been legal evidence to prove it, that fact was on record in the journals of the Senate, and might have been proved by that record, or an official copy of it. As this evidence was the highest of which the case admitted, no inferior evidence of it, such as oral proof is well known to be, could be admitted.

For these reasons this respondent did concur with his colleague, the said Cyrus Griffin, in rejecting the three above-mentioned questions; but not any other testimony that the said John Taylor might have been able to give. In this he insists that he acted legally and properly, according to the best of his ability. If he erred, it is impossible, for the reasons stated by him in the beginning of his answer to this article, to suppose that he erred wilfully: since he could have had no possible motive for a piece of misconduct so shameful, and at the same time so well calculated to give offence. In a point so liable to misapprehension and misrepresentation, and so likely to be used as a means of exciting public odium against him, it is far more probable, that had he been capable of bending his opinion of the law to other motives, he would have admitted illegal testimony; which, taken in its utmost effect, could have had no tendency to thwart those plans of vengeance against the traverser, under the influence of which he is supposed to have acted.

If his error was an honest one, which, as his colleague also fell into it, might in charity be supposed; and, as there is not a shadow of evidence to the contrary, must in law be presumed; he cannot, for committing it, be convicted of any offence, much less a high crime and misdemeanor, for which he must, on conviction, be deprived of his office.

And for plea to the said third article of impeachment, the said Samuel Chase, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said third article is alleged against him: this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The fourth article of impeachment alleges, that during the whole course of the trial of James Thompson Callender, above-mentioned, the conduct of this respondent was marked by "manifest injustice, partiality, and intemperance;" and five particular instances of the "injustice, partiality, and intemperance," are adduced.

The first consists, "in compelling the prisoner's counsel to reduce to writing and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above-mentioned John Taylor, the witness."

This respondent, in answer to this part of the article now under consideration, admits that the court, consisting of himself and the above-mentioned Cyrus Griffin, did require, the counsel for the traverser, on the trial of James Thompson Callender, above-mentioned, to reduce to writing the questions which they intended to put to the said witness. But he denies that it is more his act than the act of his colleague, who fully concurred in this measure. The measure, as he apprehends and insists, was legal and proper; his reasons for adopting it, and he presumes those of his colleague, he will submit to this honorable Court, in order to show that if he, in common with his colleague, committed an error, it was an error into which the best and wisest men might have honestly fallen.

It will not be denied, and cannot be doubted, that according to our laws, evidence, whether oral or written, may be rejected and prevented from going before the jury, on various grounds. 1st, For incompetency; where the source from which the evidence is attempted to be drawn, is an improper source: as if a witness were to be called who was infamous, or interested in the event of the suit; or a paper should be offered in evidence, which was not between the same parties, or was not executed in the forms prescribed by law. 2d, for irrelevancy: when the evidence offered is not such as in law will warrant the jury to infer the fact intended to be proved; or where that fact, if proved, is immaterial to the issue. For these reasons, and perhaps for others which might be specified, evidence may properly be rejected, in trials before our courts.

As little can it be doubted that, according to our laws, the court, and not the jury, is the proper tribunal for deciding all questions relative to the admissibility of evidence. The effect of the evidence, when received, is to be judged of by the jury; but whether it ought to be received, must be determined by the court. This arises from the very constitution of the trial by jury; one fundamental principle of which is, that the jury must decide the case, not according to vague notions, secret impressions, or general belief, but, according to legal and proper evidence delivered in court. So strictly is this rule observed, that if one juror have any knowledge of the matter in dispute, it may influence his own judgment, but not that of his fellow jurors, unless he state it to them on oath, in open court; and nothing is more common than for our courts, after all the evidence which the party can produce has been offered and received, to tell the jury that there is no evidence to support the claim, or the defence; or when proof is offered of a certain fact, to determine that such fact is not proper to be given in evidence.

Hence it results, and is every day's practice, that when a witness is produced, or a writing is offered in evidence, the opposite party, having a right to object to the evidence if he should think it improper, requires to be informed what the witness is to prove, or to see the writing before the first is examined, or the second is read to the jury. The court has the same right, resulting necessarily from its power to decide all questions relative to the admissibility of evidence. This right our courts are in the constant habit of exercising; not only when objections are made by the parties, but when, there being no objection, the court itself has reason to suspect that the testimony is improper. In most cases, but not in all, consent by the opposite party removes all

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objections to the admissibility of evidence, and courts sometimes infer consent from silence; but, as it is their duty to take care that no improper or illegal evidence goes to the jury, unless the objection to it be removed by consent of parties, it is consequently their duty, in all cases where they see reason to suspect that the evidence offered is improper, to ascertain whether consent has been given, or whether the seeming acquiescence of the opposite party has proceeded from inattention. This is more particularly their duty in *criminal* cases, where they are bound to be counsel for the Government, as well as for the party accused.

It being thus the right and duty of a court before which a trial takes place, to inform itself of the evidence offered, so as to be able to judge whether such evidence be proper, it results necessarily that they have a right to require, that any question intended to be put to a witness, should be reduced to writing, for that is the form in which their deliberation upon it may be most perfect, and their judgment will be most likely to be correct. In the case now under consideration, the court did exercise this right. When the testimony of John Taylor was offered, the court inquired of the traverser's counsel, what that witness was to prove. The statement of his testimony given in answer, induced the court to suspect that it was irrelevant and inadmissible. They, therefore, that they might have an opportunity for more careful and accurate consideration, called upon the counsel to state, in writing, the questions intended to be put to the witness.

This is the act done by the court, but concurred in by the respondent, which has been selected and adduced as one of the proofs and instances of "manifest injustice, partiality, and intemperance" on his part. He owes an apology to this honorable Court for having occupied so much of its time with the refutation of a charge which has no claim to serious consideration, except what it derives from the respect due to the honorable body by which it was made, and the high character of the court where it is preferred.

The next circumstance stated by the article now under consideration, as an instance and proof of "manifest injustice, partiality, and intemperance" in this respondent, is his refusal to postpone the trial of the said James Thompson Callender, "although 'an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused, and although it was manifest that, with 'the utmost diligence, the attendance of such 'witnesses could not have been procured at that 'term."

This respondent, in answer to this part of the charge, admits that, in the above-mentioned trial, the traverser's counsel did move the court, while this respondent sat in it alone, for a continuance of the trial until the next term; not merely a postponement of the trial, as the expressions used in this part of the article would seem to import; and did file, as the ground work of their motion, an affidavit of the traverser, a true and official copy of which (marked exhibit No. 5) this respondent herewith exhibits, and begs leave to make part of this answer; but he denies that any sufficient ground for a continuance until the next term was disclosed by this affidavit; as he trusts will clearly appear from the following facts and observations:

The trial of an indictment at the term when it is found by the grand jury, is a matter of course, which the prosecutor can claim as a right, unless legal cause can be shown for a continuance. The prosecutor may consent to a continuance, but if he withholds his consent, the court cannot grant a continuance without legal cause. Of the sufficiency and legality of this cause, as of every other question of law, the court must judge; but it must decide on this, as on every other point, according to the fixed and known rules of law.

One of the legal grounds, and the principal one on which such a continuance may be granted, is the absence of competent and *material* witnesses, whom the party cannot produce at the present term, but has a *reasonable ground* for expecting to be able to produce at the next term. Analogous to this, is the inability to procure, at the present term, legal and *material* written testimony, which the party has a *reasonable expectation* of being able to procure at the next term.

These rules are as reasonable and just in themselves, as they are essential to the due administration of justice, to the punishment of offences on the one hand, and to the protection of innocence on the other. If the continuance of a cause, on the application of the party accused, were a matter of right, it is manifest that no indictment would be brought to trial until after a delay of many months. If, on the other hand, the granting of a continuance depended not on fixed rules, but on the arbitrary will of the court, it would follow that weakness or partiality might induce a court, on some occasions, to extend a very improper indulgence to the party accused; while, on others, passion or prejudice might deprive him of the necessary means of making his defence. Hence the necessity of fixed rules, which the judges are bound to expound and apply, under the solemn sanction of their oath of office.

The true and only reason for granting a continuance, is, that the party accused may have the best opportunity that the laws can afford to him, of making his defence. But incompetent or immaterial witnesses could not be examined if they were present; and, consequently, their absence can deprive the party of no opportunity which the laws afford him, of making his defence. Hence the rule, that the witnesses must be competent and material.

Public justice will not permit the trial of offenders to be delayed, on light or unfounded pretences. To wait for testimony which the party really wished for, but did not expect to be able to produce within some definite period, would certainly be a very light pretence; and to make him the judge, how far there was reasonable expectation of obtaining the testimony within the proper time, would put it in his power to delay the trial on the most unfounded pretences. Hence the rule, that

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there must be reasonable ground of expectation, in the judgment of the court, that the testimony may be obtained within the proper time.

It is therefore a settled and most necessary rule, that every application for a continuance, on the ground of obtaining testimony, must be supported by an affidavit, disclosing sufficient matter to satisfy the court, that the testimony wanted "is competent and material," and that there is "reasonable expectation of procuring it within the time prescribed." From a comparison of the affidavit in question with the indictment, it will soon appear how far the traverser in this case brought himself within this rule.

The absent witnesses, mentioned in the affidavit, are William Gardner, of Portsmouth in New Hampshire; Tench Coxe, of Philadelphia, in Pennsylvania; Judge Bee, of some place in South Carolina; Timothy Pickering, lately of Philadelphia, in Pennsylvania, but of what place at that time the deponent did not know; William B. Giles, of Amelia county, in the State of Virginia; Stevens Thompson Mason, whose place of residence is not mentioned in the affidavit, but was known to be in Loudon county, in the State of Virginia; and General Blackburn, of Bath county, in the said State. The affidavit also states, that the traverser wished to procure, as material to his defence, authentic copies of certain answers made by the President of the United States, Mr. Adams, to addresses from various persons; and also, a book entitled "an Essay on Canon and Feudal Law," or entitled in words to that purport, which was ascribed to the President, and which the traverser believed to have been written by him; and also, evidence to prove that the President was in fact the author of that book.

It is not stated, that the traverser had any reasonable ground to expect, or did expect, to procure this book or evidence, or these authentic copies, or the attendance of any one of these witnesses, at the next term. Nor does he attempt to show in what manner the book, or the copies of answers to addresses, were material, so as to enable the court to form a judgment on that point. Here, then, the affidavit was clearly defective. His believing the book and copies to be material, was of no weight, unless he showed to the court, sufficient grounds for entertaining the same opinion. Moreover, he does not state where he supposes that this book, and those authentic copies, may be found: so as to enable the court to judge, how far a reasonable expectation of obtaining them might be entertained. On the ground of this book and these copies, therefore, there was no pretence for a continuance. As to the witnesses, it is manifest, that from their very distant and dispersed situation, there existed no ground of reasonable expectation, that their attendance could be procured at the *next* term, or at any subsequent time. Indeed, the idea of postponing the trial of an indictment till witnesses could be convened at Richmond, from South Carolina, New Hampshire, and the western extremities of Virginia, is too chimerical to be seriously entertained. Accordingly, the traverser, though in his affidavit he stated them to be material, and declared that he could not procure their attendance at that term, could not venture to declare, on oath, that he expected to procure it at the next, or at any other time; much less that he had any reasonable ground for such an expectation. On this ground, therefore, the affidavit was clearly insufficient; and it was consequently the duty of the court to reject such application.

But the testimony of these witnesses, as stated in the affidavit, was wholly immaterial; and, therefore, their absence was no ground for a continuance, had there been reasonable ground for expecting their attendance at the next term.

William Gardner and Tench Coxe were to prove that Mr. Adams had turned them out of office, for their political opinions or conduct. This applied to that part of the publication, which constituted the matter of the third charge in the indictment, in these words, "the same system of persecution extended all over the continent. Every person holding an office, must either quit it, or think and vote exactly with Mr. Adams." Judge Bee was to prove, that Mr. Adams had advised and requested him by letter, in the year 1799, to deliver Thomas Nash, otherwise called Jonathan Robbins, to the British Consul, in Charleston. This might have had some application to the matter of the seventh charge; which alleged that "the hands of Mr. Adams, were reeking with the blood of the poor, friendless Connecticut sailor." Timothy Pickering was to prove, that Mr. Adams, while President, and Congress was in session, was many weeks in possession of important despatches, from the American Minister in France, without communicating them to Congress. This testimony was utterly immaterial; because, admitting the fact to be so, Mr. Adams was not bound, in any respect, to communicate those despatches to Congress, unless, in his discretion, he should think it necessary; and also, because the fact, if true, had no relation to any part of the indictment. There are, indeed, three charges, on which it might at first sight seem to have some slight bearing. These are the eighth, the words furnishing the matter of which are, "every feature in the Administration of Mr. Adams forms a distinct and additional evidence that he was determined, at all events, to embroil this country with France;" the fourteenth, the words stated in which, allege, that "by sending these Ambassadors to Paris, Mr. Adams and his British faction designed to do nothing but mischief;" and the eighteenth, the matter of which states, "that in the midst of such a scene of profligacy and usury, the President persisted as long as he durst, in making his utmost efforts for provoking a French war." To no other charge in the indictment had the evidence of Timothy Pickering, as stated in the affidavit, the remotest affinity. And surely, it will not be pretended by any man, who shall compare this evidence with the three charges above-mentioned, that the fact intended to be proved by it, furnished any evidence proper to go to a jury, in support of either of those charges: that "every feature of his Administration formed a distinct and

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additional evidence of a determination, at all events, to embroil this country with France," that "in sending Ambassadors to Paris, he intended nothing but mischief," that "in the midst of a scene of profligacy and usury, he persisted, as long as he durst, in making his utmost effort for provoking a French war," are charges, which surely cannot be supported or justified, by the circumstance of his "keeping in his possession, for several weeks, while Congress was in session, despatches from the American Minister in France, without communicating them to Congress," which he was not bound to do, and which it was his duty not to do, if he supposed that the communication, at an earlier period, would be injurious to the public interest. The testimony of William B. Giles and Stevens Thompson Mason was to prove, that Mr. Adams had uttered in their hearing certain sentiments, favorable to aristocratic or monarchical principles of Government.

This had no application except to a part of the twelfth charge; which has been already shown to be wholly immaterial if taken separately, and wholly incapable of a separate justification, if considered as part of an entire charge. And, lastly, it was to be proved by General Blackburn, that in his answer to an address, Mr. Adams avowed, "that there was a party in Virginia, which deserved to be humbled into dust and ashes, before the indignant frowns of their injured, insulted, and offended country." There were but two charges in the indictment to which this fact, if true, had the most distant resemblance. These are the fifteenth and sixteenth, the words forming the matter of which, call Mr. Adams "an hoary-headed libeller of the Governor of Virginia, who with all the fury, but without the propriety or sublimity of Homer's Achilles, bawled out, to arms, then, to arms!" and "who, floating on the bladder of popularity, threatened to make Richmond the centre point of a bonfire." It would be an abuse of the patience of this honorable Court, to occupy any part of its time in proving that the fact intended to be proved by General Blackburn could not in the slighest degree support or justify such charges as these. This is the account given of the testimony of the absent witnesses, by the affidavit filed as the ground of the motion for a continuance. From a comparison of it with the indictment, it will appear, that out of twenty charges in the indictment, there were but eight, to which any part of the testimony of those witnesses had the most distant allusion: and that of those eight charges there are five, which the testimony, having some allusions to them, could not in the slightest degree support. Twelve charges, therefore, remained without even an attempt to justify them; and seventeen were wholly destitute of any legal or sufficient justification. On these seventeen charges, therefore, the traverser must have been convicted; even if the remaining three had been completely justified by the testimony of the absent witnesses. The conviction on these seventeen charges, or even on one of them, would have put it into the power of the court to fine and imprison the traverser, to the whole extent allowed by the law. If the truth of these three charges, admitting it to be established, could not have any effect in mitigating the punishment, which depended on the court and not on the jury, the court in passing sentence might make, and in this case actually did make, the fullest abatement on that account that the testimony if adduced would warrant.

This testimony, therefore, was in every view immaterial; and had it been material, there existed no ground of reasonable expectation that it could be obtained at the next term, or any future term. For these reasons, and not from criminal motives, which without the least shadow of proof are ascribed to him, this respondent did overrule and reject the motion for a continuance till the next term; as it was his duty to do, since he had no discretion in the case, but was bound by the rules of law.

But in order to afford every accommodation to the traverser and his counsel, which it was in his power to give, this respondent did offer to postpone the trial for a month, or more, in order to afford them full time for preparation, and for procuring such testimony as was within their reach. This indulgence they thought proper to refuse.

On Monday, the second, and Tuesday, the third day of June, 1800, when Judge Griffin had taken his seat in court, and was on the bench, the counsel for the traverser renewed their motion for a continuance, founded on the same affidavit; and after a full hearing and consideration of the argument, the court, Judge Griffin concurring, overruled the motion, and ordered the trial to proceed.

If this decision be correct, as he believes and insists that it is, no offence could be committed by him in making or concurring in it. It was a proper and legal performance of his duty as a judge. If it be erroneous, still the error, if an honest one, cannot be an offence, much less a high crime and misdemeanor; and as in his colleague it has been considered as an honest error, he confidently trusts it will be considered so in him also.

To the third charge adduced in support of the article now under consideration, the charge of using "unusual, rude, and contemptuous expressions, towards the prisoner's counsel," and of "falsely insinuating, that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of this respondent did manifestly tend," he cannot answer otherwise than by a general denial. A charge so vague, admits not of precise or particular refutation. He denies that there was anything unusual or intentionally rude or contemptuous in his conduct or his expressions towards the prisoner's counsel; that he made any false insinuation whatever against them, or that his own conduct tended in any manner to produce insubordination to law. On the contrary, it was his wish and intention to treat the counsel with the respect due to their situation and functions, and with the decorum due to his own character. He thought it his duty to restrain such of their attempts as he considered improper, and to overrule motions made by them, which he considered as unfounded in law; but

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this it was his wish to accomplish in the manner least likely to offend, from which every consideration concurred in dissuading him. He did indeed think at that time, and still remains under the impression, that the conduct of the traverser's counsel, whether from intention or not he will not undertake to say, was disrespectful, irritating, and highly incorrect. That conduct which he viewed in this light, might have produced some irritation in a temper naturally quick and warm, and that this irritation might, notwithstanding his endeavors to suppress it, have appeared in his manner and in his expressions, he thinks not improbable; for he has had occasions of feeling and lamenting the want of sufficient caution and self-command, in things of this nature. But he confidently affirms, that his conduct in this particular was free from intentional impropriety; and this respondent denies, that any part of his conduct was such as ought to have induced the traverser's counsel to "abandon the cause of their client," nor does he believe that any such cause did induce them to take that step. On the contrary, he believes that it was taken by them under the influence of passion, or for some motive into which this respondent forbears at this time to inquire. And this respondent admits that the said traverser was convicted, and condemned to fine and imprisonment, but not by reason of the abandonment of his defence by his counsel; but because the charges against him were clearly proved, and no defence was made or attempted against far the greater number of them.

The fourth charge in support of this article attributes to this respondent "repeated and vexatious interruptions of the said counsel, which at length induced them to abandon the cause of their client, who was therefore convicted, and condemned to fine and imprisonment." To this charge, also, it is impossible to give any other answer but a general denial. He avers that he never interrupted the traverser's counsel vexatiously, or except when he considered it his duty to do so.

It cannot be denied that courts have power to interrupt counsel, when in their opinion the correctness of proceeding requires it. In this, as in everything else, they may err. They may sometimes act under the influence of momentary passion or irritation, to which they in common with other men are liable. But unless their conduct in such cases, though improper or ill-judged, be clearly shown to proceed, not from human infirmity, but from improper motives, it cannot be imputed to them as an offence, much less as a crime or misdemeanor.

Lastly, this respondent is charged under this article, with an "indecent solicitude, manifested by him, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice." This is another charge of which it is impossible to give a precise refutation, and to a general denial of which, this respondent must therefore confine himself. He denies that he felt any solicitude whatever for the conviction of the traverser; other than the general wish natural to every friend of truth, decorum, and virtue, that persons guilty of such offences, as that of which the traverser stood indicted, should be brought to punishment for the sake of example. He has no hesitation to acknowledge, that his indignation was strongly excited, by the atrocious and profligate libel which the traverser was charged with having written and published. This indignation, he believes, was felt by every virtuous and honorable man in the community, of every party, who had read the book in question, or become acquainted with its contents. How properly it was felt, will appear from the book itself, which this respondent has ready to produce to this honorable court; from the parts of it incorporated into the indictment now under consideration; and from further extracts contained in the paper marked exhibit No. 6, which this respondent prays leave to make part of this his answer. He admits, and it can never be to him a subject of self-reproach or a cause of regret, that he partook largely in this general indignation, but he denies that it in any manner influenced his conduct towards the traverser, which was regulated by a conscientious regard to his duty and the laws. He moreover contends, that a solicitude to procure the conviction of the traverser, however unbecoming his character as a judge, would not have been an offence, had he felt it; unless it had given rise to some misconduct on his part. Intentions and feelings, unless accompanied by actions, do not constitute crimes in this country; where the guilt or innocence of men is not judged of by their wishes and solicitudes, but by their conduct and its motives. And this respondent thinks it his duty, on this occasion, to enter his solemn protest against the introduction in this country of those arbitrary principles, at once the offspring and the instruments of despotism, which would make "high crimes and misdemeanors" to consist in "rude and contemptuous expressions," in "vexatious interruptions of counsel," and in the manifestation of "indecent solicitude" for the conviction of a most notorious offender. Such conduct is, no doubt, improper and unbecoming in any person, and much more so in a judge: but it is too vague, too uncertain, and too susceptible of forced interpretations, according to the impulse of passion or the views of policy, to be admitted into the class of punishable offences, under a system of law whose certainty and precision in the definition of crimes is its greatest glory, and the greatest privilege of those who live under its sway.

In concluding his defence against those charges contained in the fourth article of impeachment, he declares, that his whole conduct in that trial was regulated by a strict regard to the principles of law, and by an honest desire to do justice between the United States and the party accused. He felt a sincere wish, on the one hand, that the traverser might establish his innocence, by those fair and sufficient means which the law allows; and a determination, on the other, that he should not, by subterfuges and frivolous pretences, sport with the justice of the country, and evade that punishment of which, if guilty, he was so proper

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an object. These intentions, he is confident, were legal and laudable; and if, in any part of his conduct, he swerved from this line, it was an error of his judgment and not of his heart.

And the said respondent for plea to the said fourth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fourth article is alleged against him, and this he prays, may be inquired of by this honorable Court, in such manner as law and justice shall seem to require.

The fifth article of impeachment charges this respondent with having awarded "a capias against the body of the said James Thompson Callender, indicted for an offence *not capital*, whereupon the said Callender was arrested and committed to *close* custody, contrary to law in that case made and provided."

This charge is rested, 1st, on the act of Congress of September 24, 1789, entitled "An act to establish the judicial courts of the United States," by which it is enacted "that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process, in the State where such offender may be found." And, 2dly, on a law of the State of Virginia, which is said to provide "that upon *presentment* by any grand jury, of an offence *not capital*, the court shall order the clerk to issue a *summons* against the person or persons so offending, to appear and answer such presentment at the *next* court." It is contended, in support of this charge, that the act of Congress above-mentioned made the State law the rule of proceeding, and that the State law was violated by issuing a capias against Callender, instead of a summons.

The first observation to be made on this part of the case is, that the date of the law of Virginia is not mentioned in the article. A very material omission! For it cannot be contended, that by the act of Congress in question, which was passed for establishing the laws of the United States, and regulating their proceedings, it was intended to render those proceedings dependent on all *future* acts of the State Legislatures. The intention certainly was to adopt, to a certain limited extent, the regulations existing in the States at the time of passing the act. Consequently, a law of Virginia, passed after this act, can have no operation on the proceedings under it. But by referring to the law of Virginia in question, it will be found to bear date on November 13, 1792, more than three years after this act of Congress, by which it is said to have been adopted. But the omission of the date of this law of Virginia is not the most material oversight which has been made in citing it. Its title is, "An act directing the method of proceeding against free persons charged with certain crimes," &c., and it enacts, section 28th, "that upon presentment made by the grand jury, of an offence not capital, the court shall order the clerk to issue a summons, or *other proper process*, against the person or persons so presented, to appear and answer at the next court." It will be observed that these words, "or other proper process," which leave it perfectly in the discretion of the court what process shall issue, provided it be such as is proper for bringing the offender to answer to the presentment, are omitted in this article of impeachment.

From these words it is perfectly manifest that the law of Virginia, admitting it to apply, did not order a summons to be issued, but left it perfectly in the discretion of the court to issue a summons, or such other process as they should judge proper. It is, therefore, a sufficient answer to this article to say, that this respondent considered a capias as the proper process, and therefore ordered it to issue; which he admits that he did immediately after the presentment was found against the said Callender by the grand jury.

This he is informed, and expects to prove, has been the construction of this law by the courts of Virginia, and their general practice. Indeed it would be most strange if any other construction or practice had been adopted. There are many offences not capital, which are of a very dangerous tendency, and on which very severe punishment is inflicted by the laws of Virginia; and to enact by law that in all such cases, however notorious or profligate the offenders might be, the courts should be obliged, after a presentment by a grand jury, to proceed against them by summons, would be to enact, that as soon as their guilt was rendered extremely probable, by the presentment of a grand jury, they should receive regular notice to escape from punishment by flight or concealment.

It will also appear, as this respondent believes, by a reference to the laws and practice of Virginia, into which he has made all the inquiries which circumstances and the shortness of time allowed him for preparing his answer would permit, that all the cases in which a summons is considered as the only proper process, are cases of petty offences, which, on the presentment of a grand jury, are to be tried by the court in a summary way, without the intervention of a petit jury. Therefore these provisions had no application to the case of Callender, which could be no otherwise proceeded on than by indictment, and trial on the indictment by a petit jury.

It must be recollected that the act of Congress of September 24, 1789, enacts, section 14, "that the courts of the United States shall have power to issue writs of scire facias, habeas corpus, *and all other writs* not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of laws." Consequently, the circuit court, where the proceedings in question took place, had power to issue a capias against the traverser, on the presentment, unless the State law above-mentioned governed the case, and contained something to restrain the issuing of that writ in such a case. This respondent contends, for the reasons above stated, that this State law neither applied to the case, nor contained anything to prevent the issuing of a capias, if it had applied.

Thus it appears that this respondent, in order-

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ing a capias to issue against Callender, decided correctly, as it certainly was his intention to do. But he claims no other merit than that of upright intention in this decision; for when he made the decision, he was utterly ignorant that such a law existed in Virginia; and declares he never heard of it till this article was reported by a committee of the House of Representatives during the present session of Congress. This law was not mentioned on the trial either by the counsel or the traverser, or by Judge Griffin, who certainly had much better opportunities of knowing it than this respondent, and who, no doubt, would have cited it had they known it and considered it as applicable to the case. This respondent well knows that, in a criminal view, ignorance of the law excuses no man in offending against it; but this maxim applies not to the decision of a judge; in whom ignorance of the law in general would certainly be a disqualification for this office, though not a crime; but ignorance of a particular act of assembly, of a State where he was an utter stranger, must be considered as a very pardonable error, especially as the counsel for the prisoner, to whose case that law is supposed to have applied, forebore or omitted to cite it; and as a judge of the State, always resident in it. and long conversant with its local laws, either forgot this law, or considered it as inapplicable.

Such is the answer which this respondent makes to the fifth article of impeachment. If he erred in this case, it was through ignorance of the law, and surely ignorance under such circumstances cannot be a crime, much less a crime and misdemeanor, for which he ought to be removed from his office. If a judge were impeachable for acting against law from ignorance only, it would follow that he would be punished in the same manner for deciding against law wilfully, and for deciding against it through mistake. In other words, there would be no distinction between ignorance and design, between error and corruption.

And the said respondent, for plea to the said fifth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fifth article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The sixth article of impeachment alleges that this respondent, "with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to the law in that case made and provided."

This charge also is founded, 1st, on the act of Congress of September 24, 1789, above-mentioned, which enacts, section 34, "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise provide, shall be regarded as the rules of decision, in trials at *common law*, in the courts of the United States, in cases where they apply;" and, 2dly, on a law of the State of Virginia, which is supposed to provide, "that in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next preceding that during which such presentment shall have been made." This law, it is contended, is made the rule of decision by the above-mentioned act of Congress, and was violated by the refusal to continue the case of Callender till the next term.

In answer to this charge this respondent declares, that he was at the time of making the above-mentioned decision wholly ignorant of any such law of Virginia as that in question; that no such law was adduced or mentioned by the counsel of Callender, in support of their motion for a continuance; neither when they first made it, before this respondent sitting alone, nor when they renewed it, after Judge Griffin had taken his seat in court; that no such law was mentioned by Judge Griffin, who concurred in overruling the motion for a continuance and ordering on the trial; which he could not have done had he known that such a law existed, or considered it as applicable to the case; and that this respondent never heard of any such law until the articles of impeachment now under consideration were reported, in the course of the present session of Congress. by a committee of the House of Representatives.

A judge is certainly bound to use all proper and reasonable means of obtaining a knowledge of the laws which he is appointed to administer; but, after the use of such means, to overlook, misunderstand, or remain ignorant of some particular law, is at all times a very pardonable error. It is much more so in the case of a Judge of the Supreme Court of the United States, holding a circuit court in a particular State, with which he is a stranger, and with the local laws of which he can have enjoyed but very imperfect opportunities of becoming acquainted. It was foreseen by Congress, in establishing the circuit courts of the United States, that difficulties and inconveniences must frequently arise from this source, and to obviate such difficulties, it was provided that the district judge of each State, who having been a resident of the State, and a practitioner in its courts, had all the necessary means of becoming acquainted with its local laws, should form a part of the circuit court in his own State. The Judge of the Supreme Court is expected, with reason, to be well versed in the general laws; but the local laws of the State form the peculiar province of the district judge, who may be justly considered as particularly responsible for their due observance. If, in the case in question, this respondent overlooked or misconstrued any local law of the State of Virginia, which ought to have governed the case, it was equally overlooked and misunderstood, not only by the prisoner's counsel who made the motion, and whose peculiar duty it was to know the law and bring it into the view of the court, but also by the district judge, who had the best opportunities of knowing and understanding it, and in whom, nevertheless, this oversight or mistake is considered as a venal error,

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while in this respondent it is made the ground of a criminal charge.

This respondent further states, that after the most diligent and the most extensive inquiry which the time allowed for preparing this answer would permit, he can find no law in Virginia which expressly enacts, that "in cases not capital, 'the offender shall not be held to answer any presentment of a grand jury, until the court next 'succeeding that during which such presentment 'shall have been made." This principle he supposes to be an inference drawn by the authors of the articles of impeachment. from the law of Virginia mentioned in the answer to the preceding article, the law of November 15th, 1792, which provides "that upon presentment made by the 'grand jury of an offence not capital, the court 'shall order the clerk to issue a summons, or other 'proper process, against the person or persons so 'presented, to appear and answer such present'ment at the NEXT court." This law, he conceives, does not warrant the inference so drawn from it, because it speaks of *presentments* and not of *indictments*, which are very different things; and is, as he is informed, confined by practice and construction, in the State of Virginia, to cases of small offences, which are to be tried by the court itself, upon the presentment, without an indictment or the intervention of a petit jury. But, for cases, like that of Callender, where an indictment must follow the presentment, this law made no provision. Further, the State laws are directed by the above-mentioned act of Congress, to be the rule of decision in the courts of the United States only "in cases where they apply." Whether they apply or not to a particular case, is a question of law, to be decided by the court where such case is pending, and an error in making the decision is not a crime, nor even an offence, unless it can be shown to have proceeded from improper motives. This respondent is of opinion that the law in question did not apply to the case of Callender, for the reasons stated above; and, therefore, that it would have been his duty to disregard it, even had it been made known to him by the counsel for the traverser.

And, in the last place, he contends, that the law of Virginia in question, is not adopted by the above-mentioned act of Congress as the rule of decision, in such cases as that now under consideration. That act does, indeed, provide: "that 'the laws of the several States, except where the 'Constitution, treaties, or statutes of the United 'States shall otherwise provide, shall be regarded 'as rules of decision in trials at *common law*, in 'the courts of the United States, in cases where 'they apply." But this provision, in his opinion, can relate only to rights acquired under the State laws which come into question *on* the trial; and not to forms of process or modes of proceeding, anterior or preparatory to the trial. Nor can it, as this respondent apprehends, have any application to indictments for offences against the statutes of the United States, which cannot with any propriety be called "trials at common law." It relates merely, in his opinion, to civil rights acquired under the State laws; which by virtue of this provision are, when they come in question in the courts of the United States, to be governed by the laws under which they accrued.

If in these opinions this respondent be incorrect, it is an honest error: and he contends that neither such an error in the construction of a law, nor his ignorance of a local State law which he had no opportunity of knowing, and of which the counsel for the party whose case it is supposed to have affected were equally ignorant, can be considered as an offence liable to impeachment, or to any sort of punishment or blame.

And for plea to the said sixth article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The seventh article of impeachment relates to some conduct of this respondent in his judicial capacity, at a circuit court of the United States held at Newcastle, in the State of Delaware, in June, 1800. The statement of this conduct, made in the article, is altogether erroneous; but if it were true, this respondent denies that it contains any matter for which he is liable to impeachment. It alleges that, "disregarding the duties of his office, he did descend from the dignity of a judge, and stoop to the level of an informer." This high offence consisted, according to the article, first, "in refusing to discharge the grand jury although 'entreated by several of the said jury to do so." Secondly, in "observing to the said grand jury, 'after the said grand jury had regularly declared 'through their foreman, that they had found no 'bills of indictment, and had no presentments to 'make, that he the said Samuel Chase understood ''that a highly seditious temper had manifested 'itself in the State of Delaware, among a certain 'class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer 'was ——." Thirdly, "in then checking himself 'as if sensible of the indecorum which he was 'committing." Fourthly, in adding "that it might 'be assuming too much to mention the name of 'this person; but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect. And, fifthly, "in authoritatively enjoining on the District Attorney of the 'United States, with intention to procure the 'prosecution of the printer in question, the necessity of procuring a file of the papers to which he 'alluded, and by a strict examination of them to 'find some passage which might furnish the 'groundwork of a prosecution against the 'printer."

These charges amount in substance to this: that the respondent refused to discharge a grand jury, on their request, which is every day's practice, and which he was bound to do, if he believed that the due administration of justice required

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their longer attendance; that he directed the attention of the grand jury to an offence against a statute of the United States, which, he had been informed, was committed in the district; and that he desired the District Attorney to aid the grand jury, in their inquiries concerning the existence and nature of this offence. By these three acts, each of which it was his duty to perform, he is alleged "to have degraded his high judicial functions, and tended to impair the public confidence in, and respect for, the tribunals of justice, so essential to the public welfare."

That this honorable Court may be able to form correctly its judgment, concerning the transaction mentioned in this article, this respondent submits the following statement of it, which he avers to be true, and expects to prove:

On the 27th day of June, 1800, this respondent, as one of the associate justices of the Supreme Court of the United States, presided in the circuit court of the United States, then held at Newcastle, in and for the district of Delaware, and was assisted by Gunning Bedford, Esq., then district judge of the United States for that district. At the opening of the court on that day, this respondent, according to his duty and his uniform practice, delivered a charge to the grand jury, in which he gave in charge to them several statutes of the United States, and, among others, an act of Congress, passed July 14th, 1798, entitled "An act in addition to the act for the punishment of certain crimes against the United States," and commonly called the "sedition law." He directed them to inquire concerning any breaches of those statutes, and especially of that commonly called the sedition law, within the district of Delaware.

On the same day, before the usual hour of adjournment, the grand jury came into court, and informed the court that they had found no indictment or presentment, and had no business before them, for which reason they wished to be discharged. This respondent replied, that it was earlier than the usual hour of discharging a grand jury; and that business might occur during the sitting of the court. He also asked them if they had no information of publications within the district, that came under the sedition law, and added, that he had been informed that there was a paper called the *Mirror*, published at Wilmington, which contained libellous charges against the Government and President of the United States: that he had not seen that paper, but it was their duty to inquire into the subject; and if they had not turned their attention to it, the attorney for the district would be pleased to examine a file of that paper, and if he found anything that came within the sedition law, would lay it before them." This is the substance of what the respondent said to the grand jury on that occasion, and, he believes, nearly his words; on the morning of the *next day* they came into court and declared that they had no presentments or indictments to make, on which they were immediately discharged. The whole time, therefore, for which they were detained, was twenty-four hours, far less than is generally required of grand juries.

In these proceedings, this respondent acted according to his sense of what the duties of his office required. It certainly was his duty to give in charge to the grand jury, all such statutes of the United States as provided for the punishment of offences, and, among others, that called the sedition act; into all offences against which act, while it continued in force, the grand jury were bound by their oaths to inquire. In giving it in charge, together with the other acts of Congress for the punishment of offences, he followed, moreover, the example of the other judges of the Supreme Court, in holding their respective circuit courts. He also contends, and did then believe, that it was his duty, when informed of an offence, which the grand jury had overlooked, to direct their attention towards it, and to request for them, and even to require, if necessary, the aid of the District Attorney in making their inquiries. In thus discharging what he conceives to be his duty, even if he committed an error in so considering it, he denies that he committed or could commit any offence whatever.

With respect to the remarks which he is charged by this article with having made to the grand jury relative to "a highly seditious temper, which he had understood to have manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington," and relative to "a most seditious printer, residing in Wilmington, unrestrained by any principle of virtue, and regardless of social order;" this respondent does not recollect or believe, that he made any such observations. But if he did make them, it could not be improper in him to tell the jury that he had received such information, if in fact he had received it; which was probably the case, though he cannot recollect it with certainty at this distance of time. That this information, if he did receive it, was correct so far as regarded the printer in question, will fully appear from a file of the paper called the "Mirror of the Times," &c., published at Wilmington, Delaware, from February 5th to March 19th, 1800, inclusive, which he has lately obtained, and is ready to produce to this honorable Court, when necessary, and some extracts from which are contained in the exhibits severally marked No. 7, which he prays leave to make part of this his answer.

And for plea to the said seventh article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said seventh article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The eighth article of impeachment charges that this respondent, "disregarding the duties and dignity of his official character did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury for the purpose of delivering to the said grand jury an intemperate

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'and inflammatory political harangue, with intent 'to excite the fears and resentment of the said 'grand jury, and of the good people of Maryland, 'against their State government and constitution," 'and also that this respondent, "under pretence of 'exercising his judicial right to address the grand 'jury as aforesaid, did endeavor to excite the odium 'of the said grand jury, and of the good people of 'Maryland, against the Government of the United 'States, by delivering opinions which were, at that 'time and as delivered by him, highly indecent, 'extra judicial, and tending to prostitute the high 'judicial character with which he was invested to 'the low purpose of an electioneering partisan."

In answer to this charge this respondent admits that he did, as one of the associate justices of the Supreme Court of the United States, preside in a circuit court held at Baltimore in and for the district of Maryland, in May, 1803, and did then deliver a charge to the grand jury, and express in the conclusion of it some opinions as to certain public measures, both of the Government of Maryland and of that of the United States. But he denies that, in thus acting, he disregarded the duties and dignity of his judicial character, perverted his official right and duty to address the grand jury, or had any intention to excite the fears or resentment of any person whatever against the Government and Constitution of the United States or of Maryland. He denies that the sentiments which he thus expressed were "intemperate and inflammatory," either in themselves or in the manner of delivering; that he did endeavor to excite the odium of any person whatever against the Government of the United States, or did deliver any opinions which were in any respect indecent, or which had any tendency to prostitute his judicial character to any low or improper purpose. He denies that he did anything that was unusual, improper, or unbecoming in a judge, or expressed any opinions, but such as a friend to his country and a firm supporter of the Governments, both of the State of Maryland and of the United States, might entertain. For the truth of what he here says, he appeals confidently to the charge itself: which was read from a written paper now in his possession ready to be produced. A true copy of all such parts of this paper as relate to the subject matter of this article of impeachment, is contained in the exhibit marked No. 8, which he prays leave to make part of this his answer. That part of it which relates to the article now under consideration is in these words:

"You know, gentlemen, that our State and national institutions were framed to secure to every member of the society *equal* liberty and *equal* rights; but the late alteration of the Federal Judiciary, by the abolition of the office of the sixteen circuit judges, and the *recent* change in our State constitution by the establishing *universal* suffrage, *and* the further alteration that is contemplated in our State judiciary. (if adopted,) will in my judgment take away *all security for property and personal liberty.* The independence of the National Judiciary is already shaken to its foundation, and the virtue of the people alone can restore it. The independence of the judges of this State will be entirely destroyed if the bill for the abolishing the two supreme courts should be ratified by the next General Assembly. The change of the State constitution, by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property and all security to personal liberty; and our republican constitution will sink into a *mobocracy*, the worst of all possible governments.

"I can only lament that the *main pillar* of our State constitution has been thrown down by the establishment of *universal suffrage.* By this shock *alone* the whole building totters to its base, and will crumble into ruins before *many* years elapse, unless it be *restored* to its original state. If the independency of your State judges, which your bill of rights wisely declares 'to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people,' shall be taken away, by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole State constitution, and there will be nothing left in it worthy the care or support of freemen."

Admitting these opinions to have been incorrect and unfounded, this respondent denies that there was any law which forbids him to express them in a charge to a grand jury, and he contends that there can be no offence without the breach of some law. The very essence of despotism consists in punishing acts which, at the time when they were done, were forbidden by no law. Admitting the expression of political opinions by a judge, in his charge to a grand jury, to be improper and dangerous, there are many improper and very dangerous acts, which not being forbidden by law, cannot be punished. Hence the necessity of new penal laws, which are from time to time enacted for the prevention of acts not before forbidden, but found by experience to be of dangerous tendency. It has been the practice in this country, ever since the beginning of the Revolution which separated us from Great Britain, for the judges to express from the bench, by way of charge to the grand jury, and to enforce to the utmost of their ability such political opinions as they thought correct and useful. There have been instances in which the Legislative bodies of this country have recommended this practice to the judges; and it was adopted by the judges of the Supreme Court of the United States as soon as the present Judicial system was established. If the Legislature of the United States considered this practice as mischievous, dangerous, or liable to abuse, they might have forbidden it by law; to the penalties of which, such judges as might afterwards transgress it, would be justly subjected. By not forbidding it, the Legislature has given to it an implied sanction; and for that Legislature to punish it now by way of impeachment would be to convert into crime, by an *ex post facto* proceeding, an act which, when it was done and at all times before, they had themselves virtually declared to be innocent. Such conduct would be utterly subversive of the fundamental

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principle on which free government rests; and would form a precedent for the most sanguinary and arbitrary persecutions under the forms of law.

Nor can the incorrectness of the political opinions thus expressed have any influence in deciding on the guilt or innocence of a judge's conduct in expressing them. For if he should be considered as guilty or innocent, according to the supposed correctness or incorrectness of the opinion thus expressed by him, it would follow that error in political opinion, however honestly entertained, might be a crime; and that a party in power might, under this pretext, destroy any judge who might happen, in a charge to a grand jury, to say something capable of being construed by them into a political opinion adverse to their own system.

There might be some pretence for saying, that for a judge to utter seditious sentiments with intent to excite sedition, would be an impeachable offence, although such a doctrine would be liable to the most dangerous abuses, and is hostile to the fundamental principles of our Constitution, and to the best established maxims of our criminal jurisprudence. But, admitting this doctrine to be correct, it cannot be denied that the seditious intention must be proved clearly, either by the most necessary implication from the words themselves, or by some overt acts of a seditious nature connected with them. In the present case no such acts are alleged, but the proof of a seditious intent must rest on the words themselves. By this rule this respondent is willing to be judged. Let the opinions which he delivered be examined, and if the members of this honorable Court can lay their hands on their hearts, in the presence of God, and say that these opinions are not only erroneous, but seditious also, and carry with them internal evidence of an intention in this respondent to excite sedition, either against the State or General Government, he is content to be found guilty.

In making this examination, let it be borne in mind, that to oppose a depending measure by endeavoring to convince the public that it is improper, and ought not to be adopted; or to promote the repeal of a law already passed by endeavoring to convince the public that it ought to be repealed, and that such men ought to be elected to the Legislature as will repeal it; to attempt, in fine, the correction of public measures by arguments tending to show their improper nature, or destructive tendency, never has been or can be considered as sedition in any country where the principles of law and liberty are respected; but is the proper and usual exercise of that right of opinion and speech which constitutes the distinguishing feature of free government. The abuse of this privilege by writing and publishing as facts malicious falsehoods, with intent to defame, is punishable as libellous in the courts having jurisdiction of such offences; where the truth or falsehood of the facts alleged, and the malice or correctness of the intention form the criterion of guilt and innocence. But the character of libellous, much less of seditious, has never been applied to the expression of opinions concerning the tendency of public measures, or to arguments urged for the purpose of opposing them, or of effecting their repeal. To apply the doctrine of sedition or of libels to such cases, would instantly destroy all liberty of speech, subvert the main pillars of free government, and convert the tribunals of justice into engines of party vengeance. To condemn a public measure, therefore, as pernicious in its tendency; to use arguments for proving it to be so, and to endeavor by these means to prevent its adoption, if still depending, or to procure its repeal in a regular and Constitutional way, if it be already adopted, can never be considered as sedition, or in any way illegal.

The first opinion expressed to the grand jury on the occasion in question, by this respondent, was, that "the late alteration of the Federal Judiciary, by the abolition of the office of the sixteen circuit judges; and the recent change in our State Constitution, by establishing universal suffrage; and the further alteration that was then contemplated in our State Judiciary, if adopted," would, in the judgment of this respondent, "take away all security for property and personal liberty." That is, "these three measures, if the last of them, which is still depending, should be adopted, will, in my opinion, form a system whose pernicious tendency must be, to take away the security for our property and our personal liberty, which we have hitherto derived from the salutary restrictions laid by the authors of our Constitution on the right of suffrage, and from the present constitution of our courts of justice." What is this but an argument to persuade the people of Maryland to reject the alterations in their State Judiciary which were then proposed; which this respondent, as a citizen of that State, had a right to oppose; and the adoption of which depended on the Legislature then to be chosen? If this be sedition, then will it be impossible to express an opinion opposite to the views of the ruling party of the moment, or to oppose any of their measures by argument, without becoming subject to such punishment as they may think proper to inflict.

The next opinion is, that "the independence of the national Judiciary was also shaken to its foundation, and that the virtue of the people alone could restore it." In other words, "The act of Congress for repealing the late circuit court law, and vacating thereby the offices of the judges, has shaken to its foundation the independence of the national Judiciary, and nothing but a change in the representation of Congress, which the return of the people to correct sentiments alone can effect, will be sufficient to produce a repeal of this act, and thereby restore to its former vigor the part of the Federal Constitution which has been thus impaired."

This is the obvious meaning of the expression; and it amounts to nothing more than an argument in favor of that change, which this respondent then thought and still thinks to be very desirable; an argument, the force of which as a patriot he might feel, and which as a free man he had a right to advance.

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The next opinion is, that "the independence of the judges of the State of Maryland would be entirely destroyed if the bill for abolishing the two supreme courts should be ratified by the next General Assembly." This opinion, however incorrect it may be, seems to have been adopted by the people of Maryland, to whom this argument against the bill in question was addressed: for at the next session of the Legislature this bill, which went to change entirely the constitutional tenure of judicial office in the State, and to render the subsistence of the judges dependent on the Legislature, and their continuance in office on the Executive, was abandoned by common consent.

All the other opinions expressed by this respondent, as above mentioned, bear the same character with those already considered. They are arguments addressed to the people of Maryland, for the purpose of dissuading them from the adoption of a measure then depending, and of inducing them, if possible, to restore to its original state that part of their constitution relating to the right of suffrage, by a repeal of the law, which had been made for its alteration.

Such were the objects of this respondent in delivering those opinions, and he contends that they were fair, proper, and legal objects, and that he had a right to pursue them in this way—a right sanctioned by the universal practice of this country, and by the acquiescence of its various Legislative authorities. Such, he contends, is the true and obvious meaning of the opinions which he delivered, and which he believes to be correct. It is not now necessary to inquire into their correctness; but if incorrect, he denies that they contain anything seditious, or any evidence of those improper intentions which are imputed to him by this article of impeachment. He denies that in delivering them to the grand jury he committed any offence, infringed any law, or did anything unusual, or heretofore considered in this country as improper and unbecoming a judge. If this article of impeachment can be sustained on these grounds, the liberty of speech on national concerns, and the tenure of the judicial office under the Government of the United States, must hereafter depend on the arbitrary will of the House of Representatives and the Senate, to be declared on impeachment, after the acts are done, which it may at any time be thought necessary to treat as high crimes and misdemeanors.

And the said Samuel Chase, for plea to the said eighth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said eighth article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

This respondent has now laid before this honorable Court, as well as the time allowed him would permit, all the circumstances of the case, with an humble trust in Providence, and a consciousness that he has discharged all his *official* duties with justice and impartiality, to the best of his knowledge and abilities; and that intentionally he hath committed no crime or misdemeanor, or any violation of the Constitution or laws of his country. Confiding in the impartiality, independence, and integrity of his judges, and that they will patiently hear, and conscientiously determine this case, without being influenced by the spirit of party, by popular prejudice, or political motives, he cheerfully submits himself to their decision.

If it shall appear to this honorable court, from the evidence produced, that he hath acted in his *judicial* character with wilful injustice or partiality, he doth not wish any favor, but expects that the whole extent of the punishment permitted in the Constitution will be inflicted upon him.

If any part of his official conduct shall appear to this honorable court, *stricti juris*, to have been *illegal*, or to have proceeded from *ignorance* or *error* in judgment; or if any part of his conduct shall appear, although not illegal, to have been irregular or improper, but not to have flown from a depravity of heart, or any unworthy motive, he feels confident that this court will make allowance for the imperfections and frailties incidental to man.

He is satisfied that every member of this tribunal will observe the principles of humanity and justice, and will presume him innocent until his guilt shall be established by legal and creditable witnesses, and will be governed in his decision by the moral and Christian rule of rendering that justice to this respondent which he would wish to receive.

This respondent now stands not merely before an earthly tribunal, but also before that awful Being whose presence fills all space, and whose all-seeing eye more especially surveys the temples of justice and religion. In a little time, his accusers, his judges, and himself, must appear at the bar of Omnipotence, where the secrets of all hearts shall be disclosed, and every human being shall answer for his deeds done in the body, and shall be compelled to give evidence against himself, in the presence of an assembled universe. To his Omnipotent Judge, at that awful hour, he now appeals for the rectitude and purity of his conduct, as to all the matters of which he is this day accused.

He hath now only to adjure each member of this honorable Court, by the living God, and in his holy name, to render impartial justice to him, according to the Constitution and laws of the United States. He makes this solemn demand of each member by all his hopes of happiness in the world to come, which he will have voluntarily renounced by the oath he has taken, if he shall wilfully do this respondent injustice, or disregard the Constitution or laws of the United States, which he has solemnly sworn to make the rule and standard of his judgment and decision.

Mr. Randolph, on behalf of the Managers, requested time to consult the House of Representatives, and likewise to be furnished with a copy of the answer of Judge Chase, for the purpose of making a replication to it.

The President said the Senate would take the request into consideration, and make known to

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the House of Representatives such order as should be taken thereon.

Whereupon, the Senate, at the suggestion of the President, retired to their Legislative apartment.

On Wednesday, the 6th instant, the House of Representatives received a copy of the foregoing answer, which was referred to the Managers. On the same day, Mr. RANDOLPH reported a replication to the answer, which was immediately taken into consideration. Several motions were made and rejected, after a short debate, to soften the style; when the replication, as reported, was adopted—yeas 77, nays 34. Whereupon, it was resolved that the Managers be instructed to proceed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

THURSDAY, February 7.

The Court was opened about two o'clock.

Present—the Managers, and Mr. HOPKINSON, of the counsel for Mr. Chase.

Mr. RANDOLPH, on behalf of the Managers, read the replication of the House of Representatives, to the answer of Samuel Chase, as follows:

Replication by the House of Representatives of the United States, to the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment exhibited against him by the said House of Representatives.

The House of Representatives of the United States have considered the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment against him, by them exhibited, in the name of themselves and of all the people of the United States, and observe,

That the said Samuel Chase hath endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations and misrepresentation of facts; that the said answer does give a gloss and coloring utterly false and untrue, to the various criminal matters contained in the said Articles; that the said Samuel Chase did, in fact, commit the numerous acts of oppression, persecution, and injustice, of which he stands accused; and the House of Representatives, in full confidence of the truth and justice of their accusation, and of the necessity of bringing the said Samuel Chase to a speedy and exemplary punishment, and not doubting that the Senate will use all becoming diligence to do justice to the proceedings of the House of Representatives, and to vindicate the honor of the nation, do aver their charge against the said Samuel Chase to be true, and that the said Samuel Chase is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place as shall be appointed for that purpose.

Signed by order, and in behalf of, the said House,

NATH. MACON, *Speaker.*

Attest: JOHN BECKLEY, *Clerk.*

Mr. HOPKINSON requested a copy of the replication, which, the PRESIDENT replied, would be furnished by the Secretary.

Mr. BRECKENRIDGE moved a resolution to the following effect:

That the Secretary be directed to inform the House of Representatives that the Senate will, to-morrow, at twelve o'clock, proceed with the trial of Samuel Chase; which was agreed to without one dissenting voice, 34 members voting for it.

Whereupon, the Senate withdrew to their Legislative apartment.

FRIDAY, February 8.

The Court opened precisely at twelve o'clock.

Present: the Managers, and the House of Representatives, in Committee of the Whole; and Mr. Chase, attended by his counsel, Messrs. MARTIN, HARPER, HOPKINSON, and KEY.

The crier having, agreeably to a prescribed form, notified all those concerned to come forward and make good the charges exhibited against Samuel Chase,

Mr. RANDOLPH, the leading Manager, requested that the witnesses on the part of the prosecution might be called, to ascertain who were present.

They were accordingly called, to the number of twenty-four.

Present: Alexander James Dallas, William Lewis, William Rawle, William S. Biddle, Edward Tilghman, George Read, John Montgomery, John Stephen, John Thomson Mason, Samuel H. Smith, John Taylor, George Hay, William Wirt, and John Heath.

Absent: James Lea, John Crow, Risdon Bishop, Aquila Hall, Philip Stewart, Thomas Hall, Philip N. Nicholas, John Harvie, Meriwether Jones, and James Pleasants.

Mr. RANDOLPH observed that various considerations, which it was unnecessary to detail, induced him, on behalf of the Managers, to move a postponement of the trial till to-morrow, when they hoped to be prepared to proceed with it.

Mr. HARPER said that, on behalf of Judge Chase, he would not object to the motion.

The PRESIDENT informed the Managers that the Senate acceded to their request, and added, that the Senate would attend to-morrow at twelve o'clock, for the purpose of proceeding with the trial.

At the request of Mr. HARPER, the witnesses on the part of Judge Chase were called over, to the number of forty.

Present: John A. Chevalier, David M. Randolph, John Marshall, John Basset, Samuel P. Moore, William C. Frazier, David Robertson, Edward Tilghman, Wm. Meredith, Jared Ingersoll, Samuel Ewing, James Winchester, Walter Dorsey, James P. Boyd, Nicholas Brice, John Purviance, Wm. M. Mechin, Thomas Chase, William H. Winder, William Gwynn, William Rawle, William J. Govane, Gunning Bedford, Nicholas Vandyke, John Hall, jun., Archibald Hamilton, and Thomas Carpenter.

Absent: William Marshall, Edmund Randolph, Robert Gamble, Philip Moore, Cornelius Comegys, John Stewart, and Edward J. Coale.

Not found: John Hopkins, Philip Gooch, William Minor, and Samuel Wheeler.

Sick: Cyrus Griffin. *Dead:* J. C. Barrett.

Whereupon the Court rose.

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SATURDAY, February 9.

The Court was opened precisely at 12 o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel, as mentioned in the proceedings of yesterday.

At a quarter after 12 o'clock, Mr. RANDOLPH, on behalf of the managers, opened the impeachment, as follows:

Mr. President: It becomes my duty to open this cause on behalf of the prosecution. From this duty, however incompetent I feel myself to its performance, at all times, and more especially at this time, as well from the very short period which has been allowed us to consider the long and elaborate plea of the respondent, as from the severe pressure of disease, it does not become me to shrink. The station in which I have been placed calls for the discharge of an important public trust at my hands. It shall be performed to the best of my ability, inadequate as I know that ability to be. When I speak of the short period which has been allowed us, I hope not to be understood as expressing, on our part, any dissatisfaction at the course which has been pursued, or any wish to prolong the time which has been allotted for trial. We are sensible of a disposition in this honorable Court to grant us every indulgence which we ought to ask, and when their attention is called to the precipitate hurry of our preparation, it is only to offer, on behalf of an individual, perhaps a weak apology for the weak defence which he is about to make of the cause confided to his care. A desire for the furtherance of justice and the avoidance of delay, but, above all, an unshaken conviction that we stand on impregnable ground, induce us on this short notice to declare that we are ready to substantiate our accusation, to prove that the respondent is guilty in such manner as he stands impeached.

It is a painful but indispensable task which we are called upon to perform: to establish the guilt of a great officer of Government, of a man, who, if he had made a just use of those faculties which God and Nature bestowed upon him would have been the ornament and benefactor of his country, would have rendered her services as eminent and useful as he has inflicted upon her outrages and wrongs deep and deadly. A character endowed by nature with some of her best attributes, cultivated by education, placed by his country in a conspicuous station, invested with authority whose righteous exercise would have rendered him a terror to the wicked, whilst it endeared him to the wise and good: such a character, presented to the nation in the light in which he now stands, and in which his misdeeds have made it our duty to bring him forward, forms one of the saddest spectacles which can be offered to the public eye. Base is that heart which could triumph over him.

I will now proceed to state the principal points on which we mean to rely, and which we expect to establish by the clearest evidence. In doing this I shall be necessarily led to notice many of the leading statements of the respondent's answer. We will begin with the first article. [Here Mr. R. read that article.] The answer to the first of these charges is by evasive insinuation and misrepresentation, by an attempt to wrest the accusation from its true bearing, the manner and time of delivering the opinion, and the intent with which it was delivered, to the correctness of the opinion itself, which is not the point in issue. And here permit me to remark, that if the Managers of this impeachment were governed only by their own conviction of the course which they ought, necessarily, to pursue, and not by the high sense of duty which they owe to their eminent employers, they would have felt themselves justified in resting their accusation on the admissions of the respondent himself. It is not for the opinion itself, that the respondent is impeached; it is for a daring inroad upon the criminal jurisprudence of his country, by delivering that opinion at a time and in a manner (in writing) before unknown and unheard of. The criminal intent is to be inferred from the boldness of the innovation itself, as well as from other overt acts charged in this article. The admission of the respondent ought to secure his conviction on this charge. He acknowleges he did deliver an opinion, *in writing*, on the question of law, (which it was the right and duty of the jury to determine, as well as the fact,) *before* counsel had been heard in defence of John Fries, the prisoner. I must beg the assistance of one of the gentlemen with whom I am associated, to read this part of the answer. [Mr. Clark accordingly read the reply of Mr. Chase to this charge.] We charge the respondent with a gross departure from the forms, and a flagrant outrage upon the substance of criminal justice, in delivering a written, prejudicated opinion on the case of Fries, tending to bias the minds of the jury against him before counsel had been heard in his defence. The respondent (page 33, of the answer) admits the fact, for he knew that we are prepared to prove it. But he artfully endeavors to shift the argument from the real point in contest, to the soundness of the opinion itself, which, however questionable (and of its incorrectness I entertain no doubt) it is not our object, at this time, to examine. For the truth of this opinion and, as it would seem, for the propriety of this proceeding, the respondent takes shelter under precedent. He tells you, sir, this doctrine had been repeatedly decided on solemn argument and deliberation, twice in the same court, and once in that very case. What is this, but a confession, that he himself hath been the first man to venture on so daring an innovation on the forms of our criminal jurisprudence? To justify himself for having given a written opinion *before* counsel had been heard for the prisoner, he resorts to the example set by his predecessors, who had delivered the customary verbal opinion, after solemn arguments and deliberation. And what do these repeated arguments and solemn deliberations prove, but that none of his predecessors ever arrogated to themselves the monstrous privilege of breaking in upon those sacred institutions, which guard the life and liberty of the citi-

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zen from the rude inroads of powerful injustice? The learned and eminent judges, to whose example he appeals, for justification, decided *after*, and not *before* a hearing. They exercised the acknowledged privilege of the bench in giving an opinion to the jury on the question of law, after it had been fully argued by counsel, on both sides. They never attempted, by previous and written decisions, to wrest from the jury their undeniable right, of deciding upon the law as well as the fact, necessarily involved in a general verdict, to usurp the decision to themselves, or to prejudice the minds of the jurors against the defence. I beg this honorable Court never to lose sight of the circumstance, that this was a *criminal* trial, for a *capital* offence, and that the offence charged was *treason*. The respondent also admits, that the counsel for Fries, not meaning to contest the truth of the facts charged in the indictment, rested their defence altogether upon the law, which he declared to have been settled in the cases of Vigol and Mitchell: a decision which, although it might be binding on the court, the jury were not obliged to respect, and which the counsel had a right to controvert before them, the sole judges, in a case of that nature, both of the *law* and *fact*. I do not deny the right of the court to explain their sense of the law to the jury, after counsel have been heard; but I do deny that the jury are bound by such exposition. If they verily believed that the overt acts charged in the indictment did not amount to treason, they could not without a surrender of their consciences into the hands of the court, without a flagrant violation of all that is dear and sacred to man, bring in a verdict of guilty. I repeat that in such a case the jury are not only the sole judges of the law, but that where their verdict is favorable to the prisoner, they are the judges without appeal. In civil cases, indeed, the verdict may be set aside and a new trial granted; but in a criminal prosecution, the verdict, if not guilty, is final and conclusive. It is only when the finding of the jury is unfavorable to the prisoner, that the humane provisions of our law, always jealous of oppression when the life or liberty of the citizen is at stake, permits the verdict to be set aside, and a new trial granted to the unhappy culprit. When I concede the right of the court to explain the law to the jury in a criminal, and especially in a capital case, I am penetrated with a conviction that it ought to be done, if at all, with great caution and delicacy. I must beg leave to take, before this honorable Court, what appears to my unlettered judgment, to be a strong and obvious distinction. There is, in my mind, a material difference between a naked definition of law, the application of which is left to the jury, and the application by the court, of such definition to the particular case, upon which the jury are called upon to find a general verdict. Surely, there is a wide and evident distinction between an abstract opinion upon a point of law, and an opinion applied to the facts admitted by the party accused, or proven against him. But it is alleged, on behalf of the respondent, that the law in this case was settled, and upon this he rests his defence. Will it be pretended by any man that the law of treason is better established than the law of murder? What is treason, as defined by the Constitution? Levying war against the United States, or adhering to their enemies, giving them aid and comfort. What is murder? Killing with malice aforethought, a definition at least as simple and plain as the other. And because what constitutes murder has been established and settled through a long succession of ages and adjudications, has any judge, for that reason, been ever daring enough to assert that counsel should be precluded from endeavoring to convince the jury that the overt acts, charged in the indictment, did not amount to murder? Is a court authorized to say, that, because killing with deliberate malice is murder, therefore the act of killing, admitted by the prisoner's counsel, or established by evidence, was a killing with malice prepense, and did constitute murder? I venture to say that an instance cannot be adduced, familar as the definition of murder is even to the most ignorant, numerous as have been the convictions for that atrocious crime, where counsel have been deprived of their unquestionable right to address the jury on the law, as well as on the fact. Much less can an instance be produced, in any trial for a capital offence, where they have found themselves anticipated in the question of law by a written opinion, to be taken by the jury out of court, as the landmark by which their verdict is to be directed. I have always understood, that, even in a civil case, when the jury carried out with them a written paper, relating to the matter in issue, and which was not offered, or permitted to be given in evidence to them, it was sufficient to vitiate their verdict, and good ground for a new trial. This written opinion of the court, delivered previous to a hearing of the cause, is a novelty to our laws and usages. It would be reprehensible in any case, but in a criminal prosecution, for a capital offence, and that offence treason, (where, above all, oppression and arbitrary proceedings on the part of courts are most to be dreaded and guarded against,) it cannot be too strongly reprobated, or too severely punished.

What would be said of a judge who in a trial for murder, where the facts were admitted (or proved) should declare from the bench, that whatever argument counsel had to offer, in relation to the facts, may be addressed to the jury, but that they should not attempt to convince the jury that such facts came not within the law, did not amount to murder, but that everything which they had to say upon the question of law, should be addressed to the court, and to the court only. Can you figure to yourselves a spectacle more horrible?

We are prepared to prove, what the respondent has in part admitted, that he "restricted the counsel of Fries from citing such English authorities as they believed apposite, and certain statutes of the United States, which they deemed material to their defence:" that the prisoner was debarred by him, from his Constitutional privilege of addressing the jury, through his counsel, on the law, as

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well as the fact, involved in the verdict which they were required to give, and that he attempted to wrest from the jury their undeniable right to hear argument, and, consequently, to determine upon the question of law which in a criminal case it was their sole and unquestionable province to decide. These last charges (except as far as relates to the laws of the United States) are impliedly admitted by the respondent. He confesses that he would not admit the prisoner's counsel to cite certain cases, "because they could not inform but might deceive and mislead the jury." Mr. President, it is the noblest trait in this inestimable trial, that in criminal prosecutions, where the verdict is general, the jury are the sole judges, and, where they acquit the prisoner, the judges, without appeal, both of law and fact. And what is the declaration of the respondent but an admission that he wished to take from the jury their indisputable privilege to hear argument and determine upon the law, and to usurp to himself that power which belongs to them, and to them *only*? It is one of the most glorious attributes of jury trial, that in criminal cases (particularly such as are capital) the prisoner's counsel may (and they often do) attempt "to deceive and mislead the jury." It is essential to the fairness of the trial, that it should be conducted with perfect freedom. It is congenial to the generous spirit of our institutions to lean to the side of an unhappy fellow-creature, put in jeopardy, of limb, or life, or liberty. The free principles of our Governments, individual and federal, teach us to make every humane allowance in his favor, to grant him, with a liberality unknown to the narrow and tyrannous maxims of most nations, every indulgence not inconsistent with the due administration of justice. Hence, a greater latitude is permitted to the prosecutor. The jury, upon whose verdict the event is staked, are presumed to be men capable of understanding what they are called upon to decide, and the Attorney for the State, a gentleman learned in his profession, capable of detecting and exposing the attempts of the opposite counsel to mislead and deceive. There is, moreover, the court, to which, in cases of difficulty, recourse might be had. But what indeed is the difficulty arising from the law in criminal cases, for the most part? What is to hinder an honest jury from deciding, especially after the aid of an able discussion, whether such an act was killing with malice prepense, or such other overt acts set forth in an indictment, constituted a levying war against the United States; and to what purpose has treason been defined by the Constitution itself, if overbearing arbitrary judges are permitted to establish among us the odious and dangerous doctrine of constructive treason? The acts of Congress which had been referred to on the former trial, but which the respondent said he would not suffer to be cited again, tended to show that the offence committed by Fries did not amount to treason; that it was a misdemeanor only, already provided for by law, and punishable with fine and imprisonment. The respondent indeed denies this part of the charge, but he justifies it even (as he says) if it be proved upon him. And are the laws of our own country (as well as foreign authorities) not to be suffered to be read in our courts, in justification of a man whose life is put in jeopardy!

I now proceed to the second article—the case of Basset, whose objection to serve on Callender's jury was overruled by the judge, who stands arraigned before this honorable Court. In the 30th page of the respondent's answer it is stated, that a new trial was granted to Fries, "upon the ground (as this respondent understood and believes) that one of the jurors, after he was summoned, but before he was sworn, had made some declaration unfavorable to the prisoner." It will be remembered that both the trials of Fries preceded that of Callender. Upon what principle, then, could the respondent declare Basset a good juryman, when he was apprized of the previous decision in the case of Fries, by his brother judge, whom he professes to hold in such high reverence, and by whose decision, on his own principles, he must have held himself bound. For surely the same exception to a juryman, which would furnish ground for a new trial, ought to be a cause of setting aside such juror, if it be taken previous to his being sworn.

From the respondent's own showing it appears, that the question put to the jurymen generally, and to Basset among others, was, whether they "had formed *and* delivered any opinion upon the subject-matter then to be tried, or concerning the charges contained in the indictment." And here let me refer the court to the question which the respondent put to the jurors in the case of Fries. It was, "whether they had ever formed, *or* delivered any opinion as to his guilt, or innocence, or that he ought to be punished?" How is this departure from the respondent's own practice, this inconsistency with himself, to be reconciled? In the one case the question is put in the disjunctive; "have you formed *or* delivered?" In the other, it is in the conjunctive, "formed *and* delivered;" besides other material difference in the terms and import of the two questions. Wherefore, I repeat, this contradiction of himself? But, Mr. President, we shall be prepared to prove that the words "*subject-matter then to be tried*," were not comprised in the question propounded to Basset, or to any of the other jurors. The question was, as will be shown in evidence, "have you ever formed *and* delivered any opinion *concerning the charges contained in the indictment*?" And it is remarkable that the whole argument of the respondent upon this point, goes to justify the question which was *actually* put, and which he probably expected we should prove that he did put, rather than that which he himself declares to have been propounded by him. Such a question must necessarily have been answered in the negative. Basset could never have seen the indictment: and although his mind might have been made up on the *book*, whatever opinion he might have formed and delivered as to the guilt of Callender, or however desirous he might have been of procuring his conviction and punishment, still,

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not having seen the indictment, he could not divine what passages of the book were made the subject of charges, and, by the criterion established by the judge, he was a good juror. But if the juror's mind was thus prejudiced against the book and the writer, was he, merely because he had not seen the indictment, competent to pass between him and his country on the charges contained in it, and extracted out of the book? And even if the question had been such as the respondent states, yet being put in the conjunctive, the most inveterate foe of the traverser who was artful, or cautious enough to forbear the expression of his enmity, would thereby have been admitted as competent to pass between the traverser and his country in a criminal prosecution.

The third article relates to the rejection of John Taylor's testimony. This fact also is admitted, and an attempt is made to justify it, on the ground of its "*irrelevancy*," on the pretext that the witness could not prove the whole of a particular charge. By recurring to "The Prospect Before Us," a book, which, with all its celebrity, I never saw till yesterday, I find this charge consists of two distinct sentences. Taken separately the respondent asserts that they mean nothing; taken together, a great deal. And because the respondent undertook to determine (without any authority as far as I can learn) that Colonel Taylor could not prove the whole, that is both sentences, he rejected his evidence entirely, for "*irrelevancy*." Might not his testimony have been relevant to that of some other witness, on the same, or on another charge? I appeal to the learning and good sense of this honorable Court, whether it is not an unheard of practice (until the present instance) in a criminal prosecution, to declare testimony inadmissible because it is not expected to go to the entire exculpation of the prisoner? Does it not daily occur in our courts, that a party accused, making out a part of his defence by one witness and establishing other facts by the evidence of other persons; does it not daily occur that the testimony of various witnesses sometimes to the same, and sometimes to different facts, does so *relieve* and support the whole case, as to leave no doubt of the innocence or guilt of the accused, in the minds of the jury, who, it must never be forgotten, are, in such cases, the sole judges both of the law and the fact? Suppose for instance that the testimony of two witnesses would establish all the facts, but that each of those facts are not known by either of them. According to this doctrine the evidence of both might be declared inadmissible, and a man whose innocence, if the testimony in his favor were not rejected, might be clearly proved to the satisfaction of the jury, may thus be subjected by the verdict of that very jury to an ignominious death. Shall principles so palpably cruel and unjust be tolerated in this free country? I am free to declare that the decision of Mr. Chase, in rejecting Colonel Taylor's testimony, was contrary to the known and established rules of evidence, and this I trust will be shown by my learned associates, to the full satisfaction of this honorable Court, if indeed they can require further satisfaction on a point so clear and indisputable. But this honorable Court will be astonished when they are told (and the declaration will be supported by undeniable proof) that at this very time neither the traverser, his counsel, or the court, knew the extent to which Colonel Taylor's evidence would go. They were apprized, indeed, that he would show that Mr. Adams was an aristocrat, and that he had proved serviceable to the British interest, in the sense conveyed by the book; but they little dreampt that his evidence, if permitted to have been given in, would have thrown great light upon many other of the charges. There is one ground of defence taken by the respondent, which I did suppose, a gentleman of his discernment would have sedulously avoided. That although the traverser had justified nineteen out of twenty of the charges contained in the indictment, if he could not prove the truth of the twentieth, it was of little moment, as he was, "thereby, put into the power of the court." Gracious God! sir, what inference is to be drawn from this horrible insinuation?

In justification of the charges contained in the fourth article, the respondent, unable to deny the fact, confesses that he did require "the questions intended to be put to the witness to be reduced to writing, and submitted to the court," in the first instance, as we shall prove, and before they had been verbally propounded. And this requisition, he contends, it was "the right and duty of the court" to make. It would not become me, elsewhere, or on any other occasion, to dispute the authority of the respondent, on legal questions, but I do aver that such is *not* the *law*, at least in the State in which that trial was held, nor do I believe that it is law anywhere. I speak of the United States. Sir, in the famous case of Logwood, whereat the Chief Justice of the United States presided, I was present, being one of the grand jury who found a true bill against him. It must be conceded that the Government was as deeply interested in arresting the career of this dangerous and atrocious criminal, who had aimed his blow against the property of every man in society, as it could be in bringing to punishment a weak and worthless scribbler. And yet, although much testimony was offered by the prisoner, which did by no means go to his entire exculpation, although much of that testimony was of a very questionable nature, none of it was declared *inadmissible;* it was suffered to go to the jury, who were left to judge of its weight and credibility; nor were any interrogatories to the witnesses required to be reduced to writing. And I will go farther, and say that it never has been done before or since Callender's trial, in any court of Virginia, and I believe I might add in the United States, whether State or Federal. No, sir, the enlightened man who presided in Logwood's case knew that, although the basest and vilest of criminals, he was entitled to *justice*, equally with the most honorable member of society. He did not avail himself of the previous and great discoveries, in criminal law, of this respondent; he admitted the prisoner's testimony to go to the jury; he never thought it *his right* or *his duty* to require ques-

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tions to be reduced to writing; he gave the accused a *fair trial*, according to law and usage, without any innovation or departure from the established rules of criminal jurisprudence, in his country.

The respondent also acknowledges his refusal to postpone the trial of Callender, although an affidavit was regularly filed, stating the absence of material witnesses on his behalf; and here again the ground of his defence is, in my estimation, good cause for his conviction. The dispersed situation of the witnesses, which he alleges to have been the motive of his refusal, is, to my mind, one of the most unanswerable reasons for granting a postponement. The other three charges contained in this article will be supported by unquestionable evidence. The rude and contemptuous expressions of the judge to the prisoner's counsel; his repeated and vexatious interruptions of them; his indecent solicitude and predetermined resolution to effect the conviction of the accused. This predetermination we shall prove to have been expressed by him long before, as well as on his journey to Richmond, and whilst the prosecution was pending; besides the proofs which the trial itself afforded.

The fifth article is for the respondent's having "awarded a capias against the body of James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in such case made and provided:" that is, contrary to the act of Assembly of Virginia, recognised (by the act of Congress passed in 1789, for the establishment of the judicial courts of the United States) as the rule of decision in the federal courts, to be held in that State, until other provision be made. The defence of the respondent embraces several points: That the act of Virginia was passed posterior to the act of Congress, viz: in 1792, and could not be intended by the latter to be a rule of decision. Fortunately, there is no necessity to question, which we might well do, the truth of his position. It may be necessary to inform some of the members of this honorable Court, that, about twelve or thirteen years ago, the laws of Virginia underwent a revision; all those relating to a particular subject being condensed into one, and the whole code thereby rendered less cumbrous and perplexed. Hence, many of our laws, to a casual and superficial observer, would appear to take their date so late as the year 1792, although their provisions were, long before, in force. The twenty-eighth section of this very act on which we rely, the Court will perceive to have been enacted in 1788, one year *preceding* the act of Congress. (Virg. laws, chap. 74, sec. 28, page 106, NOTE b. Pleasants' edition.) [Here Mr. Randolph read the act referred to.] "Upon presentment made by a grand jury of an offence not capital, the court shall order the clerk to issue a summons, or other proper process, against the person so presented, to appear and answer such presentment at the next court," &c. But the respondent, aware, no doubt, of this fact, asserts that the act not being adduced, he was not bound to know of its existence, and that he ought not to be censured for the omissions of the traverser's counsel, whose duty it was to have cited it on behalf of their client; and this objection, with the preceding ones, which I have endeavored to answer, will equally apply to the sixth article. Sir, when the counsel for the traverser were told by the judge at the outset, when they referred to a provision of this very law, "that such may be your local State laws here in Virginia, but that to suppose them as applying to the courts of the United States, is a *wild notion*," would it not, indeed, have been a *wild experiment* in them to cite the same law with a view of influencing the opinion of a man, who had scornfully scouted the idea that he was to be governed by it?

Unwilling, however, to rest himself now on the ground which he then took, the respondent justifies himself by declaring that he complied, although ignorantly, with this law, by issuing that *other proper process*, of which it speaks, that is a capias. But that other process must be of the nature of a summons, notifying the party to appear at the *next term;* and will any man pretend to say, that a capias taking him into close custody and obliging him to appear, not at the next, but at the existing term, is such process as that law describes? Sir, not only the law, but the uniform practice under it, as we are prepared to show by evidence, declares the capias not to be the proper process. But it is said that this would be nothing more than notice to the party accused to abscond, and therefore *ought not* to be law. Sir, we are not talking about what ought to have been the law; that is no concern of ours; the question is, what *was* the law? But the impolicy of this mode of proceeding is far from being ascertained. It is a relief to the innocent who may be in a state of accusation. It saves the expense of imprisoning the guilty, and if they should prefer voluntary exile to standing a trial, is it so very clear that the State is thereby more injured than by holding them to punishment, after which they would remain in her bosom to perpetrate new offences? Remember, this proceeding is against petty offenders, not felons. It does not apply to capital cases; to felonies, then, capital, for which our law has since commuted the punishment of death, into that of imprisonment at hard labor.

For further defence against the sixth article, the respondent takes shelter under this position: That the provision of the law of the United States establishing the judicial courts relates only to rights acquired under *State* laws, which come into question *on* the trial, and not to forms of process *before* the trial, and can have no application to offences created by statute, which cannot, with propriety, be termed trials at "*common law*." We are prepared to show that the words "trials at common law," are used in that statute, not in their most restricted sense, but to contradistinguish a certain description of cases from those arising in equity, or under maritime or civil law.

I will pass over the seventh article of impeachment, as well because I am nearly exhausted, as

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being content to leave it on the ground where the respondent himself has placed it. It would be impossible for us to put it in a stronger light than has been thrown upon it by his own admission.

The eighth and last article remains to be considered—[article read.] I ask this honorable Court whether the prostitution of the bench of justice, to the purposes of an hustings, is to be tolerated? We have nothing to do with the politics of the *man*. Let him speak, and write, and publish, as he pleases. This is his right in common with his fellow-citizens. The press is free. If he must electioneer and abuse the Government under which he lives, I know no law to prevent or punish him, provided he seeks the wonted theatres for his exhibition. But shall a judge declaim on these topics from his seat of office? Shall he not put off the political partisan when he ascends the tribune? or shall we have the pure stream of public justice polluted with the venom of party virulence? In short, does it follow that a judge carries all the rights of a private citizen with him upon the bench, and that he may there do every act which, as a freeman, he may do elsewhere, without being questioned for his conduct?

But, sir, we are told that this high Court is not a court of errors and appeals, but a Court of Impeachment, and that however incorrectly the respondent may have conducted himself, proof must be adduced of criminal intent, of wilful error, to constitute guilt. The *quo animo* is to be inferred from the facts themselves; there is no other mode by which, in any case, it can be determined, and even the respondent admits that there are acts of a nature so flagrant that guilt must be inferred from them, if the party be of sound mind. But this concession is qualified by the monstrous pretension that an act to be impeachable must be indictable. Where? In the Federal courts? There, not even robbery and murder are indictable, except in a few places under our exclusive jurisdiction. It is not an indictable offence under the laws of the United States for a judge to go on the bench in a state of intoxication—it may not be in all the State courts; and it is indictable nowhere for him to omit to do his duty, to refuse to hold a court. But who can doubt that both are impeachable offences, and ought to subject the offender to removal from office? But in this long and disgusting catalogue of crimes and misdemeanors, (which he has in a great measure confessed,) the respondent tells you he had accomplices, and that what was guilt in him could not be innocence in them. I must beg the Court to consider the facts alleged against the respondent in all their accumulated atrocity; not to take them, each in an insulated point of view, but as a chain of evidence indissolubly linked together, and establishing the indisputable proof of his guilt. Call to mind his high standing and character, and his superior age and rank, and then ask yourselves whether he stands justified in a long course of oppression and injustice, because men of weak intellect and yet feebler temper—men of far inferior standing to the respondent, have tamely acquiesced in such acts of violence and outrage? He is charged with various acts of injustice, with a series of misconduct so connected in time, and place, and circumstance, as to leave no doubt, on my mind at least, of intentional ill. Can this be justified, because his several associates have at several times and occasions barely yielded a faint compliance, which perhaps they dared not withhold? Can they be considered as equally culpable with him whose accumulated crimes are to be divided amongst them, who had given at best but a negative sanction to them? But, sir, would the establishment of their guilt prove his innocence? At most, it would only prove that they too ought to be punished. Wherever we behold the respondent sitting in judgment, there do we behold violence and injustice. Before *him* the counsel are always contumacious. The most accomplished advocates of the different States, whose demeanor to his brethren is uniformly conciliating and temperate, are to *him*, and him only, obstinate, perverse, rude, and irritating. Contumacy has been found to exist only where he presided.

Mr. President, it appears to me that one great distinction remains yet to be taken. A distinction between a judge zealous to punish and repress crimes generally, and a judge anxious only to enforce a particular law, whereby he may recommend himself to power or to his party. It is this hideous feature of the respondent's judicial character, on which I would fix your attention. We do not charge him with a general zeal in the discharge of his high office, but with an indecent zeal, in particular cases, for laws of doubtful and suspicious aspect. It is only in cases of constructive treason and libel, that this zeal breaks out. Through the whole tenor of his judicial conduct runs the spirit of party. I could cite the name and authority of a judge of whom, if I might be permitted to speak, I would say, that he was no less a terror to evil-doers than a shield to the oppressed. In a commendable zeal for the faithful execution of the laws, he has never been surpassed, neither in tenderness to the liberty of the citizen, nor the liberty of the press, nor trial by jury. [Here Mr. R. read the following passage from Tucker's Blackstone, vol. 4, page 350.] "But it is not customary nor agreeable to the 'general course of proceedings (unless by consent 'of parties, or where the defendant is actually in 'jail) to try persons indicted of smaller misde-'meanors at the same court in which they have 'pleaded not guilty, *or traversed the indictment*." [What follows is subjoined in a note.] And this is the practice in Virginia; but in the case of the United States against Callender, in the Federal court at Richmond, May, 1800, a different course was pursued, although the act of Congress (First Congress, 1 Sept., chap. 20, sec. 32) may be interpreted otherwise. This is the very act and section on which we rely.

I have endeavored, Mr. President, in a manner, I am sensible, very lame and inadequate, to discharge the duty incumbent on me; to enumerate the principal points upon which we shall rely, and to repel some of the prominent objections ad-

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vanced by the respondent. Whilst we confidently expect on his conviction, it is from the strength of our cause, and not from any art or skill in conducting it. It requires so little support that (thank Heaven) it cannot be injured by any weakness of mine. We shall bring forward in proof, such a specimen of judicial tyranny, as, I trust in God, will never be again exhibited in our country.

The respondent hath closed his defence by an appeal to the great Searcher of Hearts for the purity of his motives. For his sake, I rejoice that, by the timely exercise of that mercy which, for wise purposes, has been reposed in the Executive, this appeal is not drowned by the blood of an innocent man crying aloud for vengeance; that the mute agony of widowed despair, and the wailing voice of the orphan, do not plead to Heaven for justice on the oppressor's head. But for that intervention, self-accusation before that dread tribunal would have been needless. On that awful day the blood of a poor, ignorant, friendless, unlettered German, murdered under the semblance and color of law, sent without pity to the scaffold, would have risen in judgment at the Throne of Grace, against the unhappy man arraigned at your bar. But the President of the United States by a well-timed act, at once of justice and mercy, (and mercy, like charity, covereth a multitude of sins,) wrested the victim from his grasp, and saved him from the countless horrors of remorse, by not suffering the pure ermine of justice to be dyed in the innocent blood of John Fries.

The Managers proceeded to the examination of witnesses in support of the prosecution.

William Lewis, affirmed.

Mr. Dallas, Mr. W. Ewing, and I were counsel for John Fries, at his request, and I believe by the assignment of the court, on his trial in the year 1799. It was conducted, I believe, in the usual manner, and we were certainly allowed all the privileges that were customary on such occasions. The trial was had before Judges Iredell and Peters. He was convicted, and a new trial was ordered, because one of the jurors had manifested a prejudice against the people in general concerned in the insurrection, and against Fries in particular. This trial took place partly in April and partly in May, 1799. At October session following, Mr. Dallas and I attended at Norristown, expecting the trial would again take place; but it did not. The proceedings on the first indictment were quashed by the District Attorney, and a new bill was found at April term, 1800, at which Judges Chase and Peters presided. Mr. Dallas and I appeared again as the counsel of Fries, at his request, and I believe we were assigned by the court, but of this I am not certain. On the morning of a certain day, which I do not now recollect, I entered the court room when the judges were on the bench, and, if I recollect rightly, the prisoner was in the bar; but if he was not then there, I feel very sure that he soon was. The list of petit jurors was called over, and many of them answered. Whether his trial had been appointed for that day, I do not recollect; nor can I say whether he was brought up in consequence of such appointment or not. I will now state, as accurately as is in my power, what took place on the occasion, premising that, although my memory is a remarkably accurate one for a short time, it is far from being so after a considerable lapse of time. I will not, therefore, undertake to state the precise words used in the altercation which took place; but I am very confident that I shall not vary from the substance. When I say that I am thus confident, I beg to be understood as not undertaking to distinguish positively in all respects between what took place on the first or on the second day.

Almost immediately after the jurors were called over, Judge Chase began to speak. At this time Mr. Dallas had not come into court. Judge Chase said, he understood, or had been informed, that on the former trial or trials, for it was impossible for me to know whether he alluded to the case of Fries only, or of him and others, there had been a great waste of time in making long speeches on topics which had nothing to do with the business, and in reading common law cases on treason, as well as on treason under the statute of Edward the Third, and also certain statutes of the United States, respecting the resisting of process, and other offences less than treason. He also said, that to prevent this in future, he or they, I do not precisely recollect which, had considered the law, had made up their minds, and had reduced their opinion to writing on the subject, and would not suffer these cases to be read again; and in order that the counsel (but whether for the prisoner, or the counsel on both sides, I cannot say) might govern themselves conformably, he had ordered three copies of that opinion to be made out, one to be delivered to the prisoner's counsel, one to the counsel in support of the prosecution, and the other, as soon as the case was fully opened, or gone through, I cannot say which, to be delivered by the clerk of the court to the jury. I rather think that the expression was, fully gone through.

Mr. Randolph. And this, sir, before the counsel had been heard?

Mr. Lewis. I have said Mr. Dallas had not yet come into court, and as to myself I had not at this time said a single word. I think it was at or about this time, that Judge Chase handed, or threw down to Mr. Caldwell, clerk of the court, one or more papers; but whether I saw them pass immediately from the hands of one to the other, I am not certain. Mr. Caldwell reached one of the papers towards me. If I took it in my hand, I did not read a single line of it. I remember well that speaking aloud, but whether addressing myself to the court or not, I am not positive, and either waving my hand, or throwing the paper from me, I used this expression: "I will never permit my hand to be tainted with a prejudged opinion in any case, much less in a capital one." If Judge Peters made use of a single expression on the first day, I either did not hear him or do not recollect it.

Judge Chase, when speaking of the authorities

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at common law, and those under the statute of Edward III., and, I believe. of the acts of Congress, said he would not suffer them to be read again. I am sure he said he would not suffer the decisions at common law, or under the statute of Edward III., to be read. I am not altogether certain whether he did or did not say the same thing as to the statutes of the United States; but I am perfectly sure that he did say they had nothing to do with the question, and that he expressed himself in strong terms of disapprobation either at their having been read or permitted to be read on the former trial. I am not certain whether some parts of this as well as that which I am about to mention occurred on the first or the second day. Judge Chase said, I think on the first day, that they were judges of the law, and if they did not understand it they were unworthy of their seats, or unfit to sit there, and that if the prisoner's counsel had anything to say, to show that they had mistaken the law, or that they were wrong, the counsel must address themselves to the court for that purpose, and not to the jury. I made some observations in answer, which it is impossible for me in all respects particularly to recollect, as having passed at this time, since some parts of it may perhaps have taken place in other stages of the business. At this time, Mr. Dallas was not in court. I was struck with what appeared to me to be a great novelty in the proceedings, and as I was extremely anxious to be of service to Fries, I was desirous that Mr. Dallas might be present. I think I went out of the bar to get somebody to go for him, and while I was out of the bar, he entered the room. I briefly stated to him what had taken place, or some parts of it; but, I believe, not the whole. We came forward, and we made some remarks, which I am unable to repeat. I was early struck with the idea, that as the court had made up their minds, and decided the question of law, before the jury was sworn, or the witnesses or counsel heard, it was not likely we should alter that opinion by anything we might say, and that we should probably render Fries more service by withdrawing from his defence, than by engaging in it. We told him so, and earnestly recommended to him to pursue that course. He appeared greatly alarmed and extremely agitated, and much at a loss what determination to come to. We, however, told him that, if he insisted on it, we would proceed in his defence at every hazard, and contend for what we deemed our Constitutional rights as his counsel, until stopped by the court; or we used expressions to this effect. His state of alarm and apprehension scarcely left him the power to decide for himself. After some time he acquiesced in our advice; said he had nobody to depend on but us; that he was sure we would do our best for him. and he would leave us to do for him as we pleased. Being very anxious for him, we told him we would call upon him at the jail, and satisfy his mind as to the course which we wished him to pursue. He finally agreed to our proposal to withdraw; but as we were apprehensive that the court might assign him other counsel in our place, and that our views might be defeated by such an arrangement, we advised him against accepting any, and I understood that he afterwards did refuse to accept of any other counsel. I will not assign my reasons for giving this advice, as it might, perhaps, be improper, unless I am directed by the Court.

Mr. Martin asked what those reasons were?

The President desired the examination to proceed on the part of the House of Representatives, and said when that was closed, the witness might be examined by the counsel for Judge Chase.

Mr. Lewis. It being thus determined that we should withdraw, and that Fries should not accept any counsel that might be assigned him, I left the court, expecting to have little or nothing more to say, as we were no longer counsel for the prisoner. The next morning, soon after the court was opened, and, I believe, when the prisoner was in the bar, Judge Chase addressed Mr. Dallas and myself, and probably Mr. Rawle, and asked us if we were ready to proceed? I answered that I was not, or that we were not any longer counsel for the prisoner. He asked our reasons for this; and I began to answer by mentioning what had taken place the day before; on which he and Judge Peters certainly manifested a strong disposition that we should proceed in the prisoner's defence, and that they would remove every restriction which had been previously imposed. I was stopped in what I was about to say by Judge Chase telling us to go on in our own way, and address the jury on the law as well as the facts, as we thought proper; but, at the same time, he said it would be under the direction of the court; and at our own peril, or the risk of our characters, if we conducted ourselves with impropriety. This had rather a contrary effect on my mind than that of inducing me to proceed, as I did not know that there had been anything in my conduct so indecorous as to make it necessary to remind me that, if I proceeded, it should be at my own peril and risk of character; and this expression, therefore, rather strengthened than lessened the determination which I had taken.

I have said if Judge Peters made use of a single expression on the first day I did not hear it, or have forgotten it. On the second day he spoke, and joined Judge Chase in urging us to proceed, in the prisoner's defence. He told us that we might take as large a scope as we pleased; said he knew the Philadelphia bar would take the stud, and asked, if they (the judges) had committed an error, or got into a scrape, would we not permit them to get out of it? I mentioned in this or some other stage of the business, that I deemed it the Constitutional right of the prisoner to be heard by himself or counsel in his defence. That it was the Constitutional right of the jury to hear counsel on the law as well as the facts; that it was their Constitutional right to pass between the prisoner and his country on both, and that it was the Constitutional right of counsel to be heard by the jury on the law as well as the facts. If I did not deliver myself in these precise words, I am confident that the substance is the same, and that there is no material difference in the sense. I

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also mentioned that I considered this a great Constitutional right, which should never be surrendered or sacrificed by me. Of this expression I am sure. And I added, that I never had, nor ever would, in a criminal prosecution address a court either on the law or the facts: In this, however, I find that I was mistaken; for I since recollect, though from the hurry of the moment, I did not then, an instance where, in a criminal case, I did address the jury on a point of law, which was separate and distinct from the facts. Judge Peters remarked that no harm could arise from the papers, (containing the opinion of the court,) as they, or the copies, had been called in or collected, and either burnt or destroyed. To this I answered, that although the papers were or might be destroyed, the opinion which the court had formed, without hearing the prisoner's counsel, still remained, and could not be erased from their minds, and would be as injurious to my client (the jurors being present and having heard what had passed) as if the papers had not been destroyed.

When Judge Chase said that we should read no common law authorities, or decisions under the statute of Edward III., before the Revolution in England, I said that we meant to contend what was the law of treason in England under the head of "levying war," was not in all respects law here; that we did not mean to cite any cases before the English Revolution to prove what the law of treason was, or for any other purpose than to show the dangerous lengths that the judges had gone while they were corrupt and dependent on the Crown; that although since the Revolution in England the judges had been independent and upright, they had, in a variety of particulars, held themselves bound by a train of former decisions which had taken place in bad times; but that the judges in this country in the construction of a new instrument of our own, defining the offence of treason, were not bound by any of the decisions or constructions which had taken place in England under the statute of Edward III.; and that the authorities we meant to cite were intended as a guard against the dangerous constructions which had prevailed in that country. It was not, therefore, to show what the law was, but to guard against the danger of constructive treason; and to show that our judges were not bound by the English decisions, that we had read them before, and intended to read them again. This principle we contended for before, and meant to contend for again; and we were principally led to it, from Mr. Sitgreaves, who had assisted the District Attorney on the former trial, having begun by stating "that the words of our Constitution respect-
' ing treason are taken from the 25th Edward III.,
' and, therefore, the people of this country had, by
' adopting the words of that statute, adopted all
' judicial determinations under it." This position we could not agree to, and the cases which had been read were merely intended to show and guard against the dangerous lengths to which we should be carried, if it were admitted to be true. Judge Chase asked if the counsel offered to read cases from any foreign country, (mentioning several with whom we had never been connected,) was the court to permit them? We, in reply, said that we had not cited such cases on the former occasions, and it was not likely that we should attempt it now.

Finding that Mr. Dallas and I were determined not to proceed in the prisoner's defence, Judge Chase said, if we intended to embarrass the court we should find ourselves mistaken, as they would proceed without us, and, by the blessing of God, render the prisoner as much justice as if he had the aid of our counsel or assistance. Both the judges, therefore, on the second day, even took pains to induce us to proceed in the defence, with liberty to go through the whole question as well in relation to the law as the facts; but we absolutely refused, believing it not likely that any arguments we could urge would change the opinion of the court already formed, or destroy its effects, and also believing that, after what had taken place, the life of Fries, even if he should be convicted, would be exposed to less jeopardy without our aid than it would be if we should engage in his defence.

Mr. Nicholson. You say that, on the first trial of Fries, you were allowed the usual latitude. What do you mean by usual latitude?

Mr. Lewis. We were allowed to address the jury on the law as well as on the facts. We were allowed the privilege of reading to the jury all such law authorities as we thought applicable, and as might, under the direction of the court, tend to satisfy them, that the doctrine contended for on the part of the prosecution was not well founded. We met with no restraint or interruption, not having, that I know of, given occasion for either.

Mr. Nicholson. Were you, on the first trial, allowed to read the statutes of the United States?

Mr. Lewis. Unquestionably; I have the notes in my pocket from which I spoke on that occasion, which I can produce if desired.

Mr. Nicholson. Were you allowed to read cases before the Revolution as well as since?

Mr. Lewis. We were; we did it to show the extravagant lengths to which constructive treason had been carried, and not what the law actually was.

In answer to an interrogatory,

Mr. Lewis said that he did not read the opinion of the court which had been handed or thrown down; that he had never read it in his life.

Mr. Randolph. If not the oldest, are you not an old practitioner at the bar, and have you not been frequently employed in criminal cases?

Mr. Lewis. I was admitted to practice in the court of common pleas, in November, 1771, and in the Supreme Court, in April, 1774, and I have been employed in a pretty extensive practice almost ever since. Immediately after the British left Philadelphia, in 1778, I was engaged for one hundred and fifty-three persons charged with treason or misprision of treason. I defended almost every man of them that was tried; and, since that time, I have been concerned in perhaps more capital cases, particularly for treason, than any

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other gentleman in Pennsylvania, compared with our business in other respects.

Mr. Randolph. Did you ever see such a proceeding as that which took place on the bench in the case of Fries; or did you see anything before, to induce you to abandon the defence of your client?

Mr. Lewis. This question seems to be a pretty general one, but if——

Mr. Key. If I understand this question, it is calculated to draw from the witness an opinion, instead of a narration of facts.

The President desired Mr. Randolph to reduce his question to writing.

While Mr. R. was engaged in penning it,

Mr. Chase said he had no objection to the question being put.

In the mean time the question in writing had been handed to the Chair, and been read by the Clerk.

The President said, the objection being withdrawn, the question would be put unless objected to by any member of the Senate.

No objection being made,

Mr. Lewis answered. No, I did not. It was entirely novel to me.

Mr. Randolph. And yet you have been present at criminal trials, at trials for treason, when there was a vast number of civil actions on the docket?

Mr. Lewis. Criminal trials for capital offences are generally tried before the court of oyer and terminer, in Pennsylvania, where there is seldom much interference in civil suits.

At the circuit court of the United States, in 1794, there were, I believe, many civil cases. Judges Iredell and Peters presided. I do not know, or believe, that the circumstance of their being civil cases occasioned the least variation in the mode of procedure in the criminal cases.

Mr. Lewis said he had one thing further to state, that Mr. Dallas and he withdrew from a desire to save the life of John Fries, and because they thought it most likely that it would be effected by doing so, and not because they were influenced by any other considerations, and that had it not been for this consideration, he would have persisted in the exercise of what he deemed his professional rights, until he was actually stopped by the authority of the court.

Mr. Harper. Did you not appear for Vigol?

Mr. Lewis. I did.

Mr. Harper. With what overt acts was he charged?

Mr. Lewis. The overt act was levying of war, particularizing the time and place.

Mr. Harper. I will ask you whether on the trial of John Fries, in 1799, in which Mr. Dallas and you appeared as his counsel, you did not make this point of law; that, to resist by force the execution of a particular law of the United States does not amount to treason, but to riot only? Or what was the point of law?

Mr. Lewis. On the first trial of Fries we made this point of law. Before the trial before Judges Chase and Peters came on, I had considered the subject with great deliberation, and my determination was to insist that, although resisting the laws generally, or even a particular law respecting the regular forces or militia of the nation was treason, yet that resisting any other particular law was not treason.

Mr. Harper. Was not the same point made on the first trial?

Mr. Lewis. It was.

Mr. Harper. Was it not ruled by the court that such acts amounted to treason?

Mr. Lewis. It was.

Mr. Harper. When then the court granted a new trial did they not express doubt on this point, or was it not granted on a collateral point?

Mr. Lewis. The new trial was granted solely on a collateral point.

Mr. Harper. How long did the trial last?

Mr. Lewis. I cannot tell; but it was a very long trial. The point of law was argued to the fullest extent, and we quoted all the authorities we thought relevant. I was assisted by Mr. Dallas. We spoke very fully, and were laid under no restriction. At the last trial we meant to have also taken other ground, and to have contended that the trial could not take place in Philadelphia, but must be in the county in which the offence had been committed, according to a law of the United States, which provides that in capital cases trials shall take place in the county where the crimes are committed, unless this cannot be without great inconvenience. This we had before contended; and had been then overruled because it was alleged the county in which the offences had been committed was not free from a state of insurrection or the effects of it. At the time of the last trial, there was no insurrection in the county where the offences charged against Fries had been committed, and we believed him, therefore, entitled to a trial in that county.

Mr. Harper. Did any part of Judge Chase's written opinion go to this point?

Mr. Lewis. It was not mentioned to the court, as Mr. Dallas and I determined to have nothing further to do in the case.

Mr. Harper. Why did you abandon that part of your client's case? It was a new point, upon which you might have had the decision of the court.

Mr. Lewis. I did not wish to have anything more to do with the case, after the manner in which we had been treated by the court.

Mr. Hopkinson. Did not the court ask Fries whether he would have counsel assigned him?

Mr. Lewis. I believe there is no doubt of the fact.

Mr. Randolph. I understand you to say that by withdrawing from the defence of Fries, and the not having counsel assigned him, you expected to serve your client. Wherefore did you think the cause of your client would thereby be served?

Mr. Lewis. It appeared to me that the conduct of the court justified us in withdrawing, after not being suffered to go on in the usual manner, and I thought it more probable that a man, thus convicted, would be pardoned by the President, than that we should be able, by anything we could say, to alter the opinion of the court.

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Mr. Nicholson. Were the jurors present?

Mr. Lewis. They were. They were called over as usual, but I do not know that they were called for the trial of Fries. It was, I believe, usual to call over the list on the morning of each day.

Alexander J. Dallas, sworn.

Mr. Dallas. I will endeavor to be correct in the statement which it is my duty to give; and I am sure that I shall be substantially so, though I cannot promise to place the facts precisely in the order of time in which they occurred; nor to recite the very words that were used by the several parties in the course of the transaction.

When the northern rioters were brought to Philadelphia, in the spring of 1799, some of their friends applied to Mr. Ingersoll, and to me to undertake their defence. Mr. Ingersoll was then Attorney General of Pennsylvania; and on consideration, I believe, declined the task. Mr. Lewis, either before or after this application, was also requested to act as counsel for the prisoners; and upon his acquiescence, we repaired to the prison to make the necessary arrangements preparatory to a trial. Mr. William Ewing had been engaged by several of the rioters, and we agreed to unite in the defence, as the same general facts in law, applied to all the cases.

In April term, 1799, the first trial of Fries took place. It was conducted with great propriety throughout, by the court, and by the prosecuting officer; and the counsel of the prisoner were permitted to address the jury at large, on the law and the facts, as well as to cite every authority which they thought proper. Fries was convicted; but on a motion made by Mr. Lewis and me, the verdict was set aside, and a new trial awarded.

The second trial of Fries, upon a new indictment (the first having been discontinued by Mr. Rawle) occurred in May, 1800. Mr. Lewis and I had again, at his request, been assigned by the court to defend him. On the morning fixed for the trial, I entered the court room sometime afterthe court had been opened. Fries was standing in the prisoner's box, the jurors of the general panel appeared to be in the jury boxes, and the hall was crowded with citizens. On my entrance, I perceived Mr. Lewis and Mr. E. Tilghman engaged eagerly in conversation, and the gentlemen of the bar, generally, seemed to be much agitated. As soon as Mr. Lewis saw me, he hastened towards me on the outside of the bar, and told me, in effect, that a "very extraordinary incident had occurred; that Mr. Chase, after speaking in terms of great disapprobation of the defence at the former trial, declared that the court, on mature deliberation, had formed and reduced to writing, an opinion on the law of treason involved in the case; and that he should direct one copy to be delivered to the attorney of the district, another to the prisoner's counsel, and a third (after the opening for the prosecution) to the jury, to take out with them."

Here Mr. Harper rose, and said—Mr. President, surely it is improper that the witness should repeat what Mr. Lewis told him, not in court, nor when the judge was present.

Mr. Dallas, turning to Mr. Harper, said, "Sir, I know the rules of evidence, and I mean to conform to them." Then turning to the Vice President, he continued, "If, Mr. President, the counsel's patience had lasted for a minute, he would have heard that I repeated Mr. Lewis's communication to the court, and that it was not contradicted. What I have said was necessary to introduce that fact; and, surely, it is strictly within the rules of evidence."

Mr. Lewis and I exchanged an opinion on the impropriety of the conduct of the court; we determined (as I thought, when first recurring to my memory for the facts, and as I still think, though I wish not to speak positively) to withdraw from the defence; and we entered the bar together. When there, something occurred which called the attention on our part, and Mr. Lewis informed the court, in effect, "that there was little dispute about the facts in the cause, and that as the court had deliberately prejudged the law, he could not hope to change their opinion, nor to serve his client; while a submission to such a proceeding would be degrading to the profession." It was then, I think, that I stated to the court, the information which I had received from Mr. Lewis, (but certainly it was either then, or, as it has been suggested to me by a respectable gentleman of the bar, at the opening of the court on the next day,) and I paused, to give an opportunity for contradiction or explanation; for, although I had no doubt of Mr. Lewis's intention to deliver a correct representation of what had passed, it was possible, and I might myself have mistaken the import of his communication. I cannot now state all that Mr. Lewis told me, but I am confident that I then repeated it all to the court. No remark being made in consequence of the pause, I proceeded to state a few comparative observations on the province and rights of the judge, and the province and rights of the advocate; and concluded with declining to act any longer as counsel for the prisoner. The court was soon afterwards adjourned. These are all the material occurrences of the first day, which I recollect; except, perhaps, that soon after I came into court, I heard Mr. Peters remark to Mr. Chase, "I told you what would be the consequence. I knew they would take the stud."

On the next day, the court was opened, Fries was placed in the prisoner's box, the jury attended, and the number of spectators was increased. Silence being proclaimed, Mr. Chase asked, "if the prisoner's counsel were ready to proceed on the trial?" and Mr. Lewis and I, successively, declared, that we no longer considered ourselves as the counsel of Fries. Mr. Peters then, as well as at other times, expressed a great desire that we should overlook what had passed; he told us that the papers delivered the day before had been withdrawn, and that he did not care what range we took, either on the law, or the fact. Mr. Chase also said: "The papers are withdrawn, and you may take what course in the defence you please; but it is at the hazard of your characters." I thought the expression was in the nature of a

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menace; that it was unkind, improper, and unnecessary. Mr. Lewis observed, in effect: "You have withdrawn the papers; but can you eradicate from your own minds the opinion which you have formed, or the effect of your declaration on the attending jurors, a part of whom must try the prisoner?" Mr. Chase said: "If you think to embarrass the court, you will find yourselves mistaken." He then asked Fries if he chose to have other counsel assigned? Fries answered, that he did not know how to act, but that he thought he would leave it to the court and the jury. On which, Judge Chase exclaimed, "Then we will be your counsel; and, by the blessing of God, do you as much justice as those who were assigned to you." Mr. Lewis and I had visited Fries in prison during the preceding afternoon; we had told him our determination to withdraw from his defence, unless he and his friends wished us to resume it; and we declared it to be, in our view of the case, his best chance to escape, as we could entertain no hope of changing the opinion of the court. He finally left the matter to us; and I think Mr. Lewis in my hearing, with my concurrence, advised him not to accept other counsel, if the court should offer to assign them. The rest of the facts, as stated by Mr. Lewis, correspond so precisely with my recollection, that I presume, after this recognition, it is unnecessary to repeat them. I wish it, however, to be properly understood that, on the second day, both the judges were extremely anxious to prevail on us to proceed in the defence; and, as I understood, withdrew all the restrictions of the preceding day. We persisted, however, in our determination; because, after what had happened, we deemed it the best chance to save our client's life, and not because we wished, as has been insinuated, to bring the court into disgrace or odium. Fries, was accordingly tried and convicted without counsel.

It is proper, perhaps, to state what passed on the first trial of Fries, as it has been much misunderstood or misrepresented. The general course of argument, *on the facts*, was, an attempt to show that the acts of Fries and his companions amounted to nothing more than a riotous opposition to the direct tax officers, or obstruction of the marshal in the execution of process, and the rescue of a particular description of prisoners whom the marshal had arrested. We drew to our aid, in this part of the discussion, the sections of the penal law, and the sedition act, which provided for the punishment of such offences, distinct from the crime of treason. The general course of our argument, on the law, was, an endeavor to show that the offence did not amount to an act of levying war against the United States. The Constitution defines that to be the only treason that can be committed; and neither the Legislature, nor the courts, can amplify or alter the definition. The words of the Constitution, however, require a practical exposition. This exposition can only be obtained by a consideration of the natural, the familiar, and the reasonable import of the words themselves, or by reference to a glossary of the English decisions on the same branch of treason, expressed in the same terms, in the English statute of Edward III. The glossary of the English decisions ought not to be relied on. It is true, that since the English Revolution of 1688, and particularly since the statute of William III., (which first gave judicial freedom to the English bench,) the judges of England have been independent, as well as wise and virtuous; and implicit confidence may be reposed in their judgments, upon all matters originally submitted to their jurisdiction. But the English judges, since the Revolution of 1688, are bound to administer the law, according to the precedents established by the English judges before that Revolution; although either in criminal, or in civil matters, if the question were *res integra*, they would, themselves, have decided in a different way. Hence, the counsel of Fries were induced to cite common law authorities, and authorities under the statute of Edward III., to show (not what the law of England was, or ought to be, not what the law of the United States was, or ought to be, but) what had been the extravagance of dependent judges in setting the precedents which the independent judges of England were bound to follow. Among other books they read Blackstone's Commentaries, where, in illustration of a positive or imputed treason, the commentator cites the cases (under the statute of Edward III.) of one man being hung as a traitor, for saying that his son was heir to the Crown, because he was himself the owner of a tavern with the sign of the Crown; and of another man's meeting the same fate, because he wished the horn of his buck, which had been killed by the king, in the belly of the monarch. These were, indeed, the illustrations of Blackstone, and not of Fries's counsel; but what professional man need be ashamed to be supposed capable of resorting to the same authorities to enforce an argument, which Blackstone had employed? Fries's counsel contended that American judges were not under the same obligation, and that the era of our Federal Constitution furnished a favorable opportunity to emancipate ourselves from the trammels of constructions given to the words of our Constitution by corrupt and dependent courts, before the English Revolution. Resorting then, to the natural, familiar, and reasonable import of the words, it was urged in defence of Fries, on the first trial, that it was not a case of treason, but of riot, obstruction of process, and rescue of prisoners; that the discrimination in the offences was marked by the very distinct nature of the actions; and that the sedition act having treated the latter case as a case of misdemeanor, it was a Legislative construction that it was not a case of treason. There was still ground enough for the Constitutional provision to occupy, (an attempt by force to subvert the Government, to defeat the legitimate operation of its principal departments, to attack or to resist its military power, &c.,) and, after the passing of the sedition act, it might be presumed such ground alone was intended to be occupied.

On this course of argument, we could not ascertain the opinion of the court, nor how far the case of the Western insurrection would be deemed

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to apply, till the charge was pronounced. But after hearing the charge, and after a new trial was granted, I confess the whole force of my mind was bent to show, on the new trial, the strong distinction between the cases of 1794 and those of 1799; and that even in England, there was no authority since the Revolution of 1688, for construing the offence of Fries to be treason, unconnected with the obligation of the judges to conform to the previous adjudications.

The President. Both you and Mr. Lewis have stated that the jury were present when the written opinions of the court were handed to the clerk: Could they hear what passed on the occasion?

Mr. Dallas. Undoubtedly, sir. I do not mean, however, the jury who tried Fries, but the general panel of jurors, from whom Fries's jury might have been taken.

The Court rose about four o'clock.

MONDAY, February 11.

The Court was opened at 12 o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

Mr Randolph observed, that it was the wish of the managers that there should be no departure from the ordinary rules observed in examining witnesses, and that immediately after their examination on the part of the prosecution, they might be cross examined by the counsel for the accused.

Mr. Harper hoped, that no absolute rule would be adopted to this effect, as circumstances might arise that would justify a departure from it. The counsel for the respondent would without any special rule endeavor to conform to the mode suggested. After a few further remarks from Mr. Martin and Mr. Nicholson, it was agreed to waive any specific motion.

Mr. Lewis was called in; when

Mr. Harper put to him the following question:

Did you at the first trial of Fries make a distinction between resistance to a particular law, and the general law of the United States, or some special laws of a particular nature, and state your intention to argue that point on the second trial.

Mr. Lewis. I was not able to answer the question the other day precisely. But having since looked at my notes, I find that that distinction was made and urged.

Henry Tilghman, sworn.

I was present at the circuit court of the United States, for the district of Pennsylvania, held on the 22d day of April, 1800. A very short time after the opening of the court (whether the general pannel of jurors had been called over or not, I do not recollect) Judge Chase declared that the court had maturely considered the law arising on the overt acts charged in the indictment against John Fries; and that they had reduced their opinion to writing; he mentioned that he understood that a great deal of time had been consumed on a former trial, and that in order to save time, a copy of the opinion of the court would be given to the attorney of the district; another to the counsel for the prisoner, and that the jury should have a third to take out with them. I took no notes of what passed either on the first or second day. Fries was tried on the third day, and having been appointed, with Mr. Levy, counsel for Heany and Getman, indicted for treason, and who were actually tried on the 27th or 28th, I deemed it my duty to attend the trial of Fries, to take notes of the evidence, the arguments, and the charge of the judge. I do not recollect that Judge Chase said any more on the first day than what I have mentioned previous to his throwing a paper or papers on the table round which the bar usually sit. The moment the paper or papers were thrown on the table, Judge Chase expressed himself in these words; "Nevertheless, or notwithstanding this, (I cannot recollect which expression he used) "counsel will be heard." The throwing of the papers on the table and the address of the judge caused some degree of agitation at the bar; in a short time after the judge used the last expression, I looked round and saw Mr. Lewis walking from under the gallery, towards the bar: I stepped towards Mr. Lewis, and met him directly opposite the entrance into the prisoner's bar. The prisoner, as well as I can recollect, not being then in court, but being brought into court some time that morning, I entered into conversation with Mr. Lewis, and as well as I can recollect, during that conversation, Mr. Dallas came into court. Mr. Dallas and Mr. Lewis had some conversation in my hearing, after which they came forward to the bar; the paper, as well as I can recollect, was then handed by Mr. Caldwell, the clerk of the court, to Mr. Lewis. Mr. Lewis cast his eye on the outside of the paper, and looked down, as if he was considering what to say. He threw the paper from him, as it appeared to me, without reading it, and the moment he threw the paper down, said, "my hand shall never be stained by receiving a paper containing a prejudged opinion, or an opinion made up without hearing counsel." I cannot recollect which was the expression, but this was the substance. I have not the least recollection that anything passed on the third day, between the counsel for the prisoner and the court; for when Mr. Lewis used these expressions, his face was not turned to the court, and he spoke with considerable degree of warmth; the court sat in the south part of the room, and Mr. Lewis (I think) turned his face full to the westward, when he used these expressions. The paper lay on the table a considerable time; after which some gentlemen of the bar took it up, and I for one copied it. Whether I took the whole of it, and all the authorities cited, I cannot say. The prisoner having been brought into court, his counsel had a good deal of conversation in my hearing, on the subject of supporting or abandoning his defence; that conversation appears to me to have been accurately stated by Mr. Lewis and Mr. Dallas. I do not recollect why the prisoner was not put on his trial that day, but the court adjourned between 12 and 1 o'clock. I went home, and after taking a walk, on returning, I saw the district attorney on my steps. He asked me whether I would have any objection to deliv-

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ering up the copy which I had taken of the opinion of the court. I said I had no objection, and gave it to him. That paper was not read on the first, or on any other day by the court, or anything stated by the court, as the substance of it. On the next morning, to wit: the 23d, the prisoner was brought into court. The court asked the prisoner's counsel, if they were ready to proceed to the trial. Mr. Lewis rose and uttered a few words, in order to show that they did not mean to proceed with it. Judge Chase here interrupted Mr. Lewis—the particular expressions of the judge I do not recollect; the substance of them was, that the counsel were not to consider themselves bound by the opinion which the court had reduced to writing the day before; that the counsel were at liberty on both sides to combat that opinion. Judge Chase as well as Judge Peters appeared to be very anxious that the counsel should undertake the defence of the prisoner. Judge Chase said, the cases at common law before the statute of Edward the Third, ought not to be read to the court: he mentioned the case of a man whose stag the king had killed, and who said he wished the stag's horns were in the king's belly; he also mentioned the man who kept a public house, with the sign of a crown, and said he would make his son heir to the Crown. He said such cases as these must not shall not be cited; and I think he made use of these expressions: "What! cases from Rome, Turkey and France!" That the counsel should go into the law, but must not cite cases that were not law.

He said that he had an opinion in point of law as to every case that could be brought before the court, or else he was not fit to sit there. He said something (but the precise words I do not pretend to recollect) as to the counsel proceeding according to their consciences; he said that the gentlemen would proceed at the hazard of their character, and when it appeared pretty plain, that the gentlemen would not proceed in defence of the prisoner, he said, you may think to put the court to difficulties; but if you do, you miss your aim, or words in substance to that effect. Judge Peters addressed the counsel, and said if an error has been committed, why may it not be redressed? the paper has been withdrawn—and I think both the judges concurred in expressing the sentiment that matters were to be considered as if the paper had never been thrown on the table. When Judge Peters mentioned that the paper had been withdrawn, Mr. Lewis answered, the paper, it is true, is withdrawn, but how can the court erase from their minds an opinion formed without hearing counsel. A good deal more passed which I do not recollect, having taken no notes. Mr. Dallas addressed the court, but I have no recollection of what he said. The counsel continued firm in their determination to abandon the prisoner: the court took great pains to induce them to act as counsel for the prisoner, and before Fries was remanded to jail, expressed their hope that the counsel would think better of it, and appear in his defence. I recollect nothing more of what happened on the second day. Should any questions be put to me, they may awaken a recollection of what does not now occur to me.

On the third day when the prisoner was brought to the bar, he was asked if he had any counsel, (I think on the second day, the court had mentioned to him that he might have other counsel,) he said no, he would depend on the court to be his counsel. Judge Chase said, the court will be your counsel, and by the blessing of God, will serve you as effectually as your counsel could have done. The trial proceeded, and after the testmony was given and a short statement of the case made by the district attorney, the judge charged the jury; he told them they were judges of the law as well as the fact. He stated to them that cases determined in England, before their Revolution, should not be received by the court. I have my notes of the charge; he stated the law very much in the manner as it was stated by Judge Paterson in the trial of Mitchell for whom I was counsel. I cannot undertake to recollect anything further than I have already stated.

Mr. Randolph. I understood you to have stated that the written paper thrown or handed down by Judge Chase on the table produced a considerable degree of agitation at the bar.—From what do you conceive that agitation arose?

Mr. Harper said he would take the opinion of the court, at some stage of the business, as to what was proper testimony. On Saturday there had been an opinion and argument interwoven in the testimony given. He paid great deference to the opinion of the witness, but he submtted it to the decision of the court whether it was proper to require it.

The President. The gentleman may vary the question, so as to attain his object, by inquiring as to the facts that took place.

Mr. Randolph then said, I ask, with the permission of the court, whether in the course of your practice, which I understand to have been long and extensive, you have ever witnessed a similar proceeding.

Mr. Key. I shall object to that question. I pray the opinion of the court, whether, in order to abridge time——

The President desired that the question might be in the first instance reduced to writing.

It was accordingly reduced to writing as follows:

Question 1st. You say that when the written opinion of the court was thrown on the table, it produced considerable agitation among the gentlemen of the bar. What did you conceive to be the cause of that agitation?—Which being read by the Secretary,

Mr. Bayard moved that the Senate should withdraw.—The motion was lost on a division.

The question was then taken on receiving the proposed question, and passed in the negative by an unanimous vote.

Mr. Randolph then submitted in writing,

Question 2d. In the course of your practice, which is understood to have been long and extensive, did you ever witness a similar proceeding on the part of the court?

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To the putting of this question, Mr. Martin withdrew the objection, which had previously been made.

Mr. Tilghman answered: I have been in the practice of the law for thirty-one years, and have no recollection of a similar proceeding.

Mr. Randolph. When Mr. Chase, after throwing or handing down the papers, went on to say that counsel would be heard, did he go on to say, or not, that counsel, when heard, must address themselves to the court and not to the jury?

Mr. Tilghman. I am confident that at that time he said nothing of the sort, nor do I recollect that he said any such thing at any other time. If he did it escaped my recollection, which is very strong, as to what was said by the judge when he threw down the paper or papers.

Mr. Harper. You have said that you are perfectly clear, that when the paper was delivered or thrown down, the court did not say the counsel must address themselves to the court and not to the jury, and I understand you also to say that you have no recollection that they said any such thing at any other time.

Mr. Tilghman. I have no recollection that they did.

Mr. Harper. Have you any recollection that the court at that time prevented the counsel from proceeding?

Mr. Tilghman. I have not.

Mr. Harper. Did the court forbid them during the proceedings, or on the trial, to cite cases?

Mr. Tilghman. There were no counsel at the trial.

Mr. Harper. Did Judge Chase at any time say that they would prohibit their reading the acts of Congress to the jury?

Mr. Tilghman. I do not reccollect that he did.

Mr. Harper. Was anything said about the sedition law, and the act——

Mr. Tilghman. I do not recollect that there was.

Mr. Harper. Did Judge Chase express any disapprobation of the conduct of the circuit court on a former trial in suffering those acts to be read?

Mr. Tilghman. I do not recollect that he did.

Mr. Hopkinson. I think you have stated that you attended the trial of John Fries throughout?

Mr. Tilghman. I did.

Mr. Hopkinson. Did you see any disposition, or act, or conduct of the court, calculated to oppress the prisoner?

Mr. Nicholson objected to this question being put, and Mr. Hopkinson said, that to avoid all difficulty, he would waive it.

Mr. Martin. Has it been the usual practice in the courts of Pennsylvania for the judges to declare to the jury what is the law in criminal cases?

Mr. Tilghman. They always in their charge to the jury state the law and the evidence, and apply the law to the evidence.

To an interrogatory offered by Mr. Martin,

Mr. Tilghman answered. The court generally hear the counsel at large on the law, and they are permitted to address the jury on the law and the fact; after which the counsel for the State concludes; the court then states the evidence to the jury, and their opinion of the law, but leaves the decision of both law and fact to the jury.

To another interrogatory of Mr. Martin, as to the practice of the courts, Mr. Tilghman replied, that counsel generally take that course which they consider best calculated to benefit their clients. In capital cases, he did not recollect the court stopping gentlemen of character in any course they thought fit to adopt.

Mr. Nicholson. In your practice in Pennsylvania, or Delaware, where I understand you have practised, did you ever hear the court undertake to inform the jury of their opinion of the law before the prisoner' counsel had been heard?

Mr. Tilghman. I do not recollect I ever did.

In answer to a question,

Mr. Tilghman said, in the charge to the jury, the contents of the paper containing the opinion of the court, and which had been withdrawn, were never alluded to; nor in the least alluded to when it was thrown down or delivered.

Mr. Nicholson. You have stated that the opinion was not read to the jury. I ask whether when this paper was laid on the table the jury was sworn?

Mr. Tilghman. No. They were not sworn till the next day but one.

Mr. Nicholson. Were the general panel then in court?

Mr. Tilghman. According to my recollection the general panel attended with great punctuality. I this morning looked over my notes and I took down those that were challenged by Fries, and those that tried him, in order to assist me in making my challenge in the case of Heany and Getman. But I do not know that I then saw the face of any of them. It is proper to state that the common jury as soon as the court is opened generally walk forward into the jury box, which holds only eleven, a chair being placed for the twelfth—the other jurors take their seats behind those, in another box, or remain in the hall of the court.

Mr. Nicholson. The judge declared that the counsel for the prisoner might proceed at the hazard of their characters?

Mr. Tilghman. I think those were the words he used.

Mr. Nicholson. Were the general panel, at this time, in a situation to hear what was said?

Mr. Tilghman. Certainly, sir, this was on the second day.

Mr. Randolph. Before the written opinion was handed down, did not Mr. Chase or the court declare that the question of law had been settled in the case of Vigol and Mitchell?

Mr Tilghman. On the trial of Fries they did cite this case and rely upon it. If the court will indulge me I can turn to my notes. Judge Chase stated the opinion of the court in his charge to the jury to be the same as in the case of Vigol and Mitchell.

Mr. Randolph. Did he say that the opinion in the case of Vigol and Mitchell was the opinion contained in that paper?

Mr. Tilghman. I do not remember. Many things might have happened, of which I have no recollection, as I did not take notes at the time.

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Mr. Campbell. How many of those papers were thrown down or given to the clerk?

Mr. Tilghman. I cannot say with perfect certainty. But I stated before, that one was handed to the attorney of the district, another to the counsel for the prisoner, and the third to the jury, to take out with them.

Mr. Campbell. Was there sufficient time before the papers were withdrawn, for the jurors or other persons to have read them?

Mr. Tilghman. I stated before that the court rose between twelve and one o'clock. The jury were not in a situation to have access to the bar table. After the paper lay for some time, several of the bar employed themselves in copying it. I have no recollection that ony one of the papers were handed into the jury box.

President. At what hour were they withdrawn?

Mr. Tilghman. I think on the same day, between one and two o'clock, that the district attorney called on me. I am pretty certain that the papers thrown down were not taken away, but remained in the hands of the court.

Mr. Campbell. Can you say how many copies were taken?

Mr. Tilghman. Not precisely. I took one, and Mr. Thomas Ross another. I believe we copied them at the same time. But I do not know of my own knowledge that any person transcribed them. Now I recollect, I think I saw one or two others also taking copies.

Mr. Campbell. Do you know whether all those taken were withdrawn?

Mr. Tilghman. I do not. I only know that mine was withdrawn.

Mr. Nicholson. Did you hear the subject spoken of generally that day?

Mr. Tilghman. Those who copied the paper spoke on the subject to each other.

Mr. Nicholson. I ask whether it was a subject of general conversation?

Mr. Tilghman. Very much so, among the gentlemen of the bar.

Mr. Nicholson. You have said that it is a usual thing in the courts of Pennsylvania for the judge to charge the jury after the counsel on both sides have spoken. Do you recollect to have seen a court reduce their charge to writing, and give it to the jury?

Mr. Tilghman. Never.

William S. Biddle, sworn.

Mr. Randolph. Were you present at the trial of John Fries?

Answer. I was.

Mr. Randolph. Were you present when the written opinion of the court was handed down?

A. From the length of time which has passed I have not a very distinct recollection of the circumstances that occurred.

Mr. Randolph. Did you take a copy of that opinion, and was that copy the whole or a part of it?

A. I did take a copy in part; I took the substance in regard to the point of treason, but I believe I did not copy the whole.

Mr. Randolph. Were there other copies taken?

A. I know of one taken by Mr. Rawle.

Mr. Randolph. Was any application ever made to you to deliver up the copy in order to destroy it?

A. Never.

Mr. Randolph. Did you communicate to any person the substance of the copy?

A. Never, until during the last session of Congress, in conversation with Mr. Dallas, I mentioned my being possessed of it, and he expressing a desire to see it, I stepped over to my office and brought it.

Mr. Randolph. Although you did not take a copy of it verbatim, did you take the substance of it?

A. I did.

Mr. Randolph. Would you know that copy?

A. I subscribed my name to it.

Mr. Randolph. Is that the paper? (showing him a paper.)

A. Yes, it is.

Mr. Randolph. Did you hear much conversation about the paper at that time?

A. I have no distinct recollection; I attended the trial of Fries and others for treason, but I do not recollect any conversation about it.

Mr. Randolph. Can you tell whether the contents became known to any of the jurors?

A. I cannot.

Mr. Harper. I observe the paper contains notes and references to authorities; were they taken from the paper handed down by the court, or were they made by yourself?

A. I cannot say as to those at the bottom; those at the end were all my own.

Mr. Martin. Do you know whether the judges or the district attorney knew you had a copy?

A. I do not.

William Rawle, affirmed.

The circuit court of the United States sat in Philadelphia in April, 1800. As the former proceedings in relation to the prisoners indicted for treason were considered at an end, except from the intervention of an act of Congress, it appeared to me most regular to quash all the previous proceedings. I made a motion to this effect, which was granted. On the same day the court charged the grand jury, and I sent to them bills against John Fries, and other persons charged with treason and other offences. The bill against John Fries was returned on the 16th a true bill, and he was immediately brought up, arraigned and pleaded not guilty. Messrs. Lewis and Dallas appeared as counsel for Fries. Copies of the indictment, and lists of the jurors and witnesses were furnished to Fries as directed by law. The bringing on the trial was postponed on account of the absence of George Mitchel, whom I deemed to be a material witness. According to my best recollection it was not intended that John Fries should be tried on the 22d, the first day alluded to. I cannot say that John Fries was then at the bar. That circumstance does not appear on the minutes of the clerk of the court. It was certainly

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not my intention that he should have been brought up, but he may possibly have been brought through mistake. Shortly after the court met, Judge Chase observed, that as much time had been lost on the former trial or trials, the court had determined to express their opinion in writing, on the point of law, that they might not be misunderstood; that they had therefore committed that opinion to writing, and that the clerk had made copies of it, one of which should be given to the district attorney, one to the counsel for the prisoner; and one the jury should take out with them: as these words were pronounced, several papers, I think three, were handed down or thown down, as it were; my back was to the court, and whether this was done by Judge Chase or the clerk, I know not. I immediately took up the one intended for me and began to read it, but casting my eyes to the opposite side of the table, I saw Mr. Lewis with another copy before him, looking at it, apparently with great indignation, and then throwing it on the table. I am pretty clear nothing passed between the court and the counsel in the course of that morning. I observed much agitation among the gentlemen of the bar, who were conversing with each other with apparent warmth; but having at that time a very great burden of criminal prosecutions on me, my attention was much engaged, and I did not hear distinctly what was said, nor did I know, until the court rose, that there was a probability of the counsel for John Fries declining to act. I think that twenty-one persons were that day brought before the court charged with seditious combinations, and who submitted to the court. The court rose pretty early in the morning, and intimated that I should not call any witnesses in relation to the submissions until the trials for treason were over. When the court rose I learnt from several gentlemen, that Mr. Lewis and Mr. Dallas were disgusted with the conduct of the court, and meant to decline acting as counsel for Fries, and I have an indistinct recollection that I heard something of this kind drop from Mr. Dallas himself. I went home, and had been there but a few minutes, when Judge Chase and Judge Peters came in. We went into another room, and Judge Peters began by expressing a good deal of uneasiness, from an apprehension that the gentlemen assigned as counsel for John Fries would not go on. Judge Chase said he could not suppose that that would be the consequence. I supported the idea which Judge Peters had expressed; I told him the gentlemen of the Philadelphia bar were men of much independence and character, and that unless those papers were withdrawn, and the business conducted as usual at our bar, they probably would desist from conducting the defence. My recollection at this distance of time cannot be very distinct, but I am pretty well satisfied that Judge Chase expressed his regret that the conduct of the court should be so taken, and said, that he did not mean that anything which he had done should preclude the counsel from making a defence in the usual manner. Judge Peters asked if I would consent to go out, and undertake to recover the papers; I said I had no objection, and both the judges concurred in requesting me to do so. I recollected seeing Mr. Edward Tilghman and Mr. Thomas Ross engaged in making copies. I did not recollect to have seen any others so engaged. I went to their houses and asked for the copies, which were readily given, and took them to Mr. Caldwell, clerk of the court. I asked him if he had noticed any others to have been taken? He said, he thought a copy had been taken by Mr. William Meredith. I desired him to go to him and endeavor to recall it. I did not know that Mr. Biddle, who was then a student in my office, had taken a copy in part, or I should have desired him to give it up. From some circumstances which I do not recollect, I find that I did not hand my own copy to Mr. Caldwell. I now have it in my possession. The paper was not read, I think, by any but those who transcribed it, and I entertained an anxious hope, after what had taken place, that the gentlemen would proceed with the defence of the prisoner. I shall now take the liberty of referring to some original notes made by me at the time—from which I can state what passed the following morning. So far as they go I believe them accurate, though they may not enable me to relate all that was said. On the 23d April, John Fries was brought and put to the bar, Messrs. Lewis and Dallas attending. The court asked if we were ready to proceed. Mr. Lewis rose and said—If employed by the prisoner, I should think myself bound to proceed, but being assigned —he was here interrupted by Judge Chase, who said, "you are not bound by the opinion delivered yesterday you may contest it on both sides." Mr. Lewis answered—I understood that the court had made up their minds, and as the prisoner's counsel have a right to make a full defence, and address the jury both on the law and the fact, it would place me in too degrading a situation, and therefore I will not proceed. Judge Chase answered with apparent impatience—"You are at liberty to proceed as you think proper, and address the jury and lay down the law as you think proper." Mr. Lewis answered, with considerable emphasis, I will never address the court in a criminal case on a question of law. He then took a pretty extensive view on the propriety of going into cases decided before the Revolution and said, if he was precluded from showing that the judges since the Revolution in England had considered themselves bound by the decisions before the Revolution, which ought not to be the doctrine in this country, he must decline acting as counsel for the prisoner. Judge Chase answered, sir, you must do as you please. Mr. Dallas then addressed the court. He contended that the rights of advocates had been encroached upon by the proceedings of the day before. He went into a general view of the ground taken by Mr. Lewis, and concluded with his determination not to proceed as counsel for John Fries.

Judge Chase then observed, no opinion has been given as to facts in this case. I would not let the witnesses be examined in the combination cases, because I would not let the jury hear them before

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the trial of Fries came on. As to the law, I knew that the trial before had taken nine days; that many common law cases were cited, such as wishing a stag's horns in the King's belly, and that of a man's saying he would make his son heir to the Crown; such cases ought not, shall not go to the jury. No case can come before me on which I have not a decided opinion as to the law, otherwise I should not be fit to preside here. I have always conducted myself with candor, and I meant, gentlemen, to save you trouble. It is not respectful, nor is it the duty of counsel, to say they have a right to offer anything they please. What! decisions in Rome, France, Turkey? No lawyer will say that common law cases are law under the statute of Edward the Third, nor justify those judges who overset the statute of William, and overrule the necessity of having two witnesses to one overt act, and to admit hearsay testimony to prove matters of fact. It is the duty of counsel to lay down the law, but not to read cases that are not law. Having thus explained the meaning of the court, you will stand acquitted or condemned to your own consciences, as you think proper to act. But, gentlemen, do as you please. The course will be, the District Attorney will open the law, state his case, and produce his witnesses. You are at liberty to controvert the law as to the matter, but the manner must be regulated by the court. Judge Peters said you are to consider every everything done yesterday as withdrawn. Mr. Lewis replied, true, sir, the papers are withdrawn, but the sentiments still remain, I shall not therefore act.

Mr. Dallas expressed the same determination, which I did not take down.

A pause for a few moments took place, when Judge Chase said, you cannot put the court into a difficulty by this conduct, gentlemen; you do not know me if you think so; and desiring the persons between him and the prisoner to stand aside, and addressing himself to John Fries, he asked, are you desirous of having other counsel assigned you, or will you go on to trial without? John Fries, after a pause, said he did not know what to do; he would leave it to the court. Under these circumstances I felt a repugnance to go on with the trial, not wishing to act in a case so extremely singular. I therefore moved to postpone the trial to the next day; the court readily concurred, and Fries was remanded to jail.

On the 24th, Fries was brought to the bar again. Judge Chase asked him if he had any counsel. He told the court that he relied on them as his counsel, and he expressed himself with a degree of firmness and composure that convinced me that his decision was formed on mature reflection. Then, Judge Chase answered, by the blessing of God we will be your counsel, and do you as much justice as those assigned you.

The jury were then called over, and the court took pains to inform Fries of his right to challenge thirty-five without cause, and as many others as he could show cause against. In every instance they appeared extremely anxious that he should defend himself. There were one or two friends near him, I believe, to assist him in his challenges. After the jurors had been severally passed by him, and before they were sworn, the court directed that they should severally be asked whether they had delivered an opinion on the subject. The first juror said he had not, and was sworn; the second said he had; he was then sworn to make true answers; and he declared that he had in a conversation said that these men ought to be punished; the court directed this person to be set aside, and he was not sworn on the trial.

The court afterwards directed the question to be somewhat altered: "Have you formed *or* delivered an opinion," &c.? Before this question was put to more than three persons, it was again altered, and put in these words: "Have you formed *and* delivered an opinion?" Three, including the one already mentioned, answered affirmatively, and were set aside. The prisoner challenged, without cause, thirty-four of the panel. Twelve jurors were then sworn, and I opened the case in a very brief manner, laid down the law, and adduced the testimony. The trial lasted till the afternoon, and till the next day; the court retired twice for refreshment and repose. John Fries called no witnesses. But at the end of the examination of each witness called on the part of the prosecution, Judge Chase reminded him that he had a right to put any question to the witness that he thought proper, and told him to be cautious not to put any question the answer to which might injure him. When the evidence on the part of the prosecution had closed, John Fries expressed his determination to call none on his part. I then addressed the jury in as brief a manner as I could, consistent with the duty I had to perform, for I severely felt the unpleasantness of the situation in which I stood, acting against a man tried on a capital charge without professional assistance. The court then charged the jury, who retired, and in about half an hour returned with a verdict of guilty. These are all the general facts I recollect in relation to the trial.

Mr. Randolph. Did you on the first day, the 22d of April, hear Mr. Lewis express in court any sentiments in regard to the paper which you say he viewed with such indignation?

Mr. Rawle. I have no recollection of hearing Mr. Lewis say one word on that day.

Mr. Randolph. You stated that on the next day Mr. Lewis, when told by the court to proceed as he thought proper, answered that he never would address the court in a criminal case on a point of law, and urged the propriety of citing cases before the Revolution, to show that the English judges since the Revolution thought themselves bound by cases before the Revolution, which ought not to be the law in this country, and that if he was not permitted to do this, he would be obliged to abandon the defence?

Mr. Rawle. Yes, sir.

Mr. Randolph. Did you hear any opinion given by the court which warranted Mr. Lewis in the opinion that he was precluded from citing such cases?

Mr. Rawle. On the 23d, I did understand the

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court to say that such cases should not be cited, because they tended to mislead the jury. But at no time did I hear the court say that counsel were precluded from addressing the jury on the law, but it was said that as to the authorities cited, it must be determined by the court whether they were admissible or not.

Mr. Randolph. You stated that both the judges after the adjournment came to your house. Was your house their place of abode?

Mr. Rawle. No, sir.

Mr. Randolph. At what hour did they call?

Mr. Rawle. About ten o'clock.

Mr. Randolph. And that Judge Peters expressed an apprehension that Messrs. Lewis and Dallas would not go on?

Mr. Rawle. Yes, sir.

Mr. Randolph. On what grounds did he express this apprehension?

Mr. Rawle. I do not know.

Mr. Randolph. Have you any recollection of any grounds for such an apprehension, except that which arose from the general character of the bar?

Mr. Rawle. I have already stated that I understood there was a measure of that kind in contemplation. I have a faint recollection of having heard something of that kind fall from Mr. Dallas.

Mr. Randolph. Did you express to the judges that your opinion was drawn from any other source than your general knowledge of the bar?

Mr. Rawle. I do not recollect that I did.

Mr. Randolph. Mr. Chase expressed his regret, and said he did not mean to preclude the counsel from proceeding in the trial in the usual manner. Was the course pursued in the case of Fries in the usual manner?

Mr. Rawle. I never saw a similar circumstance take place at our bar during the whole course of my life.

Mr. Randolph. Is it usual for the court to give a general opinion on the law before counsel are heard?

Mr. Rawle. Never, except on their general charge to the grand jury. They sometimes inquire of the gentlemen who prosecute, what are the offences likely to be presented, in order to inform the grand jury what it is their duty to do, and to make their charge more pointed.

Mr. Randolph. Did you ever hear of its being done in a particular case before the court?

Mr. Rawle. Not that I recollect.

Mr. Randolph. Do you know whether much conversation took place at the bar on this novel opinion thrown down on the table?

Mr. Rawle. I stated before that I had a great burden of criminal cases to manage; as I was situated it was not in my power to keep up the usual colloquial intercourse, and I cannot recollect any conversation until that which I have mentioned.

Mr. Randolph. Do you suppose that the act of delivering the opinion in writing was so public as to attract the notice of the jurymen that were attending?

Mr. Rawle. From the number of the jurymen, and from the construction of the court-room, I think that a considerable proportion must have paid attention to the transaction.

Mr. Randolph. If you heard Mr. Lewis use no language on the opinion of the court, whence do you infer his indignation?

Mr. Rawle. From his countenance, and the manner of his throwing down the paper.

Mr. Randolph. Was it such as to attract the attention of those in court?

Mr. Rawle. If they saw him, they must have been struck with the manner in which he expressed his indignation. It was very strong.

Mr. Randolph. Did you hear Mr. Chase say, that if the prisoner's counsel had any objection as to the law, as laid down by the court, they must address the court and not the jury?

Mr. Rawle. I have no recollection of hearing such an expression fall from Judge Chase at any time.

Mr. Nicholson. You stated much of your testimony from your notes. I would ask, sir, were those notes taken at the time, and in the order they stand arranged?

Mr. Rawle. Precisely so, sir. I made my notes in court.

Mr. Nicholson. What was there in the conduct of Judge Chase that induced the counsel to infer that they would be precluded from citing the statutes of the United States which have been referred to?

Mr. Rawle. I cannot say from what circumstance, unless from a recollection of the strenuous opposition made on a former trial on the part of the prosecution to the course then adopted.

Mr. Nicholson. Judge Chase also declared: "No case can come before us on which I have not an opinion as to the law, otherwise I should not be fit to preside here." Was there anything which took place prior to this on which Mr. Lewis founded the opinion that he would be compelled to address the court and not the jury?

Mr. Rawle. It appeared to me that it arose altogether from misapprehension. Nothing fell from the court in my hearing, either in public or in private, which tended to control the counsel from speaking, or to withdraw the consideration of the law from the jury. There appeared to be much misapprehension; and I observed that the court did not set him right as explicitly as might have prevented part of this misapprehension.

Mr. Randolph. I think you said that you entertained at the time of your conference with the judges an anxious hope that the gentlemen would be induced to proceed. If there is no impropriety in the question, I wish to know the cause of the great anxiety you felt on that subject, which induced you to become the agent of calling in the papers containing the opinion of the court?

Mr. Rawle. My reasons arose from an anticipation of those unpleasant sensations, which I would never wish my greatest enemy to feel, that of conducting a trial, in a capital case, and standing alone against a man without counsel. It is easy to conceive that my hopes may have been anxious that I might not be placed in such a painful situation.

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Mr. Nicholson. I will ask you whether you took notes of what passed on the first day?

Mr. Rawle. I did not.

Mr. Harper. Inform the court whether Judge Chase did, at any time during the proceedings, say that he would restrict the counsel of Fries from citing any statutes of the United States to the jury, and especially the sedition law?

Mr. Rawle. I do not recollect that he did.

Mr. Harper. Did he say that he disapproved of the conduct of the former circuit court in permitting the statutes of Congress to be read?

Mr. Rawle. He did not. I never heard any such expression from Judge Chase in relation to the statutes.

Mr. Harper. Have you the paper in your possession which was thrown down on the table?

Mr. Rawle. I have it in my pocket.

Mr. Harper. Will you please to produce it?

Mr. Rawle. This is it, (handing it to Mr. Harper.)

Mr. Harper. Do you know in whose handwriting it is?

Mr. Rawle. In that of the assistant clerk of the court, Mr. Bond.

Mr. Harper. We will offer this paper in evidence.

Mr. Harper then read the paper, as follows, being exhibit No. 2:

"The prisoner, John Fries, stands indicted for *levying war* against the United States.

"This *Constitutional* definition of *treason* is a question of *law*. Every proposition in any statute (whether more or less distinct—whether easy or difficult to comprehend) is always a question of *law*.

"What is the true meaning and true import of the statute, and whether the case stated comes within the statute, is a question of *law* and not of *fact*. The question in an indictment for *levying war* against (or adhering to the enemies of) the United States, is 'whether the *facts* stated do not amount to *levying war*.'

"It is the duty of the court in this, as in all *criminal* cases, to state to the jury their opinion of the law arising on the facts; but the jury are to decide on the present, and in all criminal cases, *both the law and the facts*, on their consideration of the *whole* case.

"The court heard the indictment read on the arraignment of the prisoner, some days past, and just now on his trial, and they attended to the *overt acts* stated in the indictment.

"It is the opinion of the court that any insurrection or rising of any body of people, within the United States, to attain or effect, by *force* or *violence*, any object of a great public nature, or of public and general (or national) concern, is a levying war against the United States, within the contemplation and construction of the Constitution of the United States.

"On this general position, the court are of opinion that any such insurrection or rising to resist or to prevent by force or violence the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling for the militia to execute the laws of the Union, or for any other purpose, (under any pretence, as that the statute was unequal, burdensome, oppressive. or unconstitutional,) is a levying war against the United States within the Constitution.

"The reason for this opinion is, that an insurrection to resist or prevent by force the execution of any statute, has a direct tendency to dissolve all the bonds of society, to destroy all order, and all laws, and also all security for the lives, liberties, and property of the citizens of the United States.

"The court are of opinion that military weapons (as guns and swords, mentioned in the indictment) are not necessary to make such insurrection or rising amount to levying war, because numbers may supply the want of military weapons; and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

"The court are of opinion that the assembling bodies of men, armed and arrayed in a warlike manner, for purposes only of a private nature, is not treason, although the judges and peace officers should be insulted or resisted; or even great outrage committed to the persons and property of our citizens.

"The true criterion to determine whether acts committed are a treason or a less offence, (as a riot,) is the *quo animo* the people did assemble. When the intention is universal or general, as to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots, or other misdemeanors, cannot alter their nature so as to make them amount to treason; and, on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of houses, or the like) are done, will show to what class of crimes the case belongs.

"The court are of opinion that if a body of people conspire and meditate an insurrection, to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor; but if they proceed to carry such intention to execution by force, that they are guilty of the treason of levying war, and the quantum of the force employed neither lessens nor increases the crime; whether by one hundred or one thousand persons is wholly immaterial.

"The court are of opinion that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war, but that it is altogether immaterial whether the force used is sufficient to effectuate the object; any force, connected with the intention, will constitute the crime of levying war."

Mr. Harper. I will ask you one question. Do you recollect whether, after the verdict of guilty

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was brought in against John Fries, the court gave him information of his right to make a motion for an arrest of judgment?

Mr. Rawle. When the verdict was brought in, the court briefly told him he might be heard then or at a future day. When he was afterwards brought up for sentence, they told him, if he, or any person for him, could point out any error or irregularity in the course of the proceedings, they should be patiently heard; and in like manner Judge Chase addressed the other prisoners; the same question was put to all that were found guilty. They answered, that they had nothing to say.

Mr. Hay being called, and not immediately appearing—

Mr. Harper observed this witness was called on an article subsequent to that on which the witnesses already examined had testified. He would submit a proposition to the honorable Managers, to go through at one time the whole of the testimony on each article. It might not be the regular course, but if gentlemen assent to it, said Mr. H., we shall prefer it; it will be convenient to the witnesses, many of whom may be discharged before the whole of the testimony is gone through.

Mr. Randolph. Though this mode may have its advantages, it is attended with its difficulties. A witness may be found to support more than one article. With regard to the first article, I have no objection to this course; but with regard to the subsequent articles I have.

President. If the gentlemen are agreed, I will take the sense of the Senate on the course to be pursued.

Mr. Randolph. It is the wish of the Managers not to depart from the usual course.

Mr. Harper. We do not claim it as a right.

George Hay, sworn.

The greater part of the evidence I am to deliver relates to what was said by me as counsel for J. T. Callender, who was indicted for a libel on the President of the United States, and what was said by *one* of the judges; for I do not recollect to have heard the voice of Judge Griffin at any time during the trial. In order to make this statement as accurate as possible, as my memory is not strong, it is necessary to resort to a statement made by myself and the counsel associated with me in the defence of J. T. Callender, which I now hold in my hand, and every part of which, according to my best recollection, is correct.

Mr. Harper here interrupted Mr. Hay, and said, the witness may refer to anything done by himself at the time the occurrences happened which he relates. But I submit it to the Court how correct it is to refer to what was not done by him, or done at the time.

The President asked Mr. Hay whether the notes were taken by him.

Mr. Hay. The statement was made by different persons. Some parts were made by myself, perhaps the greater part; the rest by Mr. Nicholas and Mr. Wirt. I believe I shall be able to state from it every material occurrence which took place at the time. With regard to those parts of the statement not made by me, a reference to them will call to my recollection the facts mentioned in such parts. If I state anything which I do not distinctly recollect, upon adverting to the statement, I will explain the actual situation of my mind on that point.

Mr. Nicholson. If I understand the witness, it is not his intention to give the paper in his hand as evidence, but merely to refer to it for the purpose of refreshing his memory.

Mr. Harper. I do not understand the way in which it is meant to use the paper. I apprehend that it is a rule of evidence that nothing but notes made at the time of the transactions related can be received as evidence. I therefore am of opinion that a reference to this statement is inadmissible, because a part of it is made by others, and none of it made at the time.

Mr. Rodney. When we advert to what has been stated by the witness, who says he does not mean to state in evidence anything in the paper of which he has not, independently of it, a distinct recollection, I think it is within the law to admit him to avail himself of it. I apprehend that had I attended the trial of Callender, and taken minutes, and others had attended and not taken notes, if by recurring to my notes there should be recalled to their recollection facts so distinctly that they could swear to them before the court, it would be competent to admit their reference to such notes.

Mr. Campbell inquired whether the objection were not confined to that part of the statement not made by the witness?

Mr. Harper said the objection related to the whole of it.

Mr. Campbell believed that a witness might use any memorandum to refresh his memory; and that it was not necessary that it should be made at the point of time when the events happened. It is sufficient if made at a time when his remembrance of the facts was correct. With regard to that part not taken by himself, if he perused it at a time so shortly after the events related, as to be able to determine it accurate, and now recognises the memorandum to be the same, it is sufficient.

Mr. Martin said he had been many years in the practice of the law. The rules of evidence were probably different in different States. But he had always supposed that a witness could not be permitted to use any memorandum not made by himself, or at the time of the events related, or near it. He may, before he comes into court, consult any memorandum for the purpose of refreshing his memory, but not in court.

The President. The witness proposes to make use of a memorandum under the circumstances which he has stated. The question is, shall the witness be permitted to make use of it?

Mr. Adams. I am not prepared to answer that question at present, not knowing the nature of the minutes the witness proposes to use. I therefore move that the Senate retire before the question is taken.

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The question on retiring was taken, and, on a division, lost.

Mr. Adams said he wished to see the paper before he voted.

The President asked Mr. Hay whether it was in his own hand-writing?

Mr. Hay replied that it was not; but that it was written by a clerk from a printed statement.

President. Have you the parts made by yourself separate?

Mr. Hay said he had not.

The President then put the question, whether the witness should be permitted to use the paper? and, the question being taken by yeas and nays, passed in the negative—yeas 16, nays 18.

Mr. Randolph asked the witness to state to the Court the circumstances which took place during the trial of James T. Callender, and particularly what respected the excuse and testimony of John Basset.

Mr. Hay. I will state as well as I can what fell from the judge, and which appeared to me to be material. After some previous observations, the counsel for the traverser claimed for their client his Constitutional right to be tried by an impartial jury. I cannot pretend to relate precisely either the course of proceeding or the exact words which were used, since I am deprived of the aid of those notes which I know to be correct. I shall not, therefore, recite the precise words, but I shall give the substance of them, and the words themselves as nearly as possible. According to my best recollection Judge Chase's declaration on that point was, that he would see justice done to the prisoner in that respect. In order to obtain the object which the counsel for Callender had in view, we pursued this course. Believing that a majority of the petit jury, if not all of them, were men decidedly opposed to J. T. Callender, in political sentiments, and thinking it probable, from the state of parties at that time, that they had made up their minds, we wished to ask every juror, before he was sworn, whether he had ever formed an opinion with respect to the book called "The Prospect Before Us." According to my best recollection, Judge Chase interfered, and told us it was not the proper question. He said he would tell us what the proper question was. He then went on to state that the proper question was this: "Have you ever formed and delivered an opinion concerning the charges in this indictment?" Though I have but little dependence on my memory, in general, yet in this I am certain, that I not only give the substance, but the identical words used. To this question an answer was necessarily given in the negative.

Mr. Key. Who answered?

Mr. Hay. A juror.

Mr. Key. The whole, or what jurors? Was it the answer of John Basset? no other juror is mentioned in the second article. The moment any attempt is made to extend the inquiry beyond the precise object of the second article, I will object to it.

Mr. Randolph. We have no objection to that course being pursued, as we can get all we want from the fourth article.

Mr. Rodney. We are examining a witness who may be able to give testimony on the second, third, or fourth articles.

President. Will the gentleman read the article on which the witness is called?

Mr. Randolph. I do not know that we are bound to do so.

President. The Senate desire it.

Mr. Randolph. I beg pardon. I thought it was desired on the other side.

Mr. Rodney then read the second, third, fourth, fifth, and sixth articles.

Mr. Harper. Our wish is to confine the witness to the *matter* charged. We only object to the *opinion* of the witness being given.

President. It is probable, gentlemen, that nothing will arise in what the witness states, that will occasion difficulty. He will please proceed.

Mr. Hay. What I was about to mention was not so much opinion as fact. I was proceeding to relate the facts which constitute the basis of the second article. When Mr. Basset was called by the marshal, he manifested some repugnance to serving on the jury. He said, according to my best recollection, that he was unwilling to serve, because he had made up his mind as to that book. I do not pretend to say that the words used were precisely those I state. He may have expressed himself in the words ascribed to him by the stenographical statement given of the trial. The objection, thus made by Mr. Basset, was overruled by Judge Chase, who asked him whether he had ever formed and delivered an opinion concerning the charges in the indictment. He was sworn to answer this question. Like the other jurors, he answered in the negative, and the judge ordered him, like the other jurors, to be sworn on the jury. He was sworn, and did serve.

Mr. Harper. Was the word used by the judge, *and* or *or*?

Mr. Hay. I am perfectly clear it was *and*, and not *or*.

In the state of things at that time, and seeing the temper that was manifested on the trial, I would not, and did not, ask the juror a single question without submitting it to the court, and soliciting their permission to ask it. I solicited the leave of the court to ask a question. The reply of the judge was this—the difficulty I experience at this moment in stating the precise words, furnishes the reason I had for wishing to have recourse to the statement I had in my hand; since I am denied that indulgence, I will not pretend to state literally what was said, but I will state the substance. I told the judge I wished to ask a question. "What, said the judge, is the question you want to put?—state it. If I think it a proper question, or if I choose it, you may put it. Come, what is your question?" Notwithstanding the humiliation I felt at being addressed in such a way before a crowded audience, I asked, "have you formed (leaving out, "and delivered") an opinion concerning the book from which the charges in the indictment are taken?" The reply of Judge Chase was, "no, sir, no, you shall ask no such question." And the question

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was not asked. This is all I recollect at this moment respecting Mr. Basset, and the occurrences connected with that part of the trial.

It was stated by Callender, in his affidavit, that Colonel Taylor, of Caroline, was a material witness; but of this I am not certain, because I have not read the affidavit since the trial. In the interval that elapsed between the day on which the first motion was made, and that on which the trial took place, Tuesday, Colonel Taylor was summoned. When he came to town, I know not. I have no recollection of having seen him until he came into court. I had, therefore, no opportunity of ascertaining whether it would be in his power to furnish the accused with the evidence he expected to derive from him. After the witnesses on the part of the United States had been adduced to prove the fact of publication, and after the attorney of the United States had opened the case, and stated the law arising upon the evidence, Colonel Taylor was offered to the court as a witness. He was sworn; and, immediately after, or probably while he was swearing, Mr. Chase asked the counsel of Callender what they expected to prove by him. If I recollect rightly, Mr. Nicholas, one of my associates, observed that we did not know distinctly what could be proved by Colonel Taylor; but that we expected to prove what would amount to a justification of one of the counts in the indictment; that we expected to prove that Mr. Adams, the then President of the United States, had avowed, in conversation with Colonel Taylor, sentiments hostile to a republican Government; and that he had voted in the Senate of the United States against the law for sequestering British property in this country, and against the law for suspending commercial intercourse between the United States and the Kingdom of Great Britain. I do not recollect precisely the words which were used by Mr. Nicholas, in making the observations that accompanied this statement; but I think he said he hoped that it would be understood that he was not tied down to these particular points, saying that probably the answers given by Colonel Taylor might suggest other questions proper to be put. Nor do I use the precise words in which Judge Chase made an objection; but I do remember that the objection was made. The principle upon which he founded his objection was this, that Colonel Taylor's evidence did not go to a justification of any one entire charge; and he declared Colonel Taylor's evidence to be inadmissible on that ground. The judge was then asked by Mr. Nicholas whether we might not prove part of a charge by one witness, and the other part by another. The judge answered him, that he desired him to understand the law as he had propounded it; and the law was this: that this could not be done; that Colonel Taylor's evidence related to only one part of a charge, and that he could not prove one part by one evidence, and one part by another. I then observed to the judge that I thought Colonel Taylor's evidence admissible even on the principle laid down by the court; that I thought his testimony would go to prove both members of the sentence. The one asserted that Mr. Adams was an aristocrat, the other, that he had proved faithful and serviceable to the British interest; and that he could prove that he had heard Mr. Adams make the remarks already stated; and that he had proved serviceable to Great Britain in the way mentioned by the author, that is, in giving the two votes in the Senate, alluded to in the work. The judge did not say in express terms that the position taken at the bar was wrong, but he said that the evidence of Colonel Taylor was inadmissible, and that the counsel knew it to be so; and I believe it was at the same moment of time, he said that our object was to deceive and mislead the populace. I remember these expressions as well as if I had heard them yesterday. Finding that the attempt I had made to render a service, not to the man, but to the cause, instead of affording service to the cause, only brought on me the obloquy of the court, I felt myself disgusted, and said no more on the subject.

I recollect that we were requested by the judge to reduce to writing the questions that we wished to propound to Colonel Taylor. I thought the measure so novel and unprecedented that I was not disposed to comply with this desire. The questions were, however, stated in writing by Mr. Nicholas, who observed that he hoped we would not be confined in the examination of the witness to the questions thus stated in writing. If I mistake, not, before the questions were reduced to writing, Mr. Nicholas made some observations about the mode pursued by the court in reference to the attorney for the United States, and that exercised towards the counsel for the prisoner; that the attorney for the United States had not been required to state in writing the questions he wished to ask. When this remark was made to the judge, he said that the attorney for the United States had stated in the opening of the case all that he expected to prove; "but though this were done, we were not bound to do it." My impression is that that word escaped the judge several times.

Nr. Nicholson. What word?

Mr. Hay. The word "we."

Mr. Nicholson. Did it refer to the court as well as the attorney?

Mr. Hay. So, sir, I understood it.

The fourth article relates to the refusal of the judge to postpone the trial on the affidavit of Callender; on which I can only say that the affidavit was filed, but whether regularly drawn or not I do not know. This affidavit, according to my best recollection, stated the absence of material witnesses.

The next article relates to a subject, that it is very unpleasant to me to make any remarks upon, because I feel myself to be a party concerned. The judge is charged with—

[Mr. Hay here read the third, fourth, and fifth clauses of the fourth article.]

There were many expressions used by Judge Chase during the trial which were uncommon, and which I thought, and still think to be so. With respect to the asperity with which he censured me, I shall not——

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Mr. Harper interrupted the witness, and desired him to state the expressions, and let the court judge for themselves.

Mr. Hay. The first expression, which made a very strong impression on my mind, was this: In the course of the argument, urged by me in support of the motion for a continuance to the next term, I assumed it as a clear position, that the law of the State of Virginia, which directs that the jury shall assess the fine, would govern in this case. As soon as I got to that part of the argument the judge interrupted me, and gave me to understand that I was mistaken in the law, and added, the assessment of the fine by the jury may be conformable to your local and State laws, but when applied to the federal courts, it is a "*wild notion.*" In the case of Colonel Taylor's evidence, which I have already stated, the judge said that we knew the evidence to be inadmissible, though we pressed it upon the court, and then the expression followed which has been already mentioned, that we were endeavoring to mislead and deceive the populace. At another time he was pleased to observe, Gentlemen, you have all along been in error in this cause, and you persist in pressing your mistakes on the court. On more occasions than one he charged the counsel with advancing doctrines they knew to be wrong. I endeavored in one part of the cause to satisfy the court that the book called the Prospect Before Us, could not be given in evidence in support of the indictment, because the title of the book was not mentioned in the indictment. In support of my argument, I observed to the court that if the indictment mentioned the book from which the charges were formed, and any subsequent prosecution should afterwards be instituted, the traverser would have nothing more to do than to produce a copy of the record, and plead in bar of a subsequent prosecution; but that according to the opinion of the court, the situation of the traverser would be more precarious than according to the doctrines for which I contended; for that the traverser, if he should plead a former prosecution in bar, would not be able to prove the fact by comparing the record with the indictment; but must resort to extraneous evidence to prove that the subsequent prosecution was founded on the same publication that gave rise to the first. The judge was pleased to observe, without seeming to understand the distinction that I had endeavored to draw, that I knew the present prosecution could be pleaded in bar. I certainly did know it, and was endeavoring at that very time to show by my argument that the better mode of proving the truth of the plea would be by a copy of the record, rather than by an appeal to parole testimony. Judge Chase again interrupted me, and said, I knew that this prosecution might be pleaded in bar.

In the course of the same argument, which I addressed to the judge, for the purpose of showing the truth of the positions we had stated, I observed that according to the established doctrine, the words "tenor and effect," in an indictment for a libel, bound the party to the literal recital of the parts charged as libellous. In support of that opinion I quoted several authorities that satisfied my mind. The judge was pleased to tell me, I was mistaken in my application of them; but I do not remember his precise words. He said the words "tenor and effect" did not oblige the prosecutor to give more than the substance of the paper meant to be recited. It is contended, said he, that the book ought to be copied *verbatim et literatim*, I wonder, he continued, *they* do not contend for *punctuatim* too.

Mr. Nicholson. Was this observation addressed to the bar?

Mr. Hay. It appeared to me to be intended for the people; for he looked round the room when he said, with a sarcastic smile, I wonder they do not contend for *punctuatim* too. I recollect also, that when Mr. Wirt, who was associated with me as counsel for the traverser, was addresssing the court, he was ordered by Judge Chase, to sit down —in this precise language, *sit down*. The judge also declared that the counsel on the part of Callender should not address any observations to the jury concerning the unconstitutionality of the second section of the sedition law, in respect to prosecutions for libellous publications.

Mr. S. Smith, at this stage of the examination of the witness, moved an adjournment of the Senate to their legislative apartment.

The motion not being agreed to;

Mr. Hay proceeded.—When Mr. Wirt was arguing from a proposition he had laid down, he said the conclusion which followed was perfectly syllogistical. The judge bowed to him in a manner I cannot describe, and said "*A non sequitur, sir.*" I do not remember any other expression used by the judge calculated to deter the counsel from proceeding in the defence of J. T. Callender. But I do remember that I was more frequently interrupted by Judge Chase on that trial, than I have ever been interrupted during the sixteen years I have practised at the bar. I do not state how often I was interrupted, because I do not recollect; but I know the interruptions were frequent, and I believed them to be very unnecessary, not only as they regarded myself, but the counsel who were associated with me in the defence.

Mr. Randolph. In your testimony you have said that during the whole course of the trial you never once heard the voice of Judge Griffin. Where those replies and those decisions, which you have detailed, given by Judge Chase apparently without any consultation with Judge Griffin?

Mr. Hay. I stated that I did not hear the voice of Judge Griffin; but I by no means meant it to be inferred that Judge Griffin was not heard by any other person. Judge Chase's manner of delivering the opinion of the court was generally this: after having stopped or interrupted the counsel for the traverser, by telling them to sit down, or that they were mistaken in the law, sometimes, but not every time, he would look at Judge Griffin, who sat upon his left hand, and turning to the bar, and to the audience, he would say, such is the opinion of the court. I think also, that I saw them speaking to each other, but not in such a manner as if they were consulting upon a question of law.

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Mr. Randolph. You said that the question propounded to Mr. Basset, and the other jurors, was, "Have you formed and delivered an opinion as to the charges contained in the indictment?" Are you certain that the expression was "formed *and* delivered?"

Mr. Hay. I am as clear on that point as I am of anything that ever occurred in the course of my life. I have said that my memory at the best is not a good one; but some of the occurrences on this trial were so singular and novel, that they made an unusual impression on my mind.

Mr. Randolph. When it was decided by the court that the question, "Have you ever formed and delivered an opinion on the charges contained in the indictment," was the only proper question, was it stated by the court, or requested by the counsel for the accused, that the indictment might be read?

Mr. Hay. It was requested by the counsel that the indictment might be read, that the juror might have an opportunity of ascertaining whether he had made up his mind on the particular charges it contained.

Mr. Randolph. Was the indictment then read?

Mr. Hay. It was not then read, nor until the jurors were sworn.

Mr. Randolph. You have been, you have stated, a practioner of the law for fifteen years. Has it been the practice of the courts in Virginia, or have you ever heard of, or seen, an instance, where the questions propounded by counsel, were required to be reduced to writing, and submitted to their inspection, before they were permitted to be put?

Mr. Hay. I never knew of a single instance; nor do I remember to have even heard or read of such an instance. I acted as the prosecutor in the trial of Logwood, charged with counterfeiting notes of the Bank of the United States. The Chief Justice of the United States, who presided at the trial, made no such requisition, nor did it ever occur to me, that such a thing ought to be, or could be done.

Mr. Nicholson. When you were required to reduce the questions to writing, was it at the instance of the attorney of the district, (Mr. Nelson,) or was it by the court?

Mr. Hay. I do not remember that Mr. Nelson made any objection to putting the question. The objection was made only on the part of the court. I recollect that Mr. Nelson made one remark as to the witnesses giving testimony on what took place in the Senate of the United States.

Mr. Randolph. Upon what ground did the counsel for the accused assume the right of proving the vote which was given in the Senate by parole testimony? To prove facts done in the Senate you should have reference to their journal.

Mr. Hay. It will be recollected that I stated that Colonel Taylor came into court at the time the jury was about to be sworn; and that the counsel for the traverser was called upon to state in writing the questions that were to be put. Those questions were written without any reflection on my part, as to the propriety or legality of proving the vote of the Senate by parole testimony.

The Court rose at 5 P. M.

TUESDAY, February 12.

The Court met at 12 o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

Mr. Hay, in continuation.

A very short statement will close the detail which I have to make. It was the intention of the counsel, who appeared in behalf of the traverser, to have defended him on the ground of the unconstitutionality of that section of the law, commonly called the sedition law, on which the indictment was founded. The gentlemen associated with me in the defence proceeded to argue this point. They were not permitted to address the jury respecting it. The treatment experienced by Mr. Wirt on this occasion, I have already in some degree stated. I recollect he was interrupted by Judge Chase at several times, and particularly at one of those times, for the purpose of telling him that the doctrine he contended for was true, that the jury had the right to determine on the law as well as the fact. Mr. Wirt then went on to state that the Constitution of the United States was the law of the land. Judge Chase interrupted him, and said there was no necessity for proving that point, it was the *supreme* law of the land. Mr. Wirt then went on to argue that if the jury had a right to determine the law in this case, and if the Constitution was the supreme law, the conclusion was perfectly syllogistical, that the jury had a right to determine on the Constitutionality of the law. It was at that time that Judge Chase addressed him in the words that I have mentioned. According to my best recollection he bowed, and with an air of derision, addressing him, said, "a *non sequitur*, sir." Whether Mr. Wirt said anything more after this in behalf of his client, I do not recollect; he did not, however, say much. After Mr Wirt sat down, I rose, addressed myself to the court, and stated that I addressed myself to the court exclusively. I observed that I did not wish to be heard by the jury, or by the very numerous assemblage that surrounded me. This observation was intended by me as a sort of reply to the observation made by the judge that our defence was intended for the people. I did not attempt to speak to the jury on the question, which I wished to argue before them, but I addressed myself to the court for the purpose of satisfying them. After I had gone on for a short time, I was interrupted by the judge, by a question which I thought an unnecessary one. I will endeavor to state it. I stated to the court, in terms as distinct as my knowledge of the English language enabled me to use, the specific proposition for which I meant to contend; which was, that the jury had, according to the laws of the land, a right to determine every question necessary to the decision of the question of guilty or not guilty. Judge Chase asked me

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whether I laid down that proposition as true in civil as well as in criminal cases, because, if you do, said he, you are wrong. My reply was that I believed the proposition universally true; but it was sufficient for my purpose if it were true as applied to criminal cases. I went on, as well as I could, in the argument I intended to urge. I was again interrupted by the judge. What the circumstances were that gave rise to that interruption, my *unaided* memory will not enable me to tell, nor do I recollect what expressions were used by him. I have not, since yesterday, taken the liberty of looking at the statement, which I have in my pocket, of the circumstances that took place on the trial; but I know that I was interrupted more than once, and I believe more than twice; but the impression on my mind was, that to get through the argument, I should be subjected to more humiliation than any man vindicating another in a court of justice was bound on any principle to encounter, and I declined proceeding in my argument.

When the judge perceived by the movements I was making with my papers, that I was about to retire, he asked me to go on. I told him I should not go on. He said there was no occasion for me to be captious. I told him I was not captious. He then said, go on, go on—you will not be interrupted. I, however, retired from the bar, and, I believe, from the room where the court was held.

Mr. Randolph. Did any circumstances occur, in relation to a witness brought forward on the part of the prosecution, of an unusual nature; were any observations made by the court to that witness, and what were those observations?

Mr. Hay. I do not know whether the circumstance I am about to state is an answer to the question which has been put to me. But I recollect distinctly that a circumstance did occur, which I thought extraordinary. A witness was brought forward to prove the publication of the Prospect Before Us, who was the very man employed by Callender to print the work. Whether the publication could be proved by any other person than Callender's agents, I do not now recollect. But I stated to the court that this witness was about to do what the Constitution authorized him to refuse to do, and what he was not required to do by the established rules of law in criminal prosecutions, which was, that no man was bound to deliver testimony that would go to criminate himself; and, if anything done by him implicated him in the transaction charged against Callender as libellous, he was not bound to answer, nor could he be required to answer by the court. Mr. Chase said that the opinion I had expressed was correct; but the witness, who had come forward to give evidence of the publication, might rest assured that he would not be molested for any part which he may have taken in the publication. I do not recollect that the District Attorney said a word on the occasion. Everything that was said on that head was said by myself, and answered by the court, as I have stated. The witness was sworn, and gave in his testimony, in which he stated that he was employed by Callender to print the work called the Prospect Before Us.

Mr. Randolph. The counsel for the accused seemed to have considered in this case, as well as in all the others, that the proceedings would be governed by the act of the State of Virginia, which, in virtue of the act of Congress of 1789, was the rule of procedure. It appears that process was issued, such as the laws of Virginia did not authorize. Was there no reference made by the counsel for the accused to the act of Virginia, to show that the process was illegal, or that it was contrary to law, to rule the party to trial at the same term the indictment was found?

Mr. Hay. There was a general, but not a specific reference to that circumstance. In making the motion for a continuance, I stated that in conformity to the law and usage of Virginia, when a presentment was found, the ordinary process was by summons to the next term, and that, during the interval between serving the process and the time at which it was returnable, the accused was enabled to prepare and collect matter for his defence. It is extremely probable that some other motion would have been made, but for an observation that fell from the judge on another part of my argument. I stated that the jury were to assess the fine according to law; this opinion was opposed and denounced as a wild notion. Finding that the judge had made up his mind on that subject, and that the law of Virginia was not considered as obligatory, I had no idea of making any motion to the court founded on the doctrine which he had thus denounced. My opinion before, at that time and at the present time, the opinion which I expressed officially on a late occasion, is, that where the laws of the United States do not otherwise require or provide——

Mr. Martin said, that he apprehended this testimony was of no kind of consequence.

Mr. Hay. I was only about to state the reasons why nothing more was said on that subject, or a motion founded on it.

The President. The Senate object to that sort of testimony. You will please to confine yourself as much as possible to facts.

Mr. Hay. I only meant to have stated a fact, that the express declaration made by the court to the counsel for the accused, in relation to the doctrine just mentioned, put a stop to my mentioning any idea, or making any motion founded on that doctrine.

Mr. Randolph. I wish to ask the witness, who tells us he has been sixteen years a practitioner at the bar, whether he ever knew an instance, in which, in a case similar to that of Callender, punishable only by fine and imprisonment, a capias was issued.

Mr. Hay. I ought to premise, that this question relates to a branch of jurisprudence which I have not much attended to, although sometime since I acted as prosecutor for the State for one of its counties. I have never known a single instance in which a capias has been awarded in the first instance. I believe the invariable practice is to

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issue a summons, and I believe it is not customary in Virginia to try a cause at the second term, when the party appears and pleads.

Mr. Randolph. If it is not the practice at the second term, do you mean that it is at the first?

Mr. Hay. No, sir; the presentment is found at the first term; the summons issues returnable to the next; at the second term the issue is made up, and the trial comes on at the subsequent term. This, I believe, is the ordinary mode of proceeding in Virginia.

Mr. Randolph. Finding that the law of Virginia was not considered as applicable, did you move, and support the motion by argument, for a continuance, founded on the affidavit filed by the accused, and what were those arguments?

Mr. Hay. I do not know whether I can state accurately all the arguments urged for a continuance. The argument was certainly in part founded on the affidavit of the traverser. He stated that he wanted documents which he could not instantaneously procure, and material witnesses who resided at a great distance. If I recollect rightly, I stated when Callender was first carried into court, that I was not prepared to discuss the important question whether a jury had a right to determine on the constitutionality of a law. I also stated the case to be a new one, that a prosecution for a libel had never before occurred in Virginia, and that the gentlemen of the bar were not masters of the subject; and that therefore I wished time to look into it.

[Mr. Charles Lee was here introduced into Court as counsel for Judge Chase.]

Mr. Harper. In your examination in chief, you stated that you defended the cause and not the man. We are not capable of understanding your meaning, and beg you to explain it. Was it the cause of Callender, or was it some other cause?

Mr. Hay. It was the cause of the Constitution, and I did not mean to defend Callender farther than he was connected with that cause.

Mr. Harper. Your object appears to have been to show that the law under which he was indicted was unconstitutional?

Mr. Hay. That was one great cause.

Mr. Harper. Not the sole one?

Mr. Hay. I had previously made up my mind, that if a prosecution should take place in Virginia under that law, I for one would step forward and offer my services to the person who should be selected as its first victim.

Mr. Harper. You said that you referred, when making a motion for a continuance, generally to the law, but not specifically to the law of Virginia?

Mr. Hay. My meaning was, that I did not quote the precise title of the act, but made a general reference to it.

Mr. Harper. Without citing the particular law?

Mr. Hay. Without citing it; I made no other than a general reference to the law.

Mr. Harper. Do you recollect whether, on the subject of Colonel Taylor's testimony, Judge Chase applied to Mr. Nelson, the attorney of the district, to determine whether the testimony should be admitted?

Mr. Hay. I have some indistinct recollection of some such thing.

Mr. Harper. Did not Judge Chase offer to postpone the cause for a month or more?

Mr. Hay. I have no recollection of such an offer; it would have been the wish of the counsel for the accused to have obtained that delay. I know that, in consequence of an impression on my mind, that a postponement could not be obtained, I devoted my days and nights to make myself acquainted with the subject, previous to the day when the trial came on. I have no recollection of such an offer; if I had so understood it at the time, I should have availed myself of it.

Mr. Harper. Did the counsel of Callender ask for a postponement, independently of a continuance to the next term?

Mr. Hay. I do not recollect that they did.

The President. You say some conversation appeared to pass between Judge Chase and Judge Griffin; did you hear so much as to understand the substance of it?

Mr. Hay. No, sir.

President. How then did you draw the inference?

Mr. Hay. From the business then before them.

President. You spoke of a witness called by the name of Rind. Did he appear willing to give testimony?

Mr. Hay. He did not appear unwilling. The objection to his testimony was made by myself.

John Taylor, sworn.

Mr. Randolph. The witness will please to state the circumstances that passed in the rejection of his testimony, and other circumstances which have any relation to the conduct of Judge Chase on the trial of Callender?

Mr. Taylor. I was summoned as a witness on that trial on the part of Callender. I attended and was sworn. On being sworn, Judge Chase inquired what it was intended to prove by my testimony? I do not recollect the expressions of Judge Chase, nor do I recollect precisely the answer made to this inquiry; but Judge Chase desired the counsel for the accused to reduce their questions to writing. They did so.

[Colonel Taylor's testimony was here so indistinctly heard, that we could not collect his words.]

I had come into court very near the hour when the court met, nor had I previously given any intimation of the testimony I could give either to Callender or his counsel. I should have added that, after, I think, the judge had declared the witness could not be examined, he applied to the district judge for his opinion; who replied in so low a voice that I could not well tell what he said. But this was after he had given his own opinion that my testimony could not be received.

Mr. Randolph. You state that neither the accused nor his counsel knew the extent to which your testimony would go. Would your testimo-

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ny, according to your belief, have had a material bearing on the charges against Callender?

Mr. Martin objecting to this question, Mr. Randolph said he would withdraw it.

Mr. Randolph. Did you observe anything unusual in conducting the trial?

Mr. Taylor. One or more motions were made by the counsel for Callender, who was interrupted by Judge Chase repeatedly. The words in which these interruptions were couched, I cannot recollect, though I formed an opinion of the style and manner of them; the effect of which was to produce laughter in the audience at the expense of the counsel. If I am required to declare the character in which I conceived them to be made, I am ready to do so.

There was here a short pause, when Judge Chase rose and said, he had no objection to the opinion of the witness being delivered.

Mr. Taylor. I thought the interruptions were in a very high degree imperative, satirical, and witty.

Mr. Randolph. Did there appear to you anything unusual in the manner of the counsel for the accused towards the court?

Mr. Taylor. I neither discovered the least degree of provocation given by the counsel, nor perceived any anger expressed by the court. Judge Griffin was silent, nor were Judge Chase's interruptions accompanied by the indication of any anger as far as I could perceive.

To an interrogatory made, Mr. Taylor said, the interruptions of the court were extremely well calculated to abash and disconcert counsel.

Mr. Randolph. Do you recollect anything in relation to the objection taken by John Basset to serving as a juror?

Mr. Taylor. I by no means recollect the circumstances with precision, but the impression on my mind is strong, that Basset said that he had entertained some prepossession against the book called "The Prospect Before Us," or against Callender; and that the judge inquired whether he had any prepossession in regard to the charges in the indictment. He said, no: and it was also said by him or by some other person brought forward as a juror, that he had not read the indictment. Judge Chase ordered him to be sworn.

Mr. Randolph. You were, I believe, a long time a practitioner of the law in the courts of Virginia?

Mr. Taylor. For a few years—about seven, I practised the law.

Mr. Randolph. I will ask you if you have ever known a capias issued against a person indicted for an offence not capital, or a person, presented for such an offence, tried at the same term the presentment was made?

Mr. Taylor. I must answer in the negative, but it is proper to remark that, as I never turned my attention to the practice of the criminal law, no great reliance ought, on this point, to be placed on my answer.

Mr. Randolph. Has it ever been the practice in the courts of Virginia for counsel to be compelled to reduce to writing, questions which they wish to propound, and submit them previously to the court?

Mr. Taylor. I have never seen such a practice in a case like that of Callender.

Mr. Randolph. Do you remember a question put by Mr. Chase to the counsel on the part of the United States, with regard to permitting your testimony to be received?

Mr. Taylor. After the decision of the court, I do recollect Mr. Chase did express some such idea as that intimated in the question. The attorney for the district instantly expressed his dissent to what I conceived to have been in a very feeble manner recommended by the judge.

Mr. Randolph. This intimation was after the positive rejection by the court?

Mr. Taylor. I think so, although I will not be positive, as I made no memorandum of what occurred.

Mr. Randolph. Were you present when a motion for a continuance was made, and do you recollect the grounds of it?

Mr. Taylor. I only recollect that it was founded on the affidavit of Callender: I have no recollection of the arguments used.

Mr. Nicholson. Do you recollect the grounds of the court for rejecting your testimony?

Mr. Taylor. I think, on the ground that though it were admitted, it would not acquit the accused.

Mr. Randolph. Was any observation made personally to you after the testimony was rejected?

Mr. Taylor. None, sir.

Mr. Harper. You have said, you considered the interruptions of the court as highly calculated to abash the counsel; did you mean thereby to give your opinion that they were so intended, or that such was their tendency?

Mr. Taylor. I thought they were so intended, and they had their full effect. They were followed by a great deal of mirth in the audience. The audience laughed, but the counsel never laughed at all.

Philip N. Nicholas, sworn.

In the year 1800, in the month of May, the circuit court of the United States sat at Richmond. Of this court, Mr. Chase and Mr. Griffin were the judges. I believe Mr. Chase sat alone for some time—for how long I do not recollect. Mr. Griffin did not, I believe, take his seat until the motion to continue the cause was renewed. On the first day of the court, Judge Chase delivered a charge to the grand jury, and called their attention, in a particular manner, to infractions of the sedition law. The grand jury returned with a presentment against James Thompson Callender, for a libel against the President, by the publication of a work, entitled "The Prospect Before Us." On this presentment, the attorney for the district filed an indictment, which the grand jury found a true bill.

Process was immediately issued on the indictment. My impression at the time, and until very lately, was, that the process issued was a bench warrant. I have lately heard that it was a *capias*.

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For several days it was believed that Callender, who resided at Petersburg, could not be found; but the marshal at length arested him, and brought him into court. Mr. Hay and myself undertook his defence. My motive was, that I believed the sedition law unconstitutional, and of course oppressive to any person prosecuted under it.

Mr. Hay and myself had an interview with Callender, in order to ascertain the grounds on which he expected to make his defence. Callender informed us that his witnesses were considerably dispersed, and that there were many documents which it would be necessary for him to obtain, before he could be prepared for his trial. An affidavit was drawn, stating the absence of Callender's witnesses, the want of the documents, and that the counsel could not be prepared during that term. On this affidavit was founded the motion to continue the cause. This motion was urged with great earnestness and zeal, as we were convinced that justice could not be done if the case was tried during that term. The arguments principally urged by us, were, that the defendant had a Constitutional right to compulsory process for his witnesses, and to counsel, but that these privileges would be nugatory if the court would not allow time to summon the witnesses, and for counsel to prepare for the defence.

When the motion was first made, Mr. Chase sat alone. He did not absolutely reject the motion for a continuance, but he intimated in pretty strong terms his opinion that the affidavit did not afford a sufficient ground to continue the cause. Mr. Chase observed that the evidence of Mr. Giles, as stated in the affidavit, was of a serious nature; that he would let the cause lie over till Monday, and in the meantime we might summon such of our witnesses as were accessible to us. On Monday, Mr. Giles did not attend. Mr. Hay stated to the court that the badness of the weather during the preceding day had probably prevented Mr. Giles's attendance, and asked that the cause might lie over a few hours. The judge said we might either let it lie a few hours, or until next day, at our option: the latter was preferred. On Tuesday, the motion was renewed to continue the cause. Amongst other arguments used in support of this motion, Mr. Hay observed, that by the laws of Virginia a person indicted for a misdemeanor was never tried at the term at which the indictment was found, but that a summons issued against him, returnable to the next term.

Mr. Hay further stated, that as the sedition law gave the party accused the right to give the truth of the matter charged as libellous in evidence, it resulted that the law meant only to include the case of facts falsely recited, and not the case of abuse or erroneous opinions; because they are not susceptible of proof, and their verity or falsehood would depend on the particular course of thinking of those who were to judge in the case. Mr. Hay said he wished time to deliberate maturely on this view of the sedition law, and said, that if his construction was correct, the jury, in assessing the fine, ought not to regard such parts of the indictment as related to mere matters of opinion. [Here Judge Chase interrupted Mr. Hay, and told him he was mistaken in supposing the jury were to assess the fine. This may be the case, said he, by your local State laws, but as applied to the courts of the United States it is a wild notion. Mr. C. said the cause must come on; that the traverser had not stated in his affidavit that he could prove all the charges in the indictment to be true; that it was necessary for him to prove the truth of all to obtain his acquittal; and that, as the absent witnesses were to give evidence as to part of the charges only, their absence afforded no good reason for a continuance.]

The motion to continue the case was overruled, and Judge Chase directed the jury to be called. When the jury came to the book, I stated to the court that I believed there was ground of challenge to the panel in consequence of one of the jurors, who was returned, having expressed opinions very hostile to the traverser. Mr. Chase, after looking into an authority which I quoted, and also into Coke Littleton, said the law was clear, that our objection did not apply to the panel, but to the individual juror. He further said that we must proceed regularly; that we might either introduce testimony to prove that a particular juror had expressed an opinion on the case, or we might examine the jurors as they came to the book. We preferred the latter mode, and Mr. Hay asked if he might ask a question of the first juror who was sworn. Mr. Chase said that Mr. Hay must submit the question to his previous inspection, and that, if he thought it a proper question, it might be asked. Mr. Hay stated that the question which he wished to ask, was, have you ever formed an opinion on the work, entitled "The Prospect Before Us," from which the charges in the indictment were extracted? Judge Chase said that the counsel should not ask that question; that the only proper question was, have you ever formed and delivered an opinion on the charge; in the indictment? I say (continued the judge,) formed and delivered; for it is not only necessary that he should have formed, but also delivered an opinion to exclude the juror. The judge propounded the last mentioned question to the first juror, and he replied that he had never seen the indictment, or heard it read. The judge said he was a good juror, and desired he might be sworn. Mr. Hay requested that the indictment be read to the juror, that he might be thereby enabled to say whether he had formed and delivered an opinion on the indictment. The judge replied that he had already indulged the counsel as much as he could, and they ought to be satisfied; he refused to let the indictment be read to the juror. The clerk then called the jury and swore them, till he came to John Basset, who in reply to the previous question said, he never had seen the indictment or heard it read. But Mr. Basset seemed to have considerable scruple at serving, and said he had formed and delivered an opinion that the book called "The Prospect Before Us," came within the sedition law. Judge Chase, however, said he was a good juror, and he was sworn and served as such. The witnesses on the part of the prose-

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cution were called and sworn, and, among others, Mr. Rind was examined to prove the publication of "The Prospect Before Us." Mr. Hay observed that no witness who was any way concerned in the printing of the "Prospect," was bound to criminate himself. Mr. Chase admitted this to be correct, but declared that the witnesses might rest assured that no person would be prosecuted in consequence of any evidence given in the case then before the court. Under these circumstances Mr. Rind proved that he had printed part of the "Prospect" for Callender, and took out of his pocket some of the original sheets from which he had printed parts of the work. Judge Chase himself compared these sheets with the work as published, and they were found to correspond. After the testimony on the part of the prosecution was finished, Col. Taylor of Caroline was called on the part of the traverser, and, after he was sworn, Judge Chase asked with apparent haste and earnestness of manner, what we expected to prove by that witness. We said we expected to prove that Mr. Adams had avowed in the presence of the witness sentiments favorable to monarchy or aristocracy, and that he had voted in the Senate against the sequestration of British debts, and the suspension of commercial intercourse with Great Britain. Judge Chase then said that we must reduce the questions to writing. This I objected to, and stated that it was a thing very unusual in our courts; that it had not been required by the court of the District Attorney, when he examined witnesses against Callender; that it involved a dangerous principle, and was calculated to subject every question of fact to the control of the court; besides, I added, that I did not know the extent to which Col. Taylor's evidence would go; that I wished him to state all he knew, and that very probably the examination would point out new questions proper to be asked. I then stated that if the court insisted on the questions being reduced to writing, I would comply with their direction, but that I hoped it would not be considered as precluding us from asking any additional questions. The questions were then reduced to writing, and are as follow, viz:

1. Did you ever hear Mr. Adams express any sentiments favorable to monarchy or aristocracy, and what were they?

2. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

3. Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and the suspension of intercourse with Great Britain?

Judge Chase, after examining the questions, declared Col. Taylor's evidence inadmissible. No evidence can be received, said the judge, which does not go to justify the whole charge; the charge is, that the President is a professed aristocrat, and has proved faithful and serviceable to the British interest. Now, you must prove both these points, or you prove nothing, and as your evidence relates to one only, it cannot be received; you must prove all or none. These, I believe, were the precise words of the judge. I think it right here to state that after Mr. Chase had declared Colonel Taylor's evidence inadmissible, he said to the District Attorney, that although the questions were improper, he wished the attorney would consent to let them be asked of the witness. The attorney said, he could not consent. The evidence of Colonel Taylor being excluded, the attorney for the United States addressed the jury, and commented at considerable length on the indictment. After that, Mr. Wirt addressed the jury for the defendant. He premised that the counsel for the traverser were placed in a very embarrassed situation; that the prisoner during the same term was presented, indicted, arrested, arraigned, tried; and that this precipitation precluded the possibility of obtaining witnesses or making the necessary preparations for arguing a cause of so much magnitude. Here Judge Chase interrupted Mr. Wirt, and told him, that he would not suffer anything to be said which reflected on the court. Mr. Wirt said he did not mean to reflect on the court; his object was only to apologize to the jury for the lameness of the defence. Mr. Chase replied that his apology contained the very reflection he disclaimed, and desired him to go on with the cause. Mr. Wirt then said, that an act of Assembly had adopted the common law of England as a part of the laws of Virginia; that an act of Congress had directed the United States courts sitting in Virginia to conform to the laws of the State in which such court might happen to sit; that by the common law the jury had a right to decide on the law as well as the fact. He then said, that if the jury upon inquiry should find the sedition law unconstitutional, they would not consider it as law, and if they did, they would violate their oaths. Here Mr. Chase said to Mr. Wirt, sit down sir. Mr. Wirt endeavored to explain, and said I am going on, sir, to——No, sir, said Mr. Chase, you are not going on; I am going on. Judge Chase then read from a paper, which he held in his hand an instruction to the counsel that they should not address the jury on the constitutionality of the act of Congress, but that arguments might be addressed to the court to prove the right of the jury to consider the constitutionality. Mr. Wirt then addressed the court. He said he had not considered the case elaborately; that it appeared to him so clearly that the jury had the right contended for, that he did not imagine it required any great research to prove it. He then proceeded to state that it was certainly the right of the jury to consider of and determine both law and fact. Mr. Chase here remarked that Mr. Wirt need not give himself trouble on that point; we all know, said he, that the jury have a right to decide the law. Mr. Wirt then said that he supposed it equally clear that the Constitution is the law. Yes, sir, said Mr. Chase, the supreme law. If then, said Mr. Wirt, the jury have a right to decide on the law, and if the Constitution is law, it follows syllogistically that they have a right to decide on the constitutionality of the law in question. *A non sequitur*, sir, said Judge Chase. Here Mr. Wirt sat down.

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I followed Mr. Wirt, and spoke concisely to prove the right of the jury to decide on the constitutionality of the sedition act. I believe I was not interrupted.

Mr. Hay followed on the same side, and in the course of the discussion laid down the position that the jury had a right to decide the law as well as the fact. Mr. Chase interrupted him to ask whether he meant to extend his position to civil as well as criminal cases; for if you do, sir, said the judge, you are wrong; it is not law. Mr. Hay said he believed the position to be universally true, but it was sufficient for his purpose if it was true in criminal cases. Mr. Hay proceeded a very little way further before he was again interrupted by Judge Chase. Mr. Hay, who had been during the cause frequently interrupted, then folded up his papers and appeared to be retiring from the bar. Mr. Chase, addressing him, said, go on sir. No sir, said Mr. Hay, I will not go on. What, sir, said Mr. Chase, will not you proceed with your cause? No, sir, said Mr. Hay; my mind is made up, and I will not proceed. The judge told Mr. Hay he need not be captious. Mr. Hay replied, he was not captious. The judge said, go on, sir; proceed, and you shall not again be interrupted; you may say what you please.

Mr. Hay, Mr. Wirt, and myself left the bar at the same moment, and I cannot state what happened after with any degree of certainty. Callender was however convicted.

Mr. Randolph. When you observed to the court, at the time you were directed to reduce your questions to writing, that the attorney for the United States had not been required to do the same, was there any reply made by Judge Chase?

Mr. Nicholas. It was, I believe, stated by Judge Chase, that the attorney for the United States had, at the opening, stated what he expected to prove by his witnesses.

Mr. Randolph. Did you hear any offer made by the court to postpone the trial of Callender for a month?

Mr. Nicholas. No, sir, I did not hear such an offer, and I never heard it suggested until within a week or two, that such an offer was alleged to have been made. If such an offer had been made, I am sure we should have accepted it, as I know very well that a postponement would have been the most acceptable thing to us, except a continuance until the next term.

Mr. Randolph. Did the opinion of the court appear to be given after consulting with the district judge?

Mr. Nicholas. I never saw Judge Chase consult Judge Griffin but once, and that was after he had declared Col. Taylor's evidence inadmissible. He turned to Judge Griffin, and asked whether his brother Judge agreed with him, to which Judge Griffin assented.

Mr. Randolph. Did Judge Chase make use of any rude, unusual, and contemptuous expressions to the counsel, and what were they?

Mr. Nicholas. I recollect when he overruled Col. Taylor's evidence, he said, my country has made me a judge, and it is my duty to pronounce the law; the evidence of the witness is inadmissible; the counsel for the traverser know it to be so, but they wish to deceive and mislead the populace. I take the responsibility of this decision on myself, and say the evidence cannot be received.

At another time Mr. Chase told the counsel that they had all along mistaken this business, and kept pressing their mistakes on the court; and said repeatedly that what we urged as law we knew not to be law. Many remarks of a similar nature were made, and in many instances the judge seemed to endeavor to throw ridicule on the counsel. When Mr. Hay was endeavoring to prove that the declaration in the indictment, that the libel was of the tenor and effect following, held the prosecutor to a strict and literal recital, Mr. Chase said that it was not law; the counsel have contended, said he, that the recital ought to have been *verbatim et literatim;* I wonder, continued he, they have not contended for *punctuatim* also. In another instance, when Mr. Hay was adducing authorities to show that the title of the book ought to have been stated in the indictment, Mr. Chase observed that he knew there were cases in which the title was recited. I remember one, continued he, in the case called the Nun in her Smock; but though it was recited in that case, it was not necessary, nor is it so in any case. It is difficult in language to convey an adequate idea of Mr. Chase's manner; but in these and similar instances, from the sarcastic way in which he expressed himself, it was evidently his intention to throw ridicule on the counsel.

Mr. Randolph. You say that on the rejection of Col. Taylor's evidence, Judge Griffin was consulted by Judge Chase; was he consulted before, or after the opinion of the court was pronounced?

Mr. Nicholas. It was after.

Mr. Randolph. In speaking of the District Attorney, who, he said, had in opening the case stated the purpose for which he meant to introduce the witnesses, do you recollect that he said *we* were not bound to do this, and by the word "*we*," identifying himself with the public prosecutor?

Mr. Nicholas. I recollect that Judge Chase, in the course of the trial, used the term *we* in the manner alluded to; but I do not recollect with certainty in what part of the trial it was.

Mr. Randolph. Were you attorney general of the State of Virginia at that time?

Mr. Nicholas. I was, sir.

Mr. Randolph. Did Judge Chase apply the epithet young men, or young gentlemen, to you and the other counsel for the traverser?

Mr. Nicholas. I do not perfectly recollect whether he said young men or young gentlemen. I believe the latter, and as applied to me, it was true, for I was then a very young man.

Mr. Randolph. Is it the practice in Virginia to issue a capias to take the body of the party on presentments for misdemeanors at the term when the presentment is made, or the indictment found?

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Mr. Nicholas. By our act of Assembly the proceedings on an indictment or information for a misdemeanor, is by summons returnable to the next term, and if the summons is returned executed, and the party does not appear, a capias is awarded returnable to the succeeding term. If the party comes in and pleads, the plea is received, and the cause stands over to the next term.

Mr. Randolph. Did you ever know the party in such case ruled to trial the same term the presentment was made?

Mr. Nicholas. Never.

Mr. Randolph. Did the counsel for the traverser refer to the act of Assembly, by which a summons is declared to be the proper process?

Mr. Nicholas. Mr. Hay mentioned it in his argument for a continuance; he said that as the laws of Virginia pointed out a summons as the proper process, and there was no act of Congress directing a different procedure, he thought the United States courts should allow the same time which the State laws did.

Mr. Harper. When you say that Mr. Hay referred to the law in question, do you mean he cited the particular act of Assembly?

Mr. Nicholas. No, sir, he referred generally to the Virginia laws, and said such was the process pointed out by them.

Mr. Harper. You said that the term *we* was used by Mr. Chase; how did you understand him to apply the expression?

Mr. Nicholas. I thought he identified himself with the prosecution.

Mr. Harper. In what part of the trial did this take place?

Mr. Nicholas. I do not particularly recollect, but I am sure he used the term *we* in the sense stated.

Mr. Harper. Is it unusual to give testimony by a person concerned in the commission of the offence for which another is indicted, and do you not as Attorney General of Virginia consider it your duty to promise a witness in such case that he shall not be prosecuted for anything he may then testify?

Mr. Nicholas. No case has occurred since I have been in office in which such promise was made.

Mr. Harper. Are you correct, sir; do you particularly remember whether you was Attorney General of Virginia at the time of the trial?

Mr. Nicholas. I certainly was; I had been a short time before the trial appointed by the Executive, subject to the approbation or rejection of the next Legislature.

Mr. Nicholson. You say the counsel were frequently interrupted, pray how frequently?

Mr. Nicholas. The counsel were frequently interrupted during the trial; and as a general character of the trial, I can say that, on most of the points which were made, not many sentences were uttered by the counsel at a time without interruption.

The President. Were you present when the process was issued against Callender?

Mr. Nicholas. I believe process was awarded whilst the court was sitting, but my impression at the time was that it was a bench warrant.

The President. Was anything said in court against its being issued?

Mr. Nicholas. There was not.

The President. By whom was the process made out?

Mr. Nicholas. I do not positively know. I suppose it was made out by the clerk, but whether by the particular direction of the court, or under an idea that it was, of course, I do not know.

John Thomson Mason, sworn.

Mr. Randolph. It has been contended on the part of the respondent, that the *quo animo* determines the guilt or innocence of an action; now, if the *quo animo* with which he went down to Richmond to execute the sedition law, can be shown, it will have an important bearing on his conduct. I wish, therefore, to ask the witness this question: Did you ever hear Judge Chase, previous to the trial of Callender, utter any expression, and, if any, what was it, on the subject of Callender's prosecution, or respecting the book called "The Prospect Before Us;" did he say that the counsel of the Virginia bar were afraid to press the execution of any law, and particularly the sedition law; did he say that he had a copy of that book, or what did he say? State the circumstances particularly.

Mr. Mason. The question refers to circumstances of which I have but an indistinct recollection, and which happened in a way which renders it extremely unpleasant on my part to relate them. Judge Chase presided in the circuit court held at Annapolis in the Spring of the year 1800; during the term a man by the name of Saunders was tried for larceny, and found guilty. After sentence was passed upon him, he was taken out of court to receive it. The press of the people being very great, the judges and myself were detained within the room. Judge Winchester, Judge Chase, and myself had a conversation, altogether of a jocular complexion. I think it was just after he delivered his valedictory, but how to connect the circumstances at this time, I do not know. I remember, however, that he asked me my opinion of the book called "The Prospect Before Us;" I told him I had not seen it, and from the character I had heard of it, I never wished to see it. He told me, in reply, that Mr. Luther Martin had sent a copy to him, and had scored the parts that were libellous, and that he would carry it to Richmond as a proper subject for prosecution. There was a good deal of conversation besides, but I do not recollect it. There was one expression, however, that he used, which just occurs to my memory, and which I will repeat, that before he left Richmond, he would teach the people to distinguish between the liberty and the licentiousness of the press. He said that he was as sincere a friend to the liberty, as he was an enemy to the licentiousness of the press. There was a sentiment he expressed, which I cannot undertake to give in his precise words, that if the Commonwealth or its inhabitants were not too depraved to

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furnish a jury of good and respectable men, he would certainly punish Callender. I do not precisely recollect the words: I never repeated this conversation before, and seldom or ever, after it occurred, thought of it.

John Heath, sworn.

During the trial of J. T. Callender, I attended at the court in Richmond as one of the bar. I had occasion to apply to the court for an injunction. The motion not having been decided upon, I went round to Crouch's, where Judge Chase lodged, and found him in his chamber alone, in which I thought myself very fortunate. We then talked over the application I had made the day before for an injunction; while talking on it, Mr. David M. Randolph, the then marshal, stepped in with a paper in his hand. The judge accosted him, and asked him what he had in his hand? He said that he had the panel of the petit jury summoned for the trial of Callender. This was after the indictment was found by the grand jury. After Mr. Randolph had mentioned that it was the panel of the petit jury that he had in his hand, Judge Chase immediately replied, have you any of those creatures called Democrats on the panel? Mr. Randolph hesitated a moment, and then said that he had not made any discrimination in summoning the petit jury. Judge Chase said, look it over, sir, and if there are any of that description, strike them off. This is all I know of this affair.

The Court rose at four o'clock.

WEDNESDAY, February 13.

The Court was opened at half-past two o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

James Triplett, sworn.

Mr. Randolph. I wish to know whether you ever heard previous to, or during the trial of Callender, any expressions used by the respondent, Judge Chase, manifesting a hostility toward J. T. Callender, and what were those expressions?

Mr. Triplett. I recollect to have had a conversation with Judge Chase on our passage in the stage down to Richmond. A book was handed to me by him, and I was asked if I had read it? I was asked, whether I had seen him, (Callender?) I told him, I had never seen him. There was a story recited about the arrest of Callender by a warrant of a magistrate, under the vagrant act of Virginia; I recollect that the judge's reply was, "it is a pity you have not hanged the rascal."

Mr. Randolph. Was there any other expressions of this nature used, after you got to Richmond?

Mr. Triplett. I did not hear anything particular; but I think the judge did say something about the Government of the United States showing too much lenity towards such renegadoes. I do not recollect any other conversation passing between us at that time, until after the court was sitting, when Judge Chase was the first who informed me of the presentment being made by the grand jury against Callender. At the same time, he informed me that he expected I would have the pleasure of seeing Callender next day before sundown, that the marshal had that day started after him for Petersburg.

Mr. Randolph. We wish you, as well as your memory serves, to state not only the substance, but the exact expressions used by the judge.

Mr. Triplett. I will state them as well as my memory serves me. Some time after this conversation, I met the judge at the place where he boarded; he said that the marshal had returned without Callender, and used this expression, "I am afraid we shall not be able to get the damned rascal at this court."

Mr. Randolph. You say a copy of this book was handed you by Judge Chase. Did you read it, sir?

Mr. Triplett. I read several passages of it.

Mr. Randolph. Were they marked?

Mr. Triplett. I saw several passages marked; but by whom I do not know.

Mr. Randolph. Do you remember any particular passages that were marked?

Mr. Triplett. I do not. I have stated everything I recollect; but if the gentlemen have any questions to ask, I am ready to give them an answer.

Mr. Martin. I will ask how many days you resided at the same house with the judge?

Mr. Triplett. I think, six days.

Mr. Martin. Do you recollect whether my name was not marked on the book which Judge Chase handed to you?

Mr. Triplett. I do not.

Mr. Harper. Can you state the day of the month, or of the week, when the last conversation passed.

Mr. Triplett. I think it was Sunday, but I am not positive. I made no minutes, as I never expected to be called upon to answer inquiries of this kind.

Mr. Harper. How long was it after the first conversation with the judge, when he mentioned that the marshal had gone after Callender?

Mr. Triplett. I do not precisely recollect. It was not, I think, so much as three days. I do not think it was so much as two days; but I cannot be positive, after so great a length of time has elapsed.

Mr. Harper. Do you recollect who travelled with you in the stage from Dumfries to Richmond?

Mr. Triplett. I cannot recollect. The stage was much crowded from Dumfries to Fredericksburg; and there was a passenger taken in at Stafford court-house.

Mr. Harper. Well, sir, how was it from Fredericksburg to Richmond?

Mr. Triplett. I do not particularly recollect; but there were passengers repeatedly getting in all the way.

Mr. Harper. Did this conversation take place before you reached Stafford court-house?

Mr. Triplett. It was after.

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Mr. Harper. Was it between Fredericksburg and Richmond?

Mr. Triplett. Yes, sir.

President. Had you any conversation with Judge Chase previous to this interview?

Mr. Triplett. No, sir.

President. Did you sit together in the stage?

Mr. Triplett. We did the second day, and it was then the conversation passed.

Mr. Hopkinson. When was it, that, for the first time, you mentioned this conversation to anybody?

Mr. Triplett. I do not recollect when I mentioned it the first time; but I remember to have communicated it to General Mason on my return to Dumfries.

Mr. Nicholson. Have you since mentioned it to others?

Mr. Triplett. Frequently.

On the suggestion of Mr. Randolph, that Mr. Triplett had fractured his wrist, from which he apprehended serious consequences, he was dismissed with the consent of the counsel for the respondent, from further attendance on the Court.

At the instance of Mr. Lee, *John Heath*, examined yesterday, was again called in.

Mr. Lee. You mentioned yesterday that you made two applications for an injunction. Were they made at the judge's chambers, or in court?

Mr. Heath. I mentioned that I made the application to the court, and that it was not then granted. I then stated that I went to the judge's chambers the next day before the court met.

Mr. Lee. Who composed the court when the injunction was moved in the first instance?

Mr. Heath. I think, but I cannot be particular, that Judge Griffin was there. He was, however, there the next day.

Mr. Lee. At what time of the day was it that you went to the judge's chambers respecting your application for the injunction?

Mr. Heath. It was immediately after breakfast. We generally breakfasted early. Immediately after, I waited upon him. I think it was between eight and nine o'clock.

Mr. Lee. What space of time were you there?

Mr. Heath. I do not think I was there quite half an hour.

Mr. Lee. Was the bill read by yourself, or put into the hands of the judge to read it, at the time you made the application at his chambers?

Mr. Heath. I do not recollect to have presented the bill to the judge. I am not positive that I had the bill with me. I called upon him for the purpose of learning the reasons, why he did not grant the application. [Here the witness related some remarks of Judge Chase on the application for an injunction, which were too indistinctly heard to be related.]

Mr. Lee. Who were present at the judge's chambers at the time you state the conversation took place between Judge Chase and Mr. David M. Randolph respecting the panel of the jury?

Mr. Heath. No other person was present but myself. When I came in I found the judge alone, and I thought myself fortunate in so finding him. We had been in conversation by ourselves for eight or ten minutes before Mr. Randolph came in.

Mr. Lee. Was any one present at the door, or was the door open at the time?

Mr. Heath. I do not recollect that there was; but it appeared to me that as I was going into the house, somebody was coming out; and I found the judge alone, I am positive, when I entered; and we continued alone until Mr. Randolph stepped in. It struck me that there might have been somebody that came in at the main door of the house between the time I was there and Mr. Randolph's coming in; but I am not certain.

Mr. Lee. You say somebody was coming out, when you went into the room. Was it Mr. Randolph?

Mr. Heath. No, sir, I said there might be somebody coming out, but whether out of his chamber, or out of another room, I am not certain; but when I entered his chamber, I found him alone, and I thought myself fortunate in so finding him.

Mr. Lee. On what day of the week was this?

Mr. Heath. I do not recollect.

Mr. Lee. How many days was it after your motion to the court before you went to the judge's chambers?

Mr. Heath. I do not recollect; but I think it was a few days after the bill against Callender had been found, and he had been arrested; but as to days, hours, and minutes, I do not pretend to recollect them.

Mr. Lee. Am I to understand that it was after Callender appeared in court?

Mr. Heath. I do not say so. It was after Callender was brought forward by the marshal, and a true bill found. I think it was immediately after; but I do not recollect whether it was a day or two after.

Mr. Lee. Did you go to Judge Chase's chambers on any business more than that one time?

Mr. Heath. No; I never did more than that one time.

Mr. Chase. It was with the motion?

Mr. Heath. Yes, sir, it was with the motion.

Mr. Randolph. Did you at any, and at what time, mention this circumstance, and to whom did you mention it?

Mr. Heath. As soon as it happened, I considered the conversation improper, and thought I had a right to relate it, as I did not visit Mr. Chase as a friend, but as a judge in his judicial character to perform the duties of his office, and on business which might have been done in open court as well as at his chambers. I mentioned it to Mr. Hugh Holmes, also to Mr. Meriwether Jones.

Mr. Randolph. Do you mean Mr. Holmes, the present Speaker of the House of Delegates of Virginia?

Mr. Heath. Yes, sir.

Mr. Randolph. You state that you mentioned it to Mr. Holmes and Mr. Jones; did you mention it to anybody else?

Mr. Heath. I was so much impressed with it, that I mentioned it to several others.

Mr. Nicholson. Did you say that you made this

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communication to those gentlemen immediately after the conversation occurred?

Mr. Heath. On the very day, and within an hour afterwards; and I have since mentioned it frequently to others—I never kept it a secret.

Mr. Hopkinson. Was this conversation on the day of the trial of Callender, or how many days before?

Mr. Heath. I do not recollect whether Callender was tried that day; I mentioned yesterday that I did not attend the trial.

Question. Did you make your motion at the same term that Callender was tried?

Mr. Heath. Yes, sir—There were intervals in which motions were made by counsel. During one of these intervals I made my motion for an injunction. Callender had not then been tried; I do not know that when I made the motion the marshal had returned with Callender, but I made it the day before I went to the judge's chambers.

Mr. Nicholson. Was the conversation before the impanelling of the jury in the case of Callender?

Mr. Heath. Yes, sir—The marshal came in during the time I was in conversation with the judge, it appeared to me, to show the judge what kind of a panel he had.

At the request of Mr. Harper, and with the consent of the managers, *John Basset*, a witness on the part of Judge Chase, was sworn and examined, in consequence of the peculiar situation of his family requiring his immediate return home.

Mr. Harper. Relate the circumstances that took place relative to your being sworn on the jury, on the trial of Callender, and what the application to the court was on your behalf?

Mr. Basset. The circuit court of the United States at which James T. Callender was presented and indicted for a libel, was held on Monday the second or third of June. I left home in the morning and arrived in Richmond as early as might be expected. On my arrival I saw David M. Randolph, who was standing at a corner of a street; perceiving me, he came towards me; before I alighted from my horse, he informed me that I had been summoned as a grand juror, and that for not appearing, had been crossed, that it was my duty to go to the court and justify myself for my absence; that he summoned me on the petit jury for the trial of Callender, and that my serving in that capacity would be an apology for my previous absence. I presented myself to the court, but the trial did not come on that day. The second day I attended also. I knew very well that the law under which the traverser was to be tried, was odious to my fellow-citizens; I knew it was conceived to be a great oppression to the liberty of the subject, and I believed that great umbrage would be given to the mass of the people by those who should undertake to execute that law. I was weak or wicked enough to be among that class of people called federalists, and I did believe that the law [sedition law] was Constitutional. I felt myself bound when called on to be a juryman, to make a declaration of my political sentiments. I made this declaration to relieve the impression on my own mind, and not in order that it should be considered that I declined, in consequence of my political opinions, to serve on Callender's trial, or in any other case. I thought it possible that I might be excused; but if I were found by the court to stand in a proper relation between my country and the traverser, I would cheerfully serve. My object was to justify my own conduct to myself, and to the whole world. I made use of these expressions, and I believe I repeat the very words, but I am well assured that I shall express the force and efficacy of what I said. I declared to the judge that my politics were federal; that I had never seen the book called the Prospect Before Us, but I had seen in a newspaper some extracts from it; that if the extracts were correctly taken from the book, and if the traverser was the author or publisher of that work, it appeared to me that it was a seditious act; that I had formed and expressed an unequivocal opinion, that the book was a seditious act; that I had never formed an opinion in respect to the indictment, for I had neither seen it nor heard it read. The court considered me a good juror, and I was sworn accordingly. After the trial had been gone through, the jury retired to their room. I informed the jury that I thought we should have the book read through.

The President here stopped the witness, and informed him that it was useless waste of time to relate what took place in the room of the jury.

The witness, however, continuing the statement he had previously begun, the President desired him to go on, if it were necessary for the purpose of connecting the testimony he had to give; but to pass over what occurred among the jury as briefly as possible.

Mr. Basset. I told the jury that I thought the book should be read. The jury did not at first agree, but the greater part of it was afterwards read. In respect to the general progress, I will state one point that makes a great impression on my mind; I do not pretend, however, to a superior recollection, especially after a lapse of five years, during which I never dreampt it would be the subject of discussion; but I will give my impressions. The judge, addressing the counsel for the traverser, said, when my country invested me with my sacred office, it placed me under an obligation to administer justice according to law; this I am determined to do, and I have done it. I have decided what the law is, but this decision is not conclusive against the traverser. If any exceptions are made by his counsel to my decision, they may be reduced to writing, and if I have commited errors, a superior tribunal shall correct them.

Mr. Randolph. You stated that you had read extracts from the Prospect Before Us in newspapers, before you were impanelled on the jury, which impressed you with the opinion, that it was a seditious publication. After reading over the book, did it appear to you to answer that description.

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Mr. Basset. I thought it was more libellous than the extracts I had seen.

Mr. Randolph. The extracts and the book did not then correspond.

Mr. Basset. I cannot say. I could not say the extracts were the same with what I read in the book; I only recollect that my impression was, they were the same. I could not then, nor can I now say they were conformable to the book, but my impression is, that they were the same in substance.

Mr. Harper. Did you mean to say that the contents of the book were more libellous than the extracts?

Mr. Basset. I meant to say, that after I had read the book, my impressions were that it was more libellous than I conceived it to be when I read the extracts.

Mr. Nicholson. Do you recollect at what time you arrived in town?

Mr. Basset. I cannot recollect, but I believe soon after the court met: that morning I rose early and rode twenty-two miles, about four hours riding.

Mr. Nicholson. Was the book given by the court to the jury?

Mr. Basset. I understood that it was delivered by the court to the jury for their inspection, and to compare the extracts from the book, and see whether they were correctly taken, but I do not recollect that the judge particularly called our attention to the book, and directed us what was to be done with it; but my recollection is that the book was delivered to us.

Mr. Rodney. Was the indictment read after all the jury were sworn?

Mr. Basset. I do not recollect that the indictment was read till after the jury was sworn.

Mr. Rodney. Had the book given to the jury any passages scored?

Mr. Basset. I think it had.

Mr. Rodney. Do you know whether the passages marked formed any part of the indictment?

Mr. Basset. I cannot say that I recollect.

Mr. Campbell. When you were sworn did you understand that the charges in the indictment were taken from the book called the Prospect Before Us?

Mr. Basset. It was subject of general notoriety, that the indictment was drawn from the Prospect Before Us.

Mr. Campbell. What authority had you for supposing that the extracts you had read were taken from the Prospect Before Us?

Mr. Basset. I had no authority but the newspapers, they purported that the extracts were taken from the book called the Prospect Before Us.

Mr. Randolph. Have you any reason to believe that the extracts in the newspapers were not taken from the book?

Mr. Basset. I firmly believe they were taken from it.

Mr. Hopkinson. Was the book which you took out that which was given in evidence during the trial?

Mr. Basset. Whether it was the book which was furnished by the prosecutor and handed to us by the agent of the court, I cannot tell.

Mr. Hopkinson. At what hour did the court meet?

Mr. Basset. I believe about ten o'clock.

The President. I understand you as saying that you never saw the book, until you saw it in court?

Mr. Basset. I am firmly and fully so impressed.

The President. When you were questioned as a juror, I understand you to have said, that if the extracts you had read were correctly given, the matter was libellous; did you say that you had formed an opinion?

Mr. Basset. No, sir, nor that I had delivered an opinion, but I said that if the traverser was the author of those extracts, he was guilty of a breach of the sedition law. I repeat every expression that is now remaining on my memory. I answered so far as to the fact. The inquiries extended no farther than to making up my opinion on the extracts contained in the newspapers. It had no connexion whatever with the book. I do not think that I stated to the court that I had expressed an opinion.

Mr. Harper. Did you make an application to the court to be excused, or did your observations arise from motives of delicacy?

Mr. Basset. If my memory does not fail me I did not solicit the judge to excuse me; the office of a juryman is no doubt always an unpleasant one, but when I am called upon to perform a duty, I do not shrink from the task. I had some doubts whether my mind was in a proper state to pass between my country and the traverser. It was to remove these doubts that I made the declaration, and for no other purpose.

Mr. Lee. On what day of the week was Callender tried?

Mr. Basset. I arrived about ten o'clock on Monday, and, the next day, the jury were sworn at the usual time.

Mr. Bayard. What was the general deportment of the judge to the counsel, and of the counsel to the court?

Mr. Basset. The different coloring through which the same things are seen make some men see things differently from others. My own opinion is that the judge conducted himself with decision unmixed with severity, and that he was witty without being sarcastic. It was my impression that the judge wished the prisoner to have a full hearing, that he might be acquitted, if innocent, and found guilty, if really guilty. It appeared to me that the sole point on which the counsel hoped to save their client was by proving the unconstitutionalty of the sedition law, and it appeared to me that they could not form a reasonable expectation of acquitting him on any other ground. I believe his counsel believed the law unconstitutional, and thought they had eloquence and argument enough to convince the jury of it. I believe they thought the judge deprived them of their right to address the jury on that point; and that having the cause very much at heart, they were vastly mortified that the court did not permit them to take the course they wished. They appeared

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to consider themselves as advocating the cause of an oppressed citizen, and they felt hurt at not being allowed the mode of defence which in their opinion the law authorized. In all their arguments they travelled but little way before they came to the point that went to prove the law unconstitutional, and the judge declared, at every such time, that they had no right to address the jury on that point; that the Constitution had made the court the sole judges of the law as far as it respected its constitutionality. From these circumstances, it is my impression that the altercation between the bar and the court arose solely from the sensibility of the counsel to this particular subject, and from being deprived, as they supposed, of their rights.

The President. What were the particular causes of irritation between the judge and the counsel?

Mr. Basset. I have stated what I considered the causes. They arose from the counsel adverting to that particular point, and their so frequently doing it occasioned the judge to elevate his voice, and to pronounce over and over again what he conceived to be the law.

Mr. Rodney. Was the question put by the court, whether you had formed and delivered an opinion on the charges contained in the indictment?

Mr. Basset. My memory on the particular form of the question is imperfect, but I will state my idea of it. I at first thought the question had been put in the disjunctive, *or*—but I am now persuaded that I was mistaken; so many gentlemen concurring in recollecting that the word *and* was used, I must believe I was mistaken.

Mr. Rodney. When the question was put, did you not say that you had formed an opinion on the extracts, and did you not express the very opinion which you had formed?

Mr. Basset. I did, and I said that if the book answered to the extracts, I had formed an unequivocal opinion that it was libellous.

Mr. Rodney. And this before you were sworn?

Mr. Basset. Yes, sir.

The witness was then, from the peculiar circumstances already stated, excused with the consent of the parties from any further attendance on the court; the President observing that although the indulgence was granted in this instance, he hoped it would not be made a precedent for a general practice.

The Court rose at four o'clock.

THURSDAY, February 14.

The Court was opened at twelve o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel,

On the request of Mr. Harper, and with the consent of the Managers, *Edmund Randolph*, a witness on behalf of the respondent, was sworn.

Mr. Hopkinson. Were you present at the trial of Callender?

Mr. Randolph. I was present during a short part of the time.

Mr. Harper. What was the general conduct and demeanor of the court towards the counsel? Was it harsh, rough, and irritating; or was it mild and facetious?

Mr. J. Randolph. I wish to submit to the Court, whether it is proper to put this question in the form proposed. I wish the witness may, in stating the conduct of the court, confine himself to specific facts, as much as possible.

Mr. Harper. The general conduct of the court is a matter of fact, and the particular acts of the court go to show what that was.

The President here desired the answer to be reduced to writing, when Mr. Harper said that he had no objection to withdrawing the question—Mr J. Randolph, however, waiving any objection to it, the President desired Mr. Randolph to proceed.

Mr. Randolph. The answer I have to make is very short. Having been absent the greater part of the time, I do not consider myself competent to say what the general conduct of the court was. I recollect that shortly after the trial commenced, I came into court, and sat very near the bench on which the judges sat. I continued there for some time, while a portion of the very lengthy indictment was reading. I then went out, and returned to my own house, where I continued until the time when I supposed the reading of the indictment would be finished. Just on my entrance into the lobby of the court, I saw the counsel for the traverser folding up their papers, and retiring from the bar.

Mr. Harper. Were you in court during the time when the previous motions were made?

Mr. Randolph. Shortly after the indictment was found against Callender, I was in court. The only incident which I recollect to have taken place at that time, was seeing the clerk or the attorney of the district hand up to Judge Chase a paper, about which I made inquiry of somebody near me, and learnt that it was a warrant for process for apprehending Callender. This is all I recollect previous to the arrest of Callender. When Callender was brought into the court, I stood outside of the crowd, at some distance from the court. I heard a great deal said, but I do not recollect what I did hear. I am therefore satisfied that I am incapable of giving a connected statement of what passed at that time. On the succeeding day the trial commenced; but I was not present when the motion was made for a continuance. I have stated already how far I was a witness from that time to the conclusion of the trial.*

Mr. Harper. What was the demeanor of the court when you saw the counsel folding up their papers?

Mr. Randolph. I do not recollect any specific facts.

Mr. Harper. What was their general demeanor during the trial?

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* The introduction of Mr. Randolph's testimony was delivered in so low a voice as not to be heard by the reporter. But it is understood that, in the part not heard, nothing relevant to the charges in the articles of impeachment, was said.

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Mr. Randolph. From the causes I have stated, I am not able to answer this question.

Mr. Harper. Have you no general impression?

Mr. Randolph. I cannot say I have.

Mr. Harper. Was there anything which struck you as remarkable, improper, or otherwise?

Mr. Randolph. I have no hesitation in saying that I saw nothing which conveyed the idea of corruption.

Mr. Harper. What do you mean by corruption?

Mr. Randolph. I mean an evil intention to oppress the traverser. I speak only of those parts of the trial which I witnessed myself, and I must be understood as knowing little of what passed from my own observation.

Mr. Harper. You say you perceived no evil intent to oppress the traverser?

Mr. Randolph. I had no idea of the sort.

Mr. Lee. Do you recollect nothing that was said by the court to the counsel, when they were putting up their papers and retiring?

Mr. Randolph. No, sir; I was at a considerable distance—at the door of the lobby at the time. I have no further answers to make to the questions proposed; I do not think it incumbent on me to relate matters that are irrelevant, or to go into conjectures.

Mr. Harper. We are ready to hear anything from a gentleman so well skilled——

Mr. Randolph. The reason of my remark is, my having understood that I was summoned in relation to opinions delivered by me at the time of the trial.

Mr. Harper. We are sensible that we cannot require them.

Mr. Randolph was, by consent of both parties, excused from further attendance as a witness.

George Read, sworn.

Mr. Randolph. The witness will please to state what he knows in relation to certain proceedings at a circuit court of the United States, held at Newcastle, in the State of Delaware, in the month of June, 1800.

Mr. Read. It is incumbent on me to state that several years have elapsed since the transactions which I am now about to relate occurred; of course I cannot pretend to say that the language I shall use to convey the sentiments delivered by Mr. Chase is precisely according to what occurred at the time; but the substance of what I relate will be correct. The transactions to which I presume I am called to testify took place at a session of the circuit court, held at Newcastle, for Delaware district, in June, 1800. The court sat two days, viz: on the 27th and 28th days of the month. At that court, Samuel Chase, one of the associate justices, presided, and Gunning Bedford, district judge, was associated with him. Judge Chase, as usual, delivered a charge to the grand jury, on the first day of the term. The grand jury, after hearing the charge, retired to their chamber; after remaining there for some time, they returned into court, and on being asked whether they had found any bills, or had any presentments to make, they answered they had found no bills of indictment, and had no presentments to make. After receiving this answer, Judge Chase proceeded to observe, as nearly as I can recollect, addressing himself to the grand jury, that he had been informed, or heard, that a highly seditious temper had manifested itself in the State of Delaware among a certain class of people, especially in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was ——; the judge here paused, and said, perhaps it might be assuming, or taking upon himself too much to mention the name of this person; but, gentlemen, it becomes your special duty, and you must inquire diligently into this matter. Several of the jurors, I believe, made a request to the court to dismiss them, and assigned as the reasons for their request, that some of them were farmers, and, as it was about the time of harvest, they were anxious to be on their farms. The judge observed that the business to which he had called their attention was of a very urgent and pressing nature, and must be attended to; that he could not, therefore, discharge them before the next day, when further information should be communicated to them on the subject he had referred to. The judge then addressing himself to me as the District Attorney, asked me, as I believe is usual on such occasions, whether I had any criminal charges to submit to the grand jury? I said that none such had yet occurred, and I believed none were likely to occur during that term. Judge Chase, continuing his address to me, observed, you might, by prosecuting proper researches, make some discoveries. Have you not heard of some persons in this State who have been guilty of libelling the Government, or the administration of the Government of the United States? I am told, and the general circulation of the report induces me to believe it, that there is a certain printer in the town of Wilmington who publishes a most scandalous newspaper; but it will not do to mention names. Have you not two printers in that town? I answered that I believed there were. Judge Chase observed, that one of them was a seditious printer, adding, he shall be taken notice of, and it is your duty, Mr. Attorney, to examine unremittingly and minutely into affairs of that nature; times like these require that this seditious temper or spirit, which pervades too many of our presses, should be discouraged or repressed. Can you not find a file of these newspapers between this time and to-morrow morning, and examine them, and discover whether this printer is not guilty of libelling the Government of the United States? This, I say, sir, must be done; I think it is your duty. I observed, as this subject was pressed by the honorable judge, I believed I was acquainted with the duties of my office, and was willing to discharge them. I mentioned that I had not in my possession the papers alluded to by the judge, nor had read them; but that if a file of them were procured and handed to me, I had no objection to examine them, and communicate with the grand jury on the subject.

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The judge then said he was satisfied, and, turning to the jury, observed, that he could not discharge them, however inconvenient their stay; they must attend the ensuing day, at the usual hour. The judge then directed that a file of the papers should be procured for me. I understood him to mean the paper called the Mirror of the Times and General Advertiser, though I do not recollect to have heard the title of the paper mentioned during the proceedings. A file of those papers was brought to me in the afternoon, after the adjournment of the court; by whom they were brought I do not recollect. I examined them, but in a very cursory manner, as I was very much interrupted by persons calling upon me. I did not discover during the course of this examination, any libellous matter coming within the provisions of the sedition act.

According to what I understood to be the wish of the judge, I sent this file of papers to the grand jury. Soon after the meeting of the court on the second day, and at the request of the grand jury, I attended them in their room. On entering, the foreman of the jury addressed me, and directed my attention to a paragraph in a publication contained in the Mirror of the 21st June, 1800, republished from the Aurora, reflecting, perhaps in strong and pointed language, on the former conduct of Judge Chase. He observed that there was a difference of opinion among the jurors as to the nature of the paragraph—some doubted whether it was a libel or not, and, if libellous, whether they had a right to present it to the circuit court. I observed that it was not necessary for me to be very particular in my opinion of the publication, as I did not consider it as coming under the sedition law, though it might be considered as an offence at common law, because Judge Chase had decided that the circuit court could not take cognizance of cases arising at common law. I returned into court. After some time, the file was placed before the judge. Judge Chase asked me what had been done, and whether the grand jury had made any discoveries of libellous matter? I answered none, unless it were the paragraph which related to Judge Chase, which I showed him, observing that it did not appear to me to come under the sedition law. Judge Chase acquiesced, and the business passed over on his part in a very polite and affable manner. I do not recollect anything further to have passed. I have, however, an indistinct recollection of a conversation between Judge Chase and myself, in the room of a tavern, before we went into court, in which I understood him to have made a general declaration of hostility against seditious printers.

Mr. Randolph. You said the judge gave orders to somebody to procure a file of newspapers. Do you recollect to whom he addressed himself?

Mr. Read. I do not; but I understood to the bailiff or marshal, or some other officer.

James Lea, affirmed.

Mr. Rodney. Please relate to the court the occurrences which took place at a circuit court of the United States at Newcastle, and whether you were summoned as a grand juror at that court.

Mr. Lea. I was summoned by the marshal of the district of Delaware as a grand juror at the circuit court held in the month of June, 1800. I attended agreeably to that summons, and was qualified as a juror. After receiving a charge from Judge Chase, we retired into our room, and remained there for some time. There appearing to be no business for us, we returned into our box. The usual question was put to us, whether we had found any bills? We said that we had not. After some time, Judge Chase addressed the grand jury, and observed that a very seditious disposition had manifested itself in the State of Delaware, in the county of Newcastle, and particularly in the town of Wilmington; that a seditious printer lived in that place, who edited a paper called the Mirror of the Times and the General Advertiser, who was in the habit of libelling the Government of the United State, and that his name was——, he said he would not mention his name, but that it was our duty to inquire if any seditious publications had been made; that he would not discharge us that day, nor until we had made the inquiry. Several of the jurors addressed the judge for leave to return home, stating that they were farmers, and were extremely anxious to be on their farms, as it was harvest time. Some conversation passed between Judge Chase and the Attorney for the District, after which he said he would not discharge us until the next day. We returned the next day into court, and after sitting some time in our box, we retired to the jury room. A file of newspapers was produced by some persons, and we examined them. We found nothing in them of a libellous nature, in our opinion, excepting something relative to Judge Chase, which some of the jury thought came under the sedition law. We sent for the Attorney of the District to inform us as to the nature of the paragraph. He told us it did not come under the sedition law. We went into the jury box, when a conversation of some length took place between Judge Chase and the Attorney of the District, after which we were discharged.

Mr. Martin. What time did you come down on the first day?

Mr. Lea. We were up a very short time—perhaps an hour.

Mr. Martin. What time the second day?

Mr. Lea. A good while.

Mr. Martin. What time is the harvest in Delaware?

Mr. Lea. It was the time of hay-harvest.

Mr. Randolph. I will ask you whether you recollect the judge to have quoted the title of the paper?

Mr. Lea. I recollect that he did.

Mr. Randolph. Was it the same paper that was sent you by the attorney?

Mr. Lea. It was.

John Crow, sworn.

Mr. Rodney. Please to state what occurred in the circuit court held at Newcastle.

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Mr. Crow. I was not in the court-house the first day. On the second day, I went into court just after it was opened. I recollect there was some conversation that took place between Judge Chase and the district attorney. The judge asked the attorney of the district if there were any presentments likely to be made that day. The attorney answered, there were none; that, on examining the file of newspapers, there was nothing found rebellious, unless it were some strictures on the judge himself. If that is all, the judge replied, we will take no notice of it. I recollect nothing further. The judge shortly after discharged the grand jury.

John Montgomery, sworn.

Mr. Randolph. The subject on which it is understood you are capable of giving some information to the court is the conduct of Judge Chase, at a circuit court of the United States held for the district of Maryland at Baltimore in May 1803, or about that time.

Mr. Montgomery. The point, I presume, on which I am called to give testimony, relates to a charge to a grand jury delivered by Judge Chase, at a circuit court where he presided, and Judge Winchester was associated with him. It will not, from the nature of the subject, be expected that I shall be able to detail, in the precise language of the judge, the whole of the charge which was delivered in 1803 at the May term. Though not one of the bar, I was present at the court, and took a chair among the gentlemen of the bar. After the grand jury were impanelled, Judge Chase addressed them. He appeared to address them from a written paper that lay before him. He proceeded in the usual manner to charge the jury as to the duties expected to be performed by them. After he had thus far proceeded in his charge, he mentioned, that before the jury retired to their chamber, he would make some observations, and that they would be considered as flowing from a wish for the happiness or welfare of the community. He stated that it was important that the people should be fully informed, particularly at such a crisis; that falsehood was more easily disseminated than truth; and that the latter was reluctantly attended to, when opposed to popular prejudice. I cannot pretend to state the sentiments delivered by the judge, in the order in which they were delivered. I can undertake to state, from my recollection, the substance of those he delivered. To the best of my recollection, the judge stated that the Administration was weak, relaxed, and inadequate to the duties devolved on it; and that its acts proceeded not from a view to promote the general happiness, but from a desire for the continuance of unfairly-acquired power. The language *unfairly-acquired power* made a strong impression on my mind at the time; and when the judge called the attention of the jury to the observations he was about to make, I was prepared to expect something extraordinary from him, as I was at Annapolis when he pronounced the valedictory address which Mr. Mason, in his testimony, took occasion to mention. The judge stated the violation of the Constitution that had taken place by the act of Congress repealing the Judiciary act of 1800, and the consequent removal of sixteen judges; that it had made a violent attack on the independence of the Judiciary. He also found fault with a law passed by the Legislature of Maryland in 1800, the effect of which was the removal of all the judges on the county-court establishment. He stated that those acts were a severe blow against the independence of the Judiciary. He stated, that since the year 1776, he had been an advocate for a representative or republican form of government; that it was his wish that freemen should be governed by representatives chosen by that class of citizens who had a property in, a common interest with, and an attachment to, the community. The language might have been in the words of our constitution. He found fault with the law passed by the Legislature of Maryland, which he styled "The Universal-suffrage Law." He stated that that also affected the independence of the Judiciary, and to the best of my recollection, he explained his ideas in this manner: that every free, white, male citizen, in the language of the Constitution, having the qualification of age and residence, though he had not a property in, an interest with, and an attachment to, the community, being suffered to choose those who constituted the Legislature, and the Judiciary being dependent on the Legislature for their support and continuance in office, few characters of integrity and ability, who are competent to discharge the duties of judges, would be found to accept appointments held by such a tenure. He stated that these measures were destructive of the happiness and welfare of the community; that they would have a tendency to sink our Republican Government into what he called a *Mobocracy*—the worst of all possible governments. When on the subject of the alteration of the State constitution, he stated that the framers of that constitution were men of ability and patriotism—the names of some of whom were honorably enrolled on the Journals of Congress, and also I think he said, on the Journals of the Convention of Maryland; that he had to observe, that the sons of those characters (which he regretted) were the chief supporters of these destructive measures. He stated that where there were equal laws and equal rights—viz: laws equally administered between the rich and the poor—in that country there was freedom. But where the administration of the laws was partial and uncertain, the people were not free; and he was apprehensive we were fast approaching to that state of things. He stated that there was but one act remaining to be done, (mentioning the act passed by the Legislature of Maryland for the trial of facts, and for abolishing the general and appellate court;) if that should be adopted, the Constitution would not be worthy of further care or preservation. At the close of the judge's charge, he, in an impressive manner, called on the jury to pause, to reflect, and when they returned to their homes, to use their endeavors to prevent these impending evils, and save their country. He said that the people had been misled by misrepresentation, falsehood, art, and cunning;

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that, by correcting these errors, the threatened evils might be prevented—or words to that effect. With regard to a part of the answer of Judge Chase, which has been published, and which I have read, perhaps it may not be improper for, and may be expected of me, to mention a fact contradictory to what is stated therein. It is stated in the answer, "The next opinion is, that the independence 'of the judges of the State of Maryland would be 'entirely destroyed if the bill for abolishing the 'two supreme courts should be ratified by the next 'General Assembly. This opinion, however in-'correct it may be, seems to have been adopted by 'the people of Maryland, to whom this argument 'against the bill in question was addressed; for, 'at the next session of the Legislature, this bill, 'which went to change entirely the Constitutional 'tenure of Judicial office in the State, and to ren-'der the subsistence of the judges dependent on 'the Legislature, and their continuance in office 'on the Executive, was abandoned by common 'consent."

It is true it was abandoned by common consent, but not for the reasons assigned by the judge in this part of his answer.

Mr. Nicholson. Was the provision for establishing universal suffrage a part of the constitution at the time Judge Chase delivered the charge?

Mr. Montgomery. It was.

Mr. Randolph. You state that the charge appeared to have been delivered from a written paper which lay before the judge. Do you mean to be understood, that after going through the first part of the charge on the ordinary duties of a grand jury, the latter part appeared to be delivered from a written paper?

Mr. Montgomery. It appeared to me that the latter, as well as the former part, was delivered in the same manner—the judge keeping his eyes on the paper before him.

Mr. Nicholson. Do you recollect whether the very last part of the charge, when he desired the jury to pause and reflect, &c., was delivered from the written paper?

Mr. Montgomery. It appeared to me as if he confined himself throughout to the written paper.

John T. Mason was again called.

Mr. Randolph. You will please to mention such circumstances as came under your observation, at a circuit court of the United States held at Baltimore in May, 1803, in relation to a charge delivered to a grand jury.

Mr. Mason. I was present when such a charge was delivered; I was present when it commenced and continued in court until it ended. I have, however, a very imperfect recollection of the greater part of it, and of a great part of it, perhaps, I have no recollection at all. I had not been in Baltimore for two years previous; the court room was very full; and while I was there a number of persons came up to salute me. I felt no particular interest in it, and I only attended to those parts of the charge, during the delivery of which I was not interrupted by interchanging the civilities of my friends and acquaintance. I do not think I can charge my recollection with more than three great points in the charge; nor am I certain that I can give them in the order in which the judge delivered them. The first contained pretty strong and censuring animadversions on the act of Congress which repealed the law passed in February, 1801, for the new organization of the courts of the United States, by which the sixteen new judges of the circuit court were removed from office. He spoke of it as an event which had wounded the independence of the judiciary, and as calculated to produce great mischief. I do not, however, pretend to give the words, but only to embrace the idea.

With regard to the second point which I recollect, it will perhaps be necessary for me to explain that, according to the provision in the constitution of Maryland for altering that instrument, amendments may be made by a Legislative act passed by two successive Legislatures. Under the constitution, before a late amendment was made, no man was permitted to vote unless possessed of property to the value of thirty pounds. That part of the constitution had been altered by two successive Legislatures by confining the qualifications of voters to age, residence, and color. This amendment Mr. Chase spoke of as one calculated to sap the foundations of Government, as injurious, and as leading to a great many evils.

The third ground arose on this circumstance: An effort had been made to alter the constitution by a considerable change in the judiciary system, and which had so far progressed as to have obtained the sanction of one Legislative vote. He spoke of this as a measure extremely dangerous in its nature, and which, if carried into effect, was calculated to deform and injure one of the most beautiful features of the constitution, and so to affect it as to leave nothing or little in it worth preserving. He concluded his remarks on this point by an earnest recommendation to those persons to whom he addressed himself, to make the necessary exertions to prevent the passage of this act, which would have made it a part of the constitution. There were at least two gentlemen in the room who were members of the Legislature, and whose fathers, as I understood, were members of the convention which formed the constitution of Maryland. Judge Chase observed that it was a matter of peculiar mortification, or concern, to look at, to see, or to know (using some such expression) some gentlemen engaged in thoughtlessly demolishing the fair fabric, which their fathers had toiled with him in erecting.

There is one point of fact in which I differ from the witness last examined. Judge Chase delivered the charge from a written paper which he had before him. He wore his spectacles at the time, and though he turned over leaf by leaf, he occasionally threw up his head, and sometimes raised his spectacles on his forehead, and spoke as if he was making what I considered an enlargement of the original charge, by extemporary observations in addition to what he had written. I cannot charge my memory with anything further.

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Samuel H. Smith, sworn.

Mr. Nicholson. Please to state what you know of the charge delivered by Judge Chase at Baltimore.

Mr. Smith. The charge of Judge Chase having been published, I did not expect to be called upon to state in detail its general contents; supposing that the only inquiry made would be on the correspondence of my recollection with the contents of the published charge. I do not know that I should be able, under these circumstances, to give a particular statement, from memory, of its contents. On the evening subsequent to the delivery of the charge, I committed to paper the most important features of it, which were published in the National Intelligencer, and which form part of the printed testimony received by the committee of inquiry. If I could be indulged with access to it, I should be enabled to state more correctly my knowledge of the charge.

[Mr. Smith here, with permission, read the following, extracted from the National Intelligencer of May 20, 1803:

"After a definition of the offences cognizable by the grand jury, Judge Chase said he hoped he should be pardoned for making a few additional observations. He had, he remarked, been uniformly attached to a free republican Government, and had actively participated in our Revolutionary struggle to obtain it. He still remained warmly attached to the principles of Government then established. Since that period, however, certain opinions had sprung up which threatened with ruin the fair fabric then raised. It had been contended that all men had equal rights derived from nature, of which society could not rightfully deprive them. This he denied. He could conceive of no rights in a state of nature, which was in fact entirely a creature of the imagination, as there was no condition of man in which he was not, under some modification, subject to a particular leader or particular species of government. True liberty did not, in his opinion, consist in the possession of equal rights, but in the protection by the law of the person and property of every member of society, however various the grade in society he filled. Nor did it consist in the form of government in any country. A monarchy might be free, and a republic in slavery. Wherever the laws protected the person and property of every man, there liberty existed, whatever the government was. Such, said he, is our present situation. But much I fear that soon, very soon, our situation will be changed. The great bulwark of an independent judiciary has been broken down by the Legislature of the United States, and a wound inflicted upon the liberties of the people which nothing but their good sense can cure. Judge Chase here went into an assertion of the right of the judiciary to decide on the constitutionality of laws. He then adverted to the proceedings of the Legislature of Maryland. He commented on the wisdom and patriotism of those who had framed the constitution of that State. That wisdom and patriotism had never conceived liberty to consist in every man possessing equal political rights. To secure property the right of suffrage had been limited. The convention had not imagined, according to the new doctrine, that property would be best protected by those who had themselves no property. The great rampart established in the limitation of suffrage was now demolished by the principle of universal suffrage ingrafted in the constitution. In addition to this, a proposition was now submitted, whose ratification depended upon the next Legislature, and which, if ratified, would destroy the independence and respectability of the judiciary, and make the administration of justice dependent upon Legislative discretion. If this shall, in addition to that which establishes universal suffrage, become part of the constitution, nothing will remain that will be worth protecting. Instead of being ruled by a regular and respectable Government, we shall be governed by an ignorant mobocracy. When he reflected on the ruinous effects of these measures, he could not but blush at the degeneracy of sons, who destroyed the fair fabric raised by the patriotism of their fathers."]

President. Did you hear any reflections cast on the Administration?

Mr. Smith. I do not recollect any other beside those contained in the statement I have read.

John Stephen, sworn.

I was at Baltimore when the charge was delivered by Judge Chase. My recollection of its contents is extremely vague. But, with regard to some of it, it coincides with that of Mr. Montgomery, Mr. Mason, and Mr. Smith. He spoke of the repeal of the Judiciary law, and said that it was injurious to the independence of the judges. He also mentioned the general suffrage law as injurious; and said no man ought to be permitted to vote unless he had a property in, a common interest with, and an attachment to, the community; that the act violated this principle, and would be attended with very injurious consequences; he denied the doctrine of natural rights; and said that they were altogether derived from convention; and at the end of the charge he exhorted the jury to use their efforts to prevent the injury likely to result from the temper of the times. I cannot say whether Judge Chase confined himself to a written paper or not. He declared that the independence of the Judiciary of the United States had been injured by the repeal of the Judiciary system; and that the bill then pending before the Legislature of Maryland, if adopted, would have the same effect upon the Judiciary of that State.

Mr. Nicholson stated, that all the witnesses present on the part of the prosecution had been examined; the managers would therefore proceed to offer certain records; but, as several material witnesses were absent, he hoped they would not be precluded from calling them, should they attend, at a future stage of the trial.

Mr. Randolph offered in evidence a copy of the record in the case of J. T. Callender; also, in the case of Fries.

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Mr. Randolph then stated that the managers had submitted all the evidence they were prepared to adduce. Whereupon the Court rose.

FRIDAY, February 15.

The Court was opened at 10 A. M.

Present: The Managers, accompanied by the House of Representatives in Committee of the Whole: and Judge Chase attended by his counsel.

The evidence being closed on the part of the prosecution,

Mr. HARPER, of counsel for the respondent, addressed the Court to this effect:

Mr. President: We feel so strong a reliance on the justice, impartiality, and discernment of this honorable Court, that nothing but an anxious regard for the character and feelings of the honorable gentleman who is the object of this prosecution, and a solicitude to remove even the slightest imputation of impropriety or incorrectness that may rest on his conduct, could induce us to occupy any portion of that time which we know to be so precious, by the introduction of testimony on his part. We believe the charges to be utterly unsupported by the testimony adduced on the part of the prosecution; and had we no other object than a mere legal acquittal, we should cheerfully rest the case on that testimony. But we are aware that some parts of the honorable judge's conduct, though not criminal nor punishable by impeachment, may, if left without explanation, appear in an unfavorable light. We are prepared with testimony to give this explanation; to show that, through all the transactions which form the matter of this prosecution, he has been governed by the purest motives, and that whatever errors he may have committed, are trivial in themselves, are imputable to human infirmity alone, and were instantly corrected by himself. This testimony we request the permission of this honorable Court to produce. But a consciousness of the strong ground on which we stand, and a recollection of the very important public business which now presses on the attention of this honorable Court, in its Legislative capacity, have determined us to waive our right to a general opening of our case; and to confine ourselves, in this stage of the cause, to a brief statement of the points to which our testimony will be directed.

On the first article, which relates to the conduct of Judge Chase in the trial of John Fries for treason, we shall produce testimony to show, that the opinion contained in the paper which the judge delivered to the prisoner's counsel was not only legal, but had been twice expressly decided, and once admitted in the same court, and had before that trial been laid down as a general principle of law, in a charge delivered to a grand jury in the same court, by one of Judge Chase's predecessors.

[Here Mr. Harper sat down, while the Committee of the Whole were entering and taking their seats.]

Mr. Harper then rose and proceeded. He stated that the counsel for the respondent had begun to open their defence, and were stating the ground which they should take in opposition to the first article of impeachment. We shall show, said he, by the most indisputable testimony, that the point of law respecting treason in levying war against the United States, which was stated in the paper delivered to the counsel of Fries, had been once informally decided by the same court, in a prior case, and twice after solemn argument and full discussion, and that one of those discussions was made in the case of John Fries himself, on an indictment for the same offence. We shall show that Judge Chase's predecessor had, before counsel was heard and before an indictment was found, delivered the same opinion in a charge to the grand jury. We shall proceed to prove in a more particular manner the contents of the paper thus delivered to the counsel. We shall produce the original paper itself; and shall prove that delivered to the prisoner's counsel to be a true copy of it; and we shall conclude, by showing that when the counsel of Fries had refused to proceed in his defence, and were informed by the judge that they might go on, and conduct the case as they thought proper, he employed no menacing expression, and uttered no such words as "proceed at the hazard of your characters:" but merely informed them that they should be under no other restriction, but that which a regard to their professional character would impose. That, far from threatening, he did all in his power to soothe; and instead of restricting, gave the utmost latitude of indulgence.

Proceeding, then, to the second general head of accusation, the conduct of the respondent relative to the trial of Callender, which furnishes the matter of the second article, and embraces in the whole five articles, we shall show that the copy of the "Prospect Before Us," which the respondent carried with him to Richmond, was marked, not by him, but by another person, without any view to a prosecution of the author, and was given to him by that person without any request, on his part, as a performance which might amuse him on the road.

As to the private conversation at Annapolis, we shall prove that it was a mere jest between the respondent and the gentleman, who, after treasuring it up for five years, has this day brought it forward to support an impeachment; and whose recollection of it we shall show to be far less accurate than ought to be required of a man, who, after so great a lapse of time, adduces a private, confidential, and jocular conversation, to aid a criminal prosecution.

We shall then follow Judge Chase to Richmond, where we shall show that, far from having formed a corrupt determination to oppress Callender, he felt solicitous for the escape of that unfortunate wretch; that, far from entering into a combination with the marshal to pack a jury for the conviction of Callender, Judge Chase expressed a wish that he might be tried by men of that political party whose cause his book was intended to support. We shall prove, by testimony not to be doubted, that no conversation whatever took

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place between the judge and the marshal, relative to striking any person from the panel, much less such a conversation as has been sworn to by one witness for the prosecution. We shall show that no panel of the jury actually summoned was formed, until the opening of the court on the day when the trial of Callender was to have commenced; that it was completed in open court, and was never seen by the judge. And we shall prove that the marshal, not by the direction of the judge, from whom he was bound to receive no directions on that subject, but with his entire approbation and according to his advice, took the utmost pains to select a jury of the most impartial, considerate, and respectable men; that, in this selection, no attention was paid to party distinctions; and that if no persons of Callender's political opinion actually did serve on the jury, it was because, after being summoned, they made excuses, which were admitted by the court, or refused to attend.

Thus much respecting the conduct of the judge previous to the trial. Proceeding then to the particular matter of the second article, which relates to the supposed rejection of John Basset's application to serve on the jury, we shall prove, more fully than we have already done, that the nature of this application has been wholly misunderstood by the witnessess on the part of the prosecution; that the juror did not offer an excuse, or apply to be discharged, but merely suggested some scruples of delicacy, and was willing to serve if those scruples were not sufficient to constitute a legal disqualification. We shall fully corroborate the testimony which the juror himself has given on this head, and shall show clearly that his scruples were not of such a nature, as to furnish a legal or proper ground of objection to his competence as a juror.

As to the refusal of a continuance, which has been so much relied on as a criminal violation of the law, with intent to oppress the party, we shall prove, that although no legal grounds for a continuance were shown, and it was therefore not in the power of the court to grant it, Judge Chase did offer to postpone the trial for a month or six weeks, in order to accommodate Callender and his counsel, and to enable them to prepare; an offer which they thought proper to reject. And we shall also show, that when this motion for a continuance was made, the law of Virginia, by which it is now contended that the court ought to have been governed, was not cited, nor even mentioned.

With respect to the conduct of Judge Chase towards Callender's counsel, we shall prove that it was free from any appearance of harshness, or desire to intimidate, abash, or oppress: that the irritation which took place proceeded from the counsel themselves, and that the conduct of the court was far more mild and forbearing than from those irritations could have been expected. That every decision on the law was the joint opinion of Judge Chase and his colleague, delivered after consultation between them. That every interruption of the counsel arose from their pertinacity in pressing points which had been decided, and on which propriety and duty required them to be silent; and that after the respondent had delivered the opinion of the court on these points of law he offered to assist the counsel for the traverser in framing a case for the opinion of all the judges of the Supreme Court, and thus to give them an opportunity of correcting any errors which he and his colleague might have committed in those decisions. And finally, we shall produce a witness who, having attended the trial and taken down all the proceedings in short-hand, will lay before this honorable Court an exact detail of all that passed.

Passing then to the matter of the fifth and sixth articles, we shall prove, by a rule solemnly made by the Supreme Court of the United States, that they never considered the State laws as regulating *process*, by virtue of the act of Congress which is relied on in support of these articles; but merely as governing the decision of rights acquired under them, when such rights come into question in the courts of the United States; that the practice in the courts of Virginia, under the State law in question, has been and is conformable to our construction, and not to that contended for on the other side. And as a proof how little the recollection of men, even the most correct, can be relied on, in cases where their feelings have been strongly excited, we shall produce a record, in which the learned gentleman who, though very young, was Attorney General of Virginia in 1800, and who has delivered his testimony with the greatest candor and propriety, did himself order a capias, on a presentment in a case not capital. We shall produce evidence to prove that the capias is the proper process, in all cases of presentments, except those of petty offences, which are tried by the court, without an indictment, and are punishable by fine only, but not imprisonment. And to remove every possible doubt on this head of accusation, we shall prove that when the presentment against Callender was made, and it became necessary to issue process against him, Judge Chase applied to the District Attorney for information as to what was the proper process, who answered, a capias; and that the capias, which was actually issued, was drawn up by the clerk, inspected and approved by the District Attorney, and issued on his suggestion.

Respecting the transactions at Newcastle, in the State of Delaware, which constitute the matter of the seventh article, we shall prove that those offensive and improper expressions, which are attributed to the respondent, relative to a seditious temper, in the State of Delaware, and, especially in the county of Newcastle and the town of Wilmington, never were uttered by him; that the witnesses who have deposed to those expressions are under a mistake; and that nothing was said or done by Judge Chase on that occasion, but what he has admitted in his answer; but what propriety justifies, and his duty required. To this end we shall offer the testimony of persons who were in a situation to remark every occurrence; to listen to every expression, and on whom such expressions, had they been uttered,

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could not have failed to make a strong impression. We shall then proceed to the charge delivered to the grand jury at Baltimore, which furnishes the eighth and last ground of accusation; and then we shall prove that the respondent said nothing of a political nature to the jury, except that which he has stated in his answer, and which he hopes to satisfy this honorable Court he had a right to say, however indiscreet or unnecessary the exercise of that right in this instance may have been. We shall produce an host of witnesses to prove that he never uttered such sentiments as are attributed to him by one witness, relative to the present Administration, its character, views, and manner of obtaining its power; sentiments which he admits would have been in the highest degree reprehensible on such an occasion; that the charge which was delivered was read from a book; and that he spoke nothing extemporary, as other witnesses for the prosecution have supposed. And, finally, we shall produce this book to speak for itself; shall prove it to be the same from which the charge was delivered; and shall conclude with the examination of witnesses who stood round the respondent while he read it, sat by his side, and almost looked over him while he delivered the charge which it contains.

This, Mr. President, will be the general bearing of our testimony; which we shall now, with the permission of this honorable Court, proceed to adduce, in the order in which it has been stated.

Samuel Ewing, sworn.

Mr. Hopkinson. (producing a paper.) Be pleased to inform the Court whether this is your handwriting.

Mr. Ewing. It is my handwriting so far as the paragraph at which I have signed my name; it was written by me at the time, and my name signed to it. The remainder is not in my handwriting, and I do not know by whom it is written.

Mr. Hopkinson. At what time and from what paper did you make it out?

Mr. Ewing. I made it out from the opinion of the court which was thrown down by Judge Peters or Chase, and within about half an hour after it was thrown down from the bench. I took the copy home with me, to Mr. Lewis's office, where I was at that time a student. In the afternoon of the same day Mr. Caldwell, the clerk of the court, called on me, and, at the desire of Judge Chase and Judge Peters, requested that it might be returned; and I gave it to Mr. Caldwell. I made out only one copy, and this is it.

Mr. Hopkinson. The paper being proved, I will read it in evidence.

Mr. Rodney observed that the original paper was the best evidence, and as one of the copies thrown down from the bench was already before the court, he presumed that ought to be considered as the best evidence.

Mr. Hopkinson said, he was desirous to read it merely to show that it corresponded with the copy in the possession of the attorney of the district.

Mr. Hopkinson then read the copy in the handwriting of Mr. Ewing, (containing the opinion of the court in the case of Fries,) which appeared to correspond precisely with the copy adduced by Mr. Rawle.

Mr. Hopkinson. Please to state whether you were in the court the day subsequent to that on which the opinion was delivered by the court, and what you recollect occurred at that time?

Mr. Ewing. I attended at the court the day succeeding, and I remember that Judges Chase and Peters, addressing Messrs. Lewis and Dallas, said they were not to consider anything which took place the day before as a restriction on the course they wished to pursue; Judge Peters said that everything done yesterday was withdrawn. Judge Chase asked them if they would go on in the cause; some conversation ensued, which ended in the determination of Messrs. Lewis and Dallas not to proceed in the defence of Fries. Judge Chase then made this observation: that if, after the court had expressed their opinion on the law, they persisted in stating to the jury their sentiments on the law, they must do it at the hazard of their legal reputations. I did not understand this as a menace, but as a delaration to the counsel that they must do it on their standing at the bar, and from a regard to their reputations. If I state anything further, it will only be a recapitulation of the testimony already given.

Edward J. Coale, sworn.

Mr. Hopkinson. Will you examine that paper, and say what you know respecting it?

Mr. Coale. It is a copy of the paper handed down by Judge Chase on the trial of Fries, made at the instance of Judge Chase, from a paper in his hand-writing; there were some words in the original which I could not ascertain: I left blanks for them, and they were filled up by Judge Chase; the other parts are written by me. It was made out before the trial of Fries. When in the office of Judge Chase, I was frequently in the habit of transcribing papers from his hand-writing. After I left him I went to Philadelphia, and lived there when Fries was tried. The judge occasionally, during my residence there, sent for me to transcribe his opinions; and on that occasion he called on me to transcribe this paper from the original hand-writing of himself.

Mr. Hopkinson. Was there a conversation between you and Judge Chase, in which he assigned his reasons, and what were they, for making out this opinion?

Mr. Nicholson objected to the putting of this question.

The President desired Mr. Hopkinson to reduce it to writing.

Mr. Nicholson said he would withdraw his objection rather than occasion delay. Some objection, however, arising on the part of the court,

Mr. Hopkinson submitted, in writing, the following question:

At the time Judge Chase desired you to make the copy in your hand, did he, or did he not, explain to you his reasons or motives for drawing up the paper from which this copy was made? If yes, what were they?

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Mr. Hopkinson said, he thought such questions perfectly legal, when they went to show the intention of the accused. We have heard, said he, much of the *quo animo;* and it is perfectly clear, that the intention constitutes the guilt of the offence.

Mr. Nicholson. The *quo animo* is to be collected from the acts of the party. The evidence of his declaration may be shown to prove the *quo animo.* But I do not consider it to be correct that Judge Chase shall be permitted to give in evidence declarations made at any other time than that when we have stated he made them; otherwise it will always lay in the discretion of the party accused to state declarations made at another time by him, for the purpose of justifying any acts he may have committed.

Mr. Martin said he had ever considered the declaration of the party at the time he was charged with committing a criminal act, as competent evidence to show his innocence.

Mr. Nicholson said there was no doubt of it; but that he was not charged with drawing out the paper as a criminal act. Any declaration made by Judge Chase at the time he delivered the opinion of the court, may be given in evidence, but any other declarations have nothing to do with the case.

The President. Where was the conversation between the judge and yourself?

Mr. Coale. At the judge's lodgings.

The question was then taken on permitting the question to be put, and passed in the negative—yeas 9, nays 25.

Mr. Hopkinson next offered a certificate of the clerk of the circuit court of Pennsylvania, to show that at the trial of Fries, in 1799, there were eighty-six civil suits depending.

Also a copy of the indictment on the first trial of Fries.

Also a part of a charge delivered by Judge Iredell at the term when Fries was tried, taken from Carpenter's report of that trial, page 14.

Mr. Campbell intimating some objection to receiving this paper in evidence,

The President said it might be read as a report of the case; but what credit it would deserve it would be for the court to determine.

Mr. Rawle was again called in.

Mr. Hopkinson. You were District Attorney at the trial of Fries. I will ask you whether the restriction of the court as to arguing the point of law was not applied to the counsel of the United States, as well as to those of the prisoner?

Mr. Rawle. I certainly did consider the restriction as imposed upon us both.

Mr. Hopkinson submitted extracts from 2d Dallas, pages 346, 348, to show that in the cases of Vigol and Mitchell the crime of high treason was completely settled by the court, and was the same as defined by Judge Chase in the trial of Fries.

William Meredith, sworn.

Mr. Hopkinson. Were you present at the trial of Fries?

Mr. Meredith. On the 22d day of April, 1800, I went to the court house for the purpose of attending the trial. It was rather at a late hour; I think after eleven o'clock before I reached the court house, I met several persons coming from the court room; I thought therefore that the court had adjourned, but not seeing any gentlemen of the bar, or the judges, I went on; when I came into court, I saw Judge Chase holding a paper in his hand, and he said that the cour thad with great deliberation considered the overt acts in the indictment against Fries, that they had made up their minds on the extent of the Constitutional definition of treason, and that to prevent their being misunderstood, they had committed their opinion to writing, one copy of which was intended to be given to the District Attorney, another to the counsel for the prisoner, and a third to be given to the jury; perhaps something else might have been said, but I do not recollect it. The paper was then thrown down by him to the bar, and a sentiment of this kind expressed by Judge Chase: that this opinion was not intended by the court to prevent the counsel from proceeding in the usual manner. I felt a desire to take a copy of the paper. I do not recollect whether more than one was thrown down. I had not, however, an opportunity of doing it. The paper was so fully occupied till the adjournment of the court, that although I made two or three attempts to obtain it, I could not succeed. The court adjourned a short time afterwards. After I went home I recollect that an application was made to me by the clerk of the court to return the copy, which he understood I had taken. I informed him I had not taken a copy. On the following day I was in the court room at the opening of the court. Fries was put to the bar, and the judge then inquired whether the counsel were ready to proceed on the trial. I remember Mr. Lewis addressing himself to the court, and objecting to proceed in the defence, because the counsel had been restrained by the court from proceeding in the manner which they deemed most beneficial to their client. I remember also that Judge Chase told him that he ought not to refer to the opinion which had been delivered on the preceding day; that the counsel were not to be bound by that opinion, as it had been withdrawn. Mr. Lewis referring to that opinion, however, considered it as the formed and decided opinion of the court, and that although the court had withdrawn it, it still would have an operation upon their minds; that while the court was under its influence, they could not expect to be heard in any of their arguments with effect. Judge Peters replied that the opinion was withdrawn, and I think Judge Chase repeated the opinion before expressed, that the counsel were not to be bound by that opinion, might enter fully into the case, and argue as well on the law as on the fact before the jury. I recollect Mr. Lewis stating to the court his opinion of the appositeness of cases decided at common law in England. I remember Judge Chase expressing his opinion and belief that they were perfectly inap-

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plicable; and afterwards remarking, that if, however, the counsel would go on, it was not the intention of the court to circumscribe them, or to take from the jury the decision of the law as well as the fact. He further added, that the counsel might manage the defence in such way as they thought proper, having a regard to their own characters. I am the more particular and positive of these expressions, because very shortly after the trial I made a summary of the proceedings. I find it stated as coming from the mouth of Judge Chase, and that he repeated that the counsel for the prisoner might go on in their own way, having a regard to their own characters. Judge Peters made a remark which I thought was calculated to put the counsel into good humor, but they persisted in their refusal to proceed. Thus far the court manifested, in my opinion, a desire that the cause might progress, and a persuasive and conciliatory temper; but Mr. Lewis having again decidedly said that he would not proceed, Judge Chase said, if you suppose by conduct like this to put the court into a difficulty, you are mistaken. After a pause, Judge Chase addressed himself to the prisoner, and asked him if he was ready to proceed on his trial, or whether he would have other counsel assigned to him. Fries replied he did not know what was best for him to do, but he would leave his case to the court. Mr. Rawle stated that from the peculiarity of the circumstances of the case, and the prisoner being left without the assistance of counsel, his wish was that the trial might be postponed for a day, and the postponement took place by order of the court. The following morning when the court was assembled, Fries was again put to the bar, and Judge Chase inquired of him whether he wished the court to assign him counsel? His reply was, that he would trust himself to the court and jury. Judge Chase replied, then by the blessing of God the court will be your counsel, and will do you as much justice as could be done by the counsel that were assigned you, or nearly in those words. The trial proceeded, but I was not present during the whole of it.

Mr. Hopkinson. Do you recollect whether Judge Chase guarded the prisoner against putting any improper questions to the witnesses, &c?

Mr. Meredith. Judge Chase seemed to me to perform his promise. He told him he had a right to put any questions he pleased, and guarded him against putting improper ones.

Mr. Harper said he would next proceed to the case of Callender.

Luther Martin, sworn.

Mr. Harper. Did you furnish Judge Chase with a copy of the book, entitled the "Prospect Before Us," and at what time did you furnish him with it?

Mr. Martin. It is not a pleasing thing for me to be a witness on this point, as I may be considered as a party concerned, and especially from being one of the counsel for Judge Chase. Yet, as it is required from me, I will proceed to state what I know. When I was in New York, I observed in a newspaper which I took up at a barber's shop an advertisement for the sale of the "Prospect Before Us." I mentioned it to Judge Washington, and he sent his servant to procure a copy, and I desired him to purchase two copies. I read it, and as was usual with me with respect to books any wise interesting, I scored such passages as were remarkable either for their merit or demerit, and I did score a great portion of the book. But I did not score them with the least idea of an indictment being founded upon them. When I scored the book I did not know that Judge Chase was going on the circuit of Virginia. My scoring was for my own amusement, and for that of my friends. Afterwards I saw Judge Chase. I asked him if he was going down to Richmond; he answered yes. I asked if he had seen the book called the "Prospect Before Us?" He said he had not. I then told him, I will put it into your hands, you may amuse yourself with it as you are going down, and make what use of it you please. There was a great deal more scored than was contained in the indictment. I most solemnly declare that I had no view to a prosecution in scoring it; though I have no hesitation in saying that in common with every worthy inhabitant of America I detested the book.

Mr. Nicholson. What do you mean by detest?

Mr. Martin. I am ready candidly to acknowledge that I did think it a book that ought to be prosecuted; and I did not think that Judge Chase would have an opportunity of seeing it unless I gave him a copy of it. Having since heard it suggested that I had some share in drawing up the indictment against Callender, I most solemnly declare I did not put pen to paper on the subject.

Mr. Harper. Was not your name written on the book?

Mr. Martin. It was.

President. Did you express the view you had in putting it into his hands?

Mr. Martin. I said what I have already stated; that he might take it down with him, and make such use of it as he pleased.

James Winchester, sworn.

Mr. Harper. Will you please to state whether you were in Annapolis in 1800, in court with Judge Chase, and Mr. John T. Mason, and what was the conversation which then took place?

Mr. Winchester. I attended a circuit court held at Annapolis in 1800. I do not recollect either the day the court commenced or ended. I think on the last day of the term sentence was passed on —— Saunders for stealing, in his character of postmaster, the contents of a letter. A crowd gathered round the door, and retarded our passage out of court. I do not remember what persons remained; but Mr. Mason came up and addressed himself to Judge Chase. My recollection is at best but imperfect, and of this conversation necessarily indistinct. In the account of it, therefore, I shall use my own language. I may occasionally use the language of Judge Chase and Mr. Mason. According to the impression on my

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mind the conversation commenced in this way. Judge Chase had delivered a charge to the grand jury. Mr. Mason came up, and in a laughing manner jocosely asked in what light are we to consider the charge, as moral, political, judicial, or religious? These are the words, I believe, but of this I am not certain. The judge replied in the same style and manner, I believe, that it was a little of all. I cannot be certain, but I think Mr. Mason intimated to the judge that he would not deliver such sentiments in Virginia. It appeared to me that the language of Mr. Mason conveyed to Judge Chase the idea that he was afraid to deliver such sentiments in Virginia, though I am not myself confident that such was his meaning. The judge replied that he would, and that he would at all times and in all places execute the laws in the manner he had declared. The conversation then turned on the book called the "Prospect Before Us;" as well as I remember it was spoken of as a book written by Callender. The conversation which passed on the subject I cannot pretend to relate at all, more than that I have a strong impression on my mind that Judge Chase mentioned that Mr. Martin had put the book into his hands, that he would take it with him to Richmond, and lay it before the grand jury, and have it presented. I heard Mr. Mason's testimony, and my recollection corresponds with his, that the whole conversation was jocular. I do not remember the particular expressions which Mr. Mason relates; but I cannot say that they were or were not made—because my attention was not very pointedly directed to the conversation, and at the time, from the laughing which took place, I might not have heard the expressions though they had been used.

Mr. Harper. What is the expression you do not recollect?

Mr. Winchester. That if the whole State of Virginia was not depraved, he would carry the book down with him, and have the fellow indicted.

William Marshall, sworn.

Mr. Harper. Inform the court how soon you saw Judge Chase after his arrival at Richmond, what passed between you, &c.?

Mr. Marshall. Judge Chase arrived in Richmond, but whether on the 21st or 22d of May, I do not recollect; but my impression is that it was Tuesday. I waited on him, as was usual with me, and gave him information respecting the state of the docket. The associate judge did not attend on the 22d, when the court was opened and the grand jury received their charge. They went to their room, and did not return till Saturday the 24th of May, when they returned a presentment against James T. Callender, which I have. [The original presentment was produced by the witness, read, and delivered to the Secretary.]

As soon as I had read the presentment, at the request of the attorney of the district the jury were taken back to their chamber, and progress was made in preparing the indictment. There was some conversation between Judge Chase and Mr. Nelson, which lasted for a few minutes. Judge Chase inquired what was the proper process on the presentment. The answer which the District Attorney made, was, that he supposed a capias was the proper process. I recollect that Judge Chase said something of a bench warrant, which was a practice unknown to us. Judge Chase asked me to draw the warrant. I said I could not. He then said he would endeavor to draw it. Afterwards Judge Chase desired the District Attorney to draw out the form of a capias; the Judge said he would draw one himself, and that I might draw out another; and he said he would take the most approved of the three. I recollect mine was drawn first; but whether before Judge Chase and Mr. Nelson had finished theirs, I do not recollect. On looking over mine, he said he was better satisfied with mine than his own; and he requested me to sign, seal, and deliver it to the marshal.

[Mr. Marshall here produced and read the original capias.]

On Saturday the 24th of May, in the afternoon, the grand jury brought in the indictment. I have taken these circumstances from a copy of the minutes of my office, which, if the court wish to see, I can produce, as I have them with me. Judge Chase alone formed the court from the 22d to the 29th of May, inclusive. On the 27th of May the marshal brought Callender into court, Judge Chase being at that time the only member of the court. A chair was handed to him, and he remained in court while the court proceeded with the docket in the usual way, until near evening, when Judge Chase observed that as the traverser was in court, he might perhaps have some application to make. I do not recollect whether the counsel afterwards employed for the defence of Callender were then in court; but if they were, they made no observations. But Mr. Meriwether Jones, with whom Callender resided, said that Callender was not then prepared to make any application; but that perhaps to-morrow he would move a continuance. Then Judge Chase applied to Callender, and asked if he could give bail. Mr. Jones replied that he could give bail in a moderate sum. Judge Chase asked Callender what were his circumstances; that in fixing the sum, he would be governed by that circumstance. Callender said they were nearly equal. The judge repeated the question and then Callender said he was indebted about two hundred dollars, and there was about as much due to him which he expected to receive; and therefore he did not consider himself worth anything. Judge Chase then asked if he could give bail, himself in two hundred dollars, and another in a like sum. The reply made by Mr. Callender or Mr. Jones was, that he could find bail to that amount; and he accordingly gave bail. On the 28th May, an application was made by Mr. Hay; this was the first instance in which Mr. Callender took any steps for his defence. Mr. Hay stated that he was not well acquainted with the practice in such cases; that he had an affidavit, of a general nature, stating the impossibility of going into the trial, with any prospect of success, without the attendance of a number of witnesses who lived

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at a great distance. Mr. Hay also inquired whether a general affidavit was sufficient, or whether a special affidavit, stating the names of the witnesses and the facts they were expected to prove, would be required. Judge Chase said that the strict practice of the law required a special affidavit; but they might take till to-morrow to prepare a special affidavit, submitting it to their discretion to manage the cause as they thought proper. I beg pardon for being a little too hasty in my narrative. When Mr. Hay offered his motion for a continuance, the court said that before they could hear the motion it was necessary that the traverser should plead to the indictment. For if he pleaded guilty, there would be no necessity for an application. Mr. Hay assured the court that the traverser would not plead guilty. Mr. Callender was arraigned and he plead not guilty; and then the conversation, which I have stated took place. The reply of Judge Chase was, after a general affidavit is made, it must be relied on, but you may withdraw the general, and file a special affidavit. Nothing further passed on the 28th.

On the 29th, in the morning, Mr. Hay produced a special affidavit; I have the original here. It is stated therein that, there were a number of witnesses, one from New Hampshire; one from Massachusetts; some from Pennsylvania, and some from South Carolina, absent; who were material witnesses for his defence; that there were also sundry documents to be procured; and an essay written by Mr. Adams on canon and feudal law, which the traverser supposed it important to have for his defence. Mr. Hay, on these grounds, moved for a continuance to the next term, in a pretty long speech. Judge Chase observed, that every person before he made a publication, if he meant to justify it, ought to know the names of his witnesses; and if he meant to justify it by documents, they ought to have been within his reach. It was not to be presumed, indeed, that he could calculate upon being able to procure his witnesses in a few days; that in this case, it was alleged that one witness resided in New Hampshire, which was a great way off. He said that the ordinary sittings of the court would be too short for him to obtain witnesses from so great a distance. He said that the prisoner should have time, and he should have a fair trial, but he could not allow him to the next term. He said he might have two weeks—but that might be too short a time—you may have three weeks, a month, nay, six weeks. We cannot sit so long, because we are obliged to hold a court in the district of Delaware; but I will adjourn this court, to go to Delaware, and will return in six weeks. In the course of the observations offered by Mr. Hay to the court, as well as I can recollect, he said if the documents and witnesses were here, he did not think he would be prepared during that term to investigate all the facts, and the law arising on them; but he would be prepared against the next term, if the court would indulge him with a continuance. After Judge Chase had made this offer of a postponement, I do not distinctly remember that Mr. Hay or Mr. Nicholas made any reply. After a short interval Judge Chase said, as they did not seem disposed to take the time he had offered, the trial should come on within the time the testimony of the witnesses residing in Virginia, deemed material, can be procured. He asked the marshal what was the distance of the residences of Mr. Giles and General Mason, and in what time they could conveniently come to Richmond; and, whether his deputy marshals could go for them? The reply of the marshal was, that his deputies were prepared to execute any orders of the court. Judge Chase then directed me to make out the subpœnas for Monday, the 2d of June; and I issued subpœnas for Messrs. Giles, Mason, and Taylor; but Colonel Taylor's name does not appear in the affidavit. The deputy marshals were directed to use all possible expedition in serving the subpœnas: they were all returned executed on Monday the 2d of June, endorsed with the hour of the day on which they were executed.

[Here Mr. Marshall offered the originals with the endorsements of the time of service.]

On Monday, the 2d day of June, Colonel Taylor appeared in court. The other witnesses were called, but they did not appear. A postponement was asked by one of the gentlemen, for two hours, who stated that it had rained on Sunday preceding, which might have impeded travelling, and it was granted. Some time in the course of the day, Judge Chase observed he might have till to-morrow, which was accepted.

On Tuesday morning, soon after the opening of the court, the motion for a continuance was renewed, founded on the affidavit of Callender, which gave rise to the first motion. Judge Griffin was then in court, having arrived on the 30th of May, and continued during the remainder of the term. It was argued much at length, and received the same decision as on the 29th. The marshal was then ordered to call the petit jury; twelve jurors appeared; there were some objections which I do not precisely recollect, to the panel of the jury; and a motion made to quash the array. An argument was made and some authorities quoted; Judge Chase said they were not to be relied on, and he asked for Coke upon Lyttleton. I brought it from the library in the capitol. Judge Chase looked into it, and said the array should not be quashed; but I do not know the principle on which he decided. When the jury had all answered, the gentlemen proposed to propound a question to the jurors as they came to the book. I do not recollect what the question was, but Judge Chase said he would propound the proper question himself. The question which Judge Chase said it was proper to propound, was: "Have you formed and delivered an opinion (for he said it was necessary to have delivered as well as formed it) on the indictment?" The answer of the first juror was, that he had never seen or heard the indictment, and could not say that he had formed an opinion respecting it. Eight or nine of the jurors were asked the same question, and gave a like answer. The gentlemen who defended the traverser then said it was unnecessary to ask the

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other jurors that question; the rest were sworn, and the trial proceeded. The course it took was pretty lengthy, and I cannot state all the circumstances that took place. I recollect that the testimony of Colonel Taylor was refused, but I do not recollect the particular circumstances attending it.

Mr. Harper. Did anything pass between you and Judge Chase respecting the jury summoned to try Callender?

Mr. Nicholson made some objection to this question.

Mr. Harper replied in support of it.

The objection was then withdrawn by the Managers; but further objection being made by a member of the court,

The President desired the question to be reduced to writing, which was accordingly done by Mr. Harper, as follows:

"Testimony on the part of the prosecution, tending to show from the declarations of the respondent, that he had a corrupt intention to pack a jury for the trial of Callender, having been given; he offers in evidence other declarations of his, made during the proceedings, but on a different day, for the purpose of rebutting the former testimony, and of showing that his intentions, in that respect, were pure, and even favorable to Mr. Callender."

When the Senate decided that it should be put—yeas 32, nays 2.

Mr. Marshall. Mr. Giles was on a jury in the circuit court, on, I think, the 27th of May, the day Callender was brought into court by the marshal. When Mr. Giles's name was called, Judge Chase asked me whether that was the celebrated Mr. Giles, Member of Congress. I said that it was, He said that he had never seen him before. Nothing more passed at that time. In the evening I was at Judge Chase's lodgings. He asked me whether I supposed Mr. Giles would remain in Richmond until the trial of Callender. I said it was uncertain, that it was not customary for Mr. Giles to remain any length of time when he came to town. Judge Chase said he wished he would remain, and serve in Callender's case; nay, he wished that Callender might be tried by a jury of his own politics. He said that if his situation as a judge would permit him to drop a hint to the marshal with respect to the jury, he would intimate his wish that Callender should be thus tried; but, in his situation, it would be improper for him to interfere with the duty of the marshal.

Mr. Harper. Inform the Court at what time, if any, you were at Judge Chase's chambers, when a certain Mr. John Heath was there; what passed, and what did not pass.

Mr. Marshall. Judge Chase was, as he informed me, a total stranger in Richmond, and had never been there until he held the court in 1800. He asked me if I would call upon him from time to time. When I knew he was at home, I used to go in an evening, and spend an hour or two with him at his lodgings. I also generally went in the morning, about an hour before the meeting of the court. I recollect about ten o'clock, going to Mr. Chase's lodgings. I went, I think, but of this I am not positive, with Mr. Randolph. I found Mr. Heath in Judge Chase's chamber, or in the passage. Mr. Heath was, I think, in the act of leaving the room; he had his hat in his hand, and I met him either in his way out of the room, or in the passage.

President. Can you state the day of the month?

Mr. Marshall. I cannot, but I think it was the day before Judge Griffin arrived. I recollect very well, on that day Mr. D. Randolph and myself walked up to the court room. I was surprised at seeing Mr. Heath at Judge Chase's, and asked Mr. Randolph what could have brought him there.

Mr. Harper. Was Mr. Heath in the act of going out when you entered?

Mr. Marshall. Yes sir, he was on the floor. He had taken his leave, as I supposed, of Judge Chase, and was either out of the room, or in the act of coming out of it. I do not recollect positively whether Mr. Randolph went with me. I recollect going with Mr. Randolph to court, and that it was the usual practice of Mr. R. and myself to go to Judge Chase's chambers in the morning and attend him to court. I do not certainly recollect whether that morning we went together to the judge's chambers, but I am positive we left the chamber together. The court met generally at eleven o'clock. I had something particular to do that morning, and it was from ten to half-past ten when I went to the judge's chambers; it may have been about ten. The time I saw Mr. Heath must have been about ten o'clock.

Mr. Harper. Did any conversation take place between the judge and Mr. Heath while you were there?

Mr. Marshall. I believe I met Mr. Heath outside of the door. There was not a word of conversation at any rate.

Mr. Harper. Did any incident take place respecting a paper handed from Mr. Randolph to Mr. Chase?

Mr. Marshall. There did not.

Mr. Harper. Did you hear anything about creatures called democrats?

Mr. Marshall. I never heard anything pass between them. I never heard the judge say anything about the jury, except what occurred either at the judge's lodgings or at court, which I took to be instructions to summon twenty-four jurors above twenty-five years of age, and freeholders; that there should be enough to supply the juries required at that court.

Mr. Harper. Did he direct them to be summoned from the country or the town?

Mr. Marshall. I have stated all that I remember relative to the summoning of the jury.

Mr. Harper. Did he say anything of the description of persons, relative to parties?

Mr. Marshall. I do not recollect that he said a word.

Mr. Harper. Did you make it a practice to go with the judge to the court every day from his lodgings?

Mr. Marshall. I walked every day with him. I made it an uniform practice. The judge's lodg-

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ings were on my way to court, not more than twenty yards out of my way.

Mr. Key. When the subpœnas were returned on the 2d of June, and neither Mr. Giles nor General Mason appeared, was there any application made on the court to allow a further time for their appearance?

Mr. Marshall. There were some observations made, but I do not recollect whether I attended to them at the time or not; but I think Judge Chase offered to issue an attachment for them, and left it to the pleasure of the traverser to say whether he would have compulsory process issued.

Mr. Key. Do you recollect, sir, whether that was applied for by the counsel, or whether it was a voluntary offer on the part of the court?

Mr. Marshall. I understood that it was a voluntary offer on the part of the court.

Mr. Harper. Did Judge Chase confer with Judge Griffin upon the motion of a continuance, and upon the rejection of Colonel Taylor's testimony?

Mr. Marshall. I sat very near them, and I frequently heard them in conversation in a sort of whisper.

Mr. Harper. Did you hear any part of the conversation between them?

Mr. Marshall. I did not hear anything distinctly; but when Mr. Basset was sworn, after having stated the situation in which he stood, Judge Chase asked him whether he had formed an opinion who was the author of the Prospect Before Us; he replied that he had not formed an opinion of the author, but he had formed an opinion of the book, and had said that the author ought to be punished. Judge Chase then turned to Judge Griffin, and said that the question propounded by the counsel would prevent the formation of a jury with respect to a notorious murder, as every man in the county where it had been committed might have declared that the perpetration ought to be punished. In that case there would not be in the whole county a competent jury. Judge Chase then said, let him be sworn. I do not know positively that Judge Griffin concurred in that opinion; but I think, from what I heard, that he did.

Mr. Harper. Did this conversation take place prior to the declaration of the opinion of the court by Judge Chase?

Mr. Marshall. I cannot say with certainty, because Judge Chase sometimes spoke without consulting Judge Griffin. I do not recollect any case in which they held a consultation, but that on the rejection of the testimony of Colonel Taylor, and the direction that Mr. Basset should be sworn on the jury. He was consulted as to the testimony of Colonel Taylor, but I did not hear him declare his assent aloud, but I took it for granted, as it was not denied.

Mr. Harper. With respect to the motion for a continuance, do you know whether the decision was made after a consultation with Judge Griffin?

Mr. Marshall. I do not recollect that anything was said on the part of Judge Griffin; but I understood that it was assented to, as it was delivered as the opinion of the court.

Mr. Harper. Was there any expression on the part of Judge Griffin of disapprobation of what was delivered by Judge Chase as the opinion of the court?

Mr. Marshall. None, sir.

Mr. Nicholson. At the time of the trial of Callender, was it not the custom of the judges to choose their circuits?

Mr. Marshall. I believe it was, sir.

Mr. Nicholson. At that time, the Virginia district was within Judge Chase's circuit, and do you recollect that he said he would not continue the cause till the next term?

Mr. Marshall. I recollect that Judge Chase said he would not continue it till the next term.

Mr. Nicholson. Who presided at the next term?

Mr. Marshall. Judge Paterson.

Mr. Randolph. You have said that on the morning when you found Mr. Heath about retiring from Judge Chase's chamber, you did not recollect whether the marshal accompanied you there or not?

Mr. Marshall. I do not recollect whether he did or not, but the probability, as resting on my mind, is that he did.

Mr. Randolph. Did he accompany you from the lodgings of Judge Chase to the court?

Mr. Marshall. Yes, I am certain of that, because I had the conversation which I have mentioned.

Mr. Randolph. You mentioned a conversation you had with Judge Chase on the subject of the political characters serving on the jury; that he wished that Mr. Giles, and other gentlemen of the same political character, might serve on the trial of Callender; did you mention that conversation to the marshal?

Mr. Marshall. I do not remember to have conversed with him on that subject?

Mr. Randolph. Were you acquainted with the gentlemen who served as petit jurors on Callender's trial?

Mr. Marshall. Yes, sir.

Mr. Randolph. Is there any one of them that comes under the description of being of the same political character with Mr. Giles?

Mr. Marshall. I believe not, sir. At the time of the trial, I was not fully acquainted with the political characters of the gentlemen that served on the jury; but since I have learned, as I then conceived, that none of them were of the same politics with Mr. Giles.

Mr. Randolph. If I understood you right, sir. you stated that a capias was ordered to be issued before the grand jury returned the indictment a true bill.

Mr. Marshall. I said on the presentment a capias was issued for the arrest of Callender, which was before the indictment was found.

Mr. Nicholson: The indictment was found on the 24th of May, was it not sir?

Mr. Marshall. The presentment was made on the morning of that day. The court sat longer than usual, and I remember that the jury wished to be discharged, but they were not, and it was five or six o'clock before they brought in the bill of indictment.

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Mr. Nicholson. Do you recollect whether the attorney of the district had commenced drawing the indictment before the presentment was made?

Mr. Marshall. I remember that the district attorney was drawing up the indictment before the presentment was made; he had made, however, very little progress in it at the time; it was finished afterwards as soon as convenient, and transmitted to the grand jury.

Mr. Randolph. During the course of that trial, pray, sir, tell the court were the interruptions of the counsel for the traverser more frequent than you have been in the habit of witnessing?

Mr. Marshall. I have rarely seen a trial where the interruptions were so frequent.

Mr. Randolph. Do you remember a single instance?

Mr. Marshall. I think in a trial where Judge Iredell presided there were interruptions which were as frequent, if not more frequent than took place in the course of this trial.

Mr. Randolph. Do you recollect anything disrespectful on the part of the counsel towards the court on the trial of Callender?

Mr. Marshall. One of the counsel, Mr. Hay, appeared to be under a great deal of irritation during a great part of the trial.

Mr. Randolph. Did you perceive any cause for this?

Mr. Marshall. The court were very positive that the jury should not be addressed by the traverser's counsel on the constitutionality of the sedition law, and whenever that point was touched by the counsel, there was as much decision shown by the court as I ever witnessed.

Mr. Randolph. Was there much mirth among the by-standers?

Mr. Marshall. There was a good deal. I cannot say what gave rise to it, but it was kept up during the course of the trial. The court was extremely facetious during that part of the trial which I particularly attended to, but I was not very attentive to the trial till that morning.

Mr. Martin. What was the cause of the interruptions?

Mr. Marshall. It was the counsel persisting in addressing the jury on the unconstitutionality of the sedition law, after the court had declared what was their opinion of the law on that point.

Mr. Randolph. Do you recollect any particular expressions used by the court on this subject?

Mr. Marshall. I heard Judge Chase say that the counsel for the traverser were mistaken in their exposition of the law, and they kept pressing their mistakes upon the court; he said so once, if not oftener.

Mr. Harper. You say, sir, that there was no gentleman on the petit jury of the same political opinion with Mr. Callender or Mr. Giles. Do you mean on the jury that tried Callender, or on the panel?

Mr. Marshall. On the jury that tried Callender.

Mr. Harper. Were there any on the panel?

Mr. Marshall. There were Colonel Harvie, Mr. Radford, and Mr. Marks Vanderval. Mr. Harvie was called very early, and Mr. Marks Vanderval; but it appeared to me that there was a great unwillingness on the part of those gentlemen to be on the jury to try this cause, and several applications were made to have them excused.

Mr. Harper. How did it happen that none of those gentlemen served?

Mr. Marshall. Mr. Harvie suggested that he was sheriff of Henrico county, and that the county court was sitting at the time; that his presence was required, and on that ground the court excused him from serving on the jury. The other two gentlemen did not attend at all.

Mr. Harper. When you said that the confusion on this trial took place from the counsel's pressing their opinion on the jury, do I understand you as saying that it was after they (the counsel) had been overruled by the court?

Mr. Marshall. I so understood it; I did not perceive any other cause.

Mr. Harper. What took place on the motion for a continuance? The affidavit filed stated that the traverser could not produce his witnesses; did it state that he could prove a justification as to all the charges in the indictment?

Mr. Marshall. No, sir, not that I remember; but the affidavit is here on file. It was stated by Judge Chase, that there were nineteen charges in the indictment, and that it was necessary for the traverser, in order to procure his acquittal, to prove the truth of the matter in the whole; it was not sufficient to prove a dozen or more of them to be true, if he could not prove them all. It was not sufficient to prove a part instead of the whole of any one charge; for example, suppose a man should charge me with being a great scoundrel, a rogue, and a very ugly fellow, and he should prove that I was a very ugly fellow, would that go to acquit him for having called me a scoundrel or a rogue? Can a part proven in this way be said to be a justification?

Mr. Harper. Was this remark made by Judge Chase in good humor?

Mr. Marshall. I thought him in a remarkable good humor.

Mr. Harper. You say Judge Chase was positive. Was he harsh towards the counsel of the traverser?

Mr. Marshall. I did not think so. I remember that he said his country had made him a judge, and he would be the judge on the business of that day, and whatever was transacted should be under the direction of the court. He said also that he was a frail and feeble man, and that it was possible he was in an error in respect to the opinion which he entertained of the law. If the gentlemen who dissented from his opinions would form a bill of exceptions, he would be the first man to allow them a writ of error to go into the Supreme Court of the United States, a superior tribunal, and have there his opinions tested.

Mr. Harper. Did the counsel for the traverser state a case on this offer of the judge?

Mr. Marshall. Those were the observations of the court, but I do not recollect that the counsel said anything in reply.

Mr. Randolph. You mentioned that no person

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of Mr. Giles's politics was on the jury; did I understand you, when speaking of Mr. John Harvie as being of those politics, as meaning Mr. Harvie of Belvidere?

Mr. Marshall. Yes, sir.

Mr. Randolph. What do you conceive to have been his politics at that time?

Mr. Marshall. I thought, from his opinion on the sedition law, which I had understood was, that it was unconstitutional, he might have been of the same politics as Mr. Giles.

Mr. Randolph. What was your opinion of Mr. Radford?

Mr. Marshall. I understood his politics to have been of the same kind.

Mr. Randolph. Did you ever hear that Mr. Marks Vanderval had denied that he was summoned on the jury for the trial of Callender?

Mr. Marshall. I have understood that he denied ever having been summoned.

Mr. Randolph. Did Mr. Harvie answer to his name when called on the jury list?

Mr. Marshall. Yes, sir, and he was excused as being high sheriff of the county of Henrico.

Mr. Randolph. Did Mr. Radford answer to his name?

Mr. Marshall. I believe not, sir; Mr. Vanderval I am certain did not.

Mr. Randolph. Were you well acquainted at the time with Mr. Radford and Mr. Harvie?

Mr. Marshall. I was with Mr. Harvie, and tolerably well with Mr. Radford.

Mr. Randolph. Were you well acquainted with Mr. Marks Vanderval?

Mr. Marshall. Not very intimately.

Mr. Randolph. Do you know, or believe, that at the election for members of the House of Representatives in the Spring of the year 1799, whether Mr. Vanderval did vote for your brother, the present chief justice?

Mr. Marshall. I believe he did not vote at all; but if he had voted, I believe it would have been for him.

Mr. Harper. Colonel Tinsely appears upon this panel; I would ask you if his political opinions were at that time the same as they are now?

Mr. Marshall. I do not know what were his political sentiments at the time; but I remember that he had been hostile to the adoption of the Federal Constitution.

Mr. Martin. The panel of the petit jury is never returned, if I understood you right, by the marshal, until the jury appears in court, and the clerk of the court knows nothing of it. Did you learn anything of the panel that had been summoned by the marshal on the morning you were with him at Judge Chase's lodgings?

Mr. Marshall. I did not.

The President. Did you know whether Mr. D. Randolph had or had not made out his panel?

Mr. Marshall. I knew nothing of it.

Mr. Wright. When was it that the conversation took place at Judge Chase's lodgings, when you met Mr. Heath there?

Mr. Marshall. I do not recollect the precise day, but I think it was the 27th or 28th of May.

Saturday, February 16.

The Court was opened at 10 o'clock, A. M.

Present: the Managers, accompanied by the House of Representatives; and Judge Chase, attended by his counsel.

David M. Randolph, sworn.

Mr. Harper. Were you marshal of the United States for the district of Virginia in 1800?

Answer. I was, sir.

Mr. Harper. Did you attend the circuit court held in May of that year, as marshal?

A. I did, sir.

Mr. Harper. Did you summon the panel of the jury that served on the trial of Callender?

A. I did.

Mr. Harper. Had you any conversation with Judge Chase on the forming that panel?

A. I had no conversation with him on that subject. There was a conversation offered to me by Judge Chase.

Mr. Harper. What was it?

A. The judge recommended to me that I should get persons generally from the country; represented that they should be twenty-five years of age, of fair characters, untainted by party prejudices.

Mr. Harper. What were his reasons for taking them from the country?

A. I do not know.

Mr. Harper. If at that period you had been disposed to form a jury of the political opinion of those then in power, would you have taken them from the town or country?

A. I knew very little of the political sentiments of the citizens. There were, however, in town a great majority of those whose politics were called federal.

Mr. Harper. Was that the case in the country?

A. I cannot say. I never meddled with politics in any way except in private conversation. Not attending at public meetings, I had but little acquaintance with the politics of individuals.

Mr. Harper. Did you, in forming the panel, summon any persons you knew to be opposed to the then Administration?

A. I believe I did several. I summoned the best and fairest characters, without respect to their political opinions. I employed two deputies.

Mr. Harper. Did you summon Colonel Vanderval?

A. I did by my deputy.

Mr. Harper. On what day was he summoned?

A. I received directions from the bench on Friday, to be prepared with two juries, of twenty-four each, on the Monday following.

Mr. Harper. When did you proceed to form the jury?

A. I proceeded the moment I was directed. I summoned several in person while in court.

Mr. Harper. When did you complete the panel?

A. I completed it on Monday morning following while the court was sitting.

Mr. Harper. Did you complete the panel before?

A. Never. It might have been considered as in an incomplete state at that period.

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Mr. Harper. Why so?

A. It is never the practice in Virginia for the jury summoned to consist of any precise number of persons.

Mr. Harper. Did you ever show the panel to Judge Chase?

A. Never at any time or place. The list was handed to the clerk of the court on Monday after the court was in session.

Mr. Harper. Did Mr. Chase ever say anything to you about striking off any persons of any particular description from the panel?

A. Never at any time or at any place, I am very confident.

Mr. Harper. You are very confident of that?

A. Perfectly so.

Mr. Harper. You say the panel was not completed till Monday?

A. It was not finished till that day when the court was in session—and the list was never shown by me to any person.

Mr. Harper. It was not the practice then to present a list to the clerk?

A. Never, except as the jurors are sworn?

Mr. Harper. Were the jurors called and sworn on that day?

A. There were twelve of them sworn on that day.

Mr. Harper. Did any gentlemen summoned apply to you to be discharged?

A. Several. At the moment I received orders to have two juries ready by Monday, I called on my two deputies, and desired them to take down, on distinct papers, the names I mentioned to them. I observed that I chose to take the responsibility on myself. While they were taking down the names, I summoned several persons whose names were not put down till Monday. On Monday, finding my two deputies had not summoned a sufficient number, I went in quest of them. I found them at the end of the town, in the act of executing my orders. Mr. Moseby, one of my deputies, was standing with Colonel Vanderval, I think in conversation with him. I called him across the street, and asked him how they succeeded. At this time I saw my other deputy. They told me they wanted but one or two jurors. I told them they must make haste. About this time I saw Mr. Basset entering town on horseback. I told him that he had been crossed as a grand juror for non-attendance; that he must serve as a petit juror, which would give him an opportunity of offering his apology. I took out my watch, and told him that I allowed him five minutes. We arrived at the capitol, and my deputies there gave me their memorandums, from which, and my own, I made up the list of the jury. Two gentlemen, Mr. Lewis and Mr. Blakely, offered something like excuses. I looked at Mr. Blakely, and said there was only one excuse that I would admit, to wit: his being under twenty-five years of age. He said he was under that age, and I dismissed him. Mr. Lewis said he might make the same excuse. I said I doubted it, but I let him off. As I went into the passage, I met Mr. Samuel Myers, who also desired to be let off. I told him I could not and would not. He said I would excuse him for a reason which he could assign. He whispered, and said that he was prejudiced against Callender. I permitted him to go, but begged him to keep that reason to himself. Another juror summoned, was very warm and importunate to be excused. I told him there was only one ground on which I would excuse him. He asked me what it was? I answered that if it applied to him, he already knew it. I begged him to go to the court, and he would learn what it was. He did so. Colonel Harvie stopped me in the passage in a hasty manner, and with great warmth and friendliness urged me to let him off. He said he was sheriff of Henrico county. I said I knew it, but that I also knew that his duties were generally performed by deputies. I did not let him off. He applied to the court, and was excused.

Mr. Harper. Were there any other gentlemen who applied to be excused?

A. Yes, sir, Mr. Radford. He was in court at the time I commenced making out the list. He urged as an objection to serving that he differed in politics from myself. This I considered evasive, and I told him I should call him. When called he did not answer. I believe he went immediately home.

Mr. Harper. Did you go in person to execute the process against Callender?

A. I did.

Mr. Harper. Did you meet any person at Petersburg with whom you had a conversation repecting the arrest of Callender?

A. The first person I had any conversation with was Mr. George Hay.

Mr. Harper. Did anything pass in that conversation tending to dissuade you from searching for Callender?

A. I had fruitlessly gone in pursuit of Callender some distance from Petersburg; on my return about sunset, at a tavern nearly opposite the residence of Mr. Hay, he came up, and entered into conversation with me with regard to Callender. I said I had been on a wild-goose chase, and had found myself foiled, but that I was determined to find whether he was not in town. Mr. Hay appeared to interest himself very much, in dissuading me from the pursuit. He said that Callender would not be taken, and that it was in vain to pursue him. I replied that I would do my duty, and, if possible, apprehend him. I asked him if he knew where Callender was. He said he knew not where he was, and if he did, he would not tell me. He invited me to take a bed at his house, which I declined, as I was going to spend the evening down town.

Mr. Harper. Did Mr. Hay assign any reasons why Callender ought not to be arrested?

A. I cannot state the language he used. He urged a great many things. Among others, he observed, that as Callender could not be defended this term, he would be found guilty and imprisoned, and said that if he was not then arrested, he might, in the fall, surrender himself.

Mr. Harper. You understood Mr. Hay to say,

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that if Callender was not arrested till the next term, he would surrender himself?

A. He so intimated to me. These were not his very words, but that was my understanding of them.

Mr. Harper. You say you completed the panel after the court met on Monday?

A. I did.

Mr. Harper. And that you never submitted it to Judge Chase, or spoke to him about it?

A. I did not, at any time or place whatever.

Mr. Harper. And that you had no conversation with the judge about forming it, except that you have mentioned?

A. None other; and that was at his lodgings in a familiar conversation.

Mr. Randolph. I understand you to have said you did not summon Marks Vanderval yourself.

A. I said so—but he was summoned by my order.

Mr. Randolph. Were you present when the order was executed?

A. I was on the opposite side of the street, and saw my deputy, Moseby, in conversation with him. He crossed the street, and said that Colonel Vanderval expressed a repugnance to serving. I told him it laid with him to release him, and if he departed from the general rule he must answer for it.

Mr. Randolph. Do you know whether Mr. Vanderval has denied that he was ever summoned?

A. I do not, except seeing it so stated in the public papers.

Mr. Randolph. Have you ever at any time had any conversation with Judge Chase on the subject of the grand jury?

A. Not that I recollect.

Mr. Randolph. Was the William Radford who was summoned and expressed his unwillingness to serve on the jury, the same who keeps the Eagle tavern?

A. The same.

Mr. Randolph. Did he keep the Eagle tavern at that time?

A. I believe not.

Mr. Randolph. Did he say his politics differed from yours?

A. I do not know that he used those words; but such was my impression, at the time, of his meaning.

Mr. Randolph. Did you understand his opinions to be of that political character?

A. I cannot say positively. I have some indistinct recollection that he was classed among that description of men.

Mr. Nicholson. What party?

A. The democratic party, as they are called.

Mr. Randolph. Did I understand you to say you were not positive to which party he belonged?

A. I was not positive at that time.

Mr. Campbell. I wish you to state when you showed the panel of the grand jury to the judge.

A. On the first day of the court after it was formed.

Mr. Campbell. Had he never seen it before?

A. Never, sir; I had never seen it before myself. The practice is, for the returns to be handed in by the deputies, and a list formed and given to the clerk, who hands it to the court.

Mr. Campbell. Have you any recollection of seeing Mr. Heath at the judge's lodgings, and when?

A. I have no recollection of seeing him at the judge's chambers at any time, or of seeing him in Richmond during that session of the court, until it was called to my mind by Mr. Marshall's testimony.

Mr. Nicholson. Then you recollect by presumption that he was there—did you see him?

A. I rather think I saw him; but I have no recollection of seeing him in Judge Chase's chamber, or with Judge Chase alone.

Mr. Randolph. Did the judge lodge at Crouch's?—is it not a tavern?

A. It is a boarding-house, and no wise distinguished from a tavern. I had never been in the house before Judge Chase's arrival.

Mr. Randolph. Did you ever receive any instructions, verbal, or by letter, from Judge Chase, in relation to the grand jury?

A. Never.

John Marshall, sworn.

Mr. Harper. Please to inform this honorable Court whether you did, or did not, on the part of Colonel Harvie, make an application for his discharge from the jury, and on what ground that application was made?

Mr. Marshall. I was at the bar when Colonel Harvie, with whom I was intimately acquainted, informed me that he was summoned on the jury. Some conversation passed, in which he expressed his unwillingness to serve, and stated that he was an unfit person; for that his mind was completely made up, that he thought the (sedition) law unconstitutional, and that, whatever the evidence might be, he should find the traverser not guilty; and requested me, on that ground, to apply to the marshal for his discharge. I told the marshal that Colonel Harvie was extremely desirous of being discharged, and, on his discovering great repugnance to his discharge, I informed him that he was predetermined, and that no testimony could alter his opinion. The marshal said that Colonel Harvie might make his excuse to the court; he observed that he was watched, and, to prevent any charge of improper conduct from being brought against him, he should not interfere in discharging any of the jurors who had been summoned. I informed Colonel Harvie of this conversation, and it was then agreed that I should apply to the court for his discharge, upon the ground of his being sheriff of Henrico county, that his attendance was necessary, as that court was then in session. I moved the discharge of the juror on that ground, and he was discharged by the court.

Mr. Harper. Did you communicate to Judge Chase, or to the court, the reasons which first induced Colonel Harvie to make this application?

Mr. Marshall. I only stated that he was sheriff of Henrico county, and that it was unusual to re-

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quire the attendance of sheriffs on juries. I believe the marshal was at that time obtaining jurymen, he had at that time a paper in his hand; and appeared to be setting down the names of persons within his view.

Mr. Randolph. Were you in court during a part of the trial, or during the whole of the trial?

Mr. Marshall. I think I was there only during a part of the time.

Mr. Randolph. Did you observe anything unusual in the conduct on the part of the counsel towards the court, or the court towards the counsel, and what?

Mr. Marshall. There were several circumstances that took place on that trial, on the part both of the bar and the bench, which do not always occur in trials. I would probably be better able to answer the question, if it were made more determinate.

Mr. Randolph. Then I will make the question more particular by asking whether the interruptions of counsel were much more frequent than usual?

Mr. Marshall. The counsel appeared to me to wish to bring before the jury arguments to prove that the sedition law was unconstitutional, and Mr. Chase said that that was not a proper question to go to the jury; and whenever any attempt was made to bring that point before the jury, the counsel for the traverser were stopped. After this there was an argument commenced (I think) by Mr. Hay, but I do not recollect positively, to prove to the Judge that the opinion which he had given was not correct in point of law, and that the constitutionality of the law ought to go before the jury; whatever the argument was which Mr. Hay advanced, there was something in it which Judge Chase did not believe to be law, and he stopped him on that point. Mr. Hay still went on, and made some political observations; Judge Chase stopped him again, and the collision ended, by Mr. Hay sitting down, and folding up his papers as if he intended to retire.

Mr. Randolph. There were many preliminary questions, such as, with respect to the continuance of the cause, the admissibility of testimony, &c. Did the interruptions take place on the part of the court only when the counsel pressed the point of the unconstitutionality of the sedition law?

Mr. Marshall. I believe that it was only at those times, but I do not recollect precisely. I do not remember correctly what passed between the bench and the bar; but it appeared to me that whenever Judge Chase thought the counsel incorrect in their points, he immediately told them so, and stopped them short; but what were the particular expressions that he used, my recollection is too indistinct to enable me to state precisely; what I do state is merely from a general impression which remains on my mind.

Mr. Randolph. Was there any misunderstanding between the counsel and the court, and what was the cause of that misunderstanding, or what was your opinion as to the cause, or did you form one?

Mr. Marshall. It is impossible for me to assign the particular cause. It began early in the proceedings and increased as the trial progressed. On the part of the judge it seemed to be a disgust with regard to the mode adopted by the traverser's counsel, at least I speak as to the part which Mr. Hay took on the trial, and it seemed to increase also with him as he went on.

Mr. Randolph. When the court decided the point that the jury had not a right to decide upon the constitutionality of a law, did the counsel for the traverser begin an argument to convince Judge Chase that the opinion which he had delivered on that point was not well founded? Is it the practice in courts when counsel object to the legality of an opinion given by the court, to hear the arguments of counsel against such opinion?

Mr. Marshall. If the counsel have not been already heard, it is usual to hear them, in order that they may change or confirm the opinion of the court, when there is any doubt entertained. There is however no positive rule on this subject, and the course pursued by the court will depend upon circumstances; where a judge believes that the point is perfectly clear and settled, he will scarcely permit the question to be agitated. However, it is considered as decorous on the part of the judge to listen while the counsel abstain from urging unimportant arguments.

Mr. Randolph. In the circuit courts of the United States, after a court is opened for any district, is it the practice of such courts to adjourn over from time to time, in order to hold a court in another district in the intermediate time, and then to return back; or is not the uniform practice to postpone causes when they cannot be conveniently treid, to the next term?

Mr. Marshall. I can only speak of courts where I have attended, in which the practice is, that the business of one term shall be gone through as far as possible, before any other court is held.

Mr. Randolph. Was it ever the practice of any court, in which you have practised or presided, to compel counsel to reduce to writing the questions which they meant to propound to their witnesses?

Mr. Marshall. It has not been usual; but in cases of the kind, the conduct of the court will depend upon circumstances. If a question relates to a point of the law, and is understood to be an important question, it might be proper to require that it be reduced to writing. Unless there is some special reason which appears to the court, or on the request of the adverse counsel, questions are not commonly reduced to writing, but when there is a special reason in the mind of the court, or it is required by the opposite counsel, questions may be directed to be committed to writing.

Mr. Randolph. When these questions are reduced to writing, is it for a special reason, after the court have heard the question, and not before they have been propounded?

Mr. Marshall. I never knew it requested that a question should be reduced to writing in the first instance in the whole course of my practice.

Mr. Randolph. I am aware of the delicacy of the question I am about to put, and nothing but duty would induce me to propound it. Did it

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appear to you, sir, that during the course of the trial, the conduct of Judge Chase was mild and conciliatory?

Mr. Marshall. Perhaps the question you propound to me would be more correct, if I were asked what his conduct was during the course of the trial; for I feel some difficulty in stating in a manner satisfactory to my own mind, any opinion which I might have formed; but the fact was, that in the progress of the trial, there appeared some—

Mr. Cocke, (a Senator) here interrupted Mr. Marshall, by observing that he thought the question an improper one.

Mr. Randolph said he would not press it, if there were any objection to it.

Mr. Harper. We, sir, have no objection; we are willing to abide in this trial by the opinion of the Chief Justice.

Mr. Randolph. Did you ever, sir, in a criminal prosecution, know a witness deemed inadmissible, because he could not go a particular length in his testimony—because he could not narrate all the circumstances of the crime charged in an indictment, or in the case of a libel; and could only prove a part of a particular charge, and not the whole of it?

Mr. Marshall. I never did hear that objection made by the court except in this particular case.

[Some inquiry was here made relative to the above question put by Mr Randolph, and objected to by Mr. Cocke, which Mr. R. answered by observing that he withdrew it.]

Mr. Harper. Please to inform this honorable Court, sir, whether you recollect that Judge Chase during any part of the proceedings made an offer to postpone the trial of Callender, and if you do, to what time?

Mr. Marshall. I recollect at the time a motion was made for the continuance till the next term, that Judge Chase declared, as his opinion, that it ought to be tried at the present term. A good deal of conversation took place on the subject. The counsel for the traverser stated several circumstances in favor of their client, particularly relative to the absence of his witnesses; but the whole terminated at that time by a postponement for a few days; so many days as, I thought at the time, were sufficient for obtaining the witnesses residing in Virginia. I do not now recollect what the time was, nor do I say it was sufficient. I simply recollect that I thought it was. When the cause came on again, there was no proposition that I recollect on the part of the traverser's counsel for a continuance, but a desire was expressed of a postponement for a few hours in order to give their witnesses time to arrive at Richmond, as it was possible they had been impeded by the badness of the roads; a considerable quantity of rain having fallen the preceding day. There was a declaration on the part of the court that they might take until the next day, and they went on to say they might have a longer time, if they thought it was necessary, but the precise length of time offered I do not recollect; but I do remember that they said the trial must come on before the present term closed.

Mr. Harper. Is it the practice of the circuit courts to hold an adjourned court; and is it not in the power of the circuit court to adjourn the jury, and direct them to meet again at some subsequent time?

Mr. Marshall. That is a question of law I have never turned my mind to.

Mr. Harper. Do you know an instance in which it has been done?

Mr. Marshall. I do not know any instance in which it has ever been done.

The President. Do you recollect whether the conduct of the judge on this trial was tyrannical, overbearing, and oppressive?

Mr. Marshall. I will state the facts. The counsel for the traverser persisted in arguing the question of the Constitutionality of the sedition law, in which they were constantly repressed by Judge Chase. Judge Chase checked Mr. Hay whenever he came to that point, and after having resisted repeated checks, Mr. Hay appeared to be determined to abandon the cause, when he was desired by the judge to proceed with his argument, and informed that he should not be interrupted thereafter. If this is not considered tyrannical, oppressive, and overbearing, I know nothing else that was so.

Mr. Randolph. Was the check given to the traverser's counsel more than once?

Mr. Marshall. There were several interruptions, as I have stated; for whenever the counsel attempted to show the unconstitutionality of the sedition law, Judge Chase observed that it was a point which should not go before the jury, and he would not permit a discussion upon it.

Mr. Randolph. Then it was these checks that induced the counsel to abandon the cause of the traverser. I understood that the counsel were endeavoring to show, without any regard to the jury, that the opinion of the court was incorrect.

Mr. Marshall. That was my impression.

Mr. Randolph. Is it not usual, when the opinion of the court is not solemnly pronounced, to hear counsel?

Mr. Marshall. Yes, sir.

The President. Is it usual for a trial to take place at the same term that the presentment is made?

Mr. Marshall. My practice, while I was at the bar, was very limited in criminal cases; but I believe it is by no means usual in Virginia to try a man for an offence at the same term at which he is presented.

Mr. Randolph. Did you ever hear Judge Chase apply any unusual epithets—such as *young men*, or *young gentlemen*—to the counsel?

Mr. Marshall. I have heard it so frequently spoken of since the trial, that I cannot possibly tell whether my recollection of the term is derived from the expressions used in the court, or from the frequent mention since made of them; but I am rather inclined to think that I did hear them from the judge.

Mr. Randolph. Are you acquainted with Mr. Wirt; was he a young man at that time; was he single, married, or a widower?

Mr. Marshall. I am pretty well acquainted with

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him; he is about thirty years of age, and a widower.

Mr. Randolph. Do you know Mr. Norborne Nicholas and Mr. Hay; they practised with you at the bar; did you observe anything in their conduct that required the interposition of the court to check or prevent its consequences?

Mr. Lee objecting to this question, Mr. Randolph said he would decline putting it. Mr. Marshall then withdrew.

Mr. Randolph. The managers think themselves entitled to put to any witness, however respectable his standing in life, any questions which they deem necessary to bring out the whole facts.

The President. If it is not objected to by the counsel for the respondent, nor decided by the court to be irrelevant or improper, the managers will be gratified by having their questions answered.

At the instance of Mr. Randolph, Chief Justice Marshall was again called.

Mr. Randolph. Is it the practice of the courts in Virginia to proceed against a person when indicted for an offence less than felony—say for a misdemeanor—by issuing a *capias* in the first instance?

Mr. Marshall. My practice, I before stated, had not taken this course; I therefore cannot well say what the usual practice is.

Mr. Harper. I will ask you a question, sir: When Mr. Hay was interrupted by the court, at the commencement of the argument, to show to the jury that they were the judges of the constitutionality of the law, was the interruption that took place one which went to the argument, or barely reminding them of some erroneous opinion delivered?

Mr. Marshall. I believe it was the latter; though I am not certain.

Mr. Randolph. Do you recollect, sir, whether it was as to the matter, or whether the impression has not been made on your mind by some conversations which you have heard since?

Mr. Marshall. My impressions are, sir, that Mr. Hay pressed the matter of the constitutionality of the law in the manner I have heretofore stated.

Edmund J. Lee, sworn.

Mr. Harper. Were you at the circuit court in the spring of 1800, held at Richmond, at which Judge Chase presided?

Mr. Lee. I was not in court when Callender was presented by the grand jury; but I was when application was made for a continuance, and I remember that Judge Chase, on an application made for a continuance, on account of the absence of some of the witnesses, informed the counsel that he could not continue the cause, but if they would fix upon any determinate time, within which they could obtain their witnesses, without its going over to the next term, the court would postpone the trial. Judge Chase also added that he had no objection to postpone it for a fortnight or a month; I am not certain whether he did not say he would postpone it for a longer time, I do not know but he said for six weeks, but he said positively he would not postpone it to the next term. He added, if the counsel conceived they could obtain the evidence within the time mentioned, they might have it.

Mr. Nicholson. At what stage of the business was this proposition made?

Mr. Lee. I think it was made after the affidavit was read.

Mr. Nicholson. On what day was it made?

Mr. Lee. I believe it was the first day. I do not recollect when the application for a continuance was first made; it possibly had been before, but I was not in court.

Mr. Nicholson. There was no subsequent application?

Mr. Lee. None, sir.

Mr. Nicholson. How long was it before the jury were sworn?

Mr. Lee. I do not recollect the day of the week on which the jury were sworn, but I remember the offer was made at the time the application for a continuance was made.

Mr. Randolph. Do you recollect whether the court offered to postpone the trial until all the witnesses could be procured, or whether the offer related alone to those who resided in the State of Virginia?

Mr. Lee. I do not recollect whether the court said anything on that point; but I recollect perfectly that they made the offer to postpone the trial for some length of time, such as I have just mentioned, a fortnight, month, or more.

Mr. Randolph. How far did you understand that *more* to extend?

Mr. Lee. Not beyond six weeks.

Mr. Campbell. Were the counsel for the traverser present, and did Judge Chase address himself to them?

Mr. Lee. The counsel were present, and I think the judge did address himself to them.

Mr. Campbell. What then was their reply?

Mr. Lee. I do not recollect, if they did say anything, what they said.

John A. Chevalier, sworn.

Mr. Harper. Were you present at the circuit court held at Richmond, in Virginia, in the spring of 1800, on the trial of James Thompson Callender?

Mr. Chevalier. I was at Richmond at the time.

Mr. Harper. Do you recollect what took place on the trial of Mr. Callender?

Mr. Chevalier. I was in the court room some few minutes during the trial, but I do not recollect anything that occurred.

Mr. Harper. Why not, sir?

Mr. Chevalier. Because I was too far off to hear anything which was said, and my mind was otherwise occupied.

Mr. Randolph. Pray how long have you resided in the United States?

Mr. Chevalier. About twenty years.

Mr. Randolph. Have you been much in courts?

Mr. Chevalier. I have had very little to do with court business. I had a suit, and it was on that account that I happened to be in court.

Mr. Randolph. Do you recollect anything re-

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markable in the conduct of the court while you happened to be present?

Mr. Chevalier. Why, sir, I recollect Mr. Hay's shutting up his books and putting away his papers, and that Judge Chase said to him, when he observed it, sir, you may go on with your speech as long as you please, and I shall not interrupt you any more.

Robert Gamble, sworn.

Mr. Harper. Were you at the circuit court of the United States for the Virginia district, in the month of May or June, 1800, held at Richmond?

Mr. Gamble. I was one of the jurors, sir, and I was in court when a motion was made for continuing the cause of Callender to the next term.

Mr. Harper. Do you recollect whether an offer was made by the court to postpone that cause?

Mr. Gamble. Yes, sir; Judge Chase said he would postpone it for a week, a fortnight, a month, or more, and I think he mentioned he would postpone it for six weeks, or as long as the term would admit, without its going over to the next term.

Mr. Harper. Do you recollect what Mr. Basset's scruples were against serving on the jury?

Mr. Gamble. I recollect that he stated to the court that he had seen extracts in the newspapers that were alleged to be taken from the book called "The Prospect Before Us," and upon that circumstance he made a declaration that if the extracts were faithfully copied from the work, he was satisfied that it would come under the operation of the sedition law. The judge asked him whether he had made up and delivered an opinion on the articles contained in the indictment, and he answered that he had neither seen the indictment, nor heard it read; he therefore could not declare that he had formed any opinion upon it. The judge said in that case he was a good juror and must be sworn.

Mr. Harper. What was understood to have been the subject of indictment?

Mr. Gamble. It was pretty well understood that the indictment was for libellous matter contained in the book called "The Prospect Before Us." I did not know it myself; I was taken that morning to serve as a juror, without any previous intimation. I had not seen either the book or the extracts alluded to, but I had heard them spoken of as being within the sedition law; yet I said nothing to the court after having heard Judge Chase declare that Mr. Basset's objection would not excuse him.

Mr. Harper. Did you understand that Mr. Basset urged it as an objection to serve on the jury?

Mr. Gamble. No, sir, he merely suggested it to the court.

Mr. Harper. Then he did not ask to be excused on that account?

Mr. Gamble. No, sir.

Mr. Randolph. You say that Mr. Basset and yourself informed the court that you had not made up your mind on the charges in the indictment, because you had not read it, and did not know its contents?

Mr. Gamble. I had never read or seen the indictment; of course I had not made up my mind in respect to anything it contained.

Mr. Randolph. Had you made up your mind on the publication of the book called "The Prospect Before Us," from which you believed the charges were extracted?

Mr. Gamble. Sir, I never read the "Examiner" that contained those extracts, nor had I then seen the book called "The Prospect Before Us," although, after the jury retired, in order to determine on our verdict, we were compelled in some degree to read it nearly through.

Mr. Randolph. What induced you to read the book after you retired?

Mr. Gamble. Mr. Basset wished it to be read. The whole book consisted in defamation of the Government.

Mr. Randolph. As that book is a lengthy production, suppose you had read it before instead of after the indictment was read, might it not so have happened that you might have made up your mind as to the publication, and not as to the indictment?

An objection having been made to this question by Mr. Martin,

Mr. Randolph said he would withdraw it, but would ask the witness another question. Do you recollect anything of an offer made to postpone the trial of Callender on the part of the court?

Mr. Gamble. I remember there was a short adjournment of the cause in the first instance, and that an offer was made by the court to postpone the trial for a month or more.

Mr. Randolph. Do you recollect what that *more* was?

Mr. Gamble. I do not recollect.

Mr. Nicholson. Was the offer to postpone the cause made before the jury was sworn or after?

Mr. Gamble. I do not recollect at what time it was made.

Mr. Randolph. Did you understand that an objection was to be made against you, sir, as a juror on this trial?

Mr. Gamble. I had understood that I might be objected to, because I had spoken words disrespectful of Callender.

Mr. Randolph. Was evidence offered to show that you had done so?

Mr. Gamble. I acknowledged it myself, and the judge said, notwithstanding, I was a good juror.

Mr. Randolph. Did you speak disrespectfully of Callender, and so declare it to the court, and what had you said?

Mr. Gamble. I had said that I thought him to be a very unworthy character.

Mr. Randolph. How did you understand that you were to be objected to?

Mr. Gamble. I had heard that Mr. —— had heard me use this expression, and that it was intended to bring him forward as a witness to prove the fact; this was on the morning of the day of the trial, and just before I was sworn.

Philip Gooch, sworn.

Mr. Harper. Please to inform this honorable

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Court whether you were present at the trial of James Thompson Callender, at a circuit court, holden at Richmond, in the year 1800?

Mr. Gooch. I was in court during a part of the time of that trial; I did not get in until the jury were called, and just before they were sworn; I believe I was not present at the whole of the trial.

Mr. Harper. What was the nature of that trial?

Mr. Gooch. I understood it to be an indictment for a libel upon the President, under the sedition law, and I went on purpose from Amherst county, where I reside, to be present at it.

Mr. Harper. What did you observe relative to the conduct of the court and counsel on that day? State what happened.

Mr. Gooch. When Mr. Basset suggested to the court his wish to be informed whether it was their opinion that he was a proper person to serve on the jury, because he had formed and expressed an opinion on the extracts which he had seen, and declared that if correctly copied from the work called "The Prospect Before Us," the author was within the pale of the sedition law; on that suggestion, I recollect, the court decided, and laid it down as law, that he must not only have formed an opinion, but delivered it also, and the judge gave some reasons why he must not only have formed, but delivered an opinion. I think he said that if a notorious murder was committed in the body of a county, which every man believed ought to be punished with death, and had so formed his opinion, it would in that case be impossible to get a jury to try such an offender, if it were an objection that a man had formed an opinion. I understood that he had consulted Judge Griffin on this point. The court was very crowded, but I had obtained a situation just behind the judges, and had an opportunity of hearing in some degree what passed between them, though not distinctly. Mr. Basset was eventually sworn upon the jury. The cause proceeded. Mr. Nelson (the District Attorney) then opened the case. I am unable to detail all his observations, nor is it material that I should do so; however, he said that the intention of the traverser was to be understood from the matter which had been extracted from "The Prospect Before Us," and laid in the indictment with inuendoes. He examined the witnesses on the part of the prosecution, but I do not recollect that any question was put on the part of the counsel for the traverser in objection to the testimony; but I remember that when Colonel Taylor was called to give testimony on the part of the traverser, the court required his counsel to state what they intended to prove by him, and that Judge Chase required the questions to be reduced to writing; after that was done, I remember that he determined that as this testimony did not go to prove the whole of a charge, it should not be received. He turned to Judge Griffin, and asked him if that also was his opinion; Judge Griffin said it was. Judge Chase added afterwards, in a pleasant manner, to the counsel for the traverser, "you show yourselves to be clever young men, and I believe you know that testimony of this kind ought not to be adduced, but perhaps you do it to blind the people and to work up their minds to a state of opposition;" he then turned to the attorney for the district, and said he was pressed by the counsel to admit the testimony of Colonel Taylor, and that he wished him to give his consent that it should be received. The District Attorney told him that he could not. Judge Chase asked him a second time to accede to the reception of the testimony of Colonel Taylor; the District Attorney replied he would not, it being inconsistent with his duty.

Mr. Wirt then opened the cause on the part of the traverser; he made some allusion to the court's prohibiting the mode of defence, which the counsel for the traverser had adopted, but he was interrupted by the court, and was told that the decision of the court must be binding for the present; that if they objected, they might file their bill of error, and it should be allowed.

Mr. W. proceeded in the cause, and was endeavoring to show that the sedition law was unconstitutional; the court interrupted him, and told him that what he had to say must be addressed to the court, but if he was going on that point, he must again be informed that the court would not suffer it to be urged. Mr. W. appeared to be in some agitation, but continued his argument, and when he came up to that point a second time, he was again interrupted by the court. Mr. W. resumed his argument, and said he was going on. Judge Chase again interrupted him and said "no, sir, you are not going on, I am going on; sit down." I recollect, also, after the judge had made some observations, Mr. W. again proceeded, and having observed that as the jury had a right to consider the law, and as the Constitution was law, it followed syllogistically that the jury had a right to decide on the constitutionality of a law. Judge Chase replied to him, a *non sequitur*, sir, and, at the same time, made him a bow. Whether these circumstances took place exactly in the order in which I have mentioned them, I am not positive, but I believe they did. Mr. W. sat down, and the judge delivered a lengthy opinion. He stated that the counsel must argue the law before the court, and not before the jury, for it was not competent for the jury to decide that point, or that the jury were competent to decide whether the sedition law embraced this case or not, but that they were not competent to decide whether the sedition law was Constitutional or not, and that he would not suffer that point to be argued.

Mr. Harper. What was the effect produced by the reply of Judge Chase to Mr. Wirt's syllogism, a *non sequitur*?

Mr. Gooch. It appeared to me as if it was intended to excite merriment, and if it was so intended, it certainly had that effect, and the same appeared to me to be the motive of the judge in adding the word *punctuatim* after the words *verbatim et literatim*. I thought these circumstances were calculated to display his wit. After this, Mr. Hay addressed the court on behalf of Callender, and I recollect he met with some interruptions in

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the course of his argument, which ended in his folding up his papers, and moving as if he was about to quit the bar. The judge perceiving it, said to him, sir, since you are so captious, you may go on and say what you please, you shall not be again interrupted.

Mr. Harper. When the judge told Mr. Wirt to sit down, did you conceive the conduct of the court to be rude, and peremptory, or was there anything like it in his application of the term "young gentlemen?"

Mr. Gooch. I did not perceive anything rude or intemperate in his conduct, unless it can be inferred from the words themselves, when he said you show yourselves clever young gentlemen, but the law is, nevertheless, not as you have stated it.

Mr. Harper. Was this allusion made to a particular point of the law, which had been agitated, or was it general?

Mr. Gooch. I do not know, sir, to what point of law it applied.

Mr. Harper. Did Judge Chase consult his brother Judge (Griffin) on the several decisions which were made, and did Judge Griffin concur in them all?

Mr. Gooch. I think he privately conversed with Judge Griffin on all the points which he decided; I do not mean that he consulted him at every time at which he stopped or interrupted the counsel.

Mr. Harper. Pray, did Judge Chase say to Mr. Wirt, sit down, or please to take your seat, sir?

Mr. Gooch. I think it was, please to sit down, sir. I think, on that occasion, the judge was proceeding to deliver an opinion of the court, and that Mr. Wirt was standing at the time, and that the judge spoke with a view of letting him have an opportunity of being easy in his seat.

David Robertson, sworn.

Mr. Harper. Did you attend the trial of James Thompson Callender, at the circuit court of the United States, held in Richmond, Virginia, in May or June, 1800.

Mr. Robertson. I attended during a part of the trial, and I took down what occurred in shorthand. I have my original notes with me, as well as a printed copy. I must, however, observe that the printed copy does not exactly correspond with my short-hand notes. There are four instances of a variation, which I have discovered by comparing it recently with my notes. If I may be permitted to have recourse to those papers, I can give as faithful a narrative, perhaps a more correct one, than when depending altogether on my own recollection. The notes were taken at the time, for my own amusement, and without an idea of their being made public. However, at the request of some of my friends, they were published, I think, in July following.

Mr. Randolph. We have no objection to take the printed statement as evidence on this occasion.

Mr. Robertson then read the printed statement.

[As this statement was published soon after the trial, in the newspapers, and was republished by the committee of inquiry of the House of Representatives, its insertion on this occasion has been deemed unnecessary. The variations in the printed statement from the original notes are entirely verbal.]

Mr. Randolph. An observation has been made in your deposition, that Judge Chase consulted with his brother Judge (Griffin) in the opinions which he gave as the opinions of the court; did you see him in the act of consultation, or did you hear him?

Mr. Robertson. I was too busily engaged in writing to have leisure for observing the attitudes or motions of the judges on the bench, but I understood at the time, and my impression is, that they held those mutual consultations.

Mr. Randolph. I observe in this printed deposition, that Judge Chase always speaks in the first person singular, was that his manner of expressing himself?

Mr. Robertson. He spoke in that manner on all those occasions on which I cited him.

Mr. Randolph. How long, sir, have you been in the practice of the law in Virginia?

Mr. Robertson. I have been a practitioner of the law for seventeen or eighteen years in Virginia. I have been a practitioner on the part of the public for several years. I am now a practitioner in two districts, having criminal jurisdiction, as public prosecutor. I have been twelve years employed in the one, and ever since the year 1788 employed in the other.

Mr. Randolph. What is the mode of proceeding in criminal cases less than capital; I mean less than felonies, such as misdemeanors, assaults and batteries, &c.?

Mr. Robertson. I will explain, sir. Misdemeanors, (short of felony,) such as assaults and batteries, are the only offences in which it is the practice to issue a summons, and upon the return of the summons, if the party does not appear, a capias is directed to be issued by the court; but I never knew, in offences of that nature, that a capias was ever issued in the first instance. When I say I do not recollect a capias to have issued in the first instance, I mean to be understood as saying, that I never knew it to be issued, although there are two cases within my knowledge in which offenders, for crimes less than felony, were indicted and tried at the same term. The one was a conspiracy to poison, and the person was bound, under recognizance, to attend at the court which was then sitting. Bail was given in a considerable sum, the trial came on shortly after, and a sentence of fine and three years' imprisonment was pronounced. The other was a conspiracy to set fire to the town of Petersburg. It was examined in the county court, and sent to the court above, the district court. There they obtained a new indictment against the prisoner, and upon that indictment, which was tried at the same term, the person was found guilty, and sentenced also to fine and imprisonment. It was from the heinousness of these offences, I think, that bail was required.

Mr. Randolph. Then, in cases of misdemeanor,

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not so heinous as to poison a person, or to burn a town, I understand it is your practice, under the laws of Virginia, to issue a summons?

Mr. Robertson. Yes, sir.

Mr. Randolph. Well, sir, at what time is your summons made returnable?

Mr. Robertson. Always to the next term.

Mr. Randolph. Does the trial take place at the next term, sir?

Mr. Robertson. If the party appears, he pleads, and the trial goes over until the next term; if he does not appear, a capias may be awarded, and he is brought in to answer at the next term.

Mr. Randolph. Did you ever know a capias to issue in the first instance for a misdemeanor, and the party ruled to a trial at the first court at which he was presented?

Mr. Robertson. No, sir, not in cases of that sort, which I have described.

Mr. Randolph. Did you ever ask a man to be ruled to trial for a misdemeanor at the first term?

Mr. Robertson. I never did, sir, if I understand your question.

Mr. Randolph. Did you ever hear of an offer made by the court to postpone the trial of Callender?

Mr. Robertson. I have heard it out of doors, but I have stated that I was not present the first day, and it was only the two last days that I was there.

To an interrogatory,

Mr. Robertson answered. In all those cases of misdemeanor to which I have alluded, the punishment is fine and not imprisonment.

The President. When the party comes in on a summons, and the trial does not proceed, is bail required for his further appearance?

Mr. Robertson. I never knew an instance unless it was in a flagitious case. In one of those which I have mentioned, the party was imprisoned, and it was considered as a favor to him, to bring on the trial in order to avoid the imprisonment which must have taken place till the next term. It was, however, considered within the power of the court either to postpone the cause or to bring it on, but I felt it a duty on my part, as public prosecutor, to urge it forward; but I have always thought it in the power of the court, in cases of high misdemeanor or flagitious offences, that the party might not escape the punishment of the law upon conviction, to issue a capias and require bail.

Mr. Randolph. The eighty-third chapter of the Revised Code of Virginia has this clause respecting the mode of proceeding upon presentment.

[Mr. R. here read the passage.]

Mr. Robertson. That is one law on this point; but there is another respecting proceeding upon information, which I will turn to if indulged with the volume. The book being handed to him, after some time, he discovered and read some passages from the 24th, 25th, 26th, and 28th sections, page 305, directing the mode of proceeding on informations.

Mr. Campbell. In the two cases, which you have mentioned, in respect to arson and poisoning, was there an application made for the continuance of either of them?

Mr. Robertson. I do not recollect that there was; I believe there was not.

Mr. Nicholson. Were they proceeded against by indictment or information?

Mr. Robertson. One by information, the other upon indictment. In one case it was impossible to obtain an acquittal, because the facts and the law came up to a conviction, and that notoriously; but in both cases, if they had been continued, the imprisonment would have been for six months longer, the period of the court being half-yearly. As the accused could not procure bail, they would have been confined for six months longer than the period for which they were condemned.

Mr. Hopkinson. Then, if I understand you right, sir, you would have kept those persons in prison, till next term, if they could not furnish bail?

Mr. Robertson. Yes, sir.

MONDAY, February 18.

The Court was opened at 10 o'clock, A. M.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

William Marshall, called in.

Mr. Randolph. Have you not been clerk of the federal court ever since its establishment?

A. Yes, sir.

Mr. Randolph. Have you ever known an instance of the circuit court adjourning from one time to another, and, in the interim, holding another court?

A. I knew it once to adjourn from Tuesday to Friday. I have never known it to hold another court in the interim.

Mr. Randolph. Was that in relation to a particular case?

A. Yes, sir. The adjournment took place to give the gentlemen of the bar an opportunity of qualifying in the superior court.

Mr. Harper. We have heard in this case much about political opinions, and of the effects they were intended to have on the trial of Callender. What was the political character of Mr. Nelson, District Attorney, at that time?

A. I considered his politics as violently opposed to the then administration of the General Government.

Mr. Harper. Was he in strong and decided opposition to it?

A. He was at that time.

Mr. Harper. Do you know any instances that occurred before Judge Chase went to Richmond, of a decision in the circuit court that the State law of Virginia respecting the assessing the fine by the jury did not apply in that court, and what were they?

A. There had been two instances of indictment in the circuit court at Richmond. In one case Judge Iredell presided, and in the other Judge Wilson. In both, it was decided that the jury should not assess the fine, but the court. The indictment in one case was quashed; and in the

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other the judgment was arrested, so that the decisions were not final.

Mr. Nicholson. In what manner did the court decide that the jury should not assess the fine?

A. In one case the jury was about to be sworn, when the court said they would certainly assess the fine.

Mr. Nicholson. Was any question made of the right of the jury to assess the fine?

A. It was mentioned; but was not, I think, discussed.

To an interrogatory put,

Mr. Marshall answered, that he knew a case in which a capias issued; it was a case in which a felon was rescued from the civil authority.

Mr. Martin. Was he tried the same term he was arrested?

A. Not in that case; but I have known repeated trials the same term; and in some instances trials have been had the same day the indictment was found.

Mr. Randolph. Have you known motions to be made for a continuance, and what was the decision?

A. I have generally agreed to them; but not as a matter of right.

Mr. Nicholson. In what courts were you public prosecutor?

A. In the court of hustings for the city of Richmond.

Mr. Nicholson. Was that court created by a law of the corporation?

A. No, sir, by an act of the Assembly.

Mr. Nicholson. You stated that, in going to Judge Chase's lodgings, you met Mr. Heath, I think, in the passage?

A. I stated that I was uncertain whether I met him within or without the house.

Mr. Nicholson. Are you rather inclined to think that you met him in the passage?

A. I cannot speak with certainty.

Mr. Nicholson. How is the door of Judge Chase's chamber situated as to the other parts of the house?

A. As well as I recollect there is but one door in a narrow passage leading to Judge Chase's room.

Mr. Nicholson. Are there other doors leading to the passage?

A. I believe there are; but I am not certain; as I have not been at the house since Judge Chase lodged there, and had not been there before.

Mr. Clark. Did I understand you to say that misdemeanors are tried in the same term that the indictment is found?

A. Yes, sir.

Mr. Clark. How was the defendant got into court?

A. He was bound in a recognizance.

Mr. Randolph. Was it at Crouch's tavern that Judge Chase lodged?

A. I do not know where he lodged. His sitting room was in the upper end of the house.

Mr. Randolph. The house stands on the side of a hill, and may be said to have two ground-floors; was his room on the upper or the lower floor?

A. He sat in a room on the upper floor.

Mr. Harper. Do you recollect instances of motions for postponement, which you opposed?

A. Yes, sir. I recollect one such instance, in which a man was charged with receiving a hogshead of tobacco, and was imprisoned six months and fined one hundred dollars.

President. I understand that you were prosecutor for the commonwealth of Virginia?

A. I was, sir. I was appointed to prosecute for Richmond, while Colonel Innes was Attorney General. I applied to him and to his successor, Mr. Brooks, for information as to the practice; but I could never find that there was a fixed practice. I therefore acted according to my best judgment.

Mr. Harper said that, before he proceeded in the examination of other witnesses, he would correct a misapprehension which had arisen with regard to the testimony of Mr. D. M. Randolph. For the purpose of correcting it, he would read a letter he had just received from that gentleman.

[Mr. Harper here read the letter to show that, though Mr. Hay had, in conversation with Mr. Randolph, stated his opinion that it would be either impossible, or extremely difficult to find Callender, and his belief that he would surrender next term; yet it was not the impression of Mr. Randolph that this was done to influence him in the discharge of his official duty.]

Mr. Nicholson observed, that he wished, at this stage of the trial to suggest a question which had arisen in his mind. Some of the witnesses on the part of the prosecution were absent. He did not know whether the court considered itself authorized to issue attachments for absent witnesses. There were some witnesses absent whose testimony the managers were extremely anxious to obtain. If the court deemed itself authorized to issue attachments, he would make a motion to that effect.

President. The Court cannot take order on hypothetical cases. If any witnesses summoned have disobeyed the orders of the Court, the Court will take proper order for securing their attendance on a proposition being made to that effect.

Mr. Harper. I will proceed to show the practice of the circuit court in the State of Maryland, where Judge Chase resides, and also in Delaware. It has been a common practice in Maryland, ever since the federal courts were organized, to adjourn, whenever a necessity for it appeared to the court to exist. In the State of Maryland there is no limitation to the session of the State courts.

James Winchester, called in.

Mr. Harper. Do you, at an adjourned court, try causes?

A. No doubt. We progress with causes at an adjourned court, in the same manner as at an original court.

Mr. Harper. Do you not try criminal as well as civil actions?

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A. I do not recollect any instances of criminal cases. We have very few instances of criminal cases in the circuit court.

Mr. Harper. Has this practice existed as long as the court has existed?

A. It has been the constant practice ever since I was on the bench. A postponement often takes place for the convenience of the bar, to allow time for making up the issues, which cannot be done during the hurry of business.

Mr. Harper. Has Judge Chase ever adjourned the circuit court for Baltimore, and, after holding a court in Delaware, opened the adjourned court at Baltimore?

A. I do not recollect. I think there was one case of an adjournment, during the interval of which he went to Delaware.

Mr. Key. The circuit meets at Baltimore on the first Monday of May, and the general court of Maryland at Annapolis on the first Tuesday of the same month. Do you recollect an instance of the circuit court adjourning the first week in May to September, and that a circuit court was in the mean time held by Judge Chase in Delaware?

A. I do not recollect this precisely. But I recollect the circuit court having adjourned from May to September; and I believe Judge Chase held a court in Delaware in the mean time.

Mr. Randolph. Have you ever known any other judge to make a similar adjournment?

A. I do not recollect. There is very little business in the circuit court, and generally all the business is transacted without a necessity for an adjournment.

Mr. Key. It has been the invariable practice of the circuit court to adjourn to intervening periods between the stated terms, at the discretion of the court; also in the State courts?

A. It has.

William Rawle, called.

Mr. Harper. Please to state what you know of the practice of the circuit court for Pennsylvania as to adjournments and meeting in the intervening time?

A. The first time I recollect the subject to have been discussed in the Pennsylvania district, was when Mr. Jay presided. On some occasion, which I do not remember, it accorded with the views of the court to adjourn for a few days, or perhaps a week. At first I was inclined to doubt whether this could be done. Mr. Jay and Mr. Peters called upon me to state my ideas, and desired me to consider the case and look at the acts of Congress. The next day I gave it as my opinion, that the court had a right to adjourn, as the length of their session was not limited by law. Mr. Jay and Mr. Peters were of the same opinion; but what took place I do not recollect.

I recollect, in 1795, at the trials arising out of the Western insurrection, many of the trials lasted till three or four o'clock in the morning; and that, in one instance, the court adjourned from the 16th to the 18th of the month. I recollect another instance, when Judge Chase presided, where, at the instance of the bar, an adjournment took place until the first Monday in August, and that the court met that day, and did some chancery business.

Another instance in which the question was discussed, was during the trials before Judge Iredell arising out of the Northern insurrection. Mr. Iredell then thought it the safest way for him to come to the court at ten o'clock, and adjourn the court from day to day, stating, however, that he did not know that this was necessary.

The next instance I recollect, was in the year 1804, when Judge Washington presided, when, at my instance, in consequence of large bodies of land having been orderd to be sold, the court adjourned from May to some day in July. I do not recollect any other instances.

Mr. Harper. Do you recollect an adjourned court being contemplated to be held in January?

A. I do. Judge Washington agreed with Judge Peters, if the yellow fever should occur at the usual time of holding the court, that the latter should open and adjourn the court. But the calamity not occurring that year, there was no necessity for the adjournment.

Mr. Randolph. Did not the first case you mentioned arise from Mr. Jay having been appointed an Envoy Extraordinary?

A. I do not recollect.

Mr. Hopkinson. Is it not the invariable practice of the court of common pleas to do every species of common business at an adjourned court?

A. Unquestionably. The period of the adjourned court is regularly fixed; and all the jury trials take place at an adjourned court.

Mr. Harper said, that he considered it his duty to do justice to a gentleman, (Mr. Nicholas,) to whose testimony he had alluded in his remarks on opening the defence. He had stated that it could be proved, contrary to his testimony, that he had himself issued a capias in a particular case. He had since inspected the record, and found that it did not warrant the inference.

Mr. Harper then said that, to show what was the practice in Virginia, he would call Mr. E. Lee.

Edmund J. Lee, called.

Mr. Harper. Please to inform the Court whether you are acquainted with the criminal practice in any, and what parts of Virginia.

A. I have been a practitioner of the law for about nine years. My practice has been confined to the upper court in three counties, and to one district court. I have never appeared in the character of a public prosecutor; but generally in defence of the accused. In the county courts of Virginia, the usual practice of presentments for offences not capital, and not prosecuted by way of indictment, is to issue a summons. There are some offences which, according to the laws of Virginia, are tried solely by the court, without the intervention of a jury: such as neglect of duty on the highway, profane swearing, sabbath breaking. When the grand jury present offences of

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this sort, the penalty attached to a number of which does not exceed five dollars, a summons issues against the party to appear at the next court, and on his appearance the court examine him, and proceed to judgment.

There are also some offences which may be prosecuted before the district court, when the penalty does not exceed ——. In these cases the court also proceeds to judgment without the intervention of a jury.

There are other offences solely prosecuted by way of information. On a presentment by a grand jury, a summons issues.

But, in the courts in which I have practised, I have never known a summons against a person to answer an indictment for any offence. The practice in the courts in which I have had occasion to attend, is this: when the party is proceeded against by indictment, the attorney for the State sends the indictment to the same grand jury that found the presentment; they return it a true bill, and a capias is then issued.

Mr. Harper. Then the distinction is between indictable offences, and those founded on presentment or information?

A. Yes, sir.

Mr. Harper. I understand you to say that it is the practice to issue a capias in cases as low as assault and battery?

A. In the county courts.

Mr. Harper. Do you recollect a question lately made under the law of Viirginia in the District of Columbia?

A. Yes, sir. In the district court for Alexandria, it has been determined on argument that a capias is the proper process on all indictments; and Mr. Mason, who has for some years prosecuted, on the part of the United States, has, in all cases for assault and battery, issued a capias.

Mr. Harper. And this under the law of Virginia?

A. Yes, sir. The laws of Virginia are, by act of Congress, made the law for Alexandria.

Mr. Lee. Is a capias the mode of process for misdemeanors used in Virginia?

A. That is either used, or a warrant.

Mr. Randolph. I wish to know whether it is regular to take the professional opinions of witnesses?

President. Gentlemen are inquiring into the practice.

Mr. Lee. Is not a capias the usual mode of process for arresting offenders for misdemeanors?

A. I never knew any other mode.

Mr. Randolph. You have mentioned that it is usual for a capias to issue on an indictment. Did you ever know a capias to issue on a presentment?

A. I have not, when the punishment is only fine.

Mr. Randolph. When a capias issued in the cases you have mentioned, when was it returnable?

A. To the next court.

Mr. Clark. Where bail is required, is it not the practice to take the engagement of the attorney instead of security?

A. I have never known an instance.

Mr. Randolph. I think you said you have not been much engaged in this kind of practice?

A. Except in the district court, and some counties of Virginia.

Mr. Harper. You have stated that, in cases where indictments have been found, you have known a capias ordered, but not on a presentment. Have you ever known a man, for an offence of an indictable nature, taken on a magistrate's warrant, and held to bail?

A. Yes, sir; in a case of assault and battery, a magistrate brought the man before him, and compelled him to give security to appear at the next court.

Mr. Harper. In cases of presentment for indictable offences, before the indictment was found, have you ever known a summons issued?

A. No; I do not recollect an instance of any process issued before the finding the indictment.

Mr. Harper. Suppose process should issue before, what do you conceive it would be?

A. I do not know.

Mr. Harper. I will examine one witness more, as to this *very variable and doubtful practice.*

Philip Gooch, called.

Mr. Gooch said that he had practised thirteen or fourteen years in the district court of Charlotte, and in the county courts, and observed that, when the punishment was only pecuniary, it was usual to issue a summons; and if the party did not appear on the return day, a capias was issued. If the case were important, the general practice was to apply to a magistrate for a warrant, or for the by-standers to carry the offender before a magistrate.

Mr. Harper. It is not, then, an object in your part of the country that offenders should escape?

A. No, sir. A magistrate may issue his warrant, and apprehend persons punishable for misdemeanors. I do not recollect any instance of the kind on a presentment. But at the district court, where Judge Tucker presided, I understood that a capias issued against a person for throwing a stone at the court.

Mr. Harper. Was it on an indictment or presentment?

A. Neither. It was for a contempt of court.

Mr. Harper. They do then punish for contempts in Virginia?

A. Certainly.

Mr. Harper. I will ask you a question relative to another part of this case. Have you ever known an instance in Virginia in which a question was proposed to a juror of this kind—"Have you ever formed and delivered an opinion respecting the matter in issue?"

A. In the county where I resided, the British merchants had a great many claims against the citizens, called British debts, some of which I was employed to prosecute. It was found that it would be impossible to get a jury, if the having formed

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an opinion was admitted as an excuse, as every man had formed an opinion. The court determined that unless a man had delivered as well as formed an opinion he was a good juror.

Mr. Harper. As the Virginia practice is extremely unsettled, I will proceed to show what the practice of Maryland is, in which Judge Chase was brought up.

Mr. Randolph. I am of opinion that the counsel might as well adduce the law in Turkey. The article only charges the respondent with a breach of the Virginia law.

Mr. Lee. I hold it as undeniable that when a high officer is brought before this high tribunal, charged with high crimes and misdemeanors, he may produce evidence from any source whatever that reprobates the evil intention wherewith he is charged. When testimony is produced by the Managers to show what the judge said in the presence of strangers, jocosely, and with unsuspicious freedom, to prove an evil intent, how comes it, when we attempt to show by indisputable evidence that there was no evil intent, that we are denied the right? This high Court which I have the honor of addressing, is, I apprehend, a court of impeachment, and not of errors. When an error is alleged to have been committed by the judge, shall we be denied the right of adducing evidence to show, that if it was an error, it was common to the judicial tribunals before he was raised to the high place he now holds; that during the whole course of his professional career he retained the opinion, now charged as an error; that in all cases he held and supported this opinion, and that he ever acted under the conviction that he was faithfully discharging his duty; that he sat as a judge in criminal cases for six years; and that it was his uniform practice to have the capias returned to the same term on which it issued, and that it was his practice to try for offences at the same term that they were indicted. Will the court deny this right? If the conduct of the judge shall be deemed an error, will not this be considered as some excuse?

Mr. Randolph said, had he known that his remark would have occasioned so long an argument, he would not have said a word. He was ready to admit as proven that for which the gentleman meant to produce testimony—that the practice was such as they stated it to be in Maryland.

Mr. Key. I understand then that it is admitted to be the universal practice in Maryland in criminal cases, before the indictment is found, to issue a capias or bench warrant.

Mr. Randolph. I admit it.

Mr. Key. And in all cases where there is a presentment, a capias or bench warrant issue *instanter*.

Mr. Randolph. I admit that it is the *general* practice.

Mr. Key. That is sufficient.

Mr. Martin. And that it is the general practice to try the first term.

Mr. Nicholson. I admit that this is the case in capital cases; but not in lighter cases, if the party accused oppose it.

Mr. Martin. The reverse is the case. The court will rather avoid pressing a trial in capital cases, where the life of a party is involved.

Mr. Wright said he wished to put a question to Mr. Martin in his capacity of a witness. In what cases have you ever known a bench warrant to issue?

Mr. Martin. I have practised for twenty-seven years: and the invarable practice is to issue a bench warrant immediately on the presentment; in all cases, from the lowest to the highest offences.

President. Is there any difference between a capias and a warrant?

Mr. Martin. They are the same, except that one is issued by a magistrate, and the other by the court.

Mr. Lee here adduced a number of authorities, (the greater part of which he barely referred to,) for the purpose of exhibiting fully the grounds of the defence. As these were again introduced in the arguments of counsel, we shall only, in this place refer to them. He referred to the 14th and 34th sections of the judicial act of the United States; to 2d Dallas, 411—Gilbert's law of evidence, page 307, 308—also page 333—2d Dallas 235, 341.

Mr. Harper said they would proceed to adduce testimony relative to the 7th article.

Gunning Bedford, sworn.

Mr. Harper. Please to state to the court whether you were present in your judicial character at a circuit court held at Wilmington in 1800, and relate the circumstances which occurred?

A. I attended that court on the 27th of June. Judge Chase presided. I arrived in the morning about half an hour before Judge Chase. We went into court about eleven o'clock. The grand jury was called and empanelled. The judge delivered a charge: they retired to their box; after an absence of not more than an hour they returned to the bar. They were asked by the judge whether they had any bills or presentments to make to the court. They said they had none. The court called on the attorney of the district to say whether there was any business likely to be brought forward. He replied that there was none. Some of the grand jury then expressed a wish to be discharged. Judge Chase said it was unusual for the court to discharge the grand jury so early in the session; it is not the practice in any circuit court in which I have sat. He turned round to me, and said, Mr. Bedford, what is your usual practice? I said it depended upon circumstances, and on the business before the court; that when the court was satisfied there was nothing to detain them they were discharged. Judge Chase then turned to the jury, and observed, "But, gentlemen of the jury, I am informed that there is conducted in this State (but I am only *informed*) a seditious newspaper, the editor of which is in the practice of libelling and abusing the Government. His name is ——, but perhaps I may do injustice to the man by mentioning his name. Have you, gentlemen of the jury, ever turned your attention to the subject?" It was answered, no,. "But, resumed the judge, it is your duty to attend to things of this kind. I

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have given you in charge the sedition act, among other things. If there is anything in what is suggested to you, it is your duty to inquire into it." He added, "It is high time that this seditious printer should be corrected; you know that the prosperity and happiness of the country depend upon it." He then turned to the attorney of the district, and said Mr. Attorney, can you find a file of those papers? He answered that he did not know. A person in court offered to procure a file. The attorney then said, as a file was found, he would look it over. Can you, said the judge, look it over, and examine it by to-morrow at ten o'clock. Mr. Attorney said he would. Judge Chase then turned to the grand jury, and said, gentlemen, you must attend to-morrow at ten o'clock. Other business was gone into, and the court adjourned about two o'clock.

On my way to Judge Chase's lodgings, I said to him, my friend, I believe you know not where you are; the people of this country are very much opposed to the sedition law, and will not be pleased with what you said. Judge Chase clapped his hand on my shoulders and replied, "my dear Bedford, no matter where we are, or among whom we are, we must do our duty."

The next day we went into court about ten o'clock. The grand jury went to their chamber, and I believe Mr. Read returned with them into court. They were asked if they had anything to offer to the court; and the attorney was called on again to state whether he had found anything in the file of a seditious nature. He had a file of the paper before him, and he said he had found nothing that was a proper subject for the notice of the jury, unless a piece, relating to Judge Chase himself. The judge answered, take no notice of that, my shoulders are broad, and they are able to bear it; but where there is a violation of a positive law of the United States it is necessary to notice it.

Mr. Harper. Did Judge Chase say nothing about a seditious temper in the town of Wilmington in Newcastle county?

A. I do not recollect that he did. The subject has occupied my attention since I saw Mr. Read's testimony given to the committee of inquiry of the House of Representatives; and I have not been able to trace in my mind any recollection of the kind. What I said to the judge shows that I did not hear such remarks. Another circumstance strengthened my conviction that no such remarks fell from him. There was a publication in the Mirror, on the fourth of July, giving an account of the proceedings of the court; in which many circumstances that occurred appeared to me to be highly exaggerated; and yet in that publication no such remarks are ascribed to the judge.

Mr. Harper. Was there anything authoritative or commanding in the language of Judge Chase to the attorney of the district; or was what he said in the nature of a request?

A. It was a request, made in the usual style of a request.

Mr. Harper. Was the business conducted with apparent good humor?

A. It appeared so to me.

Mr. Harper. From what source did the printer obtain his statement of the proceedings of the court?

A. The printer stated that he had it from a person in court.

Mr. Randolph. Was the title of the paper mentioned at the time?

A. I think not. I believe, I suggested the title, when inquiry was made as to the procuring a file.

Mr. Rodney. In what manner did the judge address the grand jury?

A. In his usual manner of speaking; but without passion.

Mr. Rodney. Do you recollect whether on the second day there was not an unusual concourse of people in court?

A. I believe there was.

Mr. Rodney. Did not Judge Chase ask whether there were not two printers in town?

A. I believe he did ask that question.

Mr. Rodney. You do not recollect a suggestion by the district attorney that the paragraph you have alluded to did not come within the sedition law?

A. I do not recollect it.

Mr. Nicholson. Do you recollect the particular expression of Judge Chase when he asked if there were not two printers?

A. He spoke very much in these terms—"Perhaps I am going too far—I may do the man injustice. Have you not two printers?"

Mr. Nicholson. In the town or State?

A. I do not recollect. I think it is more than probable that he mentioned the town.

Mr. Nicholson. You are not certain whether Judge Chase cited the title of the paper?

A. I am not certain.

Mr. Nicholson. What induced you to consider what he said as applicable to the Mirror?

A. We had two papers printed in Wilmington, one of which was federal, and the other, the Mirror, democratic.

Mr. Rodney. Do you recollect whether it is the general practice in Delaware to discharge the grand jury the same day they are empanelled?

A. I believe it is the general practice.

Mr. Randolph. Do you recollect whether the judge, when speaking of the printer, said, "and one of them, if report does not much belie him, is a seditious printer and must be taken notice of. I consider it a part of my duty, and it shall or must be noticed. And it is your duty, Mr. Attorney, to examine minutely and unremittingly into affairs of this nature; the times, sir, require that this seditious spirit, which pervades too many of our presses, should be discouraged and repressed."

A. I have no recollection of such words.

Mr. Harper. Do you know who gave the information to Judge Chase about the printer—was it yourself?

A. It was not—I had not the opportunity, as I came to town at a late hour.

Nicholas Vandyke, sworn.

Mr. Harper. Please to state whether you were at the circuit court for Delaware in the year 1800?

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A. I attended the circuit court held in Newcastle on the 27th and 28th June, 1800. I was not present when the court opened; but I think I entered the court house while Judge Chase was delivering a charge to the grand jury. After its delivery the grand jury retired; they were absent a short time: and as well as I can recollect before and when they returned, I was either out of the court house, or engaged in conversation with some person out of the bar. I think so, as I have no recollection of the question put to the grand jury, whether they had found any bills, and that put to the district attorney. I entered the bar while there was a pause, and silence prevailed. I recollect that the first circumstance that attracted my attention was the observation of Judge Chase to the grand jury, that since he had come among them, he had been credibly informed that there was a seditious printer within the State, in the habit of libelling the Government of the United States, and having received this information, he thought it his duty to call the attention of the grand jury to the subject. He appeared to me to be proceeding to state the name of the printer; but he did not name him. He said that might be doing injustice to the man, or that it was improper in him. I cannot say which was the term he used. I think he then asked the district attorney if there were not two printers in the State. He answered, that there were. There was then some conversation between the judge and the district attorney. My impression was that it conveyed a request from Judge Chase to the district attorney to inquire into the subject on which he had previously spoken to the jury. Mr. Attorney said that he had not seen the papers. The judge asked him whether he could not procure a file of them. I do not recollect that the name of the printer was mentioned then, or during the whole sittings of the court. Some person at the bar said a file could be procured. Judge Chase asked the attorney, if he could make the inquiry by to-morrow at 10 o'clock. About this time I heard some observations made respecting the discharge of the grand jury on that day. Some of the gentlemen said it was a busy season, that they were farmers, and were desirous of returning to their homes. Judge Chase replied, that might be very true; but that the business of the public was also important; it must be attended to: and therefore he could not discharge them. I do not pretend to say I have pursued the language used. I have only attempted to give my impression of the facts that occured.

Mr. Harper. Did you hear any such phrase, as this: that a seditious temper had manifested itself in the State of Delaware, in Newcastle county, and more especially in the town of Wilmington?

A. I do not think I heard such expressions.

Mr. Harper. What was the manner of Judge Chase in addressing the District Attorney?

A. His usual manner; which is always warm and earnest.

Mr. Harper. Did he say anything that was authoritative or imperious to the District Attorney?

A. It did not strike me so.

Mr. Harper. But made a request in the usual way?

A. Yes, sir.—On the second day, a short time after I entered the court, some person spoke to the District Attorney, who soon after, as I supposed, went to the grand jury; in a short time after he returned, and then the grand jury, with a file of papers. The judge inquired of the jury whether they had anything to lay before the court. They said they had not. The same question was put to the District Attorney, who answered there was nothing, unless a certain piece against Judge Chase. Judge Chase said, that was not a proper subject of inquiry; it was only matter that tended to libel the Government of the United States, that was a proper subject of inquiry for the grand jury.

Mr. Nicholson. Is your recollection of what occurred very perfect?

A. I cannot say that it is, after so long a lapse of time, I only state my present impressions of what occurred.

Archibald Hamilton, sworn.

Mr. Harper. Please to inform the court whether you were present at a circuit court for Delaware in 1800?

A. I recollect that I was present on the 27th of June. I arrived about ten o'clock, at which time Judge Chase was not there. Some time after, the court was formed, the grand jury was sworn, and Judge Chase delivered a charge. Having retired for about an hour, the grand jury returned to the bar. Judge Chase asked them if they had any bills or presentments to make. Their reply was that they had not. Judge Chase then asked the Attorney of the District if he had no business to lay before them. He said he had not. The jury requested to be discharged. Judge Chase said, it was not usual to discharge them so early, some business might occur during the course of the day. He told them, he had been informed that there was a printer who was guilty of libelling the Government of the United States; his name is——; here he stopped, and said, "perhaps I may commit myself, and do injustice to the man. Have you not two printers?" The attorney said there were. Well, said Judge Chase, cannot you find a file of the papers of the one I allude to? Mr. Read said he did not take the papers, or that he had not a file. Some person then observed that a file could be got at Mr. Crow's. Judge Chase asked the attorney if he could examine the papers by the next morning. Mr. Read said, that under the directions of the court, he conceived it to be his duty, and he would do it.

On the second day the same questions, whether they had found any bills, were put to the grand jury. They answered that they had not. Mr. Chase asked the Attorney of the District if he had found anything in the papers that required the interposition of the jury. He said that he had found nothing which in his opinion came within the sedition law; but there was a paragraph against his honor. Judge Chase said, that

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was not what he alluded to. He was abused from one end of the continent to the other; but his shoulders were broad enough to bear it.

Mr. Harper. Did the judge say anything of a seditious temper in that State?

A. I do not recollect any such expressions.

Mr. Harper. Were you in the court the whole time?

A. I was.

Mr. Harper. How were you situated?

A. I was directly under Judge Chase, and nothing could fall from him without my hearing it.

Mr. Rodney. Do you recollect whether he mentioned the name of the paper?

A. I do not recollect that he did.

Mr. Rodney. What was the manner of the judge?

A. I saw nothing unusual.

Mr. Rodney. Do you recollect whether his manner made any impression at the bar?

A. On nobody but the printer.

Mr. Rodney. Do you recollect that the District Attorney said he conceived it his duty to inquire into matter of the kind he alluded to?

A. I do.

John Hall, sworn.

Mr. Harper. Were you present at the circuit court for Delaware held in June 1800?

A. I believe I was in court when they met, and when the grand jury were called, and returned into court. I have but a faint recollection of what passed between the court and the jury after they returned; I was at a considerable distance from the court. I was not present the second day.

Mr. Harper, Do you recollect what occurred the first day about a printer?

A. I recollect that Judge Chase said, he was credibly informed there was a seditious paper published in the State of Delaware; and he made inquiry of the jury whether anything of that nature had come under their notice. They said it had not.

Mr. Harper. What did Judge Chase then say?

A. I cannot recollect particularly.

Mr. Harper. What did he say afterwards?

A. There was some conversation between Judge Chase and the District Attorney. The judge asked him whether he had seen anything of the kind he had alluded to. He said he had not. The judge asked him if he could procure a file of the papers.

Mr. Harper. Did Judge Chase say anything about a seditious temper in the State of Delaware, or Newcastle county, or in the town of Wilmington?

A. I do not recollect.

Mr. Rodney. Was Mr. McMechin a member of the grand jury?

A. Yes, sir.—He and Judge Chase went to court together.

Gunning Bedford, called.

Mr. Rodney. Did Judge Chase, in a conversation with you, subsequent to the discharge of the grand jury, complain that he could not get a person indicted in Delaware for sedition, though he could in Virginia.

Mr. Bedford. I have no distinct recollection of that kind. I have some indistinct recollection that in a small circle of friends, though not to me personally, he said some such thing in a jocular way.

Samuel Moore, affirmed.

Mr. Harper. Were you in the circuit court held in Delaware in June, 1800, when it met?

A. No, sir.—I did attend early enough on the first day to hear the charge given to the grand jury. I think I did not attend before twelve o'clock. I attended as a juror. On the next day I attended early, and was in the court-house when the court met. When the jury returned into court, inquiry was made whether they had any bills or presentments to make. They answered no. The court then inquired of the Attorney of the District whether he had any business to lay before the grand jury. He said he had not. While he was making this reply, he rose, and laid hold of a file of newspapers, which I took to be the Mirror of the Times, and while he was in the act of presenting it, he observed that he had not seen anything that in his opinion required notice, unless it were a publication reflecting on Judge Chase, which did not appear to him to come under the sedition law. Judge Chase answered, no, sir; they have abused me from one end of the continent to the other; but it is the Government, and not myself, that I wish protected from calumny. Immediately after the grand jury were discharged.

Mr. Harper. Have you ever seen the printed deposition of Mr. Read on this subject? If you are acquainted with any particular circumstances relative to it, please to state them.

A. I do not know any particular circumstances respecting it.

Mr. Harper. I mean to inquire whether there was any consultation?

A. If you mean a private conversation, it may be improper to state what may be considered as confidential.

Mr. Harper. I will not then ask it.

Mr. Nicholson. If these questions are stated with a view to impeach the testimony of Mr. Read, I hope they will be put and answered.

Mr. Harper. I will state the object of the question. It is to discredit the testimony of Mr. Read by particular circumstances that occurred in a conversation between the witness and him. If the witness knows of no such circumstances, I have been misinformed.

Mr. Rodney. Conscious that nothing which can be stated will in the least invalidate the testimony of Mr. Read, it is my wish, and that of the Managers, to allow the fullest liberty to the witness to state anything he knows.

Mr. Moore. I will answer any questions put, but unless directed, I shall not consider it correct to relate a confidential conversation.

Mr. Harper. I will waive all further inquiry, if the witness deem it indelicate.

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Mr. Moore intimated that he did so deem it.

Mr. Randolph. I will ask the witness if he ever had a conversation with Mr. Read on the subject?

A. Frequently.

Mr. Randolph. I understand you to say that you do not know anything that goes to invalidate Mr. Read's testimony.

A. Yes, sir.

Mr. Randolph. That is all we want.

Mr. Hopkinson here adduced a charge delivered by Chief Justice McKean in November, 1797, in Philadelphia, printed in Claypoole's paper in December, 1797, (respecting alleged libellous publications of William Cobbett.)

Mr. Harper. We will now adduce testimony relative to the 8th article. But before we call our witnesses, I will ask a question or two of Mr. Montgomery.

Mr. Montgomery was called.

Mr. Harper. Will you look at that paper? Is it the publication referred to in your testimony as having been sent to the press?

Mr. Montgomery. Yes, sir.

Mr. Harper. Did you ever send any other publication of the same kind to a newspaper?

A. No, sir.

Mr. Harper. I will offer this publication in evidence, and I will proceed to read it.

Mr. Montgomery. A short time after I returned home, from my recollection at that time, I committed to paper what I conceived to be the substance of the charge delivered by Judge Chase, and made my comments upon it. The court will observe that it refers to other conduct of Judge Chase, in the State of Maryland.

Mr. Harper here read the paper above alluded to from the Baltimore American of the 30th June, 1803, and added, this is the temper of the witness who has on a previous day given his testimony in this court.

Mr. Harper. I will now proceed to show that Mr. Montgomery, in his strong anxiety to get Judge Chase impeached, has remembered things which nobody else remembers, and has heard things which nobody else heard.

Mr. Randolph. I will ask of this court whether the witnesses we have called are not under their protection?

The President. If the counsel, in the testimony they adduce, come up to what they state they can prove, they will not be subject to reproach; if they do not, they merit it.

Mr. Randolph. I have no objection to the counsel impugning the veracity of one witness by the evidence of another, and descanting upon it; but I think they take an improper liberty when they undertake to say, before it is proved, that what is deposed by a witness never passed.

The President. I understand the gentleman to say that he will prove, by another witness, that what has been deposed never did pass.

Mr. Harper. Precisely so, sir.

William H. Winder, sworn.

Mr. Harper. I will ask you whether you were in the circuit court of the United States, held at Baltimore, in May, 1803? I will, however, previously observe that it is not my intention to say or to prove that the witness, when he deposed to certain facts, knew that they had not passed. I mean only to impeach his correctness, and to infer that, as he was angry, he gave to what he heard the coloring of his own feelings.

Mr. Winder. I was present at that court when it was opened, and the jury empanelled, and I heard Judge Chase deliver his charge. After delivering the general and usual charge to the grand jury, he said he begged leave to detain them a few minutes, while he made some general reflections on the situation of public affairs. He commenced by laying down some abstract opinions, stating that that Government was the most free and happy that was the best administered; that a republic might be in slavery and a monarchy free. He also drew some distinctions with regard to the doctrine of equal rights, and said that the idea of perfect equality of rights, more particularly such as had been broached in France, was fanciful and untrue; that the only doctrine contended for with propriety was, the equal protection of all classes from oppression. He commented on the repeal of the Judiciary system of the United States, and remarked that it had a tendeney to weaken the Judiciary, and to render it dependent. He then adverted to the laws of Maryland respecting the Judiciary, as tending to the same effect. One was a law for the repeal of the county court system. He also alluded to the depending law for the abolition of two of the courts of Maryland. He said something of the toil and labor and patriotism of those who had raised the fair fabric, (constitution of Maryland,) and said that he saw with regret some of their sons now employed in destroying it. He also said that the tendency of the general suffrage law was highly injurious, as, under it, a man was admitted to full political rights, who might be here to-day and gone to-morrow.

This is the amount of my recollection; and I think I have stated the language of the judge in as strong terms as he himself used. Since I was summoned as a witness I have never seen the charge of the judge, or that published in the National Intelligencer, or by Mr. Montgomery. I concluded that it was most proper not to avail myself of those publications. My impressions, therefore, are altogether unassisted by them.

Mr. Harper. Did you attend carefully to the charge?

A. I did. I am sure no part of it escaped me.

Mr. Harper. Did Judge Chase appear to read it from a paper?

A. I so took it. Occasionally he raised his eyes, but not longer than I should imagine a person would who was familiarly acquainted with what he was reading.

Mr. Harper. Did you hear him use any of those expressions deposed by one of the witnesses—that the Administration was feeble, and inadequate to the discharge of its duties, and that their object was to preserve power unfairly acquired. Did he use any such words?

A. To my best belief, he did not. I have a

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strong reason for considering my recollection on this point correct. Immediately after the charge was delivered, I conversed with several gentlemen respecting it. It was complained of as harsh, and as containing reflections on those who had brought about the measure alluded to. I reflected on it, and the result on my mind was, that it was couched in polite terms, and that the reflections it contained were entirely matters of inference.

Mr. Harper. Did the judge use any arguments against pending measures?

A. Certainly.

Mr. Harper. Did he mention the present Administration?

A. I believe not. If he had, it would have struck my mind very forcibly.

Mr. Harper. Did he use any such phrase as "degenerate sons?"

A. I have a particular recollection of that, or some such expression. I considered it as a very happy allusion to events which occurred in the State Legislature.

Mr. Harper. You considered it as calculated to have a persuasive influence?

A. That was not my language. The sentiment I think was this. He regretted to see sons taking part in destroying the fair fabric their fathers had raised. He spoke feelingly on this point.

Mr. Harper. Had you any other conversation which tended to impress the substance of the charge on your memory?

A. I do not recollect. I was very attentive to the charge. I observed Mr. S. H. Smith to be present; and it was observed at the time that we might expect to see an accurate statement of the charge from him, as he could detail what he heard with great precision. I recollect to have looked at the statement published in the National Intelligencer at the time it appeared, and I thought it gave a faithful view of the substance of the charge, quite as strong as the charge itself.

Mr. Nicholson. Did Judge Chase say anything of the motives of the members of the Legislature of Maryland?

A. He did, according to my impression.

Mr. Nicholson. What were the motives he ascribed to them?

A. As I understood him, the motive he ascribed to them, was to get rid of the judges, and not the system.

Mr. Nicholson. He did certainly, then, allude to the motives of the members of the Assembly of Maryland?

A. I think he did. If he did not, that was the impression produced on my mind by what he said.

Mr. Nicholson. Do you recollect whether Judge Chase did at the close of his charge recommend to the members of the grand jury to return home, and prevent certain laws from being passed?

A. I think that was the result which he drew from what he had previously said.

James Winchester, sworn.

Mr. Harper. Please, sir, to state to this court your recollection respecting a charge delivered by Judge Chase in the circuit court of Maryland in May, 1803?

Mr. Winchester. As already stated, that court sat in May, 1803, in a room in Evans's tavern. The court and gentlemen of the bar sat round several dining tables. I sat on the left of Judge Chase, and the jury were on his right. He addressed a charge to them, the beginning of which was in the usual style of such addresses. He then commenced what has been called the political part of the charge, with some general observations on the nature of government. He afterwards adverted to two measures of the Legislature of Maryland; the first related to an alteration of the Constitution on the subject of suffrage; the other contemplated an alteration in the judiciary. He commented on the injurious tendency of the principle of universal suffrage, and deprecated the evil effects it was likely to have. Incidental to these remarks, he adverted to the repeal of the judiciary law of the United States. I say incidental, for my impression was that his object was to show the dangerous consequences that would result to the people of Maryland from a repeal of their judiciary system, and to show that as the act of Congress had inflicted a violent blow on the independence of the federal judiciary, it was more necessary for the State of Maryland to preserve their judiciary perfectly independent. I was very attentive to the charge for several reasons. I regretted it as imprudent. I felt convinced that it would be complained of; and I am very confident from my recollection, and from the publications respecting it, which I afterwards perused, that all the political observations of the judge related to the State of Maryland.

Mr. Harper. Did the judge appear to deliver the charge from a written paper?

A. I have sat in the circuit ever since 1800. Judge Chase has a kind of standing form in his charges on the general subject of crimes and offences. When there is much business expected to be transacted he goes into a detailed view of the duties of a grand jury. When there is little business he contents himself with a charge of a different form. When he delivered this charge, he had in his hand a marble covered book.

Mr. Harper. (Showing him a book.) Do you think this was the book?

Mr. Winchester. I believe it was. There were occasional pauses during the delivery; he turned backwards and forwards, and read sections from different parts of the book. At the conclusion of particular sentences he lengthened out the tones of his voice, and made a pause, as if to arrest the attention of the jury. Though I cannot say that there was not a word or expression introduced that was not written, yet my impression is that he delivered the whole from the book before him.

Mr. Harper. Did you hear any expressions applied to the present Administration, or was the Administration mentioned at all?

A. My impression is very strong that neither the present Administration was mentioned, or the

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views or designs of any member of it in any manner whatever. I am confident of this, because if such remarks had been uttered, they would have made a strong impression on my mind.

Mr. Harper. Did you ever hear the judge allude to such topics in his charges?

A. I never heard Judge Chase in any of his charges reflect on any Administration. I have heard a great many charges of his, containing political matter, and they have been all rather calculated to support the existing Administration.

Mr. Harper. Have you heard any since 1800?

A. I recollect no particular charge delivered by him since that time.

Mr. Harper. Was the general tenor of his charges since and before 1800 calculated to support the laws?

A. I think there has been this difference. Those delivered before 1800 called on the jury to support the measures of the Government as wise and upright; since that period he has made no allusion to the measures of the Administration.

Mr. Harper. But his general practice has been to recommend to them the observance of law, and the support of government?

A. He generally addressed the jury on the necessity of obeying the laws: that has been the tenor of his charges at all times.

Mr. Key. In a criminal case, when a question of law arises, is not the opinion of the court always taken?

A. Except in a case which occurred between the present Secretary of the Navy and myself. [The details of this case were not heard.] I never knew an instance in which the direction of the court was not taken, and I know no instance in which counsel attempted to controvert the opinion of the court on a point of law.

Mr. Key. Have you ever known counsel address a jury on a point of law after it had been decided by the court?

A. Never.

Mr. Martin. Would it not be deemed indecorous to do so?

A. I have always thought so.

Mr. Nicholson. I will ask you whether Judge Chase recommended to the jury, on their return home, to use their exertions to prevent the adoption of a depending law?

A. I do not know whether the recommendation came from the judge in language and terms. I rather think it flowed as an inference from what he had said.

By a Senator. In any criminal or civil case, did you ever know the court give an opinion without being required by counsel?

A. I recollect no instance, except in a general charge to the grand jury, or in summing up the testimony at the end of the trial?

Mr. Randolph. I will ask whether the case you allude to is, after both parties have been heard, at the end of the trial?

A. Certainly, sir.

Mr. Martin. I will ask you whether in any case, where the law is settled, and counsel go into an argument on the point of law, the court do not frequently stop them?

A. It is difficult to give a correct answer to this question. It is certain that it often happens, that in arguments on points of law, the court check the counsel, and say they are too clear to be controverted, and, to prevent delay, beg the counsel to pass over them.

TUESDAY, February 20.

The Court was opened at 10 o'clock, A. M.

Present: the Managers, accompanied by the House of Representatives, and Judge Chase attended by his counsel.

At the instance of Mr. Harper,

Edward Tilghman was called.

Mr. Harper. Do you recollect any instance of an adjournment of the circuit courts of the United States?

Mr. Tilghman. I recollect in the year 1801, that at a circuit court of the United States, where Judges Tilghman, Griffith, and Basset were on the bench, which was held at Philadelphia, there was an adjournment on the 26th or 27th of October to some day early in January ensuing. The court adjourned because they were obliged to hold a court in Bedford, which was in the western district of Pennsylvania. I recollect that in the court held in Philadelphia, they were not able to go through the business before them, particularly in the case of Peter Blight's assignees. The court consulted with the bar on the adjournment, and the sentiment was unanimous that an adjournment could take place. After the court was held in Bedford, it was again held in Philadelphia, in the month of January; the cause I have mentioned was tried, and I believe several others.

Mr. Harper. What is the distance of Bedford from Philadelphia?

Mr. Tilghman. I believe between one hundred and one hundred and fifty miles. In the last year in the month of May, while Judge Washington was holding a court in Philadelphia, he learned that an attempt had been made to set fire to his house; in consequence of that circumstance and the situation of his family he was obliged to leave town. He and Judge Peters consulted on the course proper to be pursued in case the yellow fever should be in Philadelphia at the usual time at which the court met, and it was agreed that Judge Peters should in that case open the court and adjourn it over to January. This was agreed after consulting the bar, and I do not recollect that there was any difference of opinion among them. The court had commenced in April, and this determination was made some time in May.

Mr. Martin. Did the judges, after holding a court at Bedford, return to their homes before the adjourned court was held in Philadelphia?

Mr. Tilghman. According to my impression they certainly did; there was little or no business done at Bedford, where they either broke up the day on which they met, or on the day after.

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Mr. Randolph. Have you ever known of a bill of exceptions in a criminal case in the courts of the United States?

Mr. Tilghman. Never. I recollect in the case of the United States *vs.* Worrell, which was an attempt to corrupt Mr. Tench Coxe, the verdict was against the defendant, and there was an arrest of judgment. There was a division of opinion whether it was an offence at common law, and there was a talk of a writ of error. It was said at the bar a writ of error would not lie, and I think when it was mentioned to the court, they said the same thing, under the idea that writs of error were confined to civil cases.

Thomas Chase, sworn.

Mr. Harper. Please to look at that paper, (showing a paper.) Do you know the handwriting of it?

Mr. Chase. I do not.

Mr. Harper. Will you look at that book; do you know whose handwriting it is?

Mr. Chase. I do.

Mr. Harper. Did you copy it?

Mr. Chase. I did.

Mr. Harper. This is exhibit No. 8, (charge of Judge Chase,) it contains the whole of the charge; from what page did you copy it?

Mr. Chase. From page 13 to the words "fathers erected."

Mr. Harper. From what did you copy the book?

Mr. Chase. From a paper in my father's handwriting, except some few words interlined by way of correction.

Mr. Harper. When did you copy it?

Mr. Chase. A few days before May term 1803.

Mr. Martin. Have you made any alterations in it since?

Mr. Chase. No, sir.

Mr. Harper. We will offer this book in evidence.

Philip Moore, sworn.

Mr. Harper. Do you know that book? (Showing him the same book above referred to.)

Mr. Moore. Judge Chase is in the practice of delivering his charges from a book. I saw him deliver his charge in May, 1803, from a marble-covered book, which I believe is the same with that book.

Mr. Harper. Did he appear to read the whole time he was delivering that charge?

Mr. Moore. He appeared to me to do so; he occasionally raised his eyes from the paper before him, and spoke with more than common emphasis, but he still appeared to speak from the book.

Mr. Harper. Did you hear anything said by him about the present Administration?

Mr. Moore. I have never heard the judge in courts of justice speak of the present Administration.

Mr. Harper. Do you think in the charges he said anything about the Administration?

Mr. Moore. I do not.

Mr. Harper. Had he made any such remarks, are there any peculiar reasons why they would have made a strong impression on your mind?

Mr. Moore. I think they would have made a strong impression, as my impressions were always in favor of the administration, while Judge Chase's were against them.

Mr. Randolph. Was there any recommendation to the jury, when they returned home to use their influence to prevent the passage of certain laws?

Mr. Moore. I do not know that there was; there may have been, but if there was, I have no recollection of it.

Walter Dorsey, sworn.

Mr. Harper. Please to inform the court whether you were at a circuit court held at Baltimore in 1803?

Mr. Dorsey. I was.

Mr. Harper, Were you present when Judge Chase delivered a charge to the grand jury?

Mr. Dorsey. I was.

Mr. Harper. Was you in such a situation as to hear that charge?

Mr. Dorsey. I was.

Mr. Harper. Were you near Mr. Montgomery?

Mr. Dorsey. I was; I think there was only one person between us.

Mr. Harper. Did you attend to the charge?

Mr. Dorsey. I attended to what is generally called the political part of it, because it was novel, and contained speculations with respect to government in general, and remarks on national and State laws.

Mr. Harper. Do you recollect anything in it respecting the Administration?

Mr. Dorsey. I do not, I recollect a part of it relating to the State and national judiciary, and to universal suffrage. I did not hesitate to state that it was an indiscreet thing; my attention was particularly drawn to it by seeing in the room the editor of a newspaper, and from expecting that it would be the subject of newspaper animadversion.

Mr. Harper. Do you think Judge Chase made any remarks relative to the present Administration?

Mr. Dorsey. I do not. I have no distinct recollection of any such. I think if he had made such remarks, I should recollect them; there is another circumstance of which I am not positive, whether he did at the end of the charge, recommend to the jury to use their exertions to repeal certain laws of the State of Maryland, or whether I drew a construction in my own mind to that effect, from what he said, I cannot say, though it is impressed on my mind that the former was the case.

Mr. Harper. Did he appear to read the charge?

Mr. Dorsey. He did, he appeared occasionally to throw his eyes off the paper.

Mr. Harper. Did he appear to throw his eyes off for a longer time than is usual with a person who is reading his own composition?

Mr. Dorsey. No, he did not.

Mr. Harper. You are of opinion that he read the whole from a book?

Mr. Dorsey. It appeared so to me.

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John Purviance, sworn.

Mr. Harper. Please to inform this honorable Court whether you was present at a circuit court held at Baltimore in May, 1803?

Mr. Purviance, I was.

Mr. Harper. State what happened on that occasion.

Mr. Purviance. I do not pretend to recollect everything which occurred; but as I attended to what Judge Chase said in his charge to the grand jury, I think I have a pretty distinct recollection as to the manner in which he delivered that address; he appeared to me to read the whole from a written paper laying before him. I never expected that this inquiry would have been made of me, and after such a lapse of time I can only speak of the impressions now on my mind.

Mr. Harper. Do you recollect whether Judge Chase made any mention of the present Federal Administration, and what was it?

Mr. Purviance. I have no recollection that he mentioned it, but as it was identified with the repeal of the law for establishing the circuit court of the United States, and so far as the Executive composed a part of the Legislature, he may have mentioned the Administration.

Mr. Harper. Was there any particular mention or allusion to the Executive of the United States?

Mr. Purviance. No, sir, nothing of the kind; I have endeavored to retrace in my mind everything which was said, and I have not the smallest recollection that any remark was made upon the Executive Department of the United States.

Mr. Harper. Was there nothing said about preserving power unfairly obtained?

Mr. Purviance. I think if such an expression had been used, it would have struck me forcibly, for shortly after the charge had been delivered, in a conversation among some gentlemen on its contents, it was declared that the sentiments expressed by Judge Chase were impeachable. I thought these kind of charges ought not to be delivered from the bench, but I did not observe that anything which had fallen was of a nature to warrant an impeachment.

Mr. Harper. Please to inform this honorable Court whether you are accustomed to practice law in the courts where Judge Chase presides?

Mr. Purviance. I am, sir.

Mr. Harper. Is it not his practice frequently to interrupt counsel?

Mr. Purviance, I think so; but I always attributed it to his quickness of apprehension, which induced him rather to anticipate counsel than to listen to them; this I always ascribed to his superior sagacity.

Mr. Harper. Have you seen any difference in his interruptions between counsel with whom he was supposed to be on ill terms, and those with whom he was on good terms?

Mr. Purviance. I never observed any difference in his conduct arising from a consideration of persons, but it always appeared to me to arise from the manner in which gentlemen treated the subject.

Mr. Harper. Were there gentlemen at the bar with whom Judge Chase was not on good terms?

Mr. Purviance. I think there were.

Mr. Harper. Did you ever know Judge Chase after having decided a point, hear counsel against his own opinion, and upon hearing, induced to decide differently?

Mr. Purviance stated a case in which the judge had retracted his opinion upon argument in a case in which he had been employed, and added that notwithstanding the pride of opinion to which men were liable, he had observed in Judge Chase an almost unparalleled disposition to hear his opinions contested, and when mistaken to relinquish them.

Nicholas Brice, sworn.

Mr. Harper. Please to inform this honorable Court whether you was at a circuit court held in May, 1803, when a charge was delivered by Judge Chase to the grand jury.

Mr. Brice. I was there and attended to the charge very particularly.

Mr. Harper. Was that charge spoken extempore or was it read from a book?

Mr. Brice. I kept my eyes steadily upon the judge, and I conceived that he read the whole from a paper, as is customary with him in delivering a charge to the grand jury.

Mr. Harper. Have you a distinct recollection of the latter part of the charge?

Mr. Brice. I have no recollection of the words, but I think I recollect their general nature and tendency.

Mr. Harper. Did he say anything respecting the present Administration?

Mr. Brice. Not in the slightest manner, further than mentioning the repeal of the judiciary law of the United States, which he mentioned incidentally in the course of his observations on the alterations of the Judiciary system in the State of Maryland. One thing more I will add, with respect to the advice which it is alleged he gave to the grand jury: shortly after the charge was delivered, in talking over this subject with Mr. Stephen, I recollect that I rather thought it was an inference drawn from the charge, than any express advice of the court on that point. Indeed I am pretty sure the words were not used.

Mr. Martin. Do I understand you right? You say he had no allusion to the present Administration, but in connexion with the repeal of the law of the United States as it was likely to affect the State of Maryland.

Mr. Brice. So far as I recollect, he made use of no other expression, but mentioned the repeal of that law to show the evil tendency of such measures as it regarded the judiciary of Maryland.

James P. Boyd, sworn.

Mr. Harper. Please to inform this honorable Court whether you were present at the circuit court held in Baltimore in May, 1803, and what occurred at that time?

Mr. Boyd. I was there, but I do not know whether I was there at the opening of the court, but I was there when the charge was delivered to the grand jury. After Judge Chase had gone

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through that part of the charge which is an instruction to the grand jury relative to the duties of their office, he proceeded to make some further observations, to which I paid particular attention because they were novel to me. I was under an impression at the time that Judge Chase was watched.

Mr. Harper. Did the judge read the charge from a book?

Mr. Boyd. To the best of my recollection he did read it, but he cast his eyes off from time to time, in the manner described by Mr. Montgomery. I thought at the time the political part of the charge would bear hard upon him, because I observed Mr. Montgomery paying particular attention to the address of the judge, which was an animadversion upon the measures Mr. Montgomery had been anxious to carry in the Legislature of Maryland. I do not, however, recollect the words which were used; those who paid it more attention are likely to be more correct.

Mr. Harper. Did that charge contain a sentiment like those you have heard, that the present Administration was weak, or wicked, &c.?

Mr. Boyd. I have not a scintilla of recollection of a word of the kind, no further than as an inference to be drawn from what was said in relation to the repeal of the Judiciary law. I have, however, a faint trace of the idea in my mind, not from my own recollection, but from having repeatedly heard it stated that there was such a remark made in the charge.

Mr. Harper. Have you any reason to believe that if such an expression had been used it would have struck you so forcibly as to enable you now to recollect it, and what is the reason?

Mr. Boyd. The reason is this. I thought a charge of that kind was both imprudent and improper; reflecting on the present Administration, of which he formed a part, I should have remarked it in a particular manner; and it is for this reason I think he did not use it. If he did, it has wholly escaped my recollection.

William McMechin, sworn.

Mr. Harper. Inform this honorable Court whether you was present at the circuit court held at Baltimore, in May, 1803?

Mr. McMechin. I was present and heard the charge delivered by Judge Chase to the grand jury.

Mr. Harper. Was you in a situation to hear the charge distinctly? How near was you to the judge?

Mr. McMechin. I was near the door of the room, about five yards distant from the judge. I saw the judge delivering the charge, but whether he kept his eyes constantly on the book I cannot say, as I did not keep my eyes steadily upon him; but it appeared to me that he read from the book throughout.

Mr. Harper. Have you a recollection of the latter part of that charge?

Mr. McMechin. I think I have.

Mr. Harper. Have you any recollection of his having said anything against the present Administration?

Mr. McMechin. I have no recollection of anything of the kind, either that they were weak, or of their having unfairly acquired power; such an idea was mentioned in no way, unless it be inferred from the remark on the repeal of the law establishing the sixteen circuit judges.

Mr. Harper. If such a sentiment had been uttered, it would not have escaped your notice?

Mr. McMechin I think it would not.

Mr. Harper. Had you any conversation about this charge? If you had, please to inform when, with whom, and what was it?

Mr. McMechin. About five minutes after the charge was delivered I left the court room: going down stairs I met Mr. Montgomery, and I asked him, or he asked me, what was thought of the charge? After a few observations, he said it was such an one as Mr. Chase would be impeached for. This drew my attention pointedly to the charge itself; after this, I heard of the publication in the American, but I did not see it. I met afterwards with a publication in the Anti-Democrat, which paper I took, purporting to be the charge of Judge Chase. I have conversed with gentlemen of both parties on the publication, and it appeared to them as it did appear to me, and as I still think it is, substantially the charge delivered by the judge.

Mr. Harper. Has that opinion rested on your mind ever since you heard the charge and read the publication?

Mr. McMechin. It has always so rested on my mind, and I have never read anything on the subject since.

William S. Govane, sworn.

Mr. Harper. Was you at the circuit court of Baltimore in May, 1803?

Mr. Govane. I was, and heard the charge delivered by Judge Chase. The room in which the court was held was a long one, in a tavern; a range of tables formed the bar, and the seats around were occupied by professional gentlemen. I went to the bottom of the table, opposite to Judge Chase, and directed my attention towards him. Whilst he was delivering his charge he appeared to read it from a book, but generally ended the sentences by looking towards the grand jury; except this circumstance, he appeared to read the whole time.

Mr. Harper. Do you retain a distinct recollection of the substance of what the judge said?

Mr. Govane. I think I do.

Mr. Harper. Do you remember any part containing animadversions on the present Administration, such as that they were weak, feeble, or incompetent?

Mr. Govane. I think no such words were used. If I could swear to a fact negatively after such a lapse of time, I could swear that no such expressions fell from the judge. He said that a Monarchy might be free, and a Republic a tyranny; and then proceeded to define what a free government was.

Mr. Harper. Then you have no recollection of any reflection made upon the present Administration?

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Mr. Govane. I have not the most distant idea that such an expression was used.

Mr. Harper. Would you have remembered them if they had been used?

Mr. Govane. I think I should, as I had a conversation with a friend respecting it soon after it was delivered; and I paid particular attention to the charge, because it came from Judge Chase, a man of great celebrity, and I wished to draw what information I could from such a respectable source; everything arrested my attention, and it appeared that the attention of the whole company was fixed upon the judge.

John Campbell, sworn.

Mr. Harper. Did you attend the circuit court held at Baltimore in 1803, and in what capacity?

Mr. Campbell. I attended that court as a grand juror and was appointed foreman.

Mr. Harper. Do you recollect the charge that was then delivered by Judge Chase?

Mr. Campbell. I recollect some parts of it, but not the whole. I paid a particular attention to that part which described my duties as a grand juror, and have some recollection of the latter part. I kept my eyes constantly upon the judge.

Mr. Harper. Did he read the charge, or speak it extempore?

Mr. Campbell. He appeared generally to read it, taking off his eyes from the book from time to time, but never for a longer time than what is usual for men to express the words they retain in their memory from their own composition.

Mr. Harper. Have you a distinct recollection of the latter part of the charge?

Mr. Campbell. I cannot say I have a distinct recollection of any particular part of the charge, though I remember its general tendency.

Mr. Harper. Do you remember to have heard the present Administration censured as weak, feeble, or incompetent, &c.?

Mr. Campbell. I have not the slightest recollection of any such expressions, if they were used they have altogether escaped my memory.

Mr. Harper. Was there any allusion to the present Administration?

Mr. Campbell. No, sir.

Mr. Harper. If such words were uttered, is there any circumstance which would have impressed them on your memory?

Mr. Campbell. I should have thought them very improper, and that would have fixed them in my mind, but I have no trace of any such impression.

Mr. Nicholson. You gave a deposition before the committee on this point?

Mr. Campbell. I did, sir.

Mr. Nicholson. Did you say that the judge recommended to the jury, when they returned home, that they should use their influence to prevent the passage of certain laws then pending before the Legislature of Maryland?

Mr. Campbell. It does appear still to me that I heard some such expression. I have thought of it repeatedly since, and I continue to believe that the judge gave the jury that advice.

Mr. Harper. Was the exhortation made by the judge, or is it an inference you draw in your own mind?

Mr. Campbell. Some such expression fell from him, and it is not an inference formed in my mind.

William Cranch, sworn.

Mr. Harper. Were you present at the circuit court held at Baltimore in 1803?

Mr. Cranch. I was. The court was held at Evans's tavern, in Baltimore. Judge Chase was seated in an arm-chair, at one end of a long table placed before him. The grand jury were on his right, some sitting on benches placed along the wall and others standing. I stood myself about fifteen feet from the judge, who was sitting during the whole time he was delivering his charge; he generally held the book in his hand.

Mr. Harper—(showing a book.) Is that the book?

Mr. Cranch. He appeared to be reading from such a book.

Mr. Harper. Did he read the whole, and did he read constantly?

Mr. Cranch. He appeared to me to read the whole charge, but I did not keep my eyes so constantly fixed upon him as to declare positively that he did.

Mr. Harper. Were there variations in his manner of delivering the charge, as if he was at one time reading and at another speaking *ex tempore?*

Mr. Cranch. He delivered some parts with more emphasis than others. He often raised his eyes from the book, but I did not observe that he repeated more than one sentence without recurring to the book; he repeated no more than a man might repeat after running his eyes hastily over a passage.

Mr. Harper. Did he raise his eyes for a longer time than a man might be supposed to do who was reading a composition of his own?

Mr. Cranch. I do not think he did.

Mr. Harper. Do you recollect the latter part of the charge?

Mr. Cranch. I recollect more of the latter part than of the beginning, because I paid more attention to the latter part.

Mr. Harper. Do you recollect any sentiments expressed relating to the weakness of the present Administration, and that they were not employed in promoting the public good, but in preserving ill-gotten power?

Mr. Cranch. No, sir, there was no such expression, as I recollect.

Mr. Harper. Was there any expression at all relative to the present Administration?

Mr. Cranch. Not as an Administration, nor anything alluding to the Administration separate from the Government of the United States.

Mr. Harper. In what way was the Government alluded to?

Mr. Cranch. By alluding to the repeal of the act of February, 1801, for the establishment of the circuit judges. I recollect no other measure of the General Government which was alluded to, or any allusion to the present Executive.

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Mr. Harper. I will now offer in evidence the book containing the charge of Judge Chase at Baltimore, which has been proved to be that from which he read his charge; it will be unnecessary to read it as it is left on file, and we wish to save the time of the court.

The written book was then returned to the clerk's table.

Mr. Harper said he wished to ask a question of Mr. McMechin.

Mr. McMechin was called, and Mr. Harper inquired if he had rightly understood him, when he said that a few minutes after he had left the court room he met Mr. Montgomery on the stairs, and Mr. Montgomery stated to him that Judge Chase would be impeached. Did Mr. Montgomery at that time say for what he would be impeached, or that he would be impeached for reflecting upon the Administration?

Mr. McMechin. He said the judge would be impeached, but I do not recollect that he said any thing about his being impeached for reflections upon the present Administration. I thought he felt hurt on the subject of the alterations in the Judiciary of Maryland, which had been much talked of, and for which he had been an advocate in the State Legislature.

Mr. Harper. In order to show that it is the custom of the courts in this country to deliver political charges to the grand juries (a practice which I am ready to admit is indiscreet,) I wish to be indulged in a narration of what has been the practice, and then this honorable Court will be convinced that it did not originate with the present respondent, but that he followed the track which had been a long time marked out. For this purpose I will refer to several transactions which have taken place. First in the year 1776, on the 27th April, an address was made to the grand jury in the State of South Carolina, by William H. Drayton, (vol. 1 of Ramsay's history of South Carolina, page 103.) A further evidence that the custom obtained is derived from the address of the executive council of Pennsylvania, wherein it is recommended that the judges of the Supreme Court make mention in their charges of various subjects of a political nature; it is under date of October 8th, 1785—American Museum, vol. 1, p. 228. I will also offer in evidence a charge delivered by Judge Iredell in Pennsylvania, previous to the trial of Fries in 1799. I will adduce that part only which may be denominated political.

I will also offer in evidence the general notoriety of the practice in this country for thirty years past, to enforce from the bench political principles, and to defend political measures; a practice which we contend universally prevailed.

I will submit a paper yesterday referred to as evidence on the 7th article; a charge delivered by Chief Justice McKean on the 27th November, 1797. In this charge the learned judge, whose eulogium has been so boldly pronounced, discusses the doctrine of libels, and after a variety of pertinent observations, goes on as follows:

[Mr. Harper here read extracts from the above charge.]

Exhibit No. 7 contains extracts from the *Mirror of the Times*, which are offered for the purpose of verifying the statement of the respondent; the first is contained in the paper of Wednesday, February 5, 1800, and the second in that of February 8th.

Mr. Randolph. The exhibits are those which accompanied the respondent's answer and pleas.

Mr. Martin. They are, and we here close our testimony, adding only the letter of Governor Claiborne, who has acted on the same principle, and given to the world his political opinions on various subjects.

Mr. Randolph. One of our witnesses has arrived in town, and we wish that he should be called.

Thomas Hall was called, and sworn.

Mr. Nicholson. Were you at Baltimore when the charge was delivered by Judge Chase, and do you recollect the language he made use of in addressing the grand jury?

Mr. Hall. I do not recollect the particular language used. I paid very little attention to what was there transacted.

Mr. Nicholson. Do you recollect the subjects generally on which he spoke?

Mr. Hall. I have a general impression, but I cannot be particular.

Mr. Nicholson. Did he mention the present Administration as weak and feeble?

Mr. Hall. My impression is that he mentioned them, or I inferred it from what was said.

Mr. Nicholson. Did he mention them in such a way as to cast an odium upon them?

Mr. Hall. I could not identify the language of Judge Chase, even if it were laid before me.

Mr. Nicholson. Do you recollect his recommendation to the jury to use their exertions to prevent the passage of particular laws?

Mr. Hall. I think he used language in substance to that effect.

Mr. Nicholson. In what way did he speak of the Administration?

Mr. Hall. I do not recollect particularly the manner.

Mr. Nicholson. Is it your general impression that he mentioned the Administration?

Mr. Hall. I think he did, or else I inferred it from what he said.

Mr. Randolph. Although you do not recollect the precise expressions of the judge, you inferred from what he said that his design was to convey to the by-standers the idea that the Administration was weak or wicked?

Mr. Hall. Yes, sir, those are my impressions.

Mr. Nicholson. Were you on the jury?

Mr. Hall. Yes, sir. I was on the petit jury.

Mr. Rodney here adduced a list of the grand jury for the circuit court held in the year 1800, in the State of Delaware.

Mr. Randolph wished that Mr. George Hay might be called to explain part of his testimony; that part which related to the conversation between the marshal and himself, when the former was in pursuit of Callender.

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George Hay was accordingly called.

Mr. Randolph. Did you endeavor to dissuade the marshal from the execution of his duty in the arrest of Callender?

Mr. Hay. I certainly did not, and Mr. D. M. Randolph could not mean to convey to this honorable court that idea. I should have been prevented from doing this by two considerations, one exclusively relating to myself, which I need not explain; the other, that I had a better opinion of Mr. Randolph than to suppose he would listen to any such suggestions. I did tell him that in my opinion he would not be able to get Callender, as I understood that he had attempted to make his escape, and in the place in which he was, it would be impossible for the marshal to discover him.

Mr. Randolph. Did you mention to him that he (Callender) would surrender at the next term?

Mr. Hay. I am not certain, but I believe I did.

Mr. Randolph. Were you at that time retained as counsel for Callender?

Mr. Hay. I was not retained as his counsel at that time, nor ever after; but I intended to appear in his defence for the sake of defending the cause, not for the man.

Mr. Randolph. Were you averse to proceed in the trial at that term for any particular reason?

Mr. Hay. I did not wish to appear before Judge Chase, from an impression that had been made on my mind in conversations with persons who knew him. I conceived it would be an unpleasant business for me to carry into execution the intention I had formed to defend Callender. This impression arose principally from the conduct the judge had manifested towards Mr. Lewis and Mr. Dallas, on the trial of Fries, at Philadelphia. He had there, as I understood, restrained them from managing the defence in the way that they thought proper. I did not expect any greater indulgence or advantage than had been allowed on that occasion. I had therefore made up my mind to meet all the exigencies of the case with temper, but with firmness. The conduct of the judge on the trial of Mr. Thomas Cooper had also its weight upon my mind. A great deal was said about the judge's conduct on that trial, whether correct or not, I do not say; but it made me unwilling to appear as counsel before Judge Chase, though I was perfectly willing to undertake Callender's defence at the next term, before any other judge.

Mr. Randolph. What was the political complexion of the jury which tried Callender?

Mr. Hay. I am not personally acquainted with the gentlemen who composed that jury. I believe some of them did not live in the city of Richmond, but the impression on my mind was, and still is, that all the persons on the jury were not only opposed to Callender, but decidedly so; and were distinguished for the warmth of their political sentiments.

Mr. Randolph. Are you acquainted with Colonel John Harvie; what is his political character?

Mr. Hay. I know Colonel Harvie, but what is his political character I do not know. I lived at Petersburg and he at Richmond. I only knew that it was said that he did not vote with the Republican party.

Mr. Randolph. Are you acquainted with Mr. William Radford? what are his politics?

Mr. Hay. He was ranked among those called moderate, but I am not well enough acquainted with him to decide upon his political character.

Mr. Randolph. Are you acquainted with Mr. Marks Vanderval, and what is his political character?

Mr. Hay. He is a very reserved man, but has been uniformly regarded as a Republican, though not a zealous one.

Mr. Randolph. In criminal actions, did you ever hear of a bill of exceptions being filed in Virginia?

Mr. Hay. Never, sir; there can be no such thing, it would answer no purpose; because, from a criminal court there is no court which has appellate jurisdiction.

Mr. Randolph. But cases are transferred from the district courts to the general court.

Mr. Hay. There is a particular process for that purpose; criminal cases are not carried up after trial. for the decision in that case is final; but if the district court are unwilling to decide, it is then carried up to the Supreme Court.

Mr. Harper. I understood you to say that it was your intention to argue the point. What point did you mean?

Mr. Hay. I meant to contend against the constitutionality of the second section of the sedition law.

Mr. Harper. Did you not mean to argue it before the public, although you knew it would be unavailing if addressed to the court? Did you mean by that argument to acquit the traverser, or to produce a political effect out of doors?

Mr. Hay. I meant to address my arguments to the court; if they should work the acquittal of the traverser, or operate any wise in his favor, it was a thing to be desired; if they should affect also the public mind, that, too, was a desirable circumstance.

Mr. Harper. I ask you now, whether you did not say to the marshal that Callender could not be defended, and that your object in requiring a continuance of the cause was, to gain time, and bring the trial nearer that period in which it was probable he might get a pardon?

Mr. Hay. I have no recollection of having said anything of this kind, but if Mr. Randolph (the marshal) says that I expressed myself to him in that manner, I shall not contradict him.

Mr. Harper. I understood him to say so in his testimony.

Mr. Hay. I do not recollect it.

D. M. Randolph was called in by Mr. Harper, and asked whether Mr. Hay had not said to him that Callender could not be defended, and that his purpose was to keep off the trial till the next court, in order to obtain a pardon?

Mr. Randolph. I do not recollect the words which were used, but I understood that Callender could not then be defended, and that he would surrender himself at the next term. I think it

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proper to remark one thing further: there never was a panel of the jury made out or presented to Judge Chase, or any other person, till the morning I made it out in court, before the commencement of Callender's trial, except in the case of the grand jury, when it is handed to the judge to appoint a foreman. In setting down their names on the list, I arranged them according to my own idea of their respectability.

Mr. Nicholson. In your conversation with Mr. Hay, did he tell you that he wished to delay the cause, in order to bring it nearer the time in which he might obtain Callender's pardon?

Mr. Randolph. He did not use the words, but I thought he had it in his mind. I inferred it from the conversation.

Mr. Randolph wished to ask another question of Mr. Hay, who was thereupon called.

Mr. Randolph. Did you ever say that Callender could not be defended?

Mr. Hay. I cannot recollect what I may have said on that point, but I recollect perfectly that I was impressed with the idea that he could not be defended, if the charge was either for writing or publishing the Prospect Before Us, for these facts were too notorious to be called in question. But I did then think, and always since have thought, that he might be defended on the ground of the unconstitutionality of the sedition law.

Mr. Randolph. Do you mean, when you say that he might be defended on the ground of the unconstitutionality of the sedition law, that you would not have defended him on any other ground, such as a flaw in the indictment, or a misstatement of the matter of the book in the indictment?

Mr. Hay. Most certainly, sir. I meant to take advantage of any mistake or defect that might appear in the indictment or in the evidence; and that may be evinced by recurring to my objection against the witnesses who were concerned with Callender in the publication, when I told one of them that he was not bound to give testimony which would go to criminate himself.

P. N. Nicholas, called.

Mr. Key. Do they ever arraign a person for a misdemeanor in Virginia?

Mr. Nicholas. I do not recollect that they do.

John Montgomery was called in at the instance of Mr. Nicholson, who desired him to explain some parts of his testimony.

Mr. Montgomery. When I was before this honorable Court the first time, I stated that I should not be able to state all the charge delivered by Judge Chase at Baltimore, or any particular part in the precise language which he used. From the examination of a great number of witnesses before this honorable court, I am induced to believe that I have been misunderstood. When I first used the word Administration, I used it not as the precise word he uttered, but what struck my mind as being his sense. The judge seemed to lay down a proposition that the administration of Government was so and so, and stated that their acts were not guided by a view to promote the general welfare, but principally to keep themselves in the possession of unfairly acquired power. I thought the judge explained his position by his allusion to the repeal of the law creating the sixteen circuit judges, the general suffrage law of Maryland, and the contemplated alteration of the Judiciary law of that State. I did not mean to state that he said Mr. Jefferson was weak or feeble, but that the Administration or the Government was so. This is the impression I then had, and now have, with respect to that part of the charge. But I did not then say, nor do I now, that I use the precise words of the judge; but I think I follow his spirit and his meaning.

Mr. Nicholson. At the concluding part of the charge, did Judge Chase recommend it to the jury when they returned home, to use their influence to prevent the passage of the Judiciary bill, or was that an inference from what he delivered?

Mr. Montgomery. That part of the charge was in the express words, and not an inference at all. I recollect that shortly after I had a conversation with several gentlemen, who concurred with me in opinion that these expressions were used; and I recollect that on the very day the charge was published in the Anti-Democrat, or the day after, I called these expressions to the recollection of the son of Judge Chase, and observed that these parts were omitted in the printed statement.

Mr. Harper. I am desired by Judge Chase to make of this honorable court the request contained in the following letter, which I will read:

"Mr. President: The state of my health will not permit me to remain any longer at this bar. It is with great regret I depart before I hear the judgment of this honorable court. If permitted to retire, I shall leave this honorable court with an unlimited confidence in its justice; and I beg leave to present my thanks to them for their patience and indulgence in the long and tedious examination of the witnesses. Whatever may be the ultimate decision of this honorable court, I console myself with the reflection that it will be the result of mature deliberation on the legal testimony in the case, and will emanate from those principles which ought to govern the highest tribunal of justice in the United States."

The President observed that the rules of the Senate did not require the personal attendance of the respondent; whereupon Judge Chase bowed in a very respectful manner, and withdrew.

Mr. Hay came again to the bar to explain the motives which induced him to undertake the defence of Callender. He said he was not without some hope that his arguments against the unconstitutionality of the sedition law, although they might not be conclusive with the court, would nevertheless have some weight with the jury, and might operate to produce the acquittal of Callender.

Mr. Randolph. On behalf of the Managers, I have to request of the court that further progress in the trial be postponed until to-morrow, in order to give those gentlemen who follow, time to digest, compare, and collate the great volume of testimony which has been given. We shall be ready

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to proceed to-morrow. There is also another reason for this request; we expect hourly some important witnesses, and are in hopes that they will make their appearance in town before the next meeting of the court. If, however, this should not be the case, we shall proceed without them. If they come, we presume we shall be permitted to take the benefit of their testimony.

President. I understand that gentlemen have nothing further to offer.

Mr. Randolph. Not, sir, at this time.

Mr. Harper. I beg leave to state that we do not join in the motion for delay, though we do not oppose it.

President. Is the course of the arguments on each side understood?

Mr. Nicholson. We understand that the Managers will open; that reply will be made by the counsel for the respondent, and that the Managers will then close.

Mr. Key. This is the usual course, and we have no objection to it.

The Court then rose.

WEDNESDAY, February 20.

The Court was opened at ten o'clock.

Present: the Managers, accompanied by the House of Representatives in Committee of the Whole; and the counsel of Judge Chase.

Mr. Nicholson. We expected a witness from Virginia; but he has not arrived: a witness, however, from Maryland is present, whom we wish to examine.

Philip Stewart, sworn.

Mr. Nicholson. Were you a member of the grand jury summoned to attend the circuit court held at Baltimore, in May 1803?

Mr. Stewart. I was.

Mr. Nicholson. Do you recollect any particular expressions used by Judge Chase in his charge to the jury?

Mr. Stewart. I have but an imperfect recollection. I have never seen the charge, nor have I heard it read since it was delivered.

Mr. Nicholson. Had you not some reason for attending to the charge, other than your duty as a grand juror?

Mr. Stewart. There were some things which struck my mind with some force.

Mr. Nicholson. Had you not been a member of the Legislature of Maryland?

Mr. Stewart. I had.

Mr. Nicholson. Did he not throw some censure upon the members of that State Legislature?

Mr. Stewart. I felt something of the kind, but I cannot tell his expressions.

Mr. Nicholson. Do you recollect his speaking of the sons of some gentlemen who had assisted in framing the constitution of Maryland; what were his expressions?

Mr. Stewart. If I were to hear the charge read I could perhaps point them out.

Mr. Nicholson. I will state the question more precisely.—Did he use the words *degenerate sons*, and apply that epithet to the members of the Legislature?

Mr. Stewart. To the best of my recollection he did; he spoke of degenerate sons of fathers who had formed the constitution of the State, which they were about to destroy by the introduction of the general suffrage bill.

Mr. Nicholson. Did he recommend to the grand jury when they returned home, to use their influence to have such men elected as would vote against the judiciary bill then pending before the Legislature?

Mr. Stewart. I do not recollect.

Mr. Harper. I will ask you, sir, whether the word *degenerate* was inferred by you, or did you actually hear it.

Mr. Stewart. I believe I heard it.

Mr. Martin. Have you ever seen any publication of the charge?

Mr. Stewart. I have not.

The President. If no further witnesses are to be introduced, I would inquire whether gentlemen consider it necessary to detain those who have been examined?

Mr. Nicholson. It is possible that gentlemen may differ in their account of the testimony; but if there is no dispute on that point the witnesses I think may be discharged.

Mr. Martin. There is a list of the grand jury summoned at the circuit court in Delaware; I do not know for what it is filed; until we are informed on that point we shall be under the necessity of detaining the witnesses from that State. Is it intended to show that there were men of different political sentiments on that jury?

Mr. Rodney. We have nothing more to prove from that list than what has already been stated.

Mr. Harper said the counsel for the respondent would have no objection to discharge all the witnesses; but must object to discharging part of them.

The President. If the gentlemen do not agree upon the discharge of the witnesses, I will take the sense of the Senate upon the point.

Mr. Harper. The particular situation of Mr. Tilghman's family requires his return to Philadelphia. I must therefore request that his further attendence be dispensed with.

The Managers consented, and Mr. T. was discharged.

The question was then taken by the President on the discharge of the witnesses, and lost; there being sixteen votes in the affirmative, and seventeen in the negative.

Mr. Rodney requested the discharge of the witnesses from Delaware; which being consented to by the respondent's counsel, they were discharged

It may be proper here to notice that, from time to time, during the trial, witnesses were discharged with consent of the parties.

The testimony having been closed on both sides, Mr. EARLY rose, and addressed the Senate as follows:

Mr. President—There is no attitude, in which the Government of this nation can be viewed more completely demonstrative of the *efficacy of*

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its principles than that in which it is now placed. We are now occupied in an act well calculated to test the *practicability* of those principles, and to prove their fitness or unfitness for the condition of that country over which they are destined to rule. There is presented before this great depository of national justice, a highly important officer of the Government, charged with acts violative of some of its leading and most essential principles. An officer who has been clothed with the function of administering to a great and rising people the blessings of freedom in their most vital relations, is the object against whom charges of this serious nature are exhibited. He stands charged with violating the sacred charter of our liberties, and with setting at naught the most holy obligations of society. He stands charged with perverting the high judicial functions of his office for the purposes of individual oppression, and of staining the pure ermine of justice by political party spirit. These charges are founded upon transactions which have passed in review before an inquiring world, and which in the estimation of the representatives of the American Government have cast a foul reproach on their national character. To this tribunal have they appealed for a vindication of that character. Hither do they appeal for the preservation of the dearest principles of their liberty, and for the sure support of their most sacred rights. It is here they must enter the complaints of the nation. It is here they must drag the *guilty* to punishment.

The first article, preferred by the House of Representatives in support of their impeachment, charges a conduct upon the respondent, which strikes at one of the most vital principles of the Government of this nation; the right of "trial by an *impartial* jury." It ought never to be forgotten that the deprivation of this right was one of the injuries for which the people of this country put to the risk of a revolution all that was dear. Nor ought it to be forgotten that the security of this right forms one of the great *safeguards* of the Federal Constitution. "In all criminal trials the accused shall enjoy the right to a speedy and public trial by an *impartial* jury of the State and district."

The relative rights of judges and juries have at some periods of judicial history been so little understood, and the limits of each so indistinctly marked, that the benefits of the institution of jury trial were left much at the mercy of *arbitrary and overbearing judges*. But it was reserved for the honor of modern times to dissipate this uncertainty so baneful to justice, and to fix down the establishment upon its only proper foundation; that of the right to determine without control, both the law and the fact *in all criminal cases whatsoever*. This right has now been so long practised upon in the United States, and may be considered as so well established, that it is scarcely to be expected we shall witness upon that point any difference of opinion. Still less is it to be expected that we shall witness such difference, when we are discussing principles which apply to cases capital. In such case it is the glory of the laws of this country, that the offence of the accused should be left exclusively to the judgment of those least liable to be swayed by the weight of accusing influence. It is no part of my intention to deny the right of judges to expound the law in charging juries. But it may be safely affirmed that such right is the most delicate they possess, and the exercise of which should be guarded by the utmost caution and humanity.

The accused shall enjoy the right to a "trial by an *impartial* jury." We charge the respondent with deliberately violating this important provision of the Constitution, in arresting from John Fries the privilege of having his case heard and determined by an impartial jury; for that the respondent took upon *himself* substantially to decide the case by prejudging the law applying thereto, at the same time accompanying the opinion thus formed and thus delivered, by certain observations and declarations calculated necessarily to create a prepossession against the case of Fries in the minds of those who had been summoned to serve upon the jury, thereby making them the reverse of impartial.

These were the acts of a man, who, from his own declarations, appears to have well understood upon what *points the defence would turn*. It was the act of a man, who, it appears, had been well informed of all that passed at the previous trial of Fries; who knew that there was no dispute as to facts, and that the whole of the defence depended upon the discussion and determination of those very principles of law which he had thus prejudged, and upon the application of those authorities which he had thus excluded in the hearing and very presence of those who were to pass upon the life and death of the accused. No argument had been heard from counsel; no opportunity had been afforded to prove that the offence committed did not amount to the crime charged; no defending voice had been raised in behalf of the accused; but, without being heard, and without having had any opportunity to be heard, his case was adjudged *against* him. I say, *adjudged against him without the chance of being heard*. For surely the case was adjudged against him, when the only point upon which it was defensible was determined against him, and that determination publicly announced from the bench. That this was done before the accused could possibly have had a chance of being heard, is placed beyond contradiction by all the testimony. And that the judge knew the point which he thus prejudged, to be the only ground upon which the defence rested, is perfectly clear. For, from his own declarations at the time of announcing the opinion, it appears that he was well acquainted with all that had passed at the previous trial of Fries.

But, sir, we must look further into the progress of this transaction. It was not enough that the poor, trembling victim of judicial oppression should thus have his dearest privileges snatched from him, by a prejudication of his case; it was not enough that the impartiality of those who were to compose his jury should be converted into a prepossession against him, by the imposing authority of solemn declarations from the bench;

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but the small remaining, darling hope of life, was to be smothered by a preclusion of his counsel from arguing the law to the jury. This fact, though sternly denied in the answer of the respondent, has, nevertheless, been established in a manner which must irresistibly force conviction upon the mind. Mr. Lewis affirms it positively. Mr. Dallas confirms it in a manner peculiarly strong. Not being himself present when the opinion was delivered to the bar, he received from Mr. Lewis a statement of what had passed, and, in an address to the court afterwards, repeated distinctly this statement, and particularly that part which attributed to the judge a declaration, that, if the counsel had anything to say upon the law, they must address themselves to the court and not to the jury. To this statement no reply was made by the court, either correcting or denying it. Thus stands the evidence in the affirmative. Opposed to this we have the negative testimony of Messrs. Rawle, Tilghman, and Meredith, who have no recollection of any such declaration. I address myself to those who well know the difference between affirmative and negative testimony. I address myself to those who well know the established rule in the law of evidence, that the testimony of one affirmative witness countervails that of many negative ones; and I am sure that I address myself to those who must feel the complete coincidence of this rule with the dictates of common sense. Upon this ground alone we might safely rest our proposition; but, sir, we will not rest it here. It appears from the testimony of the witnesses on both sides, that almost every observation from the counsel to the court, on the second day, was predicated upon the idea that something had been said on the preceding day, restrictive of their privileges. These observations, although addressed to the court, and carrying this feature prominent in their face, were neither contradicted nor corrected by the court. This was a strong tacit admission of the correctness of the idea upon which they were bottomed. But, sir, we have not only this tacit admission, but we have in testimony, this strong and impressive declaration from Judge Chase, that "the counsel might be heard in opposition to the opinion of the court, at the hazard of their characters."

But, Mr. President, we have the positive admission of the respondent, in page 18 of his answer, that certain observations were made by him condemning the use of common law authorities upon the doctrine of treason, and also condemning authorities under the statute of treasons, but prior to the English Revolution. [Here the passage was read.] By a recurrence to page 22 of the answer, it will be found that the respondent admits that these observations of his were made on the first day; yet, sir, nothing of all this is remembered by Messrs. Rawle, Tilghman, or Meredith. How light, then, how extremely light, must their bare want of recollection weigh against the positive affirmative testimony of Messrs. Lewis and Dallas!

Considering my position as uncontrovertibly established, I will proceed to observe that the offence with which Fries stood charged, was the highest possible offence which can be committed in a state of society. The punishment annexed to its commission, was the highest possible punishment known to our laws. The accused was, therefore, entitled to every possible indulgence. In favor of life, not only every possible ground should be occupied by counsel to the jury, but every possible argument listened to and weighed with patience and forbearance; and it should never be forgotten that Judge Chase had such a conduct set as an example before him, in a previous trial of the same case. Yes, sir, a brother judge of his, who has since gone to the world of spirits, had set him an example conspicuous for the purity of its excellence, and which should have arrested his career in the commission of this cruel outrage upon all humanity. But Judge Chase predetermines the law, then prohibits the counsel from proving to the jury that the law was not as laid down. This was, in effect, an extinguishment at once of the whole right of jury trial. All the privileges and all the benefits of that institution were swept at once from an American court of justice, and scarcely the external form preserved. The law was predetermined by the judge, and the accused was debarred from pleading it to the jury. Of what avail is it, sir, that the jury should be made judges of law and of fact, when the law is not permitted to be expounded to them? Of what avail is it that the accused should have a trial by jury, when he is prevented from stating and explaining to the jury the only grounds upon which his case is defensible? The right to hear and determine facts is *not more the right* of a jury, than the right to hear and determine the law. To deprive them, then, of the privilege of hearing and determining the law, is as much a violation of their rights, as to deprive them of the privilege of hearing and determining facts. The right of the accused to be heard upon the facts, to the jury, is not more his right, than the right of being heard upon the law, to the jury. To deprive him, then, of the privilege of being heard upon the law, to the jury, is as much a violation of his rights, as to deprive him of the privilege of being heard upon the facts to the jury.

But, sir, we are assailed by a train of reasoning on the part of the respondent, in exculpation of his conduct, which it may be proper to notice in part at this stage of the argument. He informs us in his answer, that the law of treason having been solemnly settled by prior adjudications, he was not at liberty to depart from the principles so settled, even had he thought them incorrect, and he enters into lengthy discussion to show the importance of uniform adherence to doctrines properly considered and solemnly established. It is no part of my intention to dispute either the correctness of the decisions previously made upon the Constitutional doctrine of treason, or the propriety of an adherence to those decisions on the part of Judge Chase. For although I consider both extremely questionable, they yet appear to me to constitute no part of the present inquiry. This inquiry is whether the judge was authorized or can be excused for delivering an opinion upon

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the law before counsel were heard on the part of the accused, and for debarring counsel from the exercise of their Constitutional privilege to address the jury on the law as well as the facts, thereby making the opinion thus prejudged and thus extrajudicially delivered completely decisive of the case. And give me leave to say, sir, that the reasoning, resorted to by the respondent to excuse this conduct on his part is, in my opinion, an aggravation of his offence. It is of importance truly that juries should be guarded against improper impressions from counsel, by having the law previously explained to them! And it is a favor to counsel to be informed that the ground they mean to occupy is not tenable, that they may look out for other resources! Would not this reasoning go to authorize a judge in all criminal prosecutions to settle the law before the case was heard? He has nothing else to do, sir, according to this doctrine, than to inform himself of the facts, as in Fries's case, and then, before any trial is had, settle the law; at the same time prohibiting counsel from arguing that to the jury. And if the reason that the law has been so solemnly settled that it cannot be departed from is to form an excuse, the more settled the law, the longer practised upon, the stronger the reason. In every case of murder or theft then it is to confer a favor on the counsel to inform them what grounds are not tenable. It is of importance to instruct the jury what the law is upon the case, that they may be guarded against improper impressions, and then to render this object effectual prevent the counsel from arguing the law to the jury. In the case of Fries I hold it that the knowledge of the judge that the case depended solely upon legal principles is a circumstance highly aggravating his offence. He knew that there was no dispute as to facts, and that by thus prejudging the law, he fixed the destiny of the accused. But it was material to do this to guard the jury from improper impressions! My God! has it come to this? And is this the amount of our boasted Constitutional right of jury trial, that they whose exclusive right it is to determine both the law and the fact, are to be guarded from improper impressions by the prejudged, extrajudicial opinion of him who possesses no right to determine either!

We are told by the respondent, that he not only never interdicted the counsel for Fries from arguing the law to the jury, but that he afterwards on the next day expressly offered to let them take as wide a range as they pleased. Mr. President, I must confess I have been disappointed. I had expected that much of the defence against the first article would have rested upon the transactions of that day. I had so expected, not because of any opinion of my own, that from them any substantial excuse could be extracted; but because public opinion had somewhat inclined to rest an excuse upon that foundation. For myself, it has been my misfortune to be unable to perceive in this part of the transaction any features other than such as afford additional proof of the unjust and oppressive intent with which the judge appears to have acted. Indeed, sir, the respondent must himself have considered the transactions of the second day, as dangerous topics. He has touched them lightly indeed. If his conduct had been so free from blame as is contended in the answer, why was an appearance of fairness to be cast over the scene by having papers recalled upon which the opinion had been written, whilst the opinion itself remained? A short view of this part of the transaction may not be unimportant. It may afford us some strong proofs of the motives of the respondent. We are involuntarily led to inquire why the papers were recalled? Was it because of the oppressive tendency with which they operated upon the case of the accused? Was it because of any conviction on the part of the judge of the impropriety of the steps he had taken, or compunction for the cruel situation in which he had placed poor Fries? No, sir! The papers were recalled because of the firm and manly stand made by the counsel. It was because those counsel were men of character, too independent, and were governed by a sense of duty too high to submit to such a prostration of their rights. The determination to recall the papers was not taken until after it was seen that the counsel would abandon their cause rather than acquiesce in a conduct so oppressive and so injurious.

This recalling of the papers was a farce acted for the purpose of giving a specious appearance to the face of things; but the folly thereof could only be exceeded by the criminality of the first act. Was the crime the greater because the opinion was written? Was it the act of writing the opinion and throwing down the paper to the bar which constituted the evil to Fries? Or was it the formation of a prejudged and extrajudicial opinion completely decisive of the case, and the communication of that opinion in the very presence of those who were to try the accused? In my opinion it was the last. The evil was complete by the act of prejudication, and withdrawing the paper could have no possible effect. The case of the accused had been predetermined—had been extrajudicially predetermined—predetermined by the judge who had no right to determine it at all; and the counsel were left to the forlorn hope of convincing the judge that the opinion delivered by him was erroneous. "They 'might be heard in opposition to the opinion of 'the court at the hazard of their characters." This is his declaration on the second day.

If then I were asked, as were Fries's counsel, on the second day, by the other judge, and as I know many are now disposed to ask, whether, if an error had been committed, I would not suffer it to be corrected? I would answer that this was an act which from its nature admitted of no correction. It was a *crime* complete in its performance, and complete in all its baneful consequences. Repentance, even had there been any, could have afforded no relief; it came too late. As well might a man, after he had inflicted a mortal wound upon another, ask to be forgiven, because before the death of the wounded he was brought to relent, from an apprehension of the

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consequences. In my opinion, Judge Chase had committed the sin not to be repented of.

As to the proffered permission to the counsel, on the second day, that they might proceed without the restrictions before imposed, it has been my misfortune to be unable to perceive either any proof of a disposition to relent on the part of the judge, or any privileges to the counsel which placed them or their client upon ground more advantageous than that on which they had before stood. On the contrary, I think I perceive, in the whole of the judge's conduct taken together, on the second day, a deliberate design to impose upon the understanding of those present, by exhibiting the external form of fairness, whilst he continued to hold on upon the substance of injustice. For, notwithstanding there appeared from his expressions at first a disposition to permit the counsel to argue the cause without any restraint, yet it ought to be kept in constant recollection, that, when brought to explain himself, the general permission which had been thus apparently given was subjected to restrictions of very serious import. The counsel were permitted to argue the law to the jury, but the manner in which they should do so would be regulated by the court. The counsel were permitted to lay down the law, but should not read cases which were not law. That common-law cases, and cases under the statute of treason, but prior to the revolution in England, were not law, and should not be read. Look at the consequence? The counsel might argue the law to the jury, but were interdicted from the use of those authorities which in their opinion bore most strongly upon the case, and upon which, it was within the knowledge of the judge, they had principally relied in the prior trial. They might lay down the law to the jury, but should not read cases which were not law. And who was to determine whether the cases offered by counsel were or were not law? The judge. And pray, sir, was not the right of the jury to determine the law as effectually invaded by the judge taking upon himself to determine each case as it was offered, as their right was invaded by the judge determining upon the whole together? I maintain, sir, that it is not the right of the judge in criminal, and especially in capital causes, to determine that any case is not law: for, if he can determine that question as to a single authority, and upon that ground arrest it from the jury, he may do so as to all, and thus as effectually abolish the great privilege of trial by jury. I know it may be objected to this reasoning, that unless some restriction is imposed upon counsel, they may abuse their privileges by reading anything, however inapplicable to the jury. This, sir, is to suppose an extreme case, and it is never correct to reason from extreme cases. It is no proof against a privilege, that it is subject to be abused. And there is security against extreme abuse in this privilege from the regard which professional men necessarily feel for their professional reputation.

Here, Mr. President, we might close the argument upon the first article; but it is not possible—no, sir, not possible—here to stop our reflections. When we review the ground which has been already travelled over; when in that review we behold an American citizen summoned to the bar of justice to undergo a trial in which his life is at stake; when we behold his judge, contrary to all precedent, and in violation of every feeling of humanity, pre-occupying the only ground upon which the case of the accused was defensible, and closing upon him this only possible avenue to safety, truly I feel that my feeble powers of language are not competent to a description of the scene: it must be left to the strong expression of silence. For this transaction, then, in the name of the American people, we denounce Judge Chase. We denounce him for invading their most valuable privilege, *the trial by jury*. We denounce him for taking into his own unhallowed hands the disposal of the life of an American citizen, and we invoke the justice of the nation to expiate by the proper punishment, this unholy sin.

The second, third, and fourth articles, exhibited by the House of Representatives, charge the defendant with a course of conduct upon a particular trial which affords many grounds of accusation. In this case it is true no unfortunate individual was charged with an offence which demanded his life as an expiation; yet, sir, there were other rights involved equally sacred in the laws of a free country. The liberty and the property of the accused were the price of a conviction. In casting our eyes over the ground upon which the different scenes of the transaction now about to be examined are spread, we are struck with a feature not usual in the history of human concerns. It would seem that even the restraint of appearances was no longer felt. We find the respondent setting out with a conduct, which seemed to prove that the fate of the accused was fixed. We find him pursuing a system of conduct throughout, which arrested from the accused some of his established and most valuable privileges. We find him endeavoring to heap shame and odium on those who occupied the station of advocates, because they would not tamely yield to his unwarrantable invasion of long established rights.

Mr. President, notwithstanding the labored attempts made by the defendant in his answer to exculpate himself from imputation in compelling Mr. Basset to serve upon the jury in the trial of Callender; yet, sir, I must be permitted to say that those attempts appear to me to be only the exertions of a mind conscious of impropriety, and seeking to impose upon the understanding of others. The test adopted, by which to try the impartiality of the jurors, in that case may possibly by some be held a correct one; but the manner of applying that test as then practised upon, is what I believe can be accounted for upon no other supposition than that of a determination on the part of the judge to procure the conviction of the accused. Upon what other principle can it be accounted for, that the jurors should be asked whether they had formed and delivered an opinion upon the charges laid in the indictment, when they knew not and were not suffered to know

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what those charges were? Why else could it be laid down by the judge, that because the individuals called to serve upon the jury did not know what charges were in the indictment, (having never seen it nor heard it read,) that therefore they could not have formed and delivered an opinion upon the subject? And why else did the judge, when this monstrous logic was contradicted by the fact of one of the jurors delivering in open court an opinion upon the whole subject of those charges, without having seen, or heard the indictment read; why else did the judge, in the teeth of this damning fact, order the jurors sworn?

Every juror sworn might, like Mr. Basset, have formed and delivered an opinion which concluded the conviction of the accused, and yet because they did not know that the subject-matter of such opinion constituted the charges in the indictment, having neither seen it nor heard it read, the expression of such opinion created no disqualification. Unworthy evasion! An evasion which prevents the doctrine of disqualification in a juror from receiving any practical operation. An evasion which effectually puts at naught that principle of the Constitution so often adverted to in a former part of the argument, that "the accused shall enjoy the right of a trial by an impartial jury." Upon this point I beg leave to read two authorities. [Mr. Early here cited 3 Bac. Abr. 176, and Co. L. 157.]

But we are told by the respondent in his answer, that the declaration made by Mr. Basset did not disqualify him, because it contained no direct opinion as to the guilt of the traverser. This I understand to be the amount of all the labored reasoning and nice distinctions drawn by the respondent upon this point. There is, sir, a plain common sense rule to govern us upon this subject, which in my opinion is as safe in its application as it is reasonable in its principle. A juror must be indifferent. How must he be indifferent? What kind of indifference is this which is made necessary? The manner in which Judge Chase has stated and explained this rule is certainly calculated to confuse and mislead. "The juror, says he, must be indifferent between the Government and the accused as to the subject-matter."

Must the juror in reality be indifferent between the parties as to the subject-matter of prosecution only? Will not a prejudice against the accused, flowing from other causes, create a disqualification? I address myself to those who well know that partiality arising from a variety of relations in society, as well as prejudice arising from a variety of causes, destroys that character of indifference necessary to render a juror competent, and that this partiality or prejudice need not relate to the subject-matter of prosecution.

So also I apprehend that character of *indifference* is as effectually destroyed by a prejudice as to the subject-matter, without any prejudice as to the person. I mean the prejudice of a prejudication of the criminality of the subject-matter. We meet with the rule every day, that it is good cause of challenge to a juror that he hath expressed an opinion upon the subject-matter of prosecution. Wherefore then the manner of stating the rule, which we find adopted in the answer? Most evidently to suit the respondent's case. What, sir, must a juror, to be so prejudiced as to be disqualified, have expressed an opinion not only that the subject-matter of prosecution was criminal in law, but that the person prosecuted was the author of the crime? Yes, sir, according to the doctrine of the answer, he must have prejudged both *law* and *fact*. In other words, although Mr. Basset had formed and delivered an opinion that such a book as "The Prospect Before Us," came within the sedition law, yet, not having said that Callender was the author or publisher, he was still a competent juror. Suppose a man indicted for murder, in a case where there is no dispute as to the fact of killing, (and here there was no dispute as to the fact of publishing,) but the defence set up was that he was excusable. A juror has given his opinion, in reference to the act, that such a killing does amount to murder, but without saying that the person prosecuted was the murderer; will any man say this expression would not disqualify him? I am bound to presume not. Sir, in the case of Callender, although Mr. Basset did not say that the person prosecuted was guilty, yet he did in effect say that whoever wrote or published the book was guilty. And give me leave to remark here that in prosecutions for libels, the question of law, as to their criminality, is generally the only question of dispute. The fact of publication is one about which there seldom occurs any difficulty, and has to be proven merely because not admitted. To have expressed an opinion then upon the question of law in such cases is substantially to have prejudged the whole case. A juror under such circumstances cannot be called impartial. As well might it be alleged that Judge Chase himself was impartial, as to the case of Fries, after he had delivered the opinion which we have before discussed.

We are told in the answer that the guilt of the traverser was not prejudged by Basset, for another reason; that as the charges to make them criminal must have been false, so Callender might have exculpated himself by proving their truth. But, sir, the traverser was at liberty to rest his defence either upon a justification or want of criminality in law, or upon both. He was not bound to disclose which, nor could the judge officially know which. Both and each of these grounds were proper for the jury to determine under the plea. The acquittal of the traverser then did not depend exclusively upon the proof of the truth of the charges.

Again, we are told that the juror barely expressed his opinion upon the book, as the contents thereof had been represented to him. The same may be said of almost every other case. Few, very few, jurors are spectators of a murder, or an act of treason. Any opinion they may have formed and delivered of the actual guilt of the person charged must be, in nine cases out of ten, from representation. Few, very few, of the jurors who were summoned in the case of Fries, had

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been spectators of the acts which were alleged to have been treasonable; probably not one of them. Yet we learn from the answer of Judge Chase, that in that very case several were repelled from serving, because of the opinions which they acknowledged they had given. Such opinions must, in nine cases out of ten, be bottomed upon representation. There are numerous secret crimes, which, from their very nature, preclude the possibility that an opinion concerning them, however positive, and however decisive of the conviction of the accused, should be founded upon any previous knowledge of facts. And yet, sir, I presume no person will deny that, in such cases, a juror may, nevertheless, so express an opinion as to disqualify himself from serving.

But, sir, the scene rises upon us. We have now to examine a part of the transaction for which, I had supposed, human invention might be tortured for a palliation in vain. I allude to the rejection of Mr. Taylor's testimony. The reason assigned for that rejection was, that the witness could not prove the truth of the whole of *any one charge.* Let us, for a moment, examine the consequences of this doctrine. According to the judge's own decisions then, as well as his doctrine now, each charge laid in the indictment must have constituted a separate offence. For it is explicitly declared both by Mr. Hay and Mr. Nicholas, that when an application was made to continue the case, because of the absence of some material witnesses, the application was rejected, upon the ground that it did not appear from the affidavit filed that the witnesses, so absent, could prove the truth of all the charges. That proof of the truth of a part only, would be of no avail, and that the whole must be proved to entitle the traverser to an acquittal. Each charge in the indictment, then, must have constituted a *separate offence;* for the charges cannot be made to help each other out. One charge, however, it seems might consist of different facts. This was the case with several in that indictment. It was particularly the case with the very charge, the truth of which Mr. Taylor was called to prove. "The President was a professed aristocrat. He had proved faithful and serviceable to the British interest." Here was a charge made up of two distinct facts; so distinct in their nature, that the knowledge of their truth might not only rest with different persons, but was extremely likely not to rest with any *one* witness. Put the case of a man charged with any offence—murder, theft, or any other crime you please. There may be a string of facts upon the proof of which the defence may depend; some within the knowledge of one man; some within that of another. Was it ever heard of before, that, because one witness could not prove the existence of all those facts, that, therefore, such witness should not be examined as to what he did know? Or, if some of the facts depended upon written testimony, was it ever heard of before that, therefore, a witness should not be examined as to those resting on oral testimony? To these questions no man will answer in the affirmative. Why, then, was an unheard-of and palpably absurd doctrine brought to bear in Callender's case? Was the defence of justification, under the sedition law of the United States, such an anomaly in its nature, that none of the established rules of jurisprudence would apply to it? Was it a thing so *entire* in its nature, that it could not consist of different parts? I have always been taught, and the respondent's answer confirms the principle, that a defence must apply to the whole of a charge. If, then, a charge consist of different parts, surely, so must the defence. But, according to Judge Chase, be the parts ever so many, they shall not be proven, unless the proof can all be made by one witness, or unless it appear that the defendant has proof in reserve to establish all. I ask this honorable Court how it can appear that the defendant has proof in reserve applying to all the parts of a charge? Suppose a witness called to substantiate *one part,* how is it to be known to the court whether there is or is not other testimony behind, in the power of the party, by which the residue of the charge may be established? We are told, by the respondent, that none of the questions propounded to Colonel Taylor had any application to the charge, except the first, and this only to a part of the charge; and that this question was repelled because no proof was offered as to the residue. I answer, sir, that the judge had no right to know, nor were the counsel bound to disclose whether there was such testimony in reserve or not. It is a new doctrine, sir, that the legal admissibility of testimony is to depend upon what the party can afterwards prove by other testimony. It is the right of the party to establish his defence as far as he can, and if he fail in establishing it completely, the evil is to himself alone. And, permit me here to add, sir, that whether he succeed in establishing his defence or not, is a question for the jury to determine, and not the judge. The judge possesses no right to *determine,* even after the testimony is finished, whether that testimony has or has not established the defence; still less, then, can he, before it is heard, determine that it will not make good the defence.

We are told, in the respondent's answer, that his rejection of Colonel Taylor's testimony can be no proof of a determination on his part to oppress, as such an intention might have been gratified by the conviction of the traverser upon the other articles. This is true, very true, upon the principle that the judge and not the jury was to determine the question of law in criminal cases. If the criminality of the charges in point of law, was to be settled by the judge, his conclusion is certainly correct. But if, as I apprehend, the criminality of the charges was to be exclusively determined by the jury, then it was not entirely certain that the judge might have been sure of his object, notwithstanding the tenth charge had been proved. For aught he knew, or ought to be presumed to have known, the jury might have been of the opinion that the other charges did not come within the sedition law, and might have, therefore, given a verdict of acquittal.

But, Mr. President, this apart, it is a novel proof

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of innocence to me, at least, that a man should have the magnanimous boldness to disregard appearances. It is a novel proof of innocence that a man should possess a spirit daring enough to insult the common sense of mankind. Yes, sir, I yield to the respondent the full share of glory, which he is desirous of accumulating from this source.

The last of the three articles now under examination goes on to charge the defendant with various acts of injustice, partiality, and intemperance, highly derogatory to his character as a judge, and equally injurious to the reputation of the American bench. Without fatiguing the patience of the honorable Court with an inquiry into the proofs and an investigation of the criminality of all the particulars here enumerated, I beg leave to call their attention to one part of the judge's conduct. which appears to me to stand pre-eminent for its open defiance of all justice, and its flagrant violation of the Constitution of this country. I allude to the refusal to continue the cause. The reasons assigned for that refusal, were, we learn, that it did not appear by the affidavit exhibited, and upon which the motion for a continuance was founded, that the witnesses, whose testimony was wanted, could prove the truth of all the charges laid in the indictment. This conduct, Mr. President, strikes me as being of the same family with the rejection of Mr. Taylor's testimony. The charges in the indictment are in number many. They embrace a numerous collection of facts, some of them assimilated, others extremely variant in their nature, many of them involving legal difficulties as to their criminality. Under the plea of not guilty, to the indictment, it was competent to the traverser not only to prove the truth of the charges in point of fact, but also to prove that any of the charges were not criminal in point of law. It was competent for the defendant to prove the truth of a part of the charges, and to contend that the rest were not seditious. Both these grounds of defence were proper for the jury, and the jury possessed the right to pass without control upon both. With what propriety, then, could the judge pronounce from the bench that to entitle the accused to a continuance, it must appear that he could prove the truth of all the charges? What, sir, was the question of law as to their criminality, a point which the judge here again arrogated to himself the exclusive right to determine, and that, too, before the traverser was heard? Indeed, it would appear that, in this case also, as in the case of Fries, the law was to be arrested from its proper organ, the jury, and to be exclusively passed upon by the judge himself. What other construction can be given to his determination that the truth of all the charges must be proven? There surely could be no necessity for this, unless they were all seditious within the act of Congress. By determining, then, that all must be proved true, the judge did determine that all were seditious. This, sir, it was the exclusive right of the jury to determine.

The Constitution of this country has most wisely provided, that "the accused shall have compulsory process for obtaining witnesses in his favor. Of what avail is this provision if time be not given for their attendance? Of what avail to grant the process, and, before the witnesses can by any physical possibility reach the place, force the accused to trial? This conduct, sir, is worse than mockery. It is an insult to the common sense of mankind. It is high treason against the majesty of the Constitution of a free country. The Constitution of the United States gives to the accused the right of process to compel the attendance of his witnesses. But, Judge Chase so administers, that the accused is indicted, arrested, tried, convicted, and punished, all in the same term, whilst his witnesses are distant hundreds of miles.

After all this, Mr. President, surely we shall not be asked for proofs of corrupt intent. They are too thick upon every feature of the transactions which have been examined. The defendant is, on all hands, acknowledged to possess an acquaintance with the laws and Constitution of his country, which yields not to that of any other man in this nation. He is, on all hands, acknowledged to possess talents which might do honor to any tribunal. With such knowledge and such talents, permit me to ask, if it was within the compass of possibility that he should mistake in points so familiar as those in which he is charged with criminal conduct? Although all things are possible, yet there are things the extreme improbability of which defies belief. Among those I rank the supposition of mistake on the part of Judge Chase in the trial of James T. Callender. We might just as well be asked for proof of malice in a case where a man wilfully and without provocation kills another. In such a case as the one now under consideration, the answer is, that the criminal intent is apparent upon the face of the act. And there is a question, sir, which strikes me as applying itself with almost irresistible force to the present discussion. Can it be that such outrages should be committed upon the most ordinary principles of law and justice, and yet the conduct of the judge not be influenced by corrupt motives? Can it be that everything should be done to favor the prosecution and stifle the defence, and yet justice be administered "faithfully and impartially and without respect to persons?" But, if all this be insufficient, I pray this honorable Court to recollect the declarations of the judge in relation to the case, as attested by several witnesses.

The fifth and sixth articles rest upon grounds so extremely simple, and so easily comprehended, that it appears totally unnecessary to fatigue the patience of the honorable Court by dwelling upon them.

The seventh article is as follows:

"That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by

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refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood 'that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was'—but checking himself, as if sensible of the indecorum which he was committing, added, 'that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter,' or words to that effect; and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States, the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of 'Mirror of the Times and General Advertiser,') and, by a strict examination of them, to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare."

The respondent stands here charged with a conduct, than which, in my opinion, nothing could be more at war with his official duty—nothing more tarnish his official character. The Constitution and laws of this country certainly intended in erecting high judicial tribunals, that those who might be appointed to minister therein, should be impartial dispensers of justice between such as might resort thither for an adjustment of their differences. In public prosecutions more especially was it intended that such dispensation should be made without respect to persons. In these, above all other cases, ought a judge to stand aloof from influence, free from predilection towards one, or prejudice against the other. Most peculiarly here is it his duty to stand firm at his post, resisting the overbearing influence of a powerful public, and protecting the rights of the accused in so unequal a contest. But Judge Chase, disregarding these principles, always held sacred in a land of laws, converts himself into a hunter after accusations. He who, in the humane language of the laws, should be counsel for the accused, becomes himself an accuser. He, whose duty it is impartially to decide between the prosecutor and prosecuted, becomes himself the procurer of prosecutions.

I have always been taught that the character of an informer, in any station of life, was deservedly considered as the reverse of reputable. What, then, shall we say of him who descends from the judgment seat of the nation to inform against and direct the prosecution of one against whom he avows the strongest antipathy, and over whose trial he himself has to preside? Surely, sir, his thirst for punishment was great. Surely it was extreme indeed when he could not wait for the tardy motion of the public prosecutors. If our judges are thus to turn informers—if they are thus to seek after objects for themselves to try and themselves to punish—then indeed must this country, heretofore considered an asylum from oppression, become itself the nursery of oppression in its most odious form. And this Government, heretofore the pride of humanity, will be held up as an object of scorn and derision to the nations of the earth.

The eighth article is in these words:

"And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness; yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with an intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a Judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion, and in a proper manner, were at that time, and as delivered by him, highly indecent, extrajudicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partisan."

It is not my intention, Mr. President, to trouble the court with many observations upon this article; not because of any opinion that it is unimportant. I believe it equally important with any in the catalogue. I believe it possesses a peculiar importance in affording, from the testimony by which it is supported, proofs of the spirit by which Judge Chase was usually governed in his official conduct.

There are features too in that part of the judge's official conduct, charged in this article, which place him in a point of view awfully grand. We have heretofore been viewing him as bringing his talents to bear upon individuals. Here we see

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his genius rising, in the majesty of its strength, to far higher objects. Here we see him consigning over whole governments to the scourge of his own avenging wrath. Whithersoever he turned his eyes, whether to the State constitution and laws, or to the laws and Constitution of the whole Union, they were equally exposed to the whip and the rack.

Mr. President, there is no truth more forcible than that expressed in the language of this article, that "mutual respect and confidence between 'the Government of the United States and those 'of the individual States, and between the people 'and those governments respectively, are highly 'conducive to that public harmony, without which 'there can be no public happiness." Indeed, sir, it may with truth be said, that this respect and confidence are *essential* to that harmony, without which we can enjoy no public happiness. What words then can describe in its proper colors the conduct of an officer of the highest judicial tribunal of the General Government, who abuses the duty and perverts the privilege of his station to destroy the confidence and excite the odium of the people against not only their State government, but that of the United States? He who was seated on the judgment-seat of the nation to execute the laws of the Union, converts that very judgment seat into a forum, from whence to pronounce a Philippic not only against the State government with which he there had no right to meddle, but against that very government under whose authority he was there sitting, and whose laws he was sworn there to execute. Not content with endeavoring to excite discontent and odium against the government of the State of Maryland, the Congress of the United States must be held up as sacrilegious destroyers of the national Constitution.

Mr. President, I have taken those views of this subject which presented themselves most forcibly to my mind. I have finished all I intended to say upon this argument. There has, in my opinion, been established against the respondent a volume of guilt, every page of which calls for punishment at the hands of this nation. I leave the case and the respondent in your hands. I leave them where the Constitution of this country has placed them. I leave them where I hope, and I believe, there will be found a different measure of justice from that which Judge Chase has been accustomed to administer. I leave them where justice *will* be administered "faithfully and impartially, and without respect to persons."

Mr. Campbell then rose and spoke as follows:

Mr. President, and Gentlemen of the Senate: It is with peculiar diffidence I rise, in compliance with the duty assigned me, to address this honorable Court on this important occasion. Sensible of my own incompetency to do that justice to the investigation of this cause which its importance, and the influence that the whole transaction is calculated to have on the jurisprudence of our country, would seem to require, I should have felt disposed to decline the undertaking; but called upon by the representatives of the nation to aid in supporting a prosecution which they have deemed it proper to institute for the public good, I conceive it my duty to yield up, in some degree, my own feeling to obey the voice of my country, and perform the duties imposed upon me thereby. Under this impression I shall endeavor to execute the trust reposed in me on this occasion in such manner as the very short time left me from other public avocations, and the limited means of information on subjects of this nature, which the present situation of this place affords, will enable me. I feel, however, sir, considerable confidence in this undertaking, from the consideration that there are other gentlemen associated with me on this occasion, who are fully competent to do complete justice to the subject. And a still higher degree of confidence arises from a perfect conviction that the honorable members who compose this high tribunal, and who are to pronounce the final decision in this cause, are well qualified to investigate its merits; and that their talents and experience are such as to preclude even the possibility of a defeat of justice taking place, in consequence of any deficiency that may exist in the exertions of counsel on either side.

The scene, presented to the nation by this trial, is more than usually interesting and important. One of the highest officers of the Government, called upon by the voice of the people, through their representatives, before the highest tribunal known to our Constitution—that same tribunal that sanctioned his elevation—to answer for the abuse of the power with which he had been entrusted! It is a melancholy truth, that derogates much from the dignity of human nature, but it is a truth that has been for ages established by experience, that high and important powers have a tendency to corrupt those on whom they are conferred. Few minds are possessed of sufficient integrity and independence, when elevated above the ordinary level of the great mass of their fellow citizens, to resist the impulse their high station gives them, to grasp at still greater powers, and prostitute those which they already possess.

Hence it has been the great exertion of all governments, who regard the rights and liberties of the people, and still must continue to be so, to watch over the conduct of the high and confidential officers of State, and guard against their abusing the powers reposed in them. For this purpose the mode of trial by impeachment was resorted to in very early times in that country from which we have derived most of our laws and usages. Near five hundred years ago, the representatives of the people in that nation felt themselves clothed with sufficient authority to check the abuses of power, in the highest officers under the Crown, by calling upon them by impeachment to answer before the House of Lords for their conduct, and punishing them for such acts as were unauthorized, illegal, or oppressive.

It was a wise and politic measure to have charges of this nature tried by the highest tribunal in the nation, that would not be *awed* by the great powers and elevated standing of the accused, nor influenced by the popular voice of the accusers,

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further than a strict regard to impartial justice would require. As I conceive, therefore, that pure and unstained impartiality ought to be the characteristic feature in the trial by impeachment, I shall for myself, and I conceive I may in the name of the representatives of the people, utterly disclaim any design or wish that party considerations, or difference in political sentiments, should, in the remotest degree, enter into the investigation, or affect the decision of this question. Yet, in order to ascertain the motives that actuated the respondent, it may become necessary to notice the difference of political sentiments, so far as regarded the accused, and those who are stated to have been injured by his conduct, at the time those transactions took place, that gave origin to this prosecution.

In the view which I propose taking on this subject, I shall in the first place notice the provisions in the Constitution relative to impeachment, and endeavor to ascertain the precise object and extent of such provision, so far as the same may relate to the present case.

The first provision in the Constitution on this subject, (art. 1st, sec. 3.,) declares, that the Senate shall have the sole power to try all impeachments. Here we discover the great wisdom of the framers of the Constitution. The highest and most enlightened tribunal in the nation is charged with the protection of the rights and liberties of the citizens against oppression from the officers of Government under the sanction of law; unawed by the power which the officer may possess, or the dignified station he may fill, complete justice may be expected at their hands. The accused is called upon before the same tribunal, and in many instances, before the same men, who sanctioned his official elevation, to answer for abusing the powers with which he had been entrusted. Men who are presumed to have had a favorable opinion of him once, are to be his judges; no inferior or coordinate tribunal is to decide on his case, which might from motives of jealousy or interest be prejudiced against him and wish his removal. No, sir, his judges, without the shadow of temptation to influence their conduct, are placed beyond the reach of suspicion.

The next provision in the Constitution declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Here the Constitution seems to make an evident distinction between such misdemeanors as would authorize a removal from office, and disqualification to hold any office, and such as are criminal, in the ordinary sense of the word, in courts of conmon law, and punishable by indictment. So far as the offence committed is injurious to society, only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment, and punishable only by removal from office, and disqualification to hold any office; but so far as the offence is criminal, independent of the office, it is to be tried by indictment, and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As, if an officer take a bribe to do an act not connected with his office, for this he is indictable in a court of justice only. Impeachment therefore, according to the meaning of the Constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner in which he performs the duties thereof; and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation, than of a criminal prosecution. And though impeachable offences are termed in the Constitution high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer; and even treason and bribery can only be inquired into by impeachment, so far as the same may be considered as a violation of the duties of the officer, and of the oath the officer takes to support the Constitution and laws of the United States, and of his oath of office; and not as to the criminality of those offences independent of the office. This must be inquired into and punished by indictment.

This position is strongly supported by the mode of proceeding adopted by this honorable Court in cases of impeachment. You issue a summons to give notice to the accused of the proceeding against him; you do not consider his personal appearance necessary; you issue no compulsory process to enforce his personal attendance; and you pass sentence, or render judgment on him in his absence. But, in all criminal prosecutions, compulsory process must issue at some stage of it to enforce the defendant's appearance; unless outlawry in England be considered an exception, which, it is believed, is not resorted to in this country, and his personal appearance is considered absolutely necessary; and in almost every case he must be present when sentence is pronounced against him. This construction of the Constitutional provision appears to be absolutely necessary, to avoid the absurd consequence that would arise from a different construction; that of punishing a man twice for the same offence, which could not have been intended by the framers of the Constitution. The nature of the judgment which you are bound to render, and not to exceed, appears also conclusive on this head. You can only remove and disqualify an individual from holding any office of honor, trust, or profit. This cannot be considered a criminal punishment; it is merely a deprivation of rights; a declaration that the person is not properly qualified to serve his country. Hence, I conceive, that, in order to support these articles of impeachment, we are not bound to make out such a case as would be punishable by indictment in a court of law. It is sufficient to show that the accused has transgressed the line of his official duty, in violation of the laws of his country; and that this conduct can only be accounted for on the ground of impure and corrupt motives. We need not hunt down the accused as a criminal, who had committed crimes of the deepest die; and this honorable Court are not authorized to inflict a punish-

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ment adequate to such crimes, if they had been committed and could be established. With this view of the meaning of the Constitutional provision relative to impeachments, I shall proceed to examine the articles now under consideration, and the evidence given to support them. In the course of this examination, we apprehend it will clearly appear that the whole conduct of the judge in the several transactions, for which charges are alleged against him, *had its origin* in a corrupt partiality and predetermination unjustly to oppress, under the sanction of legal authority, those who became the objects of his resentment in consequence of differing from him in political sentiments; turning the judicial power, with which he was vested, into an engine of political oppression. So completely, it is conceived, has this motive pervaded the whole of his judicial transactions now in question, that there is not a single act charged in the articles of impeachment, that is not strongly marked with manifest oppression, springing from political intolerance, under the mask of administering justice. This is the corrupt origin from which have issued all the evils complained of; this has for ages been the scourge of society; and it is all important that, in our country which is yet in its infancy, when this poisonous germ cannot have taken deep root, it should be crushed in its embryo, and not permitted to gather strength by the sanction of high and superior authority.

In order to observe some arrangement in the investigation of this subject, I propose to consider, first, under one general view, the conduct of the judge on the trial of Fries for treason, as stated in the charges contained in the first article; and,

Secondly, I will consider also, under one general view, the conduct of the judge in the trial of Callender for a libel, as stated in the several charges contained in the impeachment. The fifth and sixth articles I will leave to be supported by those gentlemen associated with me in the management of this prosecution, who have been more conversant than myself with the laws of, and practice of the courts in Virginia, upon which the support of these articles materially depend; and the remaining articles, to wit, the seventh and eighth, will be chiefly relied upon by me, to show the spirit of oppression, partiality, and political intolerance, that marked the whole judicial career of the judge during the course of these transactions, thereby establishing more clearly the motives that actuated his conduct in the several acts charged as misdemeanors in the articles already noticed and relied upon.

In examining the first article, I shall rely upon the following positions:

First—That, under the eighth article amendatory of the Constitution of the United States, (referred to in this article of the impeachment,) which secures to the defendant, in all criminal prosecutions, the assistance of counsel, he is thereby entitled to the *right* of such counsel being heard in his defence by the court, before a decision be made and declared against him on the law arising in his case; and, also, that such counsel should exercise their professional rights in making his defence, according to the known and established laws and usages of the nation, free from any arbitrary control or restriction whatever.

Secondly—That, in the trial of Fries for treason, the judge did, by delivering an opinion in writing on the law arising in the case, before counsel were permitted to be heard in his defence, effectually deprive the defendant of any benefit from the assistance of counsel.

Thirdly—That he imposed on the counsel engaged for the defendant, arbitrary restrictions and control, in the exercise of their professional rights, unknown to, and unauthorized by the laws and usages of the nation, which compelled them to relinquish the defence of the prisoner.

Fourthly—I will then insist that this conduct was such a flagrant violation of his duty, as could only spring from corrupt motives, and a disposition to oppress those who became the objects of his resentment.

With regard to the first position, that counsel ought to be permitted to be heard for a defendant before a decision should be declared against him; and, also, that the counsel ought to be protected in the exercise of their professional rights, according to the usages and practice of courts, it appears to me substantially supported by the Constitutional provision already noticed, securing to the defendant the assistance of counsel, and to be a necessary consequence of that provision; and essential, in order to give it effect. For, in the first place, as to the law, of what use would the assistance of counsel be to the defendant, if a decision of the law arising in his case should be deliberately made up by the court, committed to writing to give it more solemnity and effect, and delivered, or made known, before such counsel were permitted to be heard in his defence? What hopes could the counsel entertain of being able to convince a court that an opinion thus deliberately formed and solemnly made known, was incorrect, and ought not to be given? Surely, if the right of the assistance of counsel, secured to a defendant, means anything, it must mean that he should have an opportunity, through his counsel, to make his case known to the court, to explain the law arising thereon, and show, as far as it could be done, that, according to the true construction of the law applying to his case, or under which he is charged, he is not subject to its penalties; before their opinion be declared on the subject, while the mind of the court is unbiassed, open to conviction, and capable of duly weighing the arguments that may be advanced on either side. But when an opinion is deliberately declared, or made known, against a defendant, before he is permitted to be heard by counsel, his case is prejudged, the character of the court is committed in a very great degree to support such opinion, the arguments of counsel cannot be expected to be heard by such a court with impartiality and fairness, that go to prove such opinion to be erroneous; and under such circumstances, the aid of counsel is a mere name without a benefit; a form without substance. But

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again, if such counsel were subject to the arbitrary control and restriction of a court, of every capricious and irritable judge; if they were not protected in the performance of their professional duties, so long as they acted within the laws of their country and the known usages and practice of courts, of what use would their assistance be to the accused, or what substantial aid could they afford him in making his defence? The counsel would have no rule to direct them in shaping their client's defence. When they had prepared to examine his cause in the manner heretofore usual in courts, and upon grounds which they conceived most likely to establish his innocence and procure his acquittal, they might be stopped at the very threshold of the defence; surprised with a new and unheard-of mode of proceeding; presented with a digested and formal opinion upon the very points they intended to contest; and informed that, in the remarks they might be permitted to make to the court, to show that such opinion was not correct, they must confine themselves in their endeavors to establish the doctrine they might advance, to the producing of authorities of a certain description; and must not extend their researches after decisions, on similar cases, beyond certain prescribed limits, as to time and the kind of decisions. Under such circumstances no counsel could render any substantial service to the accused; none would be found to submit to the tyranny of such a practice

Further, it is conceived an universal rule of construction, that when a right is secured to any person, by a law, the means of acquiring the benefit of that right are thereby also secured to him. The Constitution secures to the defendant in all criminal cases the assistance of counsel in his defence; the only means by which the benefits of that right can be obtained by such defendant, it is conceived, must be, by permitting counsel to be heard in his behalf, before his case is decided against him, and by protecting such counsel in the due performance of their professional duties. These rights are secured to counsel for the benefit of those for whom they are concerned, and whose interests they advocate; and not for their own advantage. And here it may be proper to observe, that though counsel may be considered in some respects as officers of the court, and in a certain degree subject to their control and direction; yet, it is certain, while they act within the line of their duty, and the known sphere of their action as counsel, their rights are as sacred as those of the court; and they are, in performing their professional duty, in a certain sense, as independent of the court, as the court are of them.

The *second* position proposed to be established and relied upon, to wit, that the judge did, in the trial of Fries for treason, by delivering an opinion in writing on the law arising in the case, before counsel was permitted to be heard in his defence, effectually deprive the defendant of any benefit from the assistance of counsel, is in part a deduction from the preceding position, and supported by it. The fact of the judge's delivering an opinion in writing, in this case, against the defendant, previous to permitting counsel to be heard in his defence, is admitted by the judge in his answer, and is also established beyond a doubt by the evidence of Messrs. Lewis, Dallas, Tilghman, and indeed of all the witnesses on the subject. No difference exists in the evidence of the different witnesses with regard to the written opinion being delivered before the cause was heard. The statement briefly is, that after the court met, the jury were called, and many of them answered and appeared; the prisoner was (Mr. Lewis believes) in court; the counsel assigned the prisoner had not all got to the bar, when the judge handed down, or threw on the clerk's table, several papers, each containing the opinion of the court on the law that was to decide the defendant's fate: one of these copies, the judge said, was to be given to the counsel for the defendant; one to the Attorney for the United States, and one to be delivered to the jury before they retired on the case. Some of the gentlemen about the bar began to copy these papers: Mr. Lewis, one of the counsel for the defendant, refused to receive or read, it, declaring his hand should never be tainted by reading a prejudged opinion in any case, but especially in a capital one. The papers were subject to public inspection; the jurymen then might, and probably did, read the opinion. Thus the formal opinion of the court on the law, being made known to the jury before the cause was heard, would bias their minds against the defendant, and, render an impartial inquiry into his case next to impossible. The counsel had no hopes of changing an opinion thus deliberately and formally made up, and stamped with the solemnity of a written sentence; the judge by deciding the law seemed to have decided the facts also, as he must have assumed them as proved, in order to found his opinion upon them; and indeed the answer states that no doubts existed with regard to the facts or evidence in the case, on either side; the jury would, therefore, consider such opinion as a decision of the whole case, and would be prepared, so far as they could be influenced by the judge, to pronounce the defendant guilty, before they heard the cause examined, or even a syllable of the evidence. In a case thus situated, how could the defendant be said to enjoy the benefit of the assistance of counsel; when the whole case was decided before the counsel was permitted to be heard; and no ground left for them to occupy? This mode of proceeding, adopted by the judge, was, therefore, a direct violation of the Constitutional right secured to the defendant, of having the assistance of counsel in all criminal prosecutions; for it cannot be pretended that to hear counsel after the cause was substantially decided, would be complying with the true intent and meaning of the Constitution; for this would render the provision totally futile and useless, and would be calculated only to deceive unfortunate defendants, who might place reliance upon it. The judge, in delivering this opinion, introduced a mode of proceeding new and before unknown in our jurisprudence; and contrary to the known and established usages and practice of the courts in

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our country. All the legal characters that have been examined as witnesses on both sides, and most of the witnesses to this article were legal characters, prove the fact, that no such practice ever did exist in this country; not one solitary case can be adduced of a similar proceeding by a judge, either in this country or in that from which we have taken most of our laws and usages. The writers on the laws of England afford no instance of this kind; and it was left for Judge Chase to introduce this extraordinary and before unheard-of mode of administering justice.

But it is insisted on, by the judge in his answer, that the opinion was a correct one, as to the law of treason, supported by former decisions, and, therefore, there would be no harm in making it known, at the time and in the manner he did; that it could not mislead the jury, but would guard them against being imposed upon by the ingenuity of counsel. Though this reasoning may appear plausible at first view, it will be found, upon examination, to be fallacious, tending to establish a dangerous doctrine, that would in principle go the whole length of justifying a judge, for dispensing with the intervention of a jury altogether in trials for crimes. If a judge may give a solemn opinion against a defendant in a criminal case, without permitting counsel to be heard in his behalf, when the party is entitled of right to the assistance of counsel, and then justify such conduct by showing that the opinion itself was correct, and must have been delivered by him in some stage of the trial; why may he not pass sentence of execution upon a criminal without the verdict or intervention of a jury? And, when charged with this conduct as unconstitutional and illegal, justify himself by showing that the sentence he passed was a correct one, that the facts in the case were notorious and admitted on all hands; that the law was clear and had been established by former decisions that could not be shaken; and that, therefore, the intervention of a jury could be of no service to the defendant, as they must find him guilty; and that, as he would have to declare the same sentence he had pronounced, after their verdict should have been rendered, it could do no harm to pronounce it without such verdict; as it could not do an injury to pass a correct sentence at any time? This reasoning would be of the same kind with that advanced by the judge in the case before you, to justify him in delivering a written opinion, before the cause was heard, or the defendant permitted to make his defence by counsel; for if in the one case it would be a violation of the Constitutional right of a trial by jury, secured to defendants in criminal prosecutions, so in the other case it would be equally a violation of the Constitutional right secured to defendants of having the assistance of counsel in their defence. The reason therefore of the judge, if it proved any thing, would prove too much; it would virtually destroy the most valuable provisions in our Constitution for the protection of the rights and liberties of the citizen; and authorize a judge or court at pleasure to dispense with Constitutional restrictions, when they found it convenient so to do.

But in the present investigation, the correctness or incorrectness of the written opinion delivered by the judge, is not in question; this opinion is not charged to be in itself incorrect or erroneous, but the offence charged is in the manner and time of delivering it; the attempt, therefore, by the judge, to justify his conduct by insisting that the opinion delivered was correct, and authorized by former decisions, is a mere evasion of the real charge alleged in the impeachment, and an exertion to prove what was not denied or put in question. It cannot therefore, in fact, aid the accused, or make his case better than it would be if such opinion had been evidently erroneous; but it is not intended, in this place, to admit the correctness of the opinion delivered by the judge in writing, by not going into the discussion of it; but this discussion of the opinion is omitted here, because its correctness or incorrectness is irrelevant to the present question, and, therefore, unnecessary to be discussed.

I will now proceed to consider the third position stated, to wit: That the judge did impose on the counsel engaged on behalf of Fries, arbitrary restrictions and control in the exercise of their professional rights, unknown to and unauthorized by the laws and usages of the nation. In support of this part of the charge there is the evidence of Mr. Lewis, who states that when the judge delivered the written opinion in the manner already noticed, he observed that on the former trials there had been a great waste of time by counsel making long speeches to the jury, on the law as well as on the fact, and stated his disapprobation of their having been permitted to read certain statutes of the United States, relating to crimes less than treason, which he, or the court, declared they would not suffer to be read again; and that cases at common law, or under the statute law of England previous to the English Revolution, had nothing to do with the question, and that they would not suffer them to be read; that they had made up their mind on the law. This is, in substance, the evidence of Mr. Lewis on this point, and it is strongly supported by that of Mr. Dallas, who, though he was not present when this statement was made by the judge, yet corroborates the truth of it by the statement he made to the court afterwards on the same day, as made to him by Mr. Lewis, and by the circumstances that took place in consequence thereof. Mr. Dallas also states that the judge said, as he thinks on the next day, that in arguing upon the law the counsel must address themselves to the court alone, and not the jury. The evidence of Messrs. Rawle and Tilghman support most of these facts in substance, except as to the judge refusing to permit the statutes of the United States to be cited, and differ only as to the time at which the judge made these declarations; these facts, therefore, are supported by evidence that cannot be shaken; and were the evidence given by Mr. Lewis and Mr. Dallas, different from that given by Messrs. Tilghman, Rawle, and others, more weight and credit ought to be given to the evidence of the former gentlemen than to that of the latter, though

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all may be men of equal integrity and veracity; for there is a material distinction between the credit due to witnesses as men of integrity and veracity, and the weight or credit that ought to be given to their evidence as containing a correct and full statement of facts. Two men may be of equal credibility in society, and equally tenacious of deposing the truth; yet the evidence of the one as to a particular transaction, may deserve much more weight and credit than that of the other, in consequence of his possessing better means of information, and being so circumstanced as to feel more interest in, and receive stronger impressions from the facts that may have taken place; so in the question before us, Mr. Lewis and Mr. Dallas felt the strongest interest in the transaction that took place; their rights as counsel were invaded, and the impressions they received were strong and not easily effaced. Mr. Lewis had the most correct means of information; his attention was arrested by the paper containing the opinion being handed or offered to him; the statement of the judge containing the restrictions already stated, immediately followed, to which he attended; he could not, therefore, possibly be mistaken; and the impression so strongly made, by so extraordinary a transaction, could not be erased from his memory. This was not the case with Messrs. Rawle and Tilghman, for though Mr. Rawle was concerned for the prosecution, he states he was much engaged with other business; the opinion delivered was also in favor of his side of the question, and of course the affair was not likely to excite so much the interest of those gentlemen, or make so deep an impression on their minds. The evidence, therefore, of Mr. Lewis and Mr. Dallas may be considered as a correct statement of this transaction. These restrictions, therefore, imposed upon the counsel, of not citing such authorities as were usually permitted to be used, and not arguing the law to the jury, are unauthorized by the laws of our country, and contrary to the usages and practice of our courts of justice, and in the case in question amounted to a prohibition to argue the cause in any possible way that could be of the least service to the defendant. That these restrictions were unauthorized by the practice in our courts, is established by the evidence of every witness that has been examined to this point, who declare that no such restrictions had ever been imposed on counsel, concerned in criminal cases, in any courts with which they had been acquainted, and particularly by the practice of the circuit court of the United States in the same State, in the trial of the same cause before, and in other similar trials, when the utmost latitude was given the counsel in making their defence. This was, therefore, a direct and arbitrary innovation on the known and established modes of proceeding in courts of justice in criminal cases, and an unwarrantable attack on the privileges secured to defendants by the Constitution and laws of the country. That judges are not authorized to substitute their own arbitrary will in place of law, and to dispense at pleasure with the established rules of proceeding in the tribunals of justice, is proved by every principle of reason and of law. To show that this position has been expressly recognised by law writers, and legal decisions for ages, I will refer the court to 2. *Bac. Ab.*, (new edition) page 97, where it is declared that, "judges are to determine according to the known law and ancient customs of the realm;" and to 4 *Com. Dig.* 418, where it is stated that "judges ought to act conformably to law, and not according to discretion."

These authorities, when we consider the country from which they come, and the times in which they were written, strongly mark the limits that ought to circumscribe the conduct of the judge. And shall the judges in our country assume greater latitude in their proceedings than those of England, and depart at pleasure from what are known to be the customs of the country? I should presume not. But the judge states in his answer, that decisions at common law, and before the Revolution in England, could throw no light on the doctrine of treason here, but might mislead the jury; and, therefore, ought not to be admitted to be read, not being law; and he wades into the dark ages of the history of England, when the judges were corrupt and under the influence of the Crown. This reasoning of the judge is evidently an evasion of the point in question. The object of the counsel for Fries, in wishing to cite those authorities, both at common law and under the statute of Edward the Third, was not to show by them what the construction of the words of our Constitution with regard to the treason ought to be; but to show first, the absurd and ridiculous lengths to which those decisions had gone, in determining what acts amounted to treason there, and then to prove that since the English Revolution, the judges in England considered themselves bound by cases decided before the Revolution, and that as the decisions on treason in England, since their revolution, were bottomed upon those cases before the revolution, they ought not to govern the courts in this country, in giving a construction to the words of our Constitution, in order to determine what acts amounted to treason. This was evidently the object of the counsel, and it is proved to have been so stated by them, by the evidence of Mr. Lewis, Mr. Dallas, and Mr. Rawle. There was, therefore, no ground for the pretence the judge makes for refusing these authorities to be introduced.

It is admitted by the answer that the jury have the right to decide upon the law as well as upon the fact; and if it were denied, it could be shown by clear and undoubted authorities, of ancient and modern times. From what motives, therefore, and under what plausible pretence, could the judge refuse to permit the law to be argued before the jury? How could they decide upon it properly, without hearing it discussed? And with what color of reasoning can the judge say that the jury have the right to decide the law, and yet that they have not the right to hear it argued and explained by counsel? Does not this show the greatest absurdity, and prove that the accused must have had some object in view, that he did

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not choose to avow, and that would not bear examination? In this case there was no dispute about the facts; the answer states, they were admitted on both sides. The judge makes up his opinion upon the law, commits it to writing, and makes it known as the opinion of the court, before the jury are impanelled in the case. For what purpose was counsel assigned to the defendant? What remained for the counsel to examine or contest, when the facts were admitted and the law decided by the court? Would not the assistance of counsel, under such circumstances, be to the defendant a mere phantom, a name without substance? Was not the assignment of counsel, in this case, and with such views as the judge must have had, an useless ceremony, an empty compliance with form, a mere mock of justice? The clear inference from the whole transaction must be, that the judge was determined the defendant should derive no benefit from the assistance of counsel, and only affected to permit them to argue the facts to the jury, because he knew they were not disputed, even by the defendant himself. It must, therefore, be a fair inference that the defendant was deprived of the assistance of counsel, by the unwarrantable, illegal, and unauthorized restrictions imposed upon them in the performance of their professional duties by the judge.

It remains on this part of the subject, to show that this conduct of the judge was such a flagrant violation of his duty, as could only spring from corrupt motives, and a disposition to oppress those who became the objects of his resentment. I lay it down as a settled rule of decision, that when a man violates a law, or commits a manifest breach of his duty, an evil intent or corrupt motive must be presumed to have actuated his conduct; as every man is presumed to know the law, and every officer or judge to understand their duty; and if the party will undertake to excuse himself, for misconduct, on the score of pure motives and unintentional error, it is incumbent on him to make the same appear by satisfactory and incontestible evidence. In some instances, erroneous conduct may be explained, excused, or palliated, by the weakness or ignorance of the delinquent, and the circumstances that attended the case. But in this whole transaction, what marks of innocence or pure motives, are to be discovered?—What excuse to be offered for the conduct of the accused? Ignorance of the law cannot be relied upon as forming a ground of excuse. The legal talents, long experience, and distinguished abilities of the judge, are too well known to admit of such a plea. It was no new and difficult case, wherein he might be easily mistaken. There were no former precedents to lead him astray. The proceeding was entirely new, and of his own invention; a total deviation from all former practice, and a manifest innovation upon the established usages in our courts of justice. The whole bar were agitated by the proceeding; counsel of near thirty years practice felt embarrassed and astonished at it. The common sense of the whole audience appeared shocked at the transaction, as being altogether new and extraordinary. The accused, in his answer, states that he relied upon the decisions of the circuit courts, wherein Judges Iredell and Paterson presided, with regard to the law of treason, as forming a precedent from which he would not even dare to depart. Why did he not consider himself equally bound by the practice they adopted in criminal cases? They gave the utmost latitude to counsel in making their defence to the jury, both on the law and the fact, did not restrict them as to the authorities they should cite, and delivered no opinion until the cause was heard. Judge Chase reversed the whole of this mode of proceeding. What good reason can be given for his adhering to their opinion in the one instance, and totally departing from their practice and example in the other? No excuse can be formed for this conduct. This is the strongest possible evidence of corrupt motives, of partiality, and a determined design to overleap all former rules of proceeding, to oppress the unfortunate defendant that was arraigned at his bar for trial. The whole course of the judge's conduct in this transaction goes to establish the same spirit of oppression. Counsel are assigned the defendant, merely for the sake of form, and, as it were, to mock him in his misfortunes. The day of trial arrives. In the mean time the judge makes up his opinion on the law arising in the case, and, to add solemnity to the act, commits it to writing. There is no doubt, no dispute as to the facts. The prisoner is brought to the bar. Not a voice is permitted to plead his cause, until the solemn sentence of his legal conviction is made known; and thereby the avenues of his defence, that might lead to his acquittal, for ever closed.

Here let us pause a moment, and behold the unfortunate, and, in the language of his able counsel, poor Fries, trembling before his condemning judge, stripped of the aid of counsel, his only and forlorn hope; the fatal fiat of his condemnation pronounced in the solemn language of a written opinion; and thus friendless, unprotected, and unheard, about to be consigned to the hand of the relentless executioner! Let us view this spectacle, and then let me ask, if this can be considered an impartial administration of justice? I might here charge the accused with having knowingly and wilfully trampled on the laws of his country, and overleaped the bounds of legal justice, to oppress a friendless individual brought before him for trial. I might call upon this honorable court to vindicate the character of insulted justice, and demonstrate to the American people, that when their rights and liberties are invaded, even though under the sacred sanction of judicial authority, this high tribunal will always be found ready and willing to avenge their wrongs and protect their interests.

But it is alleged by the judge that the offensive written opinion that had been made known was withdrawn, and that next day full latitude was offered to the counsel to argue both the law and the facts to the jury. This was a fallacious offer. It came too late to be of service to the defendant, or excuse the judge. The act on his part was

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done—the offence was complete—and it was only the sternness of the counsel that made him retract. The impression had been made on the minds of the jury that could not be erased—the flame had been kindled by the fire-brands he had scattered, which could not be extinguished by withdrawing the instruments that occasioned it. The experiment was as dangerous as it was novel, and can only be ascribed to the same spirit of oppression and political intolerance that will be found to distinguish the whole conduct of the judge in his judicial career during these transactions.

The respondent further insists, in his answer, that he cannot be impeached, except for some offence for which he may be indicted at law. This position cannot be supported by any fair construction of the provision in the Constitution on this subject. It has already been attempted to be shown, in the view taken of this Constitutional provision, that in order to support an impeachment it is not necessary to show that the offence charged is an indictable one, but only that it is a breach and violation of official duty; and I conceive that this is the only construction that can be adopted to give consistency to the Constitution; to the mode of proceeding adopted under it in cases of impeachment; to reconcile with justice the nature of the judgment that must be rendered upon conviction, and to avoid the palpable absurdity that would follow a different construction of punishing a man twice for the same offence. To the exposition already given of this provision in the Constitution, I beg leave to refer the court as controverting the position here relied upon by the judge. But I would here further observe, in support of this doctrine, that according to the laws of England, a judge of a court of record is not accountable by indictment for anything done in open court, in his judicial capacity, and that he may plead to an action brought against him, for any such act, that he did it, (that is, what he was charged with) as a judge of record; and it would be a good justification. In support of this doctrine the court are referred to 2 Bac. Ab. (new ed.) page 97; 2 Hawk. 113; Jac. Law Dictionary, (new ed.) verbum Judges. It appears from the same authorities that the judges in England are accountable in Parliament only for opinions delivered by them in court; and are not, for such opinions, to be questioned before any other tribunal. This is the great protection and security that judges of courts of record have, that they are accountable for their official conduct only to the legislature, and are punishable at law only for such acts as would be indictable offences, independent of their official character. This view of the subject renders the judges, so far as regards their judicial conduct, independent of all tribunals except the legislature, and is certainly better calculated to preserve the independence and dignity of the judges, than that contended for in the answer. I cannot, therefore, entertain a reasonable doubt that the true intent and meaning of the Constitution will support this doctrine, and that it will be sanctioned by the opinion of this honorable Court.

Mr. Campbell here observed that he had closed the remarks he proposed making on the first part of the subject, and, finding himself indisposed, expressed a wish that the Court would adjourn.

Whereupon the Court rose.

THURSDAY, February 21.

The Court was opened at 10 A. M.

Present: the Managers, attended by the House of Representatives in Committee of the Whole, and the counsel of Judge Chase.

MR. CAMPBELL, *in continuation.*

I will now proceed, as well as my indisposition will permit, to examine in a brief manner the second part of the subject, containing the several charges founded on the trial of Callender, at Richmond, as stated in the second, third, and fourth articles of the impeachment. I will consider these several articles in the order in which the transactions on which they are founded took place in court. In order to ascertain the motives that actuated the judge in this whole transaction, it will only be necessary to view his conduct as proved, so far as the same relates to this subject, previous to the trial. The first account we have of the intended prosecution, or I might say persecution, of Callender, is at Annapolis. Here the judge received the famous book called the "Prospect Before Us," upon which the prosecution was founded, and here the determination was formed to convict and punish Callender. The respondent said he would take the book with him to Richmond; that the libellous parts had been marked by Mr. Martin, and that before he returned he would teach the lawyers of Virginia to know the difference between the liberty and licentiousness of the press; and, that if the Commonwealth of Virginia was not totally depraved, if there was a jury of honest men to be found in the State, he would punish Callender before he returned from Richmond. This is the evidence of Mr. Mason, nearly in his own words, and no person will pretend to doubt its correctness. What language could be used that would more clearly show the partiality and predetermination of the judge to punish Callender, and the spirit of persecution by which he was actuated. Again: on his way to Richmond, according to the evidence of Mr. Triplett, the judge reviles the object of his intended vengeance; states his surprise and regret that he had not been hanged in Virginia; remarks that the United States had shown too much lenity to such renegadoes; and after arriving at Richmond, informs the deponent he was afraid they would not be able to get the damn'd rascal that court. Thus evincing in every stage of this business that intolerant spirit of oppression and vengeance that seems to have given spring to all his actions. After the indictment is found against Callender, the panel of the petit jury is presented to the judge; he inquires if he had any of the creatures called Democrats on that panel, directs the marshal to examine it, and if there were any such on it, to strike them off. This is the evidence of Mr. Heath, whose char-

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acter and standing in society are known to many of the members of this honorable Court. And though his evidence is opposed to the negative declarations of Mr. Randolph, who affirms that he did not present the panel of the jury to the judge, or receive such directions, yet I conceive the court will give more weight to the affirmative declarations of Mr. Heath, with regard to these facts, than to the negative assertions of Mr. Randolph, who may have forgotten the transaction. This point rests upon the integrity and veracity of Mr. Heath. He could not receive the impression of these facts, unless the transaction had taken place; he could not reasonably be mistaken; the affair was new and extraordinary, and must have arrested his attention; and in this case there is no ground to make allowance for a treacherous memory, for it is not pretended that the witness, Mr. Heath, has forgot the facts, but that they never existed. If you do not, therefore, believe the statement he makes, it must follow that you admit the witness has wilfully and corruptly stated a falsehood. This, I presume, will not be admitted. But on the other hand, Mr. Randolph may have forgotten the transaction in the bustle of business, and this will account for the difference in the evidence of the witnesses without impeaching the veracity of either. This mode of reconciling the evidence is agreeable to the rules of law. I take the facts, therefore, as stated by Mr. Heath, to be correct, and they afford an instance of judicial depravity hitherto unequalled and unknown in our country—a direct attempt to pack a jury of the same political sentiments with the judge to try the defendant. This is a faint representation of the previous conduct of the judge relative to this subject, before whom the defendant was about to be tried, or rather before whom he was to be called for certain conviction and punishment, for it ought not to be dignified with the name of a trial. With this view, therefore, of the temper and disposition of the judge, and of his previous conduct on this occasion, we will examine the first important step taken in the trial, in which the designs of the judge begin more clearly to unfold themselves, viz: his refusal to postpone or continue the trial until the next term, on an affidavit regularly filed, stating the absence of material witnesses and the places of their residence, being the second charge in the fourth article.

It is admitted by the respondent, in his answer, that an affidavit was filed, which he exhibits to the court, and a motion made thereupon by the counsel of Callender to continue his cause for trial until the next term; and it is proved by the evidence of Mr. Hay and Mr. Nicholas, that, as counsel for Callender, they insisted for a continuance of the case on the grounds stated in the affidavit, and also on other grounds; that they were not prepared to argue the law arising in the case, for want of time to examine the subject, and that the defendant was not, by the laws of Virginia, bound to come to trial that term. Here it may be proper to show what are the grounds for a continuance known in law, and to inquire whether those stated in the affidavit come within the decisions heretofore made in courts of justice. On this subject I will refer the court to one authority only, but one equally respectable with any that can be produced on criminal law.—*Foster Cr. Law, pp.* 2, 3. Here Mr. Campbell read the case at length, and then observed that this decision took place in a country where criminal law is executed with as much rigor as in any in the world where there is the shadow of liberty; and yet the affidavit filed in this case, upon which a continuance was granted, only states the absence of material witnesses and the places of their abode; the defendants were not required to state the facts that those witnesses would prove. In ordinary cases, the courts do not require this, and in many cases it would be impossible for the defendant to know all that a witness could give in evidence; nor is the defendant bound, except in ordinary cases, to disclose the evidence that his witnesses, who are absent, can give, as it might endanger his defence and give an advantage to the prosecutor, if so disposed, to procure evidence, whether true or false, to controvert that of the defendant. The court, in the case cited, was held by a special commission from the Crown, for the purpose of trying offenders for crimes of the deepest die, and such as are punished in that country with the utmost rigor; yet the court continued the cases of those defendants for such a length of time as was deemed sufficient to procure their witnesses, according to the distances at which they resided. There were in this case no stated terms to which the court could adjourn and continue the causes; they therefore fixed upon a reasonable time, and adjourned over to such day, in order to enable the defendants to prepare for trial; and it was observed by the court, in that case, as an additional ground for continuance, that the indictments had not been found until the court sat, and that, therefore, the defendants had not time to prepare for trial. This was the case with Callender; he had no notice of this prosecution until after the indictment was found, and during the same term; he therefore could not have had time to prepare for his trial. The affidavit he filed was stronger and much more full than that in the case cited; it states the absence of a number of witnesses whose evidence the deponent declares material to his defence. This would be sufficient to authorize a continuance upon a first application, and more ought not to have been required; but the affidavit goes further, and states the substance, as far as the defendant knew, of the evidence the witnesses could give; and also states the want of papers and books, material to the defence, that could not be obtained without allowing a considerable time to procure them. What more could be stated in an affidavit for a continuance on the ground of want of testimony by any defendant who wished to adhere to the truth? Yet a continuance is refused, and the judge states in his answer, as the principal cause of such refusal, that the evidence of all the witnesses stated in the affidavit to be in writing would not prove the truth of all the charges in

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the indictment, and would not, therefore, make a complete justification if procured, and enters into an examination of the charges and evidence to prove this position. This excuse of the accused is founded on a train of the most fallacious and sophistical reasoning that can be resorted to, and is no more than a groundless apology, by which, if possible, to evade the true question, and avoid the odium that ought and must attach to such a transaction. It is not denied by the judge that the absent witnesses would prove in part the charges in the indictment; but he says it ought to appear, they could prove the whole. By this rule, in order to obtain a continuance, the party must show to the court the whole of the evidence necessary to support his case, and the judge is to compare the evidence with the charges, and must be satisfied that it is sufficient to cover the whole of the case, or he will not grant a continuance. This doctrine is too absurd to require a refutation; it would destroy all the benefit that could arise to parties from the right, so well established in law, of continuing causes upon affidavit of absent material witnesses; and subject the right to a fair and impartial trial to the mere arbitrary will of a judge, who would thus assume the right to weigh the evidence wanted, and measure its materiality by his prejudice against the party. This would, in fact, tend in many instances to destroy the trial by jury, and reduce it to a mere form without substance; for the party could not state on oath all that his witnesses could prove once in a hundred times. But the answer states that the court proposed to postpone the trial for a month, and some of the witnesses go further than the accused himself, and say for six weeks; and this is relied upon as showing the disposition of the judge to accommodate the defendant. This is a pretence to accommodate that could answer the defendant no valuable purpose. The absent witnesses resided at such great distances, that most of them could not be procured in that time, and this the judge well knew. He even states in his answer that they lived at such great distances as left no reasonable ground to believe they could be procured at the succeeding term, being six months, and yet pretends that one month or six weeks would be sufficient. But here I must notice, that it is remarkable the counsel for the defendant never heard of this proposed postponement, and I must therefore conclude it was not seriously made; but if it was, it only proves that the judge was determined to try Callender himself, and would not, therefore, on any ground whatever, continue the cause to a succeeding term, at which he was not to be present. He had, therefore, determined to punish Callender, and could not trust his case to the management of any other judge. This is of a piece with the rest of his conduct on this occasion, and presents this honorable Court and the world with an instance of the most flagrant abuse of common justice, under the sacred sanction of administering the law for the correction of offenders.

The next charge which I propose to examine is contained in the second article of the impeachment, and consists in the judge's overruling the objection of John Basset, one of the jury, who wished to be excused from serving on the trial of Callender, because he had made up his mind as to the book from which the words charged to be libellous in the indictment had been drawn. The Constitution secures to defendants charged with crimes, the right of a trial by an impartial jury; anything, therefore, that goes to show that a man has made up an opinion with regard to the guilt or innocence of the accused, or with regard to the matter in question, or decided it in his own mind, proves him to be disqualified to serve as a juror, because it proves he is not impartial, has a bias upon his mind, and cannot be said to be indifferent. The same doctrine is supported by the laws of England. In order to show this, I will refer the court to 3 Bac. Ab. (new ed.) 756, and also Co. Litt. 158; where it is stated, if a juror has declared his opinion, touching the matter in question, &c., or has done anything by which it appears that he cannot be indifferent or impartial, &c., these are principal causes of challenge; and therefore such juror would be disqualified. Here it is manifest, that though declaring an opinion is good cause of challenge to a juror, if it is not necessary he should declare such opinion in order to disqualify him; it is sufficient that he has done something, whether making up an opinion, or doing any act whatever, by which it appears he is not indifferent, is not perfectly impartial. The objection, therefore, made to Basset as a juror, ought to have been sustained, and he ought to have been excused from serving on the jury, upon two grounds. First, because he had made up an opinion with regard to the matter of the charge against Callender. This is proved by the evidence of Basset himself, who says, he had seen in a newspaper, extracts stated in the publication to have been taken from the Prospect Before Us; and he stated to the court on the trial, that he had made up his opinion that those extracts were seditious, and that the author of the book called the Prospect Before Us, or that from which these extracts were taken, was within the sedition act, and therefore punishable under it. It was at the time notorious and well known that Callender was the author of the Prospect Before Us; it was equally notorious and known that the indictment against him was founded on that book: and Mr. Basset stated, he had no reason to doubt that the extracts were taken from that book as stated in the papers. Is it not, therefore, clear, that forming an opinion with regard to the extracts, was forming an opinion with regard to the matter charged as libellous in the indictment? No reasonable doubt can exist on this point, and though Mr. Basset did not hear the indictment read, as the court refused to permit it to be read until the jury were sworn, a measure under such circumstances as extraordinary as it was new; yet he knew the subject-matter it contained as well as if he had heard it. The opinion, therefore, that he had made up his mind on this subject, clearly proves he was not indifferent, was not impartial; he had decided the guilt of Callender, in fact, in his own mind, and could not be expected to shake

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off the effect of such prejudication. He was, therefore, according to the Constitution, and the law already cited, disqualified from being a juror, having done an act that showed he was not indifferent, was not impartial, and ought of course to have been excused from serving on the jury. He ought also to have been rejected as a juror on a second ground; because he had not only made up an opinion on the matter in question, but had declared that opinion in public. It is proved by the evidence of Mr. Basset himself, as well as by that of Mr. Hay and Mr. Nicholas, and also by that of Mr. Robinson, that when he was asked whether he had formed and delivered an opinion upon the charge in the indictment, he stated, that although he had never heard the indictment read, yet he had formed an opinion that the author of the Prospect Before Us was within the sedition act. This, as has been already insisted upon, was the same as forming an opinion upon the charges in the indictment, as he knew the indictment was founded upon that book; and this opinion, which he had formed, he then declared in open court, in the hearing of all bystanders, and before he was sworn as a juror. This was, therefore, according to the rule laid down by the judge and the question he declared proper to be asked, a complete disqualification of Mr. Basset from serving as a juror on that trial. For he had formed and delivered an opinion on the matter in question. And what difference could it make, whether such opinion was delivered a minute or an hour before the juror was sworn on the trial, or a week, or a month before? Certainly the effect on his mind must be the same, and he must be equally unfit to serve as a juror in either case. On both of these grounds, therefore, Mr. Basset ought certainly to have been rejected from serving as a juror on the trial of Callender; and this is so glaring an innovation on the impartiality of trial by jury, (the *security* of our rights and great *bulwark* of our liberties,) that when taken in connexion with the rest of the judge's conduct, it strongly evinces an overbearing disposition, that would not stop at the use of any means, however unjust and illegal, to obtain a desired object. He had told the marshal, if he had on his list of jurors any creatures called democrats, to strike them off. He, therefore, knew the political sentiments of those who were called as jurors, to be favorable to his wishes, as no doubt this direction was pursued. Mr. Basset had declared his opinion, that the author of the Prospect Before Us was within the sedition law, who was notoriously known to be Callender. He therefore knew the sentiments of the juror; knew he must be disposed to convict the defendant, and for this reason he would not excuse him from serving on the trial, but would pervert the meaning of the law to make it subservient to his own views.

The next charge to be inquired into, is that stated in the third article, in rejecting the evidence of Colonel Taylor, a material witness in favor of the defendant, on the pretence that he could not prove the truth of the whole of one charge. In this instance the judge acted contrary to all former precedents in courts of justice, and without the shadow of law or reason to justify his conduct. Not a solitary case could be stated by any of the witnesses of a similar conduct in a judge. The rule here adopted, with regard to the admissibility of evidence, would deprive the jury of their undoubted right to decide on the credibility and weight of evidence, as well as on the extent to which it proved the matter in question; would transfer in substance this right to the court, and thereby shake to its very centre the fabric so justly admired, and held so sacred, *of trial by jury*. It would make it necessary for the party to present to the court, all the evidence relied upon to make out his case. This evidence, the court or judge would first deliberately examine, compare it with the charges or case to be supported, and if it did not, in his opinion, prove the whole of one charge, or go the whole extent of the case to be established by it, he would reject it, and not permit the jury to hear it. This would strip the jury of the very prerogative that renders this kind of trial so much superior to all others, that of deciding on the weight and credit of evidence. There is a manifest distinction between the right which a judge has to decide upon the admissibility of evidence, on the ground of its being proper or improper according to the established rules of law, and the right here assumed of deciding upon the extent to which such evidence, that is admitted to relate to the matter in question, will go to support the case: the former is the exercise of a proper authority to prevent the admission of extraneous and improper matter, wholly irrelevant to the matter in question; the latter is an arbitrary assumption of power, to decide on the extent to which evidence admitted to be relevant, at least in some degree, would go to prove the matter in question; and is a direct innovation on the most sacred privilege of the jury. Nothing can be more absurd and dangerous, than the consequences that would flow from such a doctrine. The judge would first weigh the evidence himself, measure its extent, reject it at pleasure, and call this a trial by jury. But I must here be permitted to notice the reasoning resorted to by the judge in his answer, to excuse his conduct on this occasion, which is as dangerous and absurd, in its consequences, as it is subtle and evasive. It is stated by the judge, that the plea of justice must answer the whole charge, or it is bad on the demurrer; and that when the matter of defence may be given in evidence without being formally pleaded, the same rules prevail. This doctrine of the judge would require the party to show, that the evidence he offered would cover the whole of his case, with the same exactness and formality that he would file a plea to avoid its being held bad on a demurrer: thus narrowing down the province of the jury, and subjecting the decision of all the facts as well as the law to the court. There is no rule of law to warrant such a proceeding, and it is manifestly contrary to all reasoning on the subject. The plea, in order to be good, must state matter sufficient to justify that part of the charge or suit to which it is put in; the demurrer admits all the facts stated in the plea that are well pleaded, but cannot admit facts that

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are not stated in it, therefore the plea must appear to contain sufficient matter of justification, or it will be held bad on demurrer; but no such rule was ever heard of before to apply to evidence offered to a jury. They alone are the proper and only tribunal to decide whether the evidence offered and given is sufficient to prove the whole matter in dispute or not; and if the jury be deprived of this right, there is nothing left them that deserves the name of a trial.

The judge insists, if he was mistaken, it was an error of judgment. This cannot be presumed. Ignorance of the law is no excuse in any man; but in a character of such high legal standing and known abilities as that of the accused, it is totally inadmissible and not to be presumed. How could any judge with upright intentions commit so many errors, or hit upon so many mistakes in the course of one trial, as are manifest in that of Callender? They must have been the result of design, and a predetermination to bear down all opposition, in order to convict and punish the defendant.

But it is stated that Judge Griffin concurred with him in opinion, and this is insisted upon by the accused in different parts of his answer, as an excuse for the errors he committed, if, as he states, they were errors. This seems to be a kind of forlorn hope resorted to, when all other expedients fail. To this argument of the judge I would in this place answer, once for all, that it can be no excuse for him, nor any justification of his offences, that another has been equally guilty with himself; and it must strongly prove the weakness of his defence to rely upon this ground. Though Judge Griffin has not yet been called to an account for his conduct on this occasion, that is no reason why he should not hereafter be made to answer for it. The nation has not said he was innocent, or that he will not be proceeded against for this conduct; and there is no limitation of time that would screen him from the effects of charges of this kind, if they should be brought forward and supported against him hereafter. No ground of excuse therefore can arise from the circumstance of Judge Griffin not having been called upon to answer for his conduct in this respect.

I will now proceed to notice very briefly the conduct of the judge in the subsequent part of this trial. Compelling the defendant's counsel to reduce to writing all questions to be asked the witness, was a direct innovation on the practice in our courts of justice, and tended to embarrass the management of and weaken the defence. It is proved by the testimony of all the witnesses, that no such practice ever prevailed in our courts of justice, for such a purpose as that avowed in this instance; the only cases in which it is required to reduce to writing questions to be asked a witness, and the only cases in which it can be proper or consistent with reason and justice to do so, are those in which an objection is made to a question proposed to be asked, on the ground of its being improper and contrary to the rules of evidence; and in order to ascertain the precise meaning and effect of the question, so as to decide on the objection made to it, it may be proper to require it to be reduced to writing, but it never was before done, so far as we can discover, for the purpose of ascertaining how far the witness could prove the matter in question, and whether he could prove the whole of one charge or not, and thereby decide whether the witness should or should not be examined. According to this rule the judge would first try the cause himself upon the evidence offered, by the questions thus reduced to writing, and if he did not consider such evidence fully sufficient to support the whole of the charge or case to which it was offered, he would reject it, and not permit the jury to hear a word of it, lest they might consider it stronger than he did, and give it sufficient weight to support the case to which it was offered. This mode of proceeding was left to be discovered and adopted by Judge Chase. No other court or judge ever attempted in this manner to trifle with the rights of the jury, and establish a doctrine so tyrannical and oppressive; but this is in perfect conformity with the whole of his conduct on this occasion; a preconcerted system of oppression, to bring the defendant, Callender, to certain conviction and punishment. For the same purpose the defendant's counsel were ridiculed, treated with indignity, and the whole audience entertained at their expense. They were frequently and abruptly interrupted in their arguments; charged with wilfully perverting the law, in order to impose upon and deceive the multitude: called boys, by way of derision, and treated as mere mushrooms of the day, who ought to cringe submissively when they appear before a circuit court in which the honorable judge presided. He was facetious, witty, and sarcastic, as the occasion required; and it is pretended there can be no harm in this; it was all in jest and good humor! It is too serious a matter, Mr. President, for judges thus to jest and trifle with the rights and liberties of the citizen. Though this proceeding was levelled immediately at the counsel, it was the defendant who was the principal object of resentment, who was intended to be made an example of, and who felt the injury and became liable to the consequences of such illegal and unjust conduct of the judge.

Barely to notice the conduct of the respondent, at Newcastle, in Delaware, as charged in the seventh article is sufficient to show that he was there actuated by the same spirit of persecution and oppression that has, as already stated, marked the whole of his conduct during the course of these transactions. That he should descend from the elevated and dignified station in which he was placed as a judge, to hunt for crimes as a common informer against his fellow-citizens; urge the jury to take notice of, and present certain persons sufficiently designated though not named; and press the attorney for the district to search for evidence among the files of newspapers to support a prosecution, was degrading to the sacred character of a judge, and was perverting the Judicial authority to a mere engine of persecution to answer party purposes. Of the same complexion with this is the conduct of the respondent in delivering an inflammatory and disorganizing charge to the grand

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jury at Baltimore, as stated in the eighth article of the impeachment. This proceeding evinced a mind inflamed by party spirit and political intolerance; it was calculated to disturb the peace of the community, and alarm the people at the measures of Government: to force them by the terror of judicial denunciation to relinquish their own political sentiments and adopt those of the judge. This was the favorite object of this whole proceeding, and to obtain it no means were left untried. It was attempted to excite the fears of the public mind, to destroy the confidence of the people in the administration of their Government. The judicial authority was prostituted to party purposes, and the fountains of justice were corrupted by this poisonous spirit of persecution, that seemed determined to bear down all opposition in order to succeed in a favorite object. Citizens of all descriptions felt alarmed at this new and unusual conduct. All the counsel at the bar, wherever the respondent went, though consisting of the ablest and most enlightened in the nation, were agitated into a general ferment, and the whole community seemed shocked at such outrages upon common sense; for, to go to trial was to go to certain conviction. Is this, Mr. President, the character that ought to distinguish the Judiciary of the United States? No, sir. The streams of justice that flow from the American bench ought to be as pure as the sunbeams that light up the morning. The accused should come before the court, with a well founded confidence that the law will be administered to him with justice, impartiality, and in mercy. When this is the case, he submits without a murmur to his fate, and hears the sentence of condemnation pronounced against him, with a mind that must approve the justice of the law and the impartiality of those who administer it.

The decision of this cause may form an important era in the annals of our country. Future generations are interested in the event. It may determine a question all important to the American people; whether the laws of our country are to govern, or the arbitrary will of those who are entrusted with their administration. Mr. President, we, on this important occasion, behold the rights and liberties of the American people hover round this honorable tribunal, about to be established on a firm basis by the decision you will make, or sent afloat on the ocean of uncertainty, to be tossed to and fro by the capricious breath of usurped power and innovation.

Mr. Clark addressed the Chair as follows—Mr. President: I rise only to make a few remarks on two of the articles, the fifth and sixth, that the counsel for the respondent may be possessed of all the points we mean to make. I will endeavor, in a few words, to state the practice which we think ought to have been pursued in the case of Callender. The practice in the federal courts is regulated by that in each State. If this position be correct, we contend, that the proper process in the case of Callender was a summons. An act of Virginia, passed in the year 1792, provides that the grand jury "shall present all treasons, murders, felonies, *or other misdemeanors whatsoever*, 'which shall have been committed or done within 'the district for which they are impanelled."

By another act of Virginia, passed in the same year, it is enacted that, "upon presentment made 'by the grand jury of an offence not capital, the 'court shall order the clerk to issue a summons or 'other proper process against the person or per'sons so presented, to appear and answer such 'presentment *at the next court*, and thereupon 'hear and determine the same according to law."

In this last provision, the words "*or other proper process*," have a direct application to the previous provision, which enacts that the grand jury shall present all treasons, murders, felonies, "or other misdemeanors." For treasons, murders, and felonies, we admit that a capias is the proper process; and when the law directs *other proper process*, it had reference to a class of crimes where a capias was required. It is in vain alleged, that the counsel for Callender made no objection to the process issued. They were not at that time to be considered as his counsel; it was only after he was brought into court that their duty commenced.

Further, whether the proper process was a capias or summons, the law of Virginia requires that it shall be returnable to the next court; and I contend that this point is established by the English practice. To show which I refer to Hawkins's Pleas of the Crown, where it is stated that a *venire facias*, which is in the nature of a summons, is the proper process, and that it is returnable to the next court.

It was surely, then, the duty of the judge to be acquainted with the laws of England, however unacquainted he may have been with the laws of Virginia. He cannot, therefore, on this ground, attempt a justification from ignorance. In his answer he informs us that ignorance of the law is no excuse. If it is no excuse in an unlettered individual, shall it constitute the apology of him who was expressly appointed to expound the law and administer justice? And if, on this occasion, he was not acquainted with the law, did it, therefore, become him to proceed with such fatal precipitancy? No sooner was the presentment made than the marshal, before any indictment was brought in, was despatched after Callender. We can only account for this, by supposing that it was the intention of the judge to act in conformity to his previous declaration, however jocularly it may have seemed to have been made; and that this was one of the means he had determined to pursue in order to convict Callender, regardless of the dignity of his station or the innocence of the man. Having offered these remarks, I am instructed to say that the case is fully opened on the part of the prosecution.

Mr. Hopkinson.—Mr. President: We cannot remind you, and this honorable Court, as our opponents have so frequently done, that we address you in behalf of the majesty of the people. We appear for an ancient and infirm man, whose better days have been worn out in the service of that country which now degrades him; and who has nothing to promise you for an honorable acquittal

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but the approbation of your own consciences. We are happy, however, to concur with the honorable Managers in one point; I mean the importance they are disposed to give to this cause. In every relation and respect in which it can be viewed, it is, indeed, of infinite importance. It is important to the respondent to the full amount of his good name and reputation, and of that little portion of that happiness, the small residue of his life may afford. It is important to you, Senators and judges, inasmuch as you value the judgment which posterity shall pass upon the proceedings of this day. It is important to our country, as she estimates her character for sound, dignified, and impartial justice, in the eyes of a judging world. The little, busy vortex that plays immediately round the scene of action, considers this proceeding merely as the trial of Judge Chase, and gazes upon him as the only person interested in the result. This is a false and imperfect view of the case. It is not the trial of Judge Chase alone. It is a trial between him and his country, and that country is as dearly interested as the judge can be, in a fair and impartial investigation of the case, and in a just and honest decision of it. There is yet another dread tribunal to which we should not be inattentive. We should look to it with solemn impressions of respect. It is posterity; the race of men that will come after us. When all the false glare and false importance of the times shall pass away; when things shall settle down into a state of placid tranquillity and lose that bustling motion that deceives with false appearances; when you, most honorable Senators, who sit here to judge, as well as the respondent who sits here to be judged, shall alike rest in the silence of the tomb, then comes the faithful, the scrutinizing historian, who, without fear or favor, will record this transaction; then comes a just and impartial posterity, who, without regard to persons or to dignities, will decide upon your decision. Then, I trust, the high honor and integrity of this Court will stand recorded in the pure language of deserved praise, and this day will be remembered in the annals of our land, as honorable to the respondent, to his judges, and to the justice of our country.

We have heard, sir, from the honorable Managers who have addressed you, many harsh expressions. I hope, sir, they will do no harm. We have been told of the respondent's unholy sins, which even the heavenly expectation of sincere repentance cannot wash away; we have been told of his volumes of guilt, every page of which calls loudly for punishment. This sort of language but pursues the same spirit of asperity and reproach which was begun in the replication to our answer. But we come here, sir, not to complain of anything, we come expecting to bear and to forbear much. It does, indeed, seem to me, that the replication filed by the honorable Managers on behalf of the House of Representatives and of all the people, carries with it more acrimony than either the occasion or their dignity demanded. It may be said that they have resorted for it to English precedent, and framed it from the replication filed in the celebrated case of Warren Hastings. There is, however, no similarity between that case and ours. Precedents might have been found more mild in their character, and more adapted to the circumstances of our case. The impeachment of Hastings was not instituted on a petty catalogue of frivolous occurrences, more calculated to excite ridicule than apprehension, but for the alleged murder of princes and plunder of empires. If, however, the choice of this case as a precedent for our pleadings, has exposed us to some unpleasant expressions, it also furnishes to us abundance of consolation and hope. There, the most splendid talents that ever adorned the British nation, were strained to their utmost exertion to crush the devoted victim of malignant persecution. But in vain; the stern integrity, the enlightened perception, the immovable justice of his judges stood as a barrier between him and destruction, and safely protected him from the fury of the storm. So, I trust in God, it will be with us.

In England, the impeachment of a judge is a rare occurrence. I recollect but two in half a century. But, in our country, boasting of its superior purity and virtue, and declaiming ever against the vice, venality, and corruption of the Old World, seven judges have been prosecuted criminally in about two years. A melancholy proof either of extreme and unequalled corruption in our Judiciary, or of strange and persecuting times among us.

The first proper object of our inquiries in this case is, to ascertain with proper precision what acts or offences of a public officer are the objects of impeachment. This question meets us at the very threshold of the case. If it shall appear that the charges exhibited in these articles of impeachment, are not, even if true, the Constitutional subjects of impeachment; if it shall turn out on the investigation that the judge has really fallen into error, mistake, or indiscretion, yet if he stands acquitted in proof of any such acts as by the law of the land are impeachable offences, he stands entitled to discharge on his trial. This proceeding by impeachment is a mode of trial created and defined by the Constitution of our country; and by this the Court is exclusively bound. To the Constitution, then, we must exclusively look to discover what is or is not impeachable. We shall there find the whole proceeding distinctly marked out; and everything designated and properly distributed necessary in the construction of a court of criminal jurisdiction. We shall find, 1. Who shall originate or present an impeachment. 2. Who shall try it. 3. For what offences it may be used. 4. What is the punishment on conviction. The first of these points is provided for in the second section of the first article of the Constitution, where it is declared that "the House of Representatives shall have the sole power of impeachment." This power corresponds with that of a grand jury to find a presentment or indictment. In the third section of the same article, the court is provided before whom the impeachment thus originated shall be tried: "The Senate shall have the sole power to try all impeach-

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ments." And the fourth section of the second article points out and describes the offences intended to be impeachable, and the punishment which is to follow conviction; subject to a limitation in the third section of the first article.

Have any facts, then, been given in evidence against the respondent which makes him liable to be proceeded against by this high process of impeachment? What are the offences? What is the Constitutional description of those official acts, for which a public officer may be arraigned before this high Court? In the fourth section of the second article of the Constitution, it is declared, that "the President, Vice President, and all civil 'officers of the United States, shall be removed 'from office on impeachment for, and conviction 'of, treason, bribery, or other high crimes and 'misdemeanors." Treason or bribery is not alleged against us on this occasion. Our offences, then, must come under the general description of "high crimes and misdemeanors," or we are not impeachable by the Constitution of the United States. I offer it as a position I shall rely upon in my argument, that no judge can be impeached and removed from office for any act or offence for which he could not be indicted. It must be by law an indictable offence. One of the gentlemen, indeed, who conduct this prosecution, (Mr. Campbell,) contends for the reverse of this proposition, and holds that for such official acts as are the subject of impeachment no indictment will lie or can be maintained. For, says he, it would involve us in this monstrous oppression and absurdity, that a man might be twice punished for the same offence, once by impeachment, and then by indictment. And so most surely he may; and the limitation of the punishment on impeachment takes away the injustice and oppression the gentleman dreads. A slight attention to the subject will show the fallacy of this gentleman's doctrine. If the absurdity and oppression he fears will really ensue on indicting a man for the same offence for which he has already been impeached, they must be charged to the Constitution itself, which, in the third section of the first article, after limiting the extent of the judgment in cases of impeachment, goes on to declare, that "the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law." The idea of the honorable Manager is, that for acts done in the course of official duty a judge must be proceeded against exclusively by impeachment; and that no indictment will lie in such case. The incorrectness of this notion appears not only from a reference to the Constitution, but to the known law of England also. I will remind you of a case, stated, I believe, in the elementary books of the law, in which it is said, that if a judge undertakes, of his own authority, to change the mode of punishment prescribed by law for any crime, he is indictable; for instance, should he sentence a man to be beheaded when the law directed him to be hanged, the judge is guilty of murder, and may be accordingly indicted. When, sir, I contend, that, in order to sustain an impeachment, an offence must be proved upon the respondent which would support an indictment, I do not mean to be understood as admitting that the converse of the proposition is true; that is, that every act or offence which is impeachable, is indictable. Far from it. A man may be indictable for many violations of positive law, which evince no *mala mens*, no corrupt heart or intention, but which would not be the ground of an impeachment. I will instance the case of an assault, which is an indictable offence, but will not surely be pretended to be an impeachable offence, for which a judge may be removed from office. It is true that the second section of the first article, which gives the House of Representatives the sole power of impeachment, does not in terms limit the exercise of that power. But its obvious meaning is not, in that place, to describe the kind of acts which are to be subjects of impeachment, but merely to declare in what branch of the Government it shall commence. The House of Representatives has the power of impeachment; but for what they are to impeach, in what cases they may exercise this delegated power, depends on other parts of the Constitution, and not on their opinion, whim, or caprice. The whole system of impeachment must be taken together, and not in detached parts; and if we find one part of the Constitution declaring who shall commence an impeachment, we find other parts declaring who shall try it, and what acts and what persons are Constitutional subjects of this mode of trial. The power of impeachment is with the House of Representatives—but only for impeachable offences. They are to proceed against the offence in this way when it is committed, but not to *create* the offence, and make any act criminal and impeachable at their will and pleasure. What is an offence, is a question to be decided by the Constitution and the law, not by the opinion of a single branch of the Legislature; and when the offence thus described by the Constitution or the law has been committed, then, and not until then, has the House of Representatives power to impeach the offender. So a grand jury possesses the sole power to indict; but in the exercise of this power they are bound by positive law, and do not assume under this general power to make anything indictable which they might disapprove. If it were so, we should indeed have a strange, unsettled, and dangerous penal code. No man could walk in safety, but would be at the mercy of the caprice of every grand jury that might be summoned, and that would be crime to-morrow which is innocent to-day.

What part of the Constitution then declares any of the acts charged and proved upon Judge Chase, even in the worst aspect, to be impeachable? He has not been guilty of bribery or corruption; he is not charged with them. Has he then been guilty of "*other high crimes and misdemeanors?*" In an instrument so sacred as the Constitution, I presume every word must have its full and fair meaning. It is not then only for crimes and misdemeanors that a judge is impeachable, but it must be for *high* crimes and misdemeanors. Although this qualifying adjective "*high*" immediately precedes and is directly attached to the word

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"*crimes*," yet, from the evident intention of the Constitution and upon a just grammatical construction, it must be also applied to "*misdemeanors*." The repetition of this adjective would have injured the harmony of the sentence without adding anything to its perspicuity. How would this be in common parlance? Suppose it should be said that at this trial there are attending many ladies and gentlemen. Would it be doubted that the adjective *many* applies to gentlemen as well as ladies, although not repeated? Or, if there is anything peculiar in this respect in this word "*high*," I will suppose it were said that among the auditors there are men of high rank and station. Would it not be as well understood as if it were said that men of high rank and station are here? There is surely no difference. So in the Constitution, it is said, that "a regular statement of the receipts and expenditures of all public money shall be published from time to time." Is not the account to be regular as well as the statement? I should have deemed it unnecessary to have spent a word on so plain a point, had I not understood that a difficulty would probably be made upon it. If my construction of this part of the Constitution be not admitted, and the adjective "high" be given exclusively to "crimes" and denied to "misdemeanors," this strange absurdity must ensue:—That when an officer of the Goverument is impeached for a crime, he cannot be convicted unless it proves to be a high crime: but he may nevertheless be convicted of a misdemeanor of the most petty grade. Observe, sir, the crimes with which these "other high crimes" are classed in the Constitution, and we may learn something of their character. They stand in connexion with "*bribery and corruption*;" tried in the same manner and subject to the same penalties. But if we are to lose the force and meaning of the word "*high*" in relation to misdemeanors, and this description of offences must be governed by the mere meaning of the term "misdemeanors," without deriving any grade from the adjective, still my position remains unimpaired, that the offence, whatever it is, which is the ground of impeachment, must be such an one as would support an indictment. "Misdemeanor" is a legal and technical term, well understood and defined in law; and in the construction of a legal instrument we must give to words their legal signification. A misdemeanor or a crime, for in their just and proper acceptation they are synonymous terms, is an act committed or omitted, in violation of a *public* law, either forbidding or commanding it. By this test, let the conduct of the respondent be tried, and, by it, let him stand justified or condemned.

Does not, sir, the court, provided by the Constitution for the trial of an impeachment, give us some idea of the grade of offences intended for its jurisdiction? Look around you, sir, upon this awful tribunal of justice—is it not high and dignified, collecting within itself the justice and majesty of the American people? Was such a court created—does such a court sit to scan and punish paltry errors and indiscretions, too insignificant to have a name in the penal code, too paltry for the notice of a court of quarter sessions? This is indeed employing an elephant to remove an atom too minute for the grasp of an insect. Is the Senate of the United States solemnly convened and held together in the presence of the nation to fix a standard of politeness in a judge, and mark the precincts of judicial decorum? The honorable gentleman who opened the prosecution (Mr. Randolph) has contended for a contrary doctrine, and held that many things are impeachable that are not indictable. To illustrate his position, he stated the cases of habitual drunkenness and profane swearing on the bench, which he held to be objects of impeachment and not of indictment. I do not desire to impose my opinions on this court as of any value. But surely I could not hesitate to say that both of the cases put by the gentleman would be indictable. Is there not known to us a class of offences, not provided for indeed by the letter of any statute, but which come under the general protection which the law gives to virtue, decency, and morals in society? Any act which is *contra bonos mores* is indictable as such. And it is so, not by act of Congress, but by the pure and wholesome mandates of that common law which some men would madly drive from our jurisprudence, but which I most sincerely pray may live forever.

If I am correct in my position that nothing is impeachable that is not also indictable, for what acts then may a man be indicted? May it be on the mere caprice or opinion of any ten, twenty, or one hundred men in the community; or must it not be on some known law of the society in which he resides? It must unquestionably be for some offence, either of omission or commission, against some statute of the United States—or some statute of a particular State, or against the provision of the common law. Against which of these has the respondent offended? What law of any of the descriptions I have mentioned has he violated? By what is he to be judged, by what is he to be justified or condemned, if not by some known law of the country; and if no such law is brought upon his case—if no such violation rises on this day of trial in judgment against him, why stands he here at this bar as a criminal? Whom has he offended? The House of Representatives—and is he impeached for this?

I maintain as a most important and indispensable principle, that no man should be criminally accused, no man can be criminally condemned, but for the violation of some known law by which he was bound to govern himself. Nothing is so necessary to justice and to safety as that the criminal code should be certain and known. Let the judge, as well as the citizen, precisely know the path he is to walk in, and what he may or may not do. Let not the sword tremble over his unconscious head, or the ground be spread with quicksands and destruction, which appear fair and harmless to the eye of the traveller.—Can it be pretended there is one rule of justice for a judge and another for a private citizen; and that while the latter is protected from surprise, from the malice or caprice of any man or body

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of men, and can be brought into legal jeopardy only by the violation of laws before made known to him, the latter is to be exposed to punishment without knowing his offence, and the criminality or innocence of his conduct is to depend not upon the laws existing at the time, but upon the opinions of a body of men to be collected four or five years after the transaction? A judge may thus be impeached and removed from office for an act strictly legal, when done, if any House of Representatives for any indefinite time after, shall for any reason they may act upon, choose to consider such act improper and impeachable. The Constitution, sir, never intended to lay the Judiciary thus prostrate at the feet of the House of Representatives, the slaves of their will, the victims of their caprice. The Judiciary must be protected from prejudice and varying opinion, or it is not worth a farthing. Suppose a grand jury should make a presentment against a man, stating that most truly he had violated no law or committed any known offence; but he had violated their notions of common sense—for this was the standard of impeachment the gentleman who opened gave us—he had shocked their nerves or wounded their sensibility. Would such a presentment be received or listened to for a moment? No, sir—And on the same principle, no judge should be put in jeopardy because the common sense of one hundred and fifty men might approve what is thus condemned, and the rule of right, the objects of punishment or praise, would thus shift about from day to day. Are we to depend upon the House of Representatives for the innocence or criminality of our conduct? Can they create offences at their will and pleasure, and declare that to be a crime in 1804, which was an indiscretion or pardonable error, or perhaps an approved proceeding in 1800? If this gigantic House of Representatives, by the usual vote and the usual forms of legislation, were to direct that any act heretofore not forbidden by law, should hereafter become penal, this declaration of their will would be a mere nullity; would have no force and effect, unless duly sanctioned by the Senate and the approbation of the President. Will they then be allowed, in the exercise of their power of impeachment, to create crimes and inflict the most serious penalties on actions never before suspected to be criminal, when they could not have swelled the same act into an offence in the form of a law? If this be truly the case, if this power of impeachment may be thus extended without limit or control, then indeed is every valuable liberty prostrated at the foot of this omnipotent House of Representatives; and may God preserve us! The President may approve and sign a law, or may make an appointment which to him may seem prudent and beneficial, and it may be the general, nay the universal sentiment that it is so; and it is undeniable that no law is violated by the act. But some four or five years hence there comes a House of Representatives whose common sense is constructed on a new model, and who either are or affect to be greatly shocked at the atrocity of this act. The President is impeached. In vain he pleads the purity of his intention, the legality of his conduct, in vain he avers that he has violated no law and been guilty of no crime. He will be told, as Judge Chase now is, that the common sense of the House is the standard of guilt, and their opinion of the error of the act conclusive evidence of corruption. We have read, sir, in our younger days, and read with horror, of the Roman Emperor who placed his edicts so high in the air that the keenest eye could not decypher them, and yet severely punished any breach of them. But the power claimed by the House of Representatives to make anything criminal at their pleasure, at any period after its occurrence, is ten thousand times more dangerous, more tyrannical, more subversive of all liberty and safety. Shall I be called to heavy judgment now for an act which, when done, was forbidden by no law, and received no reproach, because in a course of years there is found a set of men whose common sense condemns the deed! The gentlemen have referred us to this standard, and being under the necessity to acknowledge that the respondent has violated no law of the community, they would on this vague and dangerous ground accuse, try, and condemn him. The code of the Roman tyrant was fixed on the height of a column, where it might be understood with some extraordinary pains; but here, to be safe, we must be able to look into years to come, and to foresee what will be the changing opinions of men or points of decorum for years to come. The rule of our conduct, by which we are to be judged and condemned, lies buried in the bosom of futurity, and in the minds and opinions of men unknown, perhaps unborn.

The pure and upright administration of justice, sir, is of the utmost importance to any people; the other movements of Government are not of such universal concern. Who shall be President, or what treaties or general statutes shall be made, occupies the attention of a few busy politicians; but these things touch not, or but seldom, the private interests and happiness of the great mass of the community. But the settlement of private controversies, the administration of law between man and man, the distribution of justice and right to the citizen in his private business and concern, comes to every man's door, and is essential to every man's prosperity and happiness. Hence I consider the Judiciary of our country most important among the branches of Government, and its purity and independence of the most interesting consequence to every man. Whilst it is honorably and fully protected from the influence of favor or fear, from any quarter, the situation of a people can never be very uncomfortable or unsafe. But if a judge is forever to be exposed to prosecutions and impeachments for his official conduct, on the mere suggestions of caprice, and to be condemned by the mere voice of prejudice, under the specious name of common sense, can he hold that firm and steady hand his high functions required? No! if his nerves are of iron they must tremble in so perilous a situation.

In England the complete independence of the Judiciary has been considered, and has been found

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the best and surest safeguard of true liberty, securing a government of known and uniform laws, acting alike upon every man. It has, however, been suggested by some of our newspaper politicians, perhaps from a higher source, that although this independent Judiciary is very necessary in a monarchy to protect the people from the oppression of a Court, yet that, in our republican institution, the same reasons for it do not exist; that it is indeed inconsistent with the nature of our Government that any part or branch of it should be independent of the people from whom the power is derived. And as the House of Representatives come most frequently from this great source of power, they claim the best right of knowing and expressing its will; and of course the right of a controlling influence over the other branches. My doctrine is precisely the reverse of this. If I were called upon to declare whether the independence of judges were more essentially important in a Monarchy or a Republic, I should certainly say, in the latter. All governments require, in order to give them firmness, stability, and character, some permanent principle, some settled establishment. The want of this is the great deficiency in republican institutions. Nothing can be relied upon; no faith can be given either at home or abroad to a people whose systems and operations and policy are constantly changing with popular opinion. If, however, the Judiciary is stable and independent; if the rule of justice between men rests upon known and permanent principles, it gives a security and character to a country which is absolutely necessary in its intercourse with the world and in its own internal concerns. This independence is further requisite as a security from oppression. All history demonstrates, from page to page, that tyranny and oppression have not been confined to despotisms, but have been freely exercised in Republics, both ancient and modern—with this difference, that in the latter, the oppression has sprung from the impulse of some sudden gust of passion or prejudice, while in the former it is systematically planned and pursued as an ingredient and principle of the Government. The people destroy not deliberately, and will return to reflection and justice, if passion is not kept alive and excited by artful intrigue, but, while the fit is on, their devastation and cruelty is more terrible and unbounded than the most monstrous tyrant. It is for their own benefit and to protect them from the violence of their own passions that it is essential to have some firm, unshaken, independent branch of Government, able and willing to resist their frenzy. If we have read of the death of a Seneca under the ferocity of a Nero, we have read too of the murder of a Socrates under the delusion of a Republic. An independent and firm Judiciary, protected and protecting by the laws, would have snatched the one from the fury of a despot, and preserved the other from the madness of a people.

I have considered these observations on the necessary independence of the Judiciary applicable and important to the case before this honorable Court, to repel the wild idea that a judge may be impeached and removed from office although he has violated no law of the country, but merely on the vague and changing opinions of right and wrong—propriety and impropriety of demeanor. For if this is to be the tenure on which a judge holds his office and character; if by such a standard his judicial conduct is to be adjudged criminal or innocent, there is an end to the independence of our Judiciary. In opposition to this reasoning I have heard (not from the honorable Managers) a sort of jargon about the sovereignty of the people, and that nothing in a Republic should be independent of them. No phrase in our language is more abused or more misunderstood. The just and legitimate sovereignty of a people is truly an awful object, full of power and commanding respect. It consists in a full acknowledgment that all power originally emanates in some way from them, and that all responsibility is finally in some way due to them; and whether this is acknowleged or not, they have, if driven to the last resort, a physical force, to make it so. But, sir, this sovereignty does not consist in a right to control or interfere with the regular and legal operations and functions of the different branches of the Government at the will and pleasure of the people. Having delegated their power; having distributed it for various purposes into various channels, and directed its course by certain limits, they have no right to impede it while it flows in its intended directions. Otherwise we have no Government. In like manner the officers of Government are responsible in certain modes, and at certain periods, for the exercise of their duties and powers; but the people have no right to make them accountable in any other manner, or at any other period than that prescribed by the great compact of Government, or Constitution. Having parted with their power under certain regulations and restrictions, they are done with it. They are bound by their own act, and having retained and declared the manner in which they will correct abuses in office, they have no right to claim any other sort of responsibility. If this be not the case, what government have we? What rule of conduct? What system of association? None; but we are truly in a state of savage anarchy and ruthless confusion, with all the vices incident to civilization without the restraints to control them.

Having discussed this necessary preliminary point as to what is or is not impeachable, I will proceed to a consideration of the charges now in issue between the respondent and the House of Representatives of the United States. It will be some relief to this honorable Court to learn, that for the expediting of this trial, and to avoid useless and irksome repetition, the counsel for the respondent have divided the articles of impeachment among themselves. I shall beg leave to address you on the first article, which relates to the transactions at Philadelphia, on the trial of John Fries for high treason.

The gentleman (Mr. Early) who has offered you his observations on these articles of impeachment, appears to have grounded his argument,

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not on the evidence, but on the articles. Supposing, perhaps, that they would be proved, he has taken it for granted that they have been proved, and has shaped his remarks accordingly. Had we filed a general demurrer to these charges, thereby admitting them as stated, the argument of the gentleman might have had the force and application he intended. But, if I mistake not, the respondent has pleaded not guilty, and the case must therefore be decided by the amount of the evidence, and not by the averments of the articles. I admit, indeed, that the honorable Managers are put to some difficulty in this respect. They are under the necessity of making their election between the articles and the evidence as the foundation of their argument; for they are so totally dissimilar, that they could not take them both; they meet in so few and such immaterial points, that no man can argue from them both for five sentences. This being the situation of the gentlemen, he has thought proper to select the articles and the facts therein set forth as the foundation of his argument in defiance of the testimony. In the observations I shall have the honor to submit, I propose to take the evidence as my text and guide, and leave the articles to shift for themselves, under the care and patronage of our honorable opponents.

Upon reading this first article of impeachment against the respondent, after a due degree of horror and indignation at the monstrous tyranny and oppression portrayed in it, the first question that would strike the mind of the inquirer would naturally be, when did this horrid transaction take place—when and where was it that Judge Chase thus persecuted an unfortunate wretch to the very brink of the grave, from which he was snatched by the interference of Executive mercy, shocked at the injustice of his condemnation? When were the rights of juries and the privileges of counsel and their clients thus thrown down and prostrated at the feet of a cruel and inexorable judge? What would this inquirer think and believe on being informed that these atrocious outrages upon justice, law, and humanity, were perpetrated five years since? Why and where has the justice of the country slumbered so long? What now awakens it from this lethargic sleep? Why has this monstrous offender so long escaped the punishment of his crimes? To what region of refuge did he fly? But will not surprise be greatly increased when it is told that at the time of the trial of John Fries, this injured and oppressed man, at the very time when these crimes of the judge were committed, the Congress of the United States, the guardian of our lives and liberties, were actually in session in the very city where the deeds were done, and probably witnessed the whole transaction? I do not expect to be answered here, for I cannot suspect our honorable opponents of so much illiberality, that at that period the Administration of our affairs was in the hands of the political friends of the judge, and therefore he was permitted to escape, however atrocious his crimes. Whatever, sir, may have been the character of that Administration, even if a weak and wicked one, as it has been represented, it could have no object in protecting any individual at so great a risk to themselves and their reputation. If Judge Chase had really violated the law and Constitution to come at the blood of Fries, and had done this in the face of the public, the Administration would have put too much at hazard by endeavoring to shelter him. I hope, however, no such reason will be given for the neglect of these charges; and as we most cheerfully and truly confide in the justice of the present Administration, we trust no such distrust will be avowed of the integrity of the former; we feel as safe under trial now as we should have done then, and look without distrust for the same impartial justice from this honorable Court, as we should have expected and received at any time.

We feel however, sir, a serious inconvenience from the delay of this prosecution In five years facts fall into oblivion, and witnesses engaged in their ordinary occupations of life cannot tax their memories with the circumstances of such distant events. It is difficult to discover, indeed, who were present at the transaction. To guard against injustice of this kind, even in civil cases, and protect us from fraudulent and slumbering demands, a limitation is put by law upon the claims of every man. The criminal code of the United States has justly adopted the same principle. By a statute, no person shall be prosecuted or punished for treason or other capital offence, with some exceptions, unless the indictment be found within three years after the offence is committed; and for smaller offences the prosecution must be instituted within two years. We cannot it is true claim the benefit of the letter of this law, but we may claim something from its principle; in expecting from this honorable Court every indulgence and allowance for any deficiency in our proof, which should be attributed, not to the real weakness of our case, but to the unreasonable staleness of the charges. Judge Chase was a stranger in Philadelphia, and necessarily found extreme difficulty in discovering what persons were in court at the time to which the charges relate, and in selecting those who had the best recollection of the transaction.

This first article, sir, charges, "that unmindful of the solemn duties of his office, and contrary to the sacred obligations by which he stood bound to discharge them faithfully and impartially and without regard to persons, the said Samuel Chase on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May 1800, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust." This general accusation is followed by three distinct specifications of offence, to wit:

"1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the

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case of the said John Fries, the prisoner, before counsel had been heard in his defence:

"2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client:

"3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give."

In the whole of these specifications I am able to discover but one truth; the rest is wholly contradicted and disproved by the evidence. It is true, that Judge Chase did form and reduce to writing, and, in a limited manner, deliver an opinion on a question of law, on the construction of which the defence of the accused materially depended—but when the article goes on to charge that this opinion tended to prejudice the minds of the jury against the case of John Fries the prisoner, before counsel had been heard in his defence, it is utterly unfounded and untrue. To whom was this opinion delivered? To the counsel for Fries and to the Attorney for the United States; and to no other person. The third copy, and but three were made, never was delivered to the jury or to any other person, and never could produce any prejudice or injury to John Fries—nor indeed was it ever intended to come to the knowledge of the jury, until they had completely heard the discussion of the case by counsel, when they were to have *taken out* with them this opinion of the judge upon the law of the case submitted to them. At that period of the trial when it was not only the right but the duty of the court to state to the jury their opinion of the law arising on the facts, then, and not until then, was it the intention of the judge to communicate to them this deliberate opinion. Could this be done with any intention to injure or oppress the prisoner? If such was the intention of the act, then and not otherwise, it was criminal. In inquiring into the nature of this act, I confine myself now to the forming and delivery of this opinion, and to decide its innocence or criminality we should consider it in relation to it *motives*, its *time and manner*, and its *consequences*. If nothing partial, oppressive, or corrupt, is to be found in any of these, I know not in what or whence the criminality is to be established. In deciding, sir, upon the *motive* which prompted the judge to this act, we must look for materials in the testimony: by this we must be governed, and not by the imputations, surmises, and constructions of our opponents, however eloquent and ingenious. The judge and his motives are not only strongly denounced in the article, but have also had the same fate from the mouths of the Managers. I take the evidence for my guide, and I know it will be the guide of this honorable Court.

What then, sir, did Judge Chase declare himself to be the reasons which induced him to form this opinion, to reduce it to writing, and to hand it to the counsel? And permit me here, sir, to state, that in all criminal prosecutions for an act equivocal in itself, and whose character of guilt or innocence depends upon the *intention* with which it was done, the declarations of the party, made at the time, are always received in evidence to ascertain and fix the true character of the act; and the fair and legal explanation of the act is taken and derived from such declarations of the party, if not disproved by other evidence. What, then, did Judge Chase himself say of his intention and motives in relation to this opinion? Mr. Lewis states that, on this occasion, Judge Chase said that he had understood that, at the former trial, *there had been a great waste of time* on topics which had nothing to do with the business or case, and in reading common law decisions on the doctrine of treason, as well as under the statute of Edward III., before the Revolution; and also relating to certain acts of Congress for crimes less than treason. That, *to prevent this in future*, he or they had considered the law, made up their minds, and reduced it to writing. And, in order that the counsel might govern themselves accordingly, had ordered three copies to be made out, &c. Here, then, the judge, at the time of the act now charged to proceed from a corrupt and partial intention, declares in unequivocal language what were his true motives. His object was to prevent an unnecessary waste of time in a court, where a vast deal of criminal and civil business was then pending and waiting for trial. This was the motive, and the only motive declared and avowed by the judge, at the time he delivered this offensive paper, and unless it be disproved by the evidence or the circumstances of the case, it must be taken to be the true one. It is not a subject of inquiry now, whether the reason he assigned for this proceeding be a good or a bad one: it is enough to our purpose that it most certainly is neither partial nor corrupt, As the motive was not partial, so neither was or could be the act oppressive to the prisoner, unless the judge, in executing his design of preventing the waste of time, pursued it to an unreasonable extent. If he obstructed only the introduction of irrelevant matter, and did not exclude anything that could and *ought* to have benefitted the prisoner, he was guilty of no injustice or impropriety. If the proper and legal rights of the counsel of the prisoner were curtailed, to his injury, there was certainly injustice done; but if nothing more than wholesome and reasonable restrictions were imposed, to the manifest advantage of the general business of the court and of other suitors there, without any unjust detriment to John Fries, then not only the motive was correct, but the act was highly laudable. And such was undoubtedly the case. If we go no further than Mr. Lewis's testimony on this subject, every idea of an intention on the part of the judge to injure or oppress John Fries is done away. As far as the judge declared himself, his intention was pure and correct, and we cannot say

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that, in the execution of this correct intention, he would have carried it to such excess as to produce oppression and injustice. The design was crushed in embryo: as far as we are acquainted with it, it is fair and clear of oppression, and we are not authorized to presume that *if* it had proceeded farther, it would have changed its character and become partial and corrupt. It is well known in Pennsylvania, that the loudest clamors are made against our courts for the delays of justice and the unreasonable time spent in the trial of every cause. These complaints had doubtless reached the ears of the judge; there was an enormous list of civil causes then before him, and he presumed that any expedient fairly to save time, would have been acceptable to everybody, to counsel as well as to suitors. I have as yet considered this part of the case only in its most unfavorable aspect to the respondent. Upon turning to the testimony of the other witnesses, its complexion becomes much more mild and unexceptionable. The suggestion, that this opinion made up by the court and handed to the counsel was declared to be final and conclusive upon them, and that no argument in opposition to it was to be permitted or heard, rests wholly and solely on the recollection of Mr. Lewis. Mr. Dallas was not in court at the time it is supposed to have happened; no other witness of all that were present has any remembrance of any such declaration, and two witnesses expressly disprove it. Mr. Edward Tilghman states that Judge Chase declared that the court had maturely considered the law arising upon the overt acts charged in the indictment against John Fries. That they had reduced their opinion to writing; that he understood a great deal of time had been consumed upon the former trial; and that, *in order to save time*, a copy of the opinion of the court would be given to the attorney of the district; another to the counsel of the prisoner; and that the jury should have a third *to take out with them.* Mr. Tilghman further states, that previously to the throwing of the papers on the table, and at the moment it was done, the judge expressed himself in these words: "Nevertheless, or notwithstanding, counsel will be heard." Mr. Rawle, a witness examined, as well as Mr. Tilghman on the part of the Managers, gives the same account of the declared motive of the judge in preparing this opinion, to save time, as much had been lost at the former trial; and states that the judges said the court had determined to express their opinion in writing, on the law, *that they might not be misunderstood.* Here we find the reason, not only for forming the opinion, but for reducing it to writing also. The court, continues Mr. Rawle, observed, they had therefore committed their opinion to writing; that the clerk had made three copies, one of which should be given to the District Attorney, one to the counsel for the prisoner, and one the jury *should take out with them.* To put this part of the transaction beyond doubt, and strengthen, if possible, the character it now bears, I beg this honorable Court to advert for a moment to Mr. Meredith's testimony. He, too, states that the judge declared the court, on great deliberation, had formed an opinion on the law on the overt acts set forth in the indictment; and that *to save time and prevent mistakes*, this opinion was reduced to writing—the copies to be distributed as mentioned by the other witnesses. He further expressly avers that the judge, when he threw down the papers, declared that the giving of this opinion was not intended to preclude the counsel from being heard, or from expressing any objections to its correctness. After this mass of concurring testimony, can the motive of the judge in forming and delivering this opinion be misrepresented or misunderstood; and can it now be believed or pretended that it was done, as the article charges, to prejudice the mind of the jury against John Fries before counsel had been heard in his defence? In order to bear up this charge against this weight of evidence, and support Mr. Lewis's testimony in discredit of that delivered by the other witnesses, the Managers who have spoken to this part of the case pretend that Mr. Lewis should be most relied upon, because most interested in the transaction. This interest, sir, may have given a false coloring and appearance to the conduct of the judge, and his anxious zeal for his client may have represented the conduct of the court to his mind in harsher views than it deserved. I have always understood that those witnesses were most to be relied upon who were most cool and least interested in the transaction to which they testify; but the ingenious gentlemen invert this rule. But, sir, I have no intention of making a comparison between the credibility of these witnesses, they are all respectable, above suspicion. It is a question of memory and not of character between them, and we must judge from various combinations of circumstances in ascertaining the respective correctness of memory. Mr. Lewis himself most candidly declared his memory to be very uncertain and imperfect of distant events. Besides, Mr. Tilghman and Mr. Meredith positively aver that the judge said, counsel would be heard on the correctness of that opinion. Now, Mr. Lewis does not and cannot say that the judge did not say so, but his evidence is no more than this, either that he did not hear it at the time, or that he does not remember it now. I refer the honorable Managers to their own rule about affirmative and negative testimony. In the Baltimore case, a single, solitary, unsupported witness (Mr. Montgomery) swears to a declaration of the judge, which some fourteen or fifteen respectable witnesses, both for and against this prosecution, with equal and better opportunities of hearing all the judge said at that time, declare was not, to the best of their knowledge, uttered by the judge, nor anything like it. Now, say the Managers, this single affirmative of Mr. Montgomery is more to be depended upon than all the other witnesses put together—and if anybody can think so, let it be so. But in Fries's case, we produce two affirmative witnesses against one negative witness, who testifies himself to the imperfection of his memory.

I presume, sir, I have most firmly established the point that the judge, in making up this opin-

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ion had, really and truly, no other object or motive than to prevent a burdensome and useless waste of time; and sure I am, that whoever attended the first trial of Fries, would see the necessity of some regulation for this purpose. How then did the judge carry this intention into execution? The opinion of the court on the points likely to arise in the case, was put into writing and delivered to the counsel. Was this any disadvantage to them? Was it not rather a friendly guide to them by which they might shape their argument so as best to meet the points of difficulty and serve their client? The court furnished each side, as well the United States as the prisoner, with copies of this opinion. This would have the effect to regulate and confine the argument on both sides to the proper channel, to the real points of difficulty, and prevent a wild, devious, and useless extension of the argument into matters wholly irrelevant. It was surely an advantage to Fries's counsel thus to know the opinion of the court on the points of law in their case, and thus to have an opportunity of meeting and repelling it. If they would convince the court or jury this opinion was erroneous, they would succeed for their client. But if the court had permitted the counsel to take the usual course, and had kept their own opinion in close reserve, without any intimation of its direction until the argument was closed, and had then delivered it to the jury, as unquestionably they might have done, and this opinion had contained some points which had been overlooked by the counsel, surely it would have been more prejudicial to the prisoner than the course that was pursued. The jury would naturally take the law from the court, and if, therefore, the judge had intended to have oppressed John Fries, he would have succeeded better by reserving his opinion, concealing it from the counsel, permitting them to flounder on in the dark, and then, in his charge to the jury, dictate the law to suit his partial and oppressive purpose. Would any gentleman of the law, about to argue a case before a court, think himself aggrieved if the judge were previously to inform him of the ideas he entertained of the case, with full liberty to controvert them? It would be esteemed a favor.

You will be pleased to bear in mind, sir, that this paper containing the opinion of the court, was not read, nor was there any declaration whatever of its contents or substance. It was known to none, it was intended to be made known to none but the counsel for whose use it was designed. How then could it produce any prejudice to John Fries? No attempt was made, no intention was manifested to read it. It was privately handed to Mr. Lewis. How then did it become public? In what manner were copies distributed to various hands? Not sir, by the court, but by the counsel of John Fries. Mr. Lewis, in a moment of real or affected indignation, threw the paper from him, declared his hands should not be polluted by it, and cast it upon the table of the court, and it does not appear that to this hour he knows the contents of the paper he so hastily condemned. Several gentlemen of the bar by this means got hold of it, and some copies were taken. But for this conduct on the part of Mr. Lewis, nobody ever could have known the contents of the paper, or the opinion of the court. It was this that gave publicity to the opinion, and extended a knowledge of its contents, not only without the design and concurrence of the court, but decidedly against them. The act of the court was thus thrown into a different course and direction from what was intended or contemplated by them.

What then, sir, is the whole amount of the crime of the judge on this occasion? That he, a law judge, had been bold enough to form an opinion—not on John Fries's case, or the facts or circumstances of it, for he knew them not; but on certain abstract points of law, without first consulting and hearing Messrs. Lewis and Dallas. And further, he had not only formed such opinions, but he had the audacity to put them into the hands of these gentlemen, which, in the article of impeachment, is called "delivering the opinion." The judge, then, on mature deliberation, from a full consideration both of English and American precedents and decisions, had really made up his mind upon what overt acts would constitute the treason of levying war; and to prevent mistake, he had reduced this opinion to writing, and for the information of the counsel on both sides (no partial selection) he gave a copy of this opinion to each of them, and intended to give another to the jury to take out with them. The jury should have this opinion where they could not mistake it, instead of their memories where it might be misunderstood. Is not this, sir, a fair and just epitome of the facts given in evidence? Is it not the full measure and amount of the judge's crime and corruption? If the judge had a right to have any opinion of his own on the case, and if the opinion he formed was a correct one, and it is admitted or at least not denied to be so, where or whence could any injury arise from it to John Fries or his counsel? The opinion is supported by English authority, and by the highly respectable names of Judges Paterson and Iredell. And this opinion Judge Chase had an undoubted right to give to the jury. He never intended to give it until the argument was closed, and then he designed to vary from the usual mode of charging juries only in this, that to prevent mistake, and for more certainty, he would deliver in writing instead of verbally. Yet the article charges that in consequence of the forming and delivering this opinion, in this illegal manner, John Fries was convicted and sentenced to death. The undisputed correctness of this opinion wipes away every idea of an intention to injure or oppress John Fries. No injustice could result to him from a legal and correct opinion, which must finally have ruled the case, delivered at any time and in any manner. There might be some inattention to usual forms, but there could be no substantial injury. An opinion thus anticipated, if manifestly unsound and erroneous, and against the prisoner, might carry some suspicion of unjust prejudice, but how *corrupt intentions* are to be proved, manifested, or executed by

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correct opinions, is to me inexplicable. The judge had taken much labor and particular pains to inform himself on the law of the case. He would not trust himself on hasty opinions, made up at the moment the life of a fellow-citizen was at stake, and might be the forfeit of an error; and he therefore carefully examined the law and deliberately took an opinion. For this unusual attention, he deserves thanks and not impeachment. If knowledge of the law be a crime in a judge, ignorance is his best recommendation; and that judge is most worthy and best qualified for his office, who possesses no opinions of his own on any legal subject, but presents himself as a scholar to be taught by the counsel, and has no impressions but such as they are pleased to give him. I mean not to pass a sentence of condemnation on the views or conduct of the counsel of Fries. Their sole object and anxiety were to save the life of their client; and if they believed they could better effect this end by taking fire at the conduct of the court, by exciting a strong feeling and prejudice against the mode of proceeding, and by involving the court in embarrassment and difficulty, it was for them to judge how far they might pursue this object by such means, and to their own judgment I submit it. It is not easy to say how far counsel may fairly go in such a case, and when the life of the client is in issue much more will be allowed than in common cases.

We have heard much about the agitation of the bar on this occasion. The particular cause of it has not been clearly explained. It might have been produced by the demeanor of Mr. Lewis, which, from his own account, was violent and indignant, or it might have been the mere bustle produced by the different efforts that were made to get hold of the obnoxious paper which Mr. Lewis cast from him with so much feeling as too foul for his hand; or from a combination of these with other causes. Another circumstance equally immaterial has been dignified with much importance by the attention the Managers have bestowed upon it—I mean the *novelty* of the proceeding. Every witness was asked in solemn form, "Did you ever see the like before?" "How long have you been a practising lawyer?" "How many criminals have you defended?" "Was not this mode of forming and giving opinions by the court a novelty to you?" Granted—it was a *novelty*—I say granted for argument's sake—it was a novelty; and what follows? Is it therefore impeachable? Every innovation, however just and beneficial, is subject to the same consequence. But, sir, if this novelty proceeded not from impure intentions, and was not followed by oppressive or injurious consequences, where is its injustice or criminality? There were many other novelties in that trial. It was a novelty that a man named John Fries should commit treason, and be tried and convicted for it. I never heard of precisely the same thing before. It was a novelty that counsel should desert their cause in the abrupt manner in which it was then done. But I presume it will not be pretended that these things were wrong merely because they were novel; much less that a judge is to be convicted of high crimes and to be removed from office for a harmless novelty. The articles charge not the judge with innovations and novelties in legal forms, but with depriving John Fries and his counsel of their Constitutional rights; and if he has not done this, the rest is of no importance now. But what is this strange novelty that excites so much interest and alarm? Is it that a law judge had a law opinion, and was capable of making it up for himself without the assistance of learned counsel? I hope not. I should be sorry to suppose this is a novelty in the United States. Was it then the reducing this opinion to writing, putting it on paper with pen and ink, that makes the dangerous novelty? To have the opinion is nothing; but to write it constitutes the crime. And yet, sir, where is the difference to the prisoner? Except that in the latter case there is more certainty; less chance of misapprehension and mistake on the part of the jury than when it is delivered to them verbally. It should be recollected, sir, and I am sure it is too important to be forgotten by this honorable Court, this written opinion contained all the limitations and discriminations on the law of treason which could serve the prisoner, as well as those which might operate against him. But, sir, I deny that there was so much novelty either in forming this opinion, or in reducing it to writing, as is pretended. Is it uncommon for judges to state their opinions on particular points of law to counsel, even before argument, for the direction of their observations? And was it ever before considered a prejudication of the case, or an encroachment upon the rights of the bar? In criminal courts the practice is constant and universal. Previous to the trial of the cases of treason, after the restoration of Charles II., the judges of England met together, and did form and reduce to writing opinions, not only upon the mode of proceeding upon the trials, but also on all those questions or points of law which they supposed would arise and require their decision in the course of the trials. (See Kelynge's Reports, pp. 1, 2, &c.—11.) Here the judges met in consultation expressly for the purposes now deemed so criminal in Judge Chase, and took to their aid the King's counsel. Our judge did not take to his assistance the Attorney of the United States in forming his opinion; nor did the judges in England deliver to the counsel of the accused the result of their deliberations, but doubtless it would have been received as a favor if they had. In the only two points of difference, therefore, between the two cases, we have most decidedly the advantage.

But, sir, how can the proceedings of Judge Chase, in *principle* and *effect*, be distinguished from the common and universal practice of charging grand juries on the legal nature and description of the crimes to come under their notice? When a judge is about to hold a criminal court, he is particular to introduce into his charge those very offences, and his opinions upon them, which, by information or otherwise, he supposes will be brought before the court. The opinion of the

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judge in such cases is formed, is reduced to writing, and is publicly delivered in the presence of all the jurors, both grand and petit, but never was before conceived to be objectionable. Nor was it ever before supposed to be a prejudication of any man's case, who might afterwards be tried for an offence thus defined. Judge Chase stated what acts in his opinion would, in construction of law, amount to treason in levying war; but whether those acts, and the necessary intention which must accompany them, would be proved upon John Fries, or anybody else, was left quite at large to be decided by the jury on the evidence. In Hardy's Trial, p. 13, Chief Justice Eyre states to the grand jury:

"Jurors and judges ought to feel an extraordinary anxiety that prosecutions of this nature should proceed upon solid grounds. I can easily conceive, therefore, that it must be a great relief to jurors placed in the responsible situation in which you now stand, bound to do justice to their country and to the parties accused, and anxious to discharge this trust faithfully; sure I am that it is consolation and comfort to us, who have upon us the responsibility of declaring what the law is in cases in which the public and the individual are so deeply interested, to have such men as the great Sir Matthew Hale, and an eminent judge of our own times, who, with the experience of a century, concurs with him in opinion, (Sir Michael Foster,) for our guides.

"To proceed by steps. From these writers upon the law of treason, who speak, as I have before observed, upon the authority of adjudged cases, we learn that not only acts of *immediate* and *direct* attempt against the King's life are overt acts of compassing his death, but that all the *remoter steps* taken with a view to assist to bring about the actual attempt, are equally overt acts of this species of treason—even the meeting and consulting what steps should be taken in order to bring about the end proposed, has been always deemed to be an act done in prosecution of the design, and as such an overt act of this treason. This is our first step in the present inquiry. I proceed to observe, that the overt acts I have been now speaking of have reference nearer or more remote to a *direct* and *immediate* attempt upon the life of the King; but that the same authority informs us that they who aim directly at the life of the King (such for instance as the persons who were concerned in the assassination plot in the reign of King William) are not the only persons who can be said to compass or imagine the death of the King. 'The entering into measures which, in the nature of things, or in the common experience of mankind, do obviously tend to bring the life of the King into danger, is also compassing and imagining the death of the King;' and the measures which are taken will be at once evidence of the compassing and overt acts of it."

Where is the criminality of such instruction and direction; but in what does it differ in principle, and in all its possible consequences to the prisoner, from the conduct of Judge Chase? The learned English judge thought he was obliging the jury, not encroaching upon them, by stating fully and precisely the legal construction of those acts which would probably be given to them in evidence to support the charges of treason. It is true the treason charged upon Hardy was not that of levying war—it was that of compassing the King's death. Now what overt acts amount to a compassing of the King's death, is a question of law resting upon long and established decisions and precedent. And Judge Eyre thought it no crime to declare to the jury his opinion of the law in this respect. So in our case, treason by levying war is a general Constitutional definition of the offence; but the application of this general definition, and the fixing and describing such overt acts as amount to a levying of war, is matter of legal construction, depending upon a knowledge of former adjudications, which the judge was bound to know, or he was not worthy of his office, and which he was also bound to communicate to the jury. The difference in the cases is only here. Chief Justice Eyre formed his opinion on deliberation, and reduced it to writing; but he also *publicly* delivered it with all the weight of his name and authority in the face of all the jurors and of the country. Whereas Judge Chase gave his opinion privately to the counsel, to be at their disposal and discretion—to use it for the benefit of their client if they could, or to disregard and suppress it if they thought proper. It might forever have been concealed from the jurors and from the world if the counsel of Fries had not themselves made it public. This practice of delivering opinions on points of law in charges to grand juries is not confined to the English courts. It is the same in the United States. The Managers have pronounced a very deserved eulogium upon the official conduct and character of Judge Iredell. The respondent has been referred to him as a bright example of justice and impartiality, and it has been lamented that with such an example before him, Judge Chase should have so wandered from the path of rectitude. We take their standard of excellence. We agree to be judged by Judge Iredell; and if I show that this humane and learned judge really did the same thing for which the respondent now stands on his trial, I hope there will be an end of the complaint. On the first trial of this same John Fries for the same offence, Judge Iredell actually committed, with some circumstances of aggravation, the same enormous crime for which Judge Chase is now impeached. He did form an opinion on the law of treason, he did reduce that opinion to writing, and he did deliver that opinion, the same in substance, and nearly the same in words with that delivered by Judge Chase. This bright example was before our eyes; he is now so, and let us be judged by him. In the charge delivered to the grand jury in 1799, who found the first bill against Fries for treason, speaking of those cases which he thought would come before the court, the judge says:

"The only species of treason likely to come before you is that of levying war against the United States. There have been various opinions and

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different determinations on the import of those words. But I think I am warranted in saying, that if, in the case of the insurgents who may come under your consideration, the intention was to prevent by force of arms the execution of any act of the Congress of the United States altogether, (as for instance the land-tax act, the object of their opposition,) any forcible opposition calculated to carry that intention into effect, was a levying war against the United States, and of course an act of treason. But if the intention was merely to defeat its operation in a particular instance, or through the agency of a particular officer, from some private or personal motive, though a higher offence may have been committed, it did not amount to the crime of treason. The particular motive must, however, be the sole ingredient in the case, for if combined with a general view to obstruct the execution of the act, the offence must be deemed treason."

Judge Iredell, therefore, so far from conceiving it to be a crime to have an opinion upon the law of treason in levying war and the overt acts which would constitute it, to reduce that opinion to writing, and to deliver both to counsel and jury, seems to have considered it, as Chief Justice Eyre had done before him, to be his duty to do so. The opinion delivered by this respectable judge coincides entirely with that of Judge Chase, and the manner of delivering was, on our opponent's principles, vastly more exceptionable. The novelty of this proceeding seems to have vanished on investigation. There is indeed one striking difference in the two opinions: That Judge Chase goes more fully and clearly into the definition of the offence, and is more particularly careful to state those distinctions and discriminations which might serve the accused, and reduce his transgression to some smaller offence, provided they could appear in his case. He sets out not only the description and character of those overt acts which constitute treason, but enumerates also with equal care such as will not amount to that offence. If these favorable discriminations might in any way have been useful to the accused, they were put fully into the power both of the counsel and the jury.

The gentleman who opened the prosecution, (Mr. Randolph,) took occasion to speak in very handsome, and I doubt not very deserved terms of applause, of a distinguished judge in Virginia. This same judge has published an edition of Blackstone's Commentaries, into which he has introduced a variety of his own opinions on the Constitution and laws of the United States. If hereafter a person should be accused under the operation of some of those statutes on the construction of which Judge Tucker has published his comments and opinions, would it be any impeachment of the justice and impartiality of this judge to say, he had made up his opinion, he had reduced it to writing, he had delivered it to the world, and therefore he had prejudged the case. No, this would be a sort of reasoning even more absurd than the Richmond *non sequitur*. The honorable Manager, (Mr. Randolph,) to enforce and exemplify his doctrines on this subject, put an analogous case. He stated that a judge holding a criminal court might properly give the legal description of murder, and the circumstances and ingredients that in point of law would constitute this offence. But, says he, he may not go on to apply this definition to the *overt acts* laid in the indictment. This, I confess, is a *novelty* to me, I never before heard of overt acts in an indictment for murder. The general charge of the offence is laid in legal and general terms, but there is no specification of the particular facts and circumstances by which the charge is to be supported. But suppose a judge, knowing that a man was coming before him for trial, accused of going into the street with a declared resolution to kill the first person he should meet; and this judge were to say to any person or in any place, verbally or in writing, that a killing under such circumstances was murder, and a full manifestation of malice in legal construction, would this be called a prejudication of the case? Is it not a mere declaration of the law existing and established long before the case, which it was the duty of the judge to know, to obey, and to declare? If the facts proved before the jury brought the accused within the law, the consequence of conviction followed, not by the will of the judge, but by the sentence of the law; and while this question was left open, the case was in no wise prejudged. To explain this point still further, I will put the case of *libelling*. This offence, like that of treason, consists of two parts—the act and the intent. Would it be criminal in a judge, knowing that such a case was to come before him, to inform himself, if necessary, of the law of libels, to make up his mind upon the constituent parts of the offence, and to declare them to the grand jury, the counsel, or anybody else? Might he not be of opinion, and write and say, that a libel is a malicious defamation of any person in writing, in order or intending to excite their wrath, or to expose them to public hatred or contempt? Here the fact of publication must be proved, and the malicious intent; and might not a judge state what in contemplation of law is a malicious and defamatory writing, and that if such an one is published with intent to injure and defame, it is in law a libel? Apply this doctrine to the case of Fries. May not a judge have an opinion and declare that an insurrection of a body with intent or in order to resist the execution of any law of the United States, and the carrying that intent into execution by actual force and violence, is treason against the United States by levying war? There is no prejudication in either case; the facts and the intent which constitute the crime, and on which the guilt or innocence of the accused depends, are left wholly untouched, and come without prejudice or bias to the jury. I have heard the phrase "prejudging the law" repeated over and over again. Judge Chase *prejudged the law* against Fries, we are told. I confess the phrase is a very singular one to me. I know not precisely how to understand it. I can comprehend what is meant when I hear of prejudging a man's case—in prejudging the

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facts of any case. But as to the law, I presume it is always prejudged—always settled, certain, and ascertained. It is never a question in a case of murder, whether a killing with malice prepense is or is not murder. The law has prejudged that, and so in all other cases the question is, whether the facts proved bring the case within the law. And so it was in Fries's case, and upon that point Judge Chase neither gave nor intimated nor had an opinion; for as the evidence had not been heard, he could not anticipate what facts would be proved.

I hope and trust, sir, that the first specification of this article is now disposed of to the satisfaction of this honorable Court, and the justification of the respondent. Part of it, when tested by the evidence, turns out to be wholly unfounded; and the rest which is true, has been fully justified both on principle and by precedent. If there was some haste and error in the conduct of the judge, which however I neither believe nor admit, there was certainly no criminality in the act. There was nothing impure in the motive—nothing injurious in the consequence.

Suffer me now, sir, to offer you some observations on the second specification of the first article of impeachment. I hope it will not be necessary to trespass greatly on your patience in refuting it. It charges Judge Chase with "restricting 'the counsel for the said John Fries from recur-'ring to such English authorities as they believed 'apposite, or from citing certain statutes of the 'United States, which they deemed illustrative 'of the positions upon which they intended to 'rest the defence of their client." This charge consists of two parts; it complains of a restriction as to English authorities, and as to American statutes. I will consider them distinctly. First, sir, permit me to remark that these allegations are made to support the general charge of partiality, oppression, and injustice. But what becomes of these pretences when we bear in mind the testimony of Mr. Rawle, the District Attorney, and always, and in every situation, a gentleman whose character, in all its relations both public and private, bears the first stamp of respectability, and fears no competition for credit? He has informed this honorable Court that this restriction so grievously complained of, and now the subject of a criminal prosecution, was imposed upon him as well as upon the counsel of Fries. Is this the character or the conduct of partiality or oppression? Does it evince that strong appetite the judge is said to have, to drink the heart's blood of this unfortunate German, and stain the pure ermine of justice with his gore? I have always understood by partiality in a judge, a favoring bias to one party to the prejudice of the other; but where a restriction is put equally on both sides, I cannot conjecture how it can be resolved into partiality or oppression. It will be seen presently that as far as this restriction could have any operation, it was friendly in that operation to John Fries. But, sir, what was this restriction so much complained of, and now magnified into a high crime? That certain English decisions in the law of treason, made before the Revolution of 1688, should not or ought not to be read to the jury; and pray, sir, what were these decisions? I will take their character from Mr. Lewis himself, and no man is better acquainted with them. He says they were decisions of dependent and corrupt judges, who carried the doctrine of constructive treason to the most dangerous and extravagant lengths. True, they were so—sanguinary, cruel, and tyrannical in the extreme; and could the exclusion of such cases injure John Fries? If cases which extenuated and softened the crime of treason had been rejected, he might indeed have suffered; but how he was or could be injured by keeping from the jury those cases which aggravated his offence, I am really at a loss to learn. The restriction there was on the United States. Had they been adduced by the Attorney General, no doubt they would have been ably answered by the defendant's counsel; but the ability of the counsel was not inferior to Fries' counsel; and if Judge Chase had indeed a design to oppress and injure John Fries, and to convict him on strained constructions of treason, his best policy would surely have been to have suffered these cases to have come forward, and if supported by his authority and the talents of the counsel of the United States, they might have had their influence with the jury, notwithstanding the able refutations they might have received. But why and for what good purpose did the counsel desire to read these cases, operating, if they operated at all, directly against the life of their client? Why would they fatigue the court and impose upon the jury with those wicked and ridiculous decisions against a man who wished his stag's horns in the king's belly; and another, who declared he would make his son heir to the Crown?

Sir, there could have been but one object in this attempt. It was this: to excite such horror in the minds of the jurors by reciting these tales of tyranny and blood, as would create a general prejudice in them against all the laws of treason. The abhorrence which would be honestly given to such extraordinary cases of cruelty practised under the law of treason, they hoped would extend itself to all cases of treason, even the most just and upright. I know another and ingenious coloring and pretence has been given for this design, this strange anxiety to read cases, which so strongly support prosecutions for treason. It has been said by Mr. Lewis, not here as a witness, but in Philadelphia as counsel for John Fries, that his object in desiring to read these extravagant cases was of this sort. That many of the decisions on the law of treason made since the Revolution of 1688, and which are received as authorities in modern courts, were actually grounded on the iniquitous cases decided before the Revolution; and therefore, says Mr. Lewis, we wished to lay these cases before the jury that they might place no reliance on those since the Revolution, which were derived from them. Could the gentleman be sincere in this pretence? How far would he carry it? To all decisions

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since the Revolution; and are we to have no adjudications on this subject which may be relied upon as sound, legal, and virtuous? I apprehend he does not mean so much. He desired I presume only to discredit such of the English decisions since the Revolution, as were derived from those corrupt sources alluded to. Then, most assuredly, he was premature in his attempt to read these precious cases. If the district attorney should read and rely upon any case, decided since the Revolution, to convict John Fries, and Mr. Lewis could trace that decision back to the horrible times spoken of, and show that it was derived from and grounded upon the opinions of those corrupt and dependent judges, it would surely have been competent for him to do so, and no court would have attempted to prevent him. But that he is to deluge the court and jury with a mass of trash and corruption, and so declared to be by himself, by way of anticipation and when no necessity had occurred or probably would occur to justify it, could not be endured by any court knowing its duties and respecting its dignity. These cases are law, or they are not law. If the former, their opinion and influence were against the prisoner; if the latter, the court should not suffer them to be read to mislead and impose upon the jury. So far, sir, and I shall trouble you no further, on the exclusion of these English statutes. Now, as to the statutes of the United States. That any such restriction was laid on the counsel of John Fries, rests wholly and entirely on the testimony and recollection of Mr. Lewis. I will, sir, first consider the nature and extent of this charge against the respondent, supposing the fact to be so. I presume it will be granted to me that a judge has some sort of authority in a court; that he does not sit there as a mere cypher, without power or command. Among the acknowledged powers of a judge, is that of regulating and directing in some degree the argument before him, and preventing the introduction of matter either grossly improper or palpably irrelevant to the issue. If then it be demonstrated that these statutes of the United States had really and truly nothing under heaven to do with the trial of John Fries, I hope the judge will not be condemned for excluding them. John Fries, sir, was indicted for the treason of levying war against the United States, and for no other offence.

The crime is created and defined by the Constitution of the United States. It became the duty of the attorney of the United States to show to that court and jury, that the prisoner had been guilty of the treason charged in the indictment according to its definition and description in the Constitution, or the prosecution must fail. If, on the other hand, he did show this to the satisfaction of the court and jury, John Fries must necessarily be convicted. Now, sir, what possible influence or control could any act of Congress have over the character of a crime defined in and derived from the higher authority of the Constitution? The act of Congress could not enlarge, restrict, or in any way alter or affect the Constitutional description. To what proper purpose then could any act of Congress be read? Why, sir, we have heard something about a Legislative construction of the Constitution; and that these acts of Congress defining sedition and other offences, might be used and were important to show what was intended by the Constitution in the description of treason. In the first place, sir, Congress in passing these statutes never had the most remote idea or intention of giving any sort of construction or opinion upon the law of treason; and if they had such an intention, it was beyond their powers and rights, and should be wholly disregarded, not only by that court, but by this. The construction of the Constitution, in common with every other law, belongs exclusively to the Judiciary, as best qualified both from its permanency and independence as well as from legal learning to exercise so important a right. The necessity of a power existing some where to judge of the Constitution, and of the conformity or non-conformity of laws to the provisions of it, results from the very nature of a written constitution. It is in vain we have an instrument paramount to ordinary legislation, if there is no authority to check encroachments upon it, and there is no department of Government with whom this power can be so safely lodged, or by whom it can be so ably and impartially exercised as the Judiciary. If the Legislature, the very branch of Government most controlled by the Constitution, and intended to be so, shall be permitted to assume the wide and unlimited right of construction, the Constitution will sink at once into a dead and worthless letter; moulded into various fantastic shapes at the will of the Legislature, and purporting one thing today and another to-morrow, and nothing at last. But Congress, I repeat, sir, in passing the sedition law, had no intention whatever of giving their construction to the Constitutional description of treason, or of affecting or touching it in any way. The counsel of Fries were, therefore, about to use or abuse the act of the Legislature to purposes never contemplated or intended. Should the court suffer a delusion of this sort to be practised upon a jury, equally disrespectful to the court and to the Congress? It was not Judge Chase only who thought these statutes of the United States totally irrelevant to the case of Fries. They had been solemnly adjudged to be so, after every exertion of the talents of the counsel to show their application and force. I refer you, sir, to the opinion of Judge Iredell on the first trial of Fries:

"An act of Congress which I have already read to you (that commonly called the sedition act) has specially provided in the manner you have heard, against combinations to defeat the execution of the laws. The combinations punishable under this act must be distinguished from such as in themselves amount to treason, which is unalterably fixed by the Constitution itself. Any combinations, therefore, which before the passing of this act would have amounted to treason, still constitute the same crime. To give the act in question a different construction, would do away altogether the crime of treason as committed by

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levying war, because no war can be levied without a combination for some of the purposes stated in the act, which must necessarily constitute a part though not the whole of the offence.

"This, gentlemen of the jury, is an indictment against the prisoner at the bar for levying war against the United States; the first inquiry therefore is, what is meant by these words in our Constitution? 'Treason against the United States shall consist only in levying war against them,' &c. These words are repeated verbatim, I believe, in an act of Congress called the Judiciary act, defining the punishment of the crime of treason, pursuant to Constitutional authority. This crime being defined in the Constitution of our country, becomes the supreme law, and can only be altered by the means therein pointed out, and not by any act of the Legislature; and, therefore, the repetition of the words of the Constitution in the Judiciary act is quite unnecessary, as the only power left to Congress over this crime was, to describe the punishment; the same act, in another part, makes provision for the method of trial. Agreeably to their power, Congress have described the punishment, and thereby declared the crime to be capital. It is clear, therefore, that, as the Constitution has defined the crime, the Congress, drawing its sole authority from that Constitution, cannot change it in any manner, particularly as it is so declared; yet the counsel for the prisoner say, that the Legislature have given it a legislative interpretation, and that their interpretation is binding on this court. They say that Congress did not mean to include the offence charged upon the prisoner at the bar, under the definition of levying war; because the sedition act describes a similar offence, and because a rescue is provided for in another act, the punishment extending no further than fine and imprisonment. Several answers may be given to remove these objections:

"First, if Congress had intended to interpret these words of the Constitution, by any subsequent act, they had no kind of authority so to do. The whole judicial power of the Government is vested in the judges of the United States, in the manner the Constitution describes; to them alone it belongs to explain the law and the Constitution; and Congress have no more right nor authority over the judicial expositions of those acts, than this court has to make a law to bind them. If this was not an article of the Constitution, but a mere act of Congress, they could not interpret the meaning of that act while it was in force, but they may alter, amend, or introduce explanatory sections to it. In this we differ from the practice of England, from whence we received our jurisprudential system in general; for they having no Constitution to bind them, the Parliament have an unlimited power to pass any act of whatever nature they please; and they, consequently, cannot infringe upon the Constitution. The very treason statute of Edward III. itself, contains a provision giving Parliament an authority to enact laws thereupon, in these words: 'Because other like cases of treason may happen in time to come, which cannot be thought or declared at present: it is thought that, if any such does happen, the judges should not try them without first going to the King and Parliament, where it ought to be judged treason, or otherwise felony.' On this point Sir Matthew Hale was very careful lest constructive treason should be introduced.

"This, gentlemen, you will observe, only relates to any case not specified in that act. But, on the occasion now before you, it is not attempted, by any construction or interpretation, that anything should be denominated treason that is not precisely and plainly within the Constitution. No treason can be committed except war has actually been levied against the United States.

"But further, nothing is more clear to me than that Congress did not intend, in any manner whatever, to innovate on the Constitutional definition of treason, because they have repeated the words, I think, verbatim, in their own act, with regard to the rescue and obstruction of process which is mentioned in the act alluded to. It will not be pretended, by any man, that every rescue or every obstruction of an officer in serving process, or even both together, amounts to high treason, or else to no crime at all. No; the crimes are differently specified, and rescue or obstruction of process may be committed without that high charge. This, I think, was sufficiently explained by the counsel for the United States."

Will it be pretended, sir, that counsel have a right to read anything before the court which they may find in a law book? Is there anything of such peculiar dignity and privilege in the statutes of the United States, that any of them may, at all times and on all occasions, whether pertinent or not, be read in a court of justice; and is it a high crime in a judge to prevent it? Suppose the counsel had chosen, on the trial of John Fries, to amuse themselves with reading the revenue laws of the United States, would the mere circumstance of their being bound in our statute book have given them such a sacred character that the court would be bound to listen, with the most respectful attention, to such an absurd waste of time? I do not hesitate to aver that the revenue laws have full as clear and proper an application to the case of John Fries as either of the statutes the counsel were so anxious to produce.

But, sir, although Judge Chase undoubtedly believed that these statutes of the United States had no sort of application to the case before him, and we contend that he would have been wholly justifiable in excluding them from the discussion, yet we deny most explicitly that he did so. The respondent never declared that these laws should not be read or referred to on that occasion. The proof of the fact rests entirely on the recollection of Mr. Lewis. Among the numerous spectators of this transaction, not a man but Mr. Lewis has been produced to sustain this charge now deemed so important. Mr. Lewis has doubtless declared this fact as he believes it; but, sir, when we recollect the agitation of this gentleman, as described by himself, the strong state of feeling or passion into which he was excited, the length of time and the acknowledged frailty of his memory,

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and when to this we add that something was probably said about the irrelevancy of these statutes, we shall find sufficient reason to believe that Mr. Lewis has, in this respect, fallen into a mistake. Opposed to this imperfect recollection, we have Messrs. Rawle, Tilghman, Meredith, Biddle, and Ewing, all possessing an equal opportunity with Mr. Lewis to hear and to understand what passed from the court; and from their cool and disinterested situations less likely to receive unfounded or discolored impressions. I cannot avoid reminding you, sir, that Mr. Tilghman and Mr. Rawle are witnesses summoned and examined on the part of the United States, and although the honorable Managers have thought proper to claim only Mr. Lewis and Mr. Dallas, and to treat the other gentlemen as witnesses for the respondent, they are nevertheless entitled to the full regard and respect, whatever it may be, attached to the witnesses for the majesty of the people. The five gentlemen I have named, were all of them in court during the trial of John Fries, and at the time Mr. Lewis supposes this restriction to have been laid upon him; and yet not one has any recollection of any such prohibition; I believe they, or some of them, state in decided terms that none such were made. If this comparison of the recollection of five witnesses against one, who himself testifies to the imperfection of his memory, leaves any doubt about the truth of the fact, I can refer this honorable Court to a written document, drawn up by Mr. Lewis in conjunction with Mr. Dallas, which must put the question to rest. When there is such a contradiction in the testimony of such respectable witnesses, it is a great relief to my mind to have some permanent voucher to refer to, to decide the difference. I allude, sir, to the letter addressed by Messrs. Lewis and Dallas to Mr. Lee, then Attorney General of the United States. This letter was written in May, 1800, soon after the trial of Fries, and when every circumstance was fresh in the memory of Mr. Lewis. This letter was written in consequence of a communication from Mr. Lee, stating "that the case of Fries was before the President; 'that *all the information* was wished which could 'assist in making a proper decision upon a claim 'for mercy and pardon; for which purpose Mr. 'Lee desired to know the grounds on which the 'counsel intended to have enforced the defence." In consequence of this solemn and important call from such high authority, and for such an interesting purpose, Mr. Lewis writes to Mr. Dallas—states that, in justice to "*poor Fries*" as well as to themselves, they ought to make the desired communication; that they should state their intended arguments, &c., and that they should state "in 'decent and manly terms *our reasons for declining* '*any interference in the trial;*" he then requested from Mr. Dallas "*every communication* likely to render service to *poor* Fries." Turn then, sir, to the letter addressed to Mr. Lee, with all these friendly dispositions on the part of Mr. Lewis, with all the anxious desire he had to serve poor Fries, and with all the aid of Mr. Dallas, in making the statement, which was to contain *all* their information on the subject, and *all* their reasons for declining to interfere in the trial. We find, sir, in this important letter, that they informed the President that the "cause was prejudged" by an opinion they were wholly unacquainted with; by a paper they had never read, and knew not the contents of; and the jury were also *prejudged* by this opinion, although they knew not what it was. But, sir, we do not find any complaint whatever; nay, not the slightest suggestion that the court prevented or forbade the reading of these statutes of the United States, or restricted the counsel from making any use of them they thought proper. With the manifest disposition of these gentlemen, in writing this letter, with the object before them for which it was required, and the uses they intended should be made of it—uses which they anticipated at the moment they abandoned the cause—is it probable so important a circumstance would have been omitted if it had really occurred? I refer you and this honorable Court, sir, to the following pages of the evidence printed at the last session of Congress for the use of the House of Representatives, pages 21, 24, 25, 26, to 32.

May I not now flatter myself, sir, that all the criminality charged upon the respondent, in the second specification of the first article of impeachment is washed away from the minds of this honorable Court? Under this hope and impression, I will proceed to consider, as briefly as possible, the third and last specification. In this the judge is charged with "debarring the prisoner from his 'Constitutional privilege of addressing the jury '(through his counsel) on the law as well as on 'the fact which was to determine his guilt or in-'nocence, and at the same time endeavoring to 'wrest from the jury their indisputable right to 'hear argument, and determine upon the question 'of law, as well as the question of fact, involved in 'the verdict which they were required to give." This charge is absolutely unfounded and untrue, and is, in all its parts, most completely disproved by the evidence. As to debarring counsel from being heard, I need only refer you, sir, to the testimony of Messrs. Tilghman and Meredith, who expressly swear, that Judge Chase, when he threw down the paper containing the opinion the court had formed on the law, explicitly declared that, nevertheless, counsel would be heard against that opinion. It is, indeed, true that Mr. Lewis seems, throughout the business, to have been under an impression that nothing would be heard in contradiction to that opinion; and that his professional rights were invaded. But this appears to be a hasty and incorrect inference or conclusion of his own, from the conduct of the court. He wholly misapprehended the court, and has charged his misapprehension to their account. This is the usual effect of such precipitate proceedings. The Managers have greatly relied on this circumstance; they urge that Mr. Lewis, through the whole affair, and in all he said concerning it, took for granted and stated that he was debarred from his Constitutional privileges. He did so; but he did so under a mistake of his own, not proceeding from the court. It is not only that no other wit-

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ness speaks of any such restriction, but expressly negative it and say, some of them at least, that none such was imposed; but Mr. Rawle has further informed you, that it appeared to him throughout the business that Mr. Lewis had wholly misunderstood the court and mistook their intention. But, surely, sir, we are not to be condemned because we have been misunderstood; especially as the mistake seems to have been peculiar to Mr. Lewis, and no other witness fell into the same error. I rely most implicitly on Mr. Rawle's testimony, not only from the strength and correctness of his character, but from the unusual pains he took to be accurate in his knowledge of this transaction. His notes are copious, connected, and satisfactory, and although he has no notes of the first day's proceeding, yet he seems to have given an uncommon and cautious attention to every circumstance to which he has testified. This gentleman negatives every idea of any restriction upon the arguments of counsel, and is supported by every witness but Mr. Lewis. If any doubt can remain upon this subject, I am happy to have it in my power to refer to a written and unchanging document, which destroys the third specification, and demonstrates not only that the counsel were not prohibited from addressing the jury, both on the law and the fact, but also that the right of the jury to decide both the law and the fact was most largely and explicitly avowed and declared to them. I beg to refer this honorable Court to the second exhibit, filed with the respondent's answer. It contains this very opinion, so scorned by the counsel of Fries, and from the pollution of which they shrunk with horror. If they had read it before it was thus indignantly condemned; if it had been understood before it was consigned to contempt, and denounced as a violation of every valuable and sacred right, how much confusion, how much unnecessary discontent, might have been saved and prevented! In this opinion, then, will be found the sentiment in these words: "It is the duty of the court 'in this and all criminal cases, to state to the jury 'their opinion of the law arising on the facts; but 'the jury are to decide on the present, and on all 'criminal cases, both the law and the facts, on 'their consideration of the whole case." Was there ever a more ample and explicit avowal of the rights of juries? Is there any friend to juries so extravagant as to contend or ask for more? The acknowledgment is as full as any man can require or the law would warrant. The judge, in thus admitting and confirming the right of the jury to decide both the law and fact, admits, by inevitable consequence, that the jury have a right to hear counsel both upon the law and facts. That which they are to decide upon, they must have information upon; and the court which declares the jury to be the tribunal to determine the *whole* case, never could have said, in the same breath, that they should hear no argument on the case they were thus to determine. This monstrous absurdity, of which the judge can hardly be suspected, brings it to a certain conclusion, that Mr. Lewis must have mistaken the court; and that no such restriction was laid upon him or the jury as he has apprehended.

The charges, sir, laid in this first article of impeachment, are grounded altogether on the proceedings of what has been called the first day of Fries's trial; and most firmly believing that the whole of this proceeding on that day will bear the most scrutinizing inquiry, and stand on the strong ground of justification, I have been willing to meet the Managers on that day's proceeding disjointed from that of the following day. But, sir, it is most evident, that this is by no means a full or a fair examination of the judge's conduct on that occasion. When he is charged with a corrupt or partial intention to injure and oppress John Fries, when he is charged with a wilful violation of the rights of the counsel and jury, the whole of the proceeding should be brought into view, before we decide upon the character of any part of it. An attention, sir, to what passed on the second day, as it is called, of Fries's trial, will most abundantly prove that Judge Chase never had intended any partiality or oppression against him; and certainly that if he had any such intention, he never carried it into execution or effect. And, I trust, I am safe in saying that the mere intention to commit a crime, however gross or outrageous, unless carried into some sort of action or effect, constitutes no crime. A man may intend to commit a larceny, assault and battery, or any other offence; but while he abstains from the act, the mere intention cannot subject him to trial or punishment. The respondent, then, discovering from the conduct of Fries's counsel, and the indignant hostility they assumed, that he was greatly misunderstood; that an arrangement he had adopted for the convenience of public justice, the reasonable expedition of the approaching trial, and the real accommodation of the court, the counsel, and the jury, was construed and received as an oppression upon the prisoner, an encroachment upon the privileges of counsel, and a violation of the rights of the jury; in short, as a corrupt and polluted prejudication of the cause to be tried, and that the fair and upright intentions of the court were misinterpreted by a real or pretended mistake into the vilest purposes of partiality, resolved to destroy the formidable engine they saw erecting against the court, and to remove at once all pretence for clamor or irritation. Granting the judge had been in error on the first day, what more could he, or any man do, than to rectify the error as soon as it was discovered, and hasten to the right path before any injury could have resulted from his momentary deviation. But the honorable Manager has told you he had sinned beyond the grace of repentance, and that no contrition, however sincere, could wipe away the offence. When I suffer such words as repentance and contrition to pass my lips, it is in quoting precisely the words of the Manager. For my part, I disclaim them. The respondent has done nothing that required the humiliation of repentance, or for which he now asks to be forgiven. Let him stand on his justification or stand not at all. But, sir, a part of that justification is that the cor-

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rupt intent charged upon him is disproved by his entire willingness to permit the counsel to manage their cause in their own way, if they disapproved of his, and, by his full and candid retraction of the error, if any error had been committed. By adverting to the testimony of Mr. Rawle, this honorable Court will see how greatly Judge Chase was surprised to find, from conversing with this witness and Judge Peters, that his conduct was viewed in so strange a light by Messrs. Lewis and Dallas. On making this discovery, although still convinced of the propriety of the proceeding, he does not obstinately adhere to it, but resolves to remove all possible cause of complaint by withdrawing all the papers which had given rise to this astonishing irritation and violation. The papers were accordingly resumed, every copy collected, and the counsel, the prisoner, and the jury, were placed in the same precise situation as if these papers had never been distributed; with the most ample acknowledgment of all their rights, and the most urgent solicitations to them to proceed in the enjoyment and exercise of them. But no, the counsel had taken their ground, and nothing could move them. John Fries had received their instructions, and with equal perseverance declined the aid of other counsel offered to him by the court repeatedly. Now, sir, let me ask you and this honorable Court, on your consciences, not to be blinded by the management and finesse of ingenious counsel; what was the meaning of all this? What was the object of it? Did the counsel now believe they would not be fully heard in defence of their client, both on law and fact? Did they now suppose themselves or the jury restricted in their rights, or that a just and impartial trial would not be had? Most certainly not. But, in the language of Mr. Lewis, they thought they had got the court into an error or a scrape, and they were determined to keep them there. What! says Judge Peters, if we have done wrong, will you not suffer us to repair the wrong by doing what is right, by doing all that you have required? No, no, was the answer. Mr. Lewis has declared to you in the most ample and explicit terms, that they abandoned John Fries because they thought they had a better chance of saving him by this means, than they could have by any trial; and, to use his own words in another part of this testimony, "we withdrew," says he, "from the 'defence of John Fries, because we thought it 'would best serve him, and we were not influ-'enced by any other motive whatever." They had already, before Judge Iredell, tried the efficacy of the full and unconfined exertion of their talents in his defence, and found how vain the attempt was. They were well satisfied no hope of success could be entertained on a fair trial of the merits of their case, both in law and fact, and they eagerly grasped any occurrence, that, by operating on the passions, the humanity, or the prejudices of mankind, might give to their client a chance for escape, which he could not look for in the merit of his own conduct. With this view, they most solemnly impressed upon the mind of John Fries the necessity of his maintaining the ground they had taken for him, and refusing the assistance of any other counsel. So well did these gentlemen know the court had no intention of oppressing John Fries, that in their communications to him, they anticipated the offer of other counsel to supply their desertion.

But, sir, there is one circumstance in this second day's proceeding, which has been introduced to show, that the respondent continued the same tyrannical spirit with which he is charged on the first day, and which it may be incumbent on him to remove. I mean the "unkind menace," as it has been termed by one of the witnesses, used to the counsel of Fries, when the judge told them they would proceed in the defence at the hazard or on the responsibility of their character. To ascertain the true nature of the expression, whatever it was, which fell from the court in this respect, I will refer to the same guide I have endeavored to follow throughout my argument, I mean the evidence. The aspect of this pretended menace will then be changed into a complimentary confidence in the discretion of the counsel, or at least into no more than such a menace as every gentleman of the bar acts under in every case; that is, to manage every cause before a jury with a due regard to their own reputation; to urge nothing as law to the jury, which they are conscious is not law, and to introduce no matter which they know to be either improper or irrelevant. This, in its worst character, will be found to be the whole amount of this terrible menace. What account does Mr. Lewis give of this occurrence? After stating that the court manifested a *strong desire* that he and his colleague should proceed in the defence of their client; that every restriction, if any had been imposed, was now removed, and that they were at full liberty to address the jury on the law and the fact as they thought proper; the judge said that this would be done "under the direction of the court, and at the peril of our own character, *if we conduct ourselves with impropriety.*" And was it not so? And where is the criminality of saying so? Mr. Lewis did not consider this as a menace intended to restrict him in the exercise of the rights just before conceded him by the court, but rather as an unwarranted suspicion of his sense of propriety; for, says he, "I did not know of any conduct of mine to make this caution necessary."

The court perhaps thought his conduct on the day before did make it necessary. Let us now take Mr. Dallas's impression of this part of the conduct of the judge. This witness after testifying to the ample range, both as to law and fact, given to the counsel by the court, states that the judge observed "they would do this at the hazard of their characters." This Mr. Dallas afterwards terms an "unkind menace." I think upon recurring to Mr. Lewis and the other witnesses, and to some considerations naturally arising from the manifest disposition of the court at that time, it will be concluded that Mr. Dallas has mistaken the nature and character of this act of the judge, when he describes it as a menace. Mr. Tilghman states that the court seemed *very anxious* that the counsel should proceed, gave them full liberty to

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combat Judge Chase's opinion before the jury, and that they were not to be bound by that opinion. Judge Chase mentioned that cases at common law before the statutes of Edward III., *ought* not to be read. So of certain other cases; he particularly mentioned the case of a man who wished the stag's horns in the King's belly; and also of the man who kept a tavern with the sign of the Crown, who said he would make his son heir to the Crown. The judge declared such cases must not be cited; and said in illustration of his idea—What! cases from Rome, from Turkey, and from France? That the counsel should go into the law, but must not cite cases that were not law. After these observations, and in direct connexion and reference to them, the judge said something about "their proceeding agreeably to their own conscience." What now begins to be the complexion and character of this part of the judge's behaviour? Why, that after giving these gentlemen the utmost latitude of discussion they could possibly require, he states a certain class of decisions and cases, which appeared to him and must appear to everybody to be unworthy of notice—to be of no sort of authority or application in the case of Fries, which were not law; which Mr. Lewis himself has described as the offspring of corrupt and dependent and bloody judges, and which, if they had any operation, were hostile to the prisoner: I say, sir, after alluding to such cases, which he knew too had been used on the former trial, was it criminal or strange, he should make an appeal to their consciences, or characters, take it either way, before they proceeded to their defence?

A further examination of testimony, puts this part of the case beyond doubt. Mr. Rawle, after stating the same course of observations from the judge, as has been mentioned by Mr. Tilghman, and that he said, "I have always conducted myself with candor, and I meant to save you trouble;" after relating to you how fully the respondent removed every obstacle which had arisen from the proceeding of the first day, and how honorably he explained and justified the motives of his conduct, declared himself thus to the counsel: "having thus explained the meaning of the court, you will stand acquitted or condemned to your own consciences;" the same terms used by Mr. Tilghman; "as you think proper to act. Do as you please." This honorable Court will be pleased to recollect that Mr. Rawle speaks not from the imperfect impressions of memory after the lapse of five years; but from full notes taken at the very moment of the transaction. It is needful to go further in justification of this mistaken menace. What says Mr. Ewing? "That the respondent told the counsel that if they read cases which were not law, after knowing the opinion of the court that they were not so, they would do it with a view to their own reputations." Mr. Meredith, after reciting what the judge observed upon the cases at common law, testifies that the respondent informed the counsel of Fries, "they might manage the defence in such way as they thought proper, having regard to their own character." I hope, sir, we have now obtained a just notion of the nature and intent of whatever was said by the judge at this period of the transaction; and as no witness considered it as a menace but Mr. Dallas, we may justly conclude he has mistaken it. Is not this the true interpretation of it, that the judge had determined to give these gentlemen the utmost latitude of discussion, both of the law and fact, to any extent they thought proper, referring them only to their own sense of propriety, to their own consciences, to their regard for their own characters, as to the manner in which they would use this unbounded liberty? The respondent confided in the character and conscience of these gentlemen for the fair exercise of their professional duty, and for such a limitation of their privilege of speech, as would prevent any abuse of it to improper purposes, or to an unreasonable extent.

Suffer me, sir, to make one further remark in confirmation of my position. It grows out of the acknowledged circumstances of the case, and, if fairly deduced, is evidence of the highest description. It is agreed by all the witnesses that on the second day the respondent manifested and expressed the utmost solicitude and anxiety for the counsel to proceed in the defence, and that he took "great pains" to induce them to do so. It is not doubted that he was sincere in this. Is it probable or possible, then, with these dispositions, and while he was endeavoring to persuade and to induce these gentlemen to return to the defence of their client, he would indulge himself in threats, in insults, and menaces, which would necessarily confirm them in the abandonment of the cause, and defeat the acknowledged wish the judge had that they should return to it? But still we are told, and this first article of impeachment concludes with averring, that in consequence of the conduct of the respondent, Fries was deprived of his right of being heard and defended by his counsel. To refute this unfounded assertion, we need go no further than to the testimony of Messrs. Lewis and Dallas. They surely are the best judges of the motives of their own conduct. What reason do they give for denying Fries their aid and advising him to refuse all other counsel? Because they had no hopes of success on a trial; because they believed the court had got into a difficulty where they were determined to keep them; because they thought they had a better chance to save their client's life by the uses they might make of the novelty of the first day's proceeding than they could have on a full trial after this novelty was removed; the counsel, in short, withdrew from the defence of Fries, because they thought it would best serve him, *and were not influenced by any other motive whatever*. How does this testimony support the averment in the conclusion of the article, which boldly affirms, not that John Fries was saved, but that he was condemned to death in consequence of not being heard by his counsel?

A very strange and unexpected effort has been made, sir, to raise a prejudice against the respondent on this occasion, by exciting or rather forcing a sympathy for John Fries. We have heard him most pathetically described as the ignorant, the

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friendless, the innocent John Fries. The ignorant John Fries! Is this the man who undertook to decide that a law which had passed the wisdom of the Congress of the United States, was impolitic and unconstitutional, and who stood so confident of this opinion as to maintain it at the point of the bayonet? He will not thank the gentleman for this compliment, or accept the plea of ignorance as an apology for his crimes. The friendless John Fries! Is this the man who was able to draw round himself a band of bold and determined adherents, resolved to defend him and his vile doctrines at the risk of their own lives, and of the lives of all who should dare to oppose? Is this the John Fries who had power and friends enough actually to suspend, for a considerable time, the authority of the United States over a large district of country, to prevent the execution of the laws, and to command and compel the officers appointed to execute the law to abandon the duties of their appointment, and lay the authority of the Government at the feet of this *friendless usurper?* The innocent John Fries! Is this the man against whom a most respectable grand jury of Pennsylvania, in 1799, found a bill of indictment for high treason; and who was afterwards convicted by another jury, equally impartial and respectable, with the approbation and under the direction of a judge, whose humanity and conduct, on that very occasion, have received the most unqualified praise of the honorable Manager who thus sympathizes with Fries? Is this the John Fries, against whom a second grand jury, in 1800, found another bill for the same offence, founded on the same facts, and who was again convicted by a just and conscientious petit jury? Is this *innocent* German the man who, in pursuance of a wicked opposition to the power and laws of the United States, and a mad confidence in his ability to maintain that opposition, rescued the prisoners duly arrested by the officers of the Government, and placed those very officers under duress; who, with arms in his hands and menace on his tongue, arrayed himself in military order and strength, put to hazard the safety and peace of the country, and threatened us with all the desolation, bloodshed, and horror of a civil war; who, at the moment of his desperate attack, cried out to his infatuated followers, "Come on! I shall probably fall on the first fire, then strike, stab, and kill all you can?" In the fervid imagination of the honorable Manager, the widow and orphans of this man, even before he is dead, are made in hypothesis to cry at the judgment seat of God against the respondent; and his blood, though not a drop of it has been spilt, is seen to stain the pure ermine of justice. I confess, sir, as a Pennsylvanian, whose native State has been disgraced with two rebellions in the short period of four years, my ear was strangely struck to hear the leader of one of them, addressed with such friendly tenderness, and honored with such flattering sympathy by the honorable Manager.

It is not unusual, sir, in public prosecutions for the accused to appeal to his general life and conduct in refutation of the charges. How proudly may the respondent make this appeal! He is charged with a violent attempt to violate the laws and Constitution of his country, and to destroy the best liberty of his fellow-citizens. Look, sir, to his past life, to the constant course of his opinions and conduct, and the improbability of the charge is manifest. Look to the days of doubt and danger; look to that glorious struggle so long and so doubtfully maintained for that independence we now enjoy; for those rights of self-government you now exercise, and do you not see the respondent among the boldest of the bold, never sinking in hope or in exertion, aiding by his talents and encouraging by his spirit; in short, putting his property and his life in issue on the contest, and making the loss of both certain by the active part he assumed, should his country fail of success! And does this man, who thus gave all his possessions, all his energies, all his hopes to his country and to the liberties of this American people, now employ the small and feeble remnant of his days, without interest or object, to pull down and destroy that very fabric of freedom, that very Government, and those very rights, he so labored to establish? It is not credible; it cannot be credited, but on proof infinitely stronger than anything that has been offered to this honorable Court on this occasion. Indiscretions may have been hunted out by the perseverance of persecution; but I trust most confidently that the just, impartial, and dignified sentence of this Court, will completely establish to our country and to the world, that the respondent has fully and honorably justified himself against the charges now exhibited against him; and has discharged his official duties, not only with the talents that are conceded to him, but with an integrity infinitely more dear to him.

FRIDAY, February 22.

Mr. KEY.—Mr. President, I rise to make some observations on the second, third, and fourth articles of the impeachment. I shall not apologize for the manner in which I shall discharge a duty which I have voluntarily undertaken, but merely regret that indisposition has prevented my giving the subject that attention which it merits. It will be at once perceived that these articles relate to the trial of Callender. Before, however, I go into an examination of the second article, it may be proper to notice the situation in which the judge found himself and the state of the public mind at the time. The sedition law was passed in the year 1799. It immediately arrested the public attention, and strongly agitated the public feelings. In the State of Virginia it was peculiarly obnoxious; many of the most respectable characters considered it as unconstitutional, and as a violation of the liberty of the press; most deemed it impolitic; while some viewed it as a salutary restraint on the licentiousness of the press, more calculated to preserve than to destroy it. In this state of the public mind it became the duty of the respondent, in the ordinary assignment of judicial districts, to go into the district

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of Virginia, where he was entirely a stranger, to carry the laws into execution. It is scarcely necessary to observe that when laws are considered obnoxious, much of the odium attending them inevitably falls on those who carry them into effect. In May, 1800, Judge Chase went to Richmond to hold a court, and soon after it was in session, the grand jury found a presentment and afterwards a bill against James T. Callender for an infraction of this law, in publishing the book entitled "The Prospect Before Us," which brought into issue its constitutionality. Professional men of talents, carried along by the tide of public opinion, volunteered their services in defence of the accused; and every effort was exhausted to wrest the decision from the respondent. Exceptions were accordingly taken at every stage of the case, and when the jurors were brought to the book, a question arose which forms the foundation of the charge contained in the second article. I will in the first place read the article, then state the law and the fact in the case referred to, and show that if both are against us, still the respondent is not guilty of the charge contained in it.

The second article states "That prompted by a 'similar spirit of persecution and injustice, at a 'circuit court of the United States, held at Richmond, in the month of May, one thousand eight 'hundred, for the district of Virginia, whereat 'the said Samuel Chase presided, and before 'which a certain James Thompson Callender was 'arraigned for a libel on John Adams, then President of the United States, the said Samuel 'Chase, with intent to oppress and procure the 'conviction of the said Callender, did overrule the 'objection of John Basset, one of the jury, who 'wished to be excused from serving on the said 'trial, because he had made up his mind as to the 'publication from which the words, charged to 'be libellous, in the indictment, were extracted; 'and the said Basset was accordingly sworn and 'did serve on the said jury, by whose verdict the 'prisoner was subsequently convicted."

If we extract from this article the epithets it contains nothing will remain, and epithets fortunately do not constitute crimes. The offence and fact charged is, the permitting Mr. Basset to be sworn on the jury with an intention to oppress the traverser, which is not in the least supported by the testimony. The article alleges that Mr. Basset wished to be excused. I appeal to the testimony, whether he did wish or desire to be excused. The observations he made arose entirely from a scruple on his own mind, and not from any objection to serving. Instead of his wishing to be excused, the real fact is that which he said flowed from the peculiar situation in which he stood; and he says that he declared himself willing to serve, provided in law he was competent. The fact, therefore, on which this article rests, is not supported by the testimony, and not being supported, I might here dismiss this branch of the subject without further animadversion. But I cannot consistently with my duty stop here, or omit proceeding to show that the arguments of the honorable Managers are as unfounded in law as their facts are destitute of proof Let us then examine the law on this case. To sustain the article, the honorable Managers must prove three points.

1. That Mr. Basset objected to serving.
2. That in point of law he ought not to have been admitted on the jury; and
3. That his objections to serving were overruled from a corrupt intention on the part of the respondent to oppress and procure the conviction of the traverser.

It is necessary here to examine the ancient doctrine of challenges. The law of challenges presents itself to our view in a twofold character, the one a challenge to the array which goes to vitiate the whole jury; the other, an objection to a particular juror. In this case there was no serious challenge made to the array. My observations will therefore be directed to the latter species of challenge, that of individual jurors, which is made by excepting to an individual when he is presented to be sworn. In this case no such exception was made to Mr. Basset.

When a juror is challenged there are two modes of trying whether he stands indifferent. One mode is by two triers consisting of the two jurors first sworn. Callender's counsel did not avail themselves of this mode.

The other mode is to swear the individual offered as a juror, and interrogate him as to his indifference.

Here I cannot avoid expressing my surprise at the law laid down by the honorable Managers. No point of law is more certain than that a juror, to be indifferent, need not have refrained from having expressed an opinion either upon the law or the fact involved in the case he is to try; and that he is only rendered incapable by favor or malice.

The great principle which the counsel laid down was that jurors should be impartial; but is that the subject of investigation in this article; what are the facts? That Judge Chase put this question to the juror: "Have you formed and delivered an opinion on the charges contained in the indictment?" The juror answered in the negative and was sworn. Gentlemen say the question should not have been formed *and* delivered, but formed *or* delivered; and that this was the question on the trial of Fries. I mean to show that there is no difference between the two expressions. I mean to show that, if the juror had both formed and delivered an opinion, this would not incapacitate him. The oath of triers will bring this case to a precise point. Trials per Pais 179, Salkeld 144, states the oath of a trier to be, "you shall well and truly try, whether A (the juror challenged) stands indifferent between the parties to this issue."

But the counsel were not willing to determine the competency of a juror by this oath, and therefore gave the decision to the court. They contend, however, that the indictment ought to have been read. But though on the facts the juror may have made up his mind, the offence consisted in the intention, and, therefore, the forming an opin-

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ion on the former did not imply a judgment on the latter. Is there a man that does not believe that when one person kills another with malice prepense, he perpetrates murder? Is not the intention the gist of the offence? And yet I can produce authorities to show, that although a juror in a criminal case give a verdict on the fact and the law, this is considered as no objection to his serving as juror in similar cases.

In Rolles' Abridgement, title Trial, folio 657, it is laid down, that, "if a juror has said that he will 'find for one of the parties, it is a good cause of 'challenge for favor, if he so spoke from favor; 'but if he did not speak it out of favor, but from 'his knowledge of the matter in issue, it is not a 'good cause of challenge."

In the same folio, it is also laid down as law, "that it is no cause of challenge to a juror that he 'hath said that he will find his verdict for one of 'the parties, if it is not found by the triers or the 'court, that he spoke from favor and not from the 'truth of the fact."

In folio 655, and in Trials per Pais, it is laid down, "that if a juror hath twenty times declared 'that he will find for one of the parties, it is not 'a principal challenge, because he might have 'spoken it from his knowledge of the matter in 'issue, and not out of favor or malice."

In Keelynge, folio 9, we find a case where a juror had formed a verdict of guilty against a person, and another person was tried on the *same* indictment for the same offence; in which an objection on that account to the juror was overruled.

The objection in this case was overruled—why? Because the juror stood indifferent. Could, then, any answer of Basset to the question propounded to him evince any degree of partiality, or that his mind was not in a state of indifference as to the issue of the trial? Having formed an opinion that a particular writing constituted a libel, did not preclude him from forming an upright opinion on the law and the fact. How had Basset formed an opinion? Simply from seeing certain passages in a newspaper, which purported to be taken from "The Prospect Before Us." Did he not, then, stand impartial so far as respected the ascertaining whether those passages were authentic, whether Callender was the author?—if edited with intent to defame? Further, was there not another decision to be made, whether the matter was false and malicious? The essence of the offence consisted in the intention. On all these points the mind of Basset was perfectly free from partiality.

To the authorities I have cited I will add one derived from our country, in which all the doctrines I have contended for are expressly recognised, in the decision of Chief Justice Ellsworth in the State of Connecticut, to be found in Kirby's Reports, page 427—"As to the other point, an 'opinion formed and declared upon a general prin-'ciple of law does not disqualify a juror to sit on 'a case, where that principle applies. Jurors are 'judges of the law as well as of the fact, as rela-'tive to the issues put to them, and are supposed 'to have opinions of what the law is, though a 'willingness to change them, if reason appears, in 'the course of the trial. They may all be chal-'lenged on one side or the other, if having an 'opinion of the law in the case is ground of chal-'lenge. It is enough in point of indifferency, that 'jurors have no interest of their own affected, and 'no personal bias or prepossession, in favor or 'against either party, and not requisite that they 'should be ignorant of the cause, or unopinionated 'as to the rules and principles on which it is to be 'decided. It has been adjudged (23 Can. K. B.) 'not to be a sufficient cause of challenge, that a 'juror had declared his opinion concerning the 'title of the land in question; so also that the jury 'have found others guilty on the same indict-'ment; or that a juror has declared his opinion 'that the party is guilty, and will be hanged, if 'it appears he made such declaration from his 'knowledge of the cause, and not out of ill-will to 'the party.—2 Hawk. P. C. 418."

I trust the authorities I have adduced fully show, that in point of law there was no valid objection to Mr. Basset as a juror, and that the illegality charged against Judge Chase on this account, falls to the ground.

I will now turn to an authority cited by one of the honorable Managers—3d Bacon, 756. [Mr. Key here read the case.]

We find that all the causes of challenge here recited go to evince partiality, or, in the language of the ancient books, "favor or malice." If the having formed and delivered an opinion on the law were a good cause for challenge, no capital case could come before an unprejudiced jury. The only question in such cases is, whether the facts proved come up to the charge; for such is the interest men take in the commission of great crimes, that every man forms an opinion on them.

Something has been said of the trial of Logwood, for forging the currency of the Bank of the United States. There is probably no man of information that has not heard something of the subject, or made up his opinion on the illegality of counterfeiting. But does it follow that the having formed such an opinion could disqualify a man from serving as a juror in the case? If this were so, it would follow that he who had formed the most correct opinion on the laws of his country, would be the most incompetent, while he who was the most ignorant of them, would be the most competent juror. It appears that if Mr. Basset had even answered in the affirmative to the question put to him, supposing the indictment to have been previously published, it would not have destroyed the competency of the juror, because he, notwithstanding, stood perfectly impartial as to the facts to be proved and the law arisng on them.

Believing that no subtility or ingenuity can shake the principle I have laid down, or establish a contrary principle, I feel full confidence in having shown the legality of the opinion laid down by the court; and I do believe that a more correct opinion was never delivered.

Suppose we are mistaken in the fact, which we say is proved, that Mr. Basset did not desire to be excused; admit that he did pray to be excused;

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still, so far as he has himself, on oath, explained the situation of his mind, there was no cause for challenge.

Admit, also, that we are mistaken in the law we have laid down, does it follow as a necessary consequence that the directing Basset to be sworn on the jury, was done with an intent to oppress the traverser? We call for the facts that impeach the motives of Judge Chase. In the opening of this case we were told that the respondent was highly gifted with rich attainments of mind. It was correctly said; and it might have been added that his integrity was equal to his talents. But the observation was made to raise his head at the expense of his heart. I will examine this argument.

The truth is that no judge is liable for an error of judgment. I apprehend this is conceded by the article itself, which states a criminal intent. Now for the evidence. What criminal intention do the honorable managers draw from it? It is said that the respondent is highly gifted with intellectual powers, and must have known in this instance the law. *Timeo Danaos et dona ferentes.* I dislike the compliment; the best gifted mortals are frail, and a single erroneous decision may be made by any man.

Let us, on this point, refer to decisions in modern times. They will show that an error in judgment has never of itself been considered an evidence of corruption in a judge.

[Mr. Key here cited a case from Dunford and East, folio 653—King *vs.* Johnson, containing the opinion of Justice Buller, who declares "that you can never infer corruption from the judgment itself but from the opinion given."]

Here then is the decided opinion of a most able judge that although the act and judgment of the court be illegal, there is no ground to infer corruption. So in this case, admit, for argument's sake, that we are mistaken in point of fact, and that the law we have laid down is incorrect; still, however gross the error of the judge, it cannot in itself contain any foundation for presuming fraud. From what fact is fraud inferred? From the general mass of the transactions attending the trial of Callender? The evidence cannot be taken accumulatively. Each article must be taken by itself, and one can derive no force from the rest. Were this not the case, a hasty word, uttered in an unguarded moment, might be construed into a crime, and a number of small offences, individually of the most trifling nature, be made to constitute a great one.

I shall, in a subsequent view, take into consideration the whole conduct of Judge Chase, and show that, so far from operating to his injury, it redounds to his credit. Upon this second article, I trust I may be permitted to say that the evidence does not bear out the facts in the manner stated; that even if the alleged facts are proven, the law is clear that Mr. Basset was still a competent juror. I have also endeavored to show that no inference of corruption can be drawn from an error in law; but that, on the contrary, particularly if it be committed by a man of acknowledged talents and unimpeached integrity, it is to be considered at best but as a mistake.

It would be well to analyze this argument of the honorable managers, by putting it in the form of a syllogism. The major proposition represents Judge Chase as possessed of great legal attainments and as highly gifted by nature; this I admit—the minor is, that with these high gifts and attainments he has erred in a clear point of law; this I deny. But what is the conclusion deducible from the premises? That his decision was corrupt? So say the managers. I deny it. In the language of the judge it is a palpable *non sequitur.*

I will now proceed to the third article, which, when correctly understood, will be found as destitute of impeachable matter as either of the other articles. It is as follows: "That, with intent 'to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material 'witness on behalf of the aforesaid Callender, was 'not permitted by the said Samuel Chase to be 'given in, on pretence that the said witness could 'not prove the truth of the whole of one of the 'charges contained in the indictment although 'the said charge embraced more than one fact."

In opening the case one of the honorable managers inquired what human subtility or ingenuity could devise to extenuate this act of the respondent. Our reply is that it requires no subtility or ingenuity; that it was correct in point of law, and that the case is so clear, that he who runs may read. The court must permit me to observe that the article presents an abstract case, not growing out of, or connected with the evidence. This court, I apprehend, is not sitting here to decide this abstract point, whether in any case it is admissible to prove one fact contained in a particular charge by one witness, and one by another; but to determine whether in this case, where one witness was offered to prove part of one charge, and no other witness offered to the same charge, it was proper to receive testimony offered. I contend that the decision was correct on the case before the court. The indictment against Callender contained two counts, each of which embraced twenty distinct set of words. Colonel Taylor was called to prove particular facts contained in one of the charges. It is not necessary here to discuss the propriety of ordering the questions to be reduced to writing, as that is the subject of the next article. Colonel Taylor, without meaning any improper use of words, was a witness on speculation; for no man has a higher respect for his character; but I bottom the remark on this circumstance, that several days previous to Colonel Taylor's appearance, an affidavit had been drawn, on the part of Callender, for a continuance, in which the names of a number of material witnesses were stated; among which was an honorable member of this court (Mr. Giles) and General Mason, but in which the name of Colonel Taylor does not appear. It appears that subpœnas had issued for three witnesses; two of which did not attend, for whom no attachment was prayed. Colonel Taylor alone appeared; and the counsel

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were certainly ignorant at the time he was sworn, what he could prove. Mr. Hay has declared that neither Callender or his counsel knew what Colonel Taylor could prove. Was it not correct in the court, under these circumstances, to ask what he could prove? Colonel Taylor was produced, under an expectation, it is said, that he could prove the twelfth set of words contained in the second count of the indictment. Let us, to elucidate the conduct of the court, refer to the testimony of Mr. Robertson, a man distinguished for his stenographical talent, which remains on paper, which was drawn up at the time, and does not therefore depend on the frailty of his memory.

Mr. Robertson says, "The attorney for the United States having concluded, the counsel for the traverser introduced Colonel Taylor as a witness, and he was sworn; but at the moment the oath was administered, the judge called on them, and desired to know what they intended to prove by the witness. They answered, that they intended, to examine Colonel Taylor, to prove that Mr. Adams had avowed principles in his presence which justified Mr. Callender in saying that the President was an aristocrat—that he had voted against the sequestration law, and the resolutions concerning the suspension of commercial intercourse with Great Britain." This was then the object and view with which Colonel Taylor was called on. What is the charge in the articles of impeachment? That the testimony of Colonel Taylor was rejected "on pretence that the said witness could not prove the truth of the whole of one of the charges, contained in the indictment, although the said charge embraced more than one fact." The charge in the indictment is that the President "was a professed aristocrat; that he proved faithful and serviceable to the British interest:" and Colonel Taylor was called to prove that Mr. Adams had voted against the sequestration law, and the resolutions concerning the suspension of commercial intercourse with Great Brttain. Was it competent to Colonel Taylor to give evidence on this point? The best evidence the nature of the case will admit must be adduced. Colonel Taylor then was clearly an incompetent witness on this point; as there was better evidence, the journals of this honorable body, within the reach of the traverser. It only then remained for Colonel Taylor to prove that the President had avowed principles which showed him to be an aristocrat; which, if proved, would have been altogether immaterial. To prove no other facts was he called upon. Are then counsel to be indulged in consuming the time of courts in the examination of witnesses, who have nothing relevant to offer? Let us familiarize this to a common case. Suppose a man is indicted for stealing a horse. One witness deposes that he saw him go into the stable where the horse was; another saw a man coming from the stable leading a horse; and another saw, an hour after, the man, with the horse, five miles off, selling him as his own property. This testimony will be admitted But state the case the other way; that a witness was brought forward solely to prove the first fact; is there a court on earth that would say such testimony should be admitted? And this was the case here. Colonel Taylor was called upon to prove what is altogether unimportant, a part only of one charge, or that which, if true, could be proved by better evidence. Are not, also, the court the exclusive judges of the competency of the testimony that shall go to the jury; and does not every day's experience show us that evidence that is offered, but which does not go to the whole of the case, is refused? This is done by all courts at all times. But say gentlemen, was it possible for the court to know whether the questions offered to be put might not have led to other inquiries, and produced information of consequence? True, but on this ground no testimony ever could be rejected, because, by possibility, it may lead to what is important.

But, admitting the judge to have been wrong, I again ask, does an error of judgment in itself imply corruption? Most surely not. In the nature of things can it be so? To give credit to my honorable client but for a moiety of the talent allowed him, he must have seen that, even had he admitted the testimony of Colonel Taylor, and admitting that it had justified the whole of the twelfth charge, there remained nineteen other charges, on which Callender must have been convicted. And whence this conduct towards Colonel Taylor? Did not the judge know that Colonel Taylor stood high in the esteem of a large portion of the community; and that umbrage offered to him would naturally excite the indignation of his friends? The decision given could not then flow from a corrupt motive. No. It was given in the sternness of his integrity. Had his motives been impure, had he viewed his conduct as wrong, instead of acting in this manly way, he would have put a gloss on his actions, he would have courted the reputation of forbearance by admitting the testimony of Colonel Taylor, and would still have satiated his vengeful feelings, if he had them, with a conviction on the remaining charges.

Let us examine another fact in this case. Judge Chase, as appears by the statement of Mr. Robertson, requested the attorney of the United States to permit the questions to be put to the witness; but Mr. Nelson "declared that he did not feel himself at liberty to consent to such a departure from legal principles." If then, in this act, there was error, that did not depend on him. The prosecutor for the United States objected to the indulgence which he proposed. I do for myself believe, that where no evidence is offered to prove the whole of one entire fact, it is within the sound discretion of the court to refuse the testimony of part. But, notwithstanding this, the judge was willing to relax the severity of the law.

Is there nothing else that goes to show that there was no intention on the part of the judge to oppress the traverser? As I have already observed, if he had possessed but half the talent ascribed to him, he would, with such intention, have gilded the bill. But he did not do so. Further, the subsequent act of the judge in imposing so light a fine,

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and so short a period of imprisonment, for so atrocious an offence, when he had power to impose a fine of two thousand dollars, and an imprisonment for two years, is indisputable evidence of his freedom from all such intention. No; the conviction flowed of necessity from the evidence, which was too powerful to be resisted. But did not the judge, in the integrity of his heart, declare, on rejecting the testimony of Col. Taylor, "Gentlemen, I may be mistaken, but if I am not 'right, it is an error in judgment, and you can 'state the proceedings on record, so as to show my 'error, and I shall be the first man to grant you 'the benefit of a new trial, by granting you a writ 'of error, in the Supreme Court."

It is said, however, that this was a mere pretext; that a bill of exceptions would not lie in a criminal case; and what could then be done? The simplest thing on earth—a point of law can be saved without an exception. The counsel were not so ignorant as not to have respected this declaration, and to have known that they might, under it, have saved the point, and taken the opinion of the superior court. The least informed counsel can show a multitude of cases of this kind. In the progress of my argument I shall show why this offer was not accepted.

It does then appear to me, that, considering the third article as connected with the facts substantiated, the judge was perfectly correct in point of law in the decision he made. All must agree in the opinion that if the testimony of Col. Taylor had proved Mr. Adams an aristocrat, it could not have justified the libellous matter with which the traverser was charged. If this is the fact, and no other evidence was offered that could be legally received, the rejection must have been perfectly correct. Supposing, however, that we are wrong on this point, there is still abundant evidence to show that Judge Chase was not influenced by any intention to oppress the accused, or to procure his conviction, because that unavoidably flowed from the nature of the charges and the state of the defence, whether testimony of Colonel Taylor were admitted or not.

In the course of my whole observation through life, I never heard it doubted, till yesterday, that in a case of doubtful aspect, a man is to be considered innocent until he is proved to be guilty. But we are now told that whenever an infraction of a law is committed by a judge, he is to be presumed guilty, unless he establishes his innocence. But this is not the case; the benignity of our law is very different. If it were so, who, that possesses the ordinary frailties of humanity, would undertake in the judicial station to interpose between man and man? The law clearly is that a judge shall be presumed innocent until he is proved guilty, even when he decide against law; and that his errors shall be ascribed to the head, and not to the heart. This notice is due to the observation of an honorable Manager, which struck me with great surprise, that Mr. Basset's request to be excused from serving as juror arose from his sentiments being known by the judge. This, however, does not appear from the evidence. It appears, on the contrary, that he was a stranger to Judge Chase, and that he did not wish to be excused. But in this prosecution we are not only to hear much new and extraordinary doctrine; but we are likewise to hear statements of facts for which there is no foundation.

I will now proceed to the fourth article, which contains five distinct specifications of facts as follows:

"That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

"1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission, or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness:"

"2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material winesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:"

"3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of the judge did, at the same time, manifestly tend:"

"4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which, at length, induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:"

"5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice."

The word *injustice* in the preliminary part of the article must refer to Callender; the partiality charged, must have been to the United States, I presume, and against Callender; the term *intemperance* is of such doubtful import, that I scarcely knew what to understand by it. It cannot be used as opposed to sobriety, as no one will charge the judge with a violation of this virtue. It may refer to his conduct to counsel, and perhaps to Callender. This conduct is said to have been evinced, in the first place, "In compelling the 'prisoner's counsel to reduce to writing, and sub-'mit to the inspection of the court, for their ad-'mission, or rejection, all questions which the said 'counsel meant to propound, to the above named 'John Taylor, the witness."

If this was incorrect, I cannot perceive its injustice to Callender, nor its partiality or intemperance. But did the conduct of the court in this instance correspond with the law and the practice? I apprehend that it did. I understand it to be a clear and admitted principle of law, that the court is the only competent tribunal to determine the competency, the admissibility, and the relevancy

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of evidence; when admitted, its credibility is the exclusive province of the jury. I have before stated the reasons which rendered it necessary in this case to know what Colonel Taylor could prove. To understand the object for which he was produced with greater certainty and precision, the judge ordered the questions proposed to be put to be previously reduced to writing. I am not sufficiently acquainted with the practice in the courts of Virginia to say this was not novel, but I may surely venture to affirm that there was nothing criminal in it. I know well that in different States there are different forms of practice. I can only say, that Judge Chase, going from Maryland, where the practice does prevail, would naturally carry to Virginia the knowledge of the practice of the State from which he went. It is said that it is not the practice in Virginia, and one gentleman says he never heard of an instance of the kind. But I believe there are exceptions. I recollect, in the *mandamus* case, the counsel were called upon to reduce their questions to writing, and that the Attorney General had a whole day allowed to him to make up his mind on the propriety of answering the questions put to him. And yet in that case there was no disposition manifested to oppress; the course was pursued to determine the competency and relevancy of evidence. Need I go further than the practice of this honorable Court in this very case, in which there have been numerous instances of questions directed by the court to be reduced to writing? Have not you, Mr. President, from a knowledge derived from your extensive practice of the bar, or from an instantaneous exercise of right reason, in several instances, directed questions to be reduced to writing? And has it not been seen that though counsel withdrew their objection, every member of the court possessed and exercised the right of requiring it to be done? No testimony which is not legal should be admitted to go to the jury; and what is legal testimony and the manner of determining it must be determined by the court.

We have thus made it to appear that it is the practice to direct questions to be committed to writing in the courts of Maryland, in the Supreme Court of the United States, and in this court. Does this not abundantly justify the conduct of the respondent? But even admitting that conduct to have been improper, was it corrupt or criminal? What moral obligation did it violate? What statutory provision did it infringe? And is a man impeachable for that which violates no moral principle or legal provision? If so, this is the most dangerous doctrine ever advanced.

The *second* specification is in the following words:

"In refusing to postpone the trial, although an 'affidavit was regularly filed, stating the absence 'of material witnesses on behalf of the accused; 'and although it was manifest that, with the ut'most diligence, the attendance of such witnesses 'could not have been procured at that term."

This charge is grounded on the fact of a refusal to postpone the trial on an affidavit. That the court acted correctly in this instance will appear from this consideration. Nothing is more clear than that, under the common law, all applications for a continuance, on affidavit, are founded on the discretion of the court. Is it not wonderfully singular that there should have been an application founded on an affidavit, if the law of Virginia, as stated in the 6th article, applied to the case? One thing is clear: either that the Attorney General and Mr. Hay lost all recollection of the existence of this law of Virginia respecting continuances, or that they considered it inapplicable; for they would not otherwise have founded the application on an affidavit. They would have produced the law and have demanded a continuance. Did they do so? No. If, then, the law officer of the State and Mr. Hay both forgot that it existed, is it surprising that it should be unknown to Mr. Chase? If those gentlemen did recollect the existence of the law, they must surely have been of opinion that it did not apply to the case of Callender, or they would have saved themselves the trouble of filing an affidavit. It will however be shown that it did not apply, and hence their application founded on affidavit.

I have stated that all applications for a continuance on affidavit are addressed to the discretion of the court. It is a great object of criminal justice that the punishment of the guilty should be certain, lenient, and speedy. In the State of Maryland, where Judge Chase had so long presided or practised, it is the uniform practice to try offences the first term they are presented. It is also the practice in England, unless particular reasons are assigned for delay. I was about to prove this; but as it is conceded, I will not trouble the court with authorities. Judge Chase, then, having no knowledge of the particular law of Virginia had to recur to the affidavit. Was that a cause for the continuance of the trial? When a man is charged with a criminal offence, matter which shall justify a continuance must go to the whole of the charges, and not merely to a part of them. If he cannot defend some of the charges, he is to plead guilty to them, and pray a continuance of such of the charges as he can justify by evidence. This is an universal rule of justice and of practice. To familiarize it by a common incident: A man is indicted for stealing a horse, a saddle, and a bridle. He is arraigned, and pleads not guilty, and then desires a continuance, on an affidavit that an absent witness can prove that the bridle is his own. Would it not revolt common sense to continue the case, when his defence rested on such grounds? No court of criminal jurisprudence would prostitute justice by conniving at such an indulgence.

How was it in the case of Callender? Were there not, in each count of the indictment, twenty distinct sets of libellous words? In order, then, to warrant a continuance, it was necessary to show the absence of material witnesses in relation to the whole, or to plead guilty to all the charges on which such testimony did not exist.

But it is said the judge had no right to be in-

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formed what it was expected could be proved on behalf of the traverser. This idea is novel to my practice. I will not say it does not prevail elsewhere; but certain I am that it does not prevail in the courts which I have attended. It is again alleged that a party is not obliged to disclose his testimony. But the law provides that he shall, when he applies for a favor. So different is the practice in the State of Maryland from that contended for on this occasion, that a party is obliged to state what he expects to prove, and if the opposite party admits it, they must go to trial on the remaining part of the charge. According to the practice of Maryland, this affidavit is materially defective, inasmuch as not guilty is pleaded to the whole of the charges contained in the indictment, and it is not declared that testimony is wanting, which there is a reasonable expectation of getting, to disprove or justify the whole of them. It is also materially defective in another point. It is not stated that there was a probability of obtaining the testimony within a reasonable time. I have never known an affidavit considered good, which did not state this circumstance.

We allow that every man is entitled to compulsory process to obtain the attendance of his witnesses: but this right does not in the least lessen the discretion of the court with regard to the time on which the trial shall take place; this they will fix according to circumstances; and when the trial does come on, should the witnesses summoned by a party not attend, he is entitled to attachments against them. This affidavit, then, was defective in two respects: it did not state the absence of witnesses who could justify the whole of the charges; neither did it state an expectation that they could be had within a reasonable time. If a man undertakes to libel the Government under which he lives, to hold it up to the resentment and scorn of the people, it is but reasonable that he should be prepared at the time of his publication with a justification of his charges. In this instance, it appears that a large part of the contemplated justification rested on records, and that even these had not been procured.

The honorable Managers have observed that, even in England, the courts will grant time to enable the party accused to issue process for his witnesses. Let me, however, surmise that, although subpœnas had been served on Mr. Giles and Mr. Mason, no process of attachment issued on their non-appearance. The judge intimated that it might issue, but the counsel waived accepting it. From what cause? Because they well knew that the testimony of these witnesses would be of no avail.

An authority has been cited from the English books (*Foster's Reports*) to show that at a special court, time was granted for obtaining witnesses alleged to be material, although, as it has been remarked, the court was confined to one term; but I cannot perceive the force of this observation, as it had the power of adjourning from time to time, until the business before it was finished. The court met, saw the extent of the business to be attended to, and allowed time for the obtaining of witnesses.

[Mr. Key here cited the case from Foster's Crown Law.]

In this case, the prisoner was tried at a great distance from his witnesses, and the place where the crime had been committed. Some of his witnesses resided in England and others in Scotland. He was allowed eleven days for obtaining his witnesses in England and twenty-one days for obtaining those in Scotland.

Compare this case with that of Callender. In the latter case, a motion was made for a continuance. The judge declared he could not postpone the trial to the next term, but offered a postponement for a month or six weeks; nay, he offered to go to Delaware, hold a court there, and return to Richmond. With such a disposition manifested by the court, is there any reason to doubt that, if asked, three months, or any reasonable time, would have been allowed. And why did they not ask for a longer time, if they deemed it important? The answer is obvious—Judge Chase was still to preside.

Doubts have been started of the power of the courts of the United States to adjourn except from day to day—a power which I never before have heard questioned, and which is essentially necessary to the impartial administration of justice. We have proved that this is the practice of the courts in Maryland and Pennsylvania, and that it has been done in Richmond; and I believe we may safely add that it is, and must be, the practice throughout the United States, when circumstances demand it.

I have stated it as an acknowledged principle of law, that he who edits libellous matter ought to be prepared with his vouchers to support it. What is there valuable among men, what is there estimable in private or public life, that has not in this country been basely calumniated by the licentiousness of the press? All characters in all administrations have been most wantonly assailed by its scurrility. He then who takes this bold and daring ground, ought to have his vouchers at hand, or to have them within accessible reach. In the situation in which a libeller wantonly stands, he is entitled to nothing but law, sheer law.

On the third specification, which charges the respondent with "the use of unusual, rude, and 'contemptuous expressions towards the prisoner's 'counsel; and in falsely insinuating that they wish-'ed to excite the public fears and indignation, and 'to produce that insubordination to law, to which 'the conduct of the judge did, at the same time, 'manifestly tend;" I have but a few observations to make. I should indeed have spared many of the remarks I have made, were it not for an ignorance of the peculiar ground on which the honorable Managers mean to rely in their reply, and were it not for the fear that an omission to notice any of the charges preferred, might be considered as an abandonment of our defence as far as related to them.

I have no where discovered in the evidence any-

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thing that supports in point of fact the charge against Judge Chase, of falsely insinuating that the prisoner's counsel wished to excite the public fears and indignation to produce insubordination to law. The judge did say that the counsel used a popular argument, calculated to mislead and deceive the populace; and this is the extent and head of his offending; but there is a wide difference between this and the charge laid to his door. He told the counsel, and told them truly, that they were availing themselves of a popular argument, calculated to mislead and deceive the people. Attend, I pray you, to the testimony of Mr. Hay. Did not the counsel for the prisoner say they had no hope of exculpating him on the facts? Did they not say they did not argue for Callender? That it was the cause, and not the man, they defended? That they did not expect to convince Judge Chase, or any other federal judge of the unconstitutionality of the sedition act? Were they not then laboring with their whole talents to catch the popular ear? Did they not expressly declare that they had little hopes of the jury, and that their object was to make an impression on the public mind? And when the judge declared that the constitutionality of the act could not be discussed before the jury, did they not, failing in their object, abandon the defence? The ground which they meant to have taken was withdrawn, and they withdrew with it.

As to the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel, no particular facts appear to be relied on. The term *captious* may be unusual; the phrase *young gentlemen*, which in the opening the honorable Manager metamorphosed into *boys*, but which last word does not by the testimony appear to have been used, may have been obnoxious to the ears of those to whom it was applied. There may not have been manifested in this language the most refined decorum; but let us recollect that our honorable client is not now on his trial for a violation of the decorums of society. Possessed of great ador of mind and quickness of feeling, he conceives with rapidity, and expresses with energy his ideas. This may be a weakness; but it is a weakness of nature. Had he a colder heart, and weaker head, he might not be exposed to these little indiscretions. But where is the *vade mecum* from which a judge is to derive precedents for his behaviour? Courts are instituted, not to polish and refine, but to administer justice between man and man. One judge may possess a more pleasing urbanity of manners than another; but are we to infer that because a man is warm in the expression of his sentiments, he is, therefore, angry? It will not be contended that when the counsel for the traverser spoke of the necessity of the indictment being *verbatim et literatim*, in the witty reply of the judge that they might as well insist that it should be *punctuatim*, there was any violation of decorum manifested. The reply grew out of the occasion, and never was a remark better applied.

I know of no other unusual language, except the expression of *non sequitur;* and surely there was nothing improper in that. We have been told that it is the usual habit of Judge Chase to interrupt counsel when they attempt to lay down as law that which is not law. In this case, he certainly did so; but it does not appear that he departed from his ordinary course; and if he had, where is the rule which, on such occasions, is to govern a judge? Such conduct, as I have before observed on another point, violates no moral obligation, infringes no statutory provision. The judge may not have displayed the urbanity, the suavity, and the patience, which so happily characterize some high characters; but where or when has the absence of these minor qualities been considered as criminal? Some of the witnesses, and among them Colonel Taylor, have described the conduct of the judge as imperious, sarcastic and witty; but no witness has pronounced it tyrannical or oppressive.

With regard to the 4th specification, which relates to the interruption of counsel, I shall say but little. A judge has a right at all times to interrupt counsel whenever they act improperly. It is the inherent right of courts. When that is laid down as law which is not law, it is not only their right, but it is their duty, to stop them. Such interruptions may be considered vexatious by the counsel that are interrupted; but of such matters the court only can be the judge. One witness, examined on the frequency of the interruptions of counsel on the trial of Callender, has said that more interruptions occurred in a case before Judge Iredell, whose eulogium has been pronounced by an honorable Manager; and another witness has informed us that it is the habit of Judge Chase frequently to interrupt counsel in civil as well as criminal cases; that the habit arises from the vigor of his mind, and the ardor of his feelings; that this is somewhat embarrassing to counsel, but that a little suavity on their part soon restores the judge to good humor. On this point I have no further observations to make. I will leave it to the good sense of this honorable body to determine how far the conduct of the respondent was, on this occasion, indecorous, and how far, on account of this conduct, he is liable to impeachment.

I have omitted to notice one of the interruptions, relied on by the Managers. When the counsel for the traverser insisted that the jury had a right to assess the fine, according to one of the witnesses, the judge replied that it was a wild notion; according to Mr. Robertson, he said it was a mistaken idea. And that it was, every professional man will acknowledge. The point had been previously decided at Richmond by Judge Paterson and Judge Iredell; it had been decided that the law of Virginia did not apply, and that the assessment of the fine was the province of the court. By the law of Virginia, a fine is assessed *ad libitum;* by the act of the United States it is provided that it shall not exceed a certain sum. How then was it possible to act under both laws?

As to the fifth specification, which is in these words: "In an indecent solicitude, manifested by 'the said Samuel Chase for the conviction of the

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'accused, unbecoming even a public prosecutor, 'but highly disgraceful to the character of a judge, 'as it was subversive of justice." I have no precise idea of the meaning of the term *indecent solicitude*—solicitude means *mental* anxiety. If we are to understand by solicitude that the judge felt anxiety for the furtherance of justice, that is simply an operation of the mind, and to determine whether it is praiseworthy or reprehensible, some overt act must be shown. For is it possible that, in any interesting case, a judge can sit on the bench without feeling some interest in the issue? This is more than falls to the lot of mortal. No, he must have feelings; and all that can be required is, that he restrain them from breaking out into acts subversive of justice. I will endeavor, on this point, to condense the testimony. It is said that the solicitude of the respondent is evinced by his indecent behaviour to the counsel, and by his conduct previous to the trial. A jocular conversation is resorted to; and expressions made in the most unguarded moments are drawn forth in judgment against him. After he had delivered a charge at Annapolis, Mr. Mason came up to him, and asked him what kind of charge he had delivered, whether it was to be considered as legal, religious, moral or political. To which the judge replied, that it was a little of all. Some conversation ensued on the licentiousness of the press, and he observed that when he went to Richmond, if a respectable jury could be found, he would have Callender punished. All this is worked up, as it were by magic, to prove a deliberate purpose on his part to institute a prosecution. That a man of the intelligence of Judge Chase, had he conceived such a project, should have thus jocosely, as is proved, and in public have divulged it, is beyond all belief. Let not a casual conversation of this light and sportive kind be tortured into evidence of a deliberate design. No man, the least acquainted with the general character of Judge Chase, will entertain the idea for a minute.

Another circumstance complained of, is, that Judge Chase was provided with a *scored* copy of "The Prospect Before Us;" and this is adduced to prove his purpose to oppress Callender. But we have given it in testimony that this copy was scored by Mr. Martin, who handed it to the judge, when he was about going to Richmond, to amuse him on the road, and to make such other use of it as he pleased. What was there improper or indecent in this? Further: the respondent is next hunted through a line of stages on his passage from Dumfries to Richmond; and Mr. Triplet is brought forward to prove that he expressed a wish that the damned rascal had been hanged. Had there been a settled purpose to convict or oppress Callender, would it not have been manifested by concealment and prudence, instead of being divulged by such an intemperate impulse of feeling?

We next find the respondent at Richmond. And here a gentleman states that, having moved the court for an injunction, he went to the chambers of Judge Chase on the subject, on the morning subsequent to the motion being made, and before the judge had gone to court; that while he was there, Mr. David M Randolph, the marshal, came in, and showed the judge the panel of jurors for the trial of Callender; that the judge asked him whether there were on it any of the creatures called democrats; and added, if there are, strike them off. Here must be some mistake. The witness must have heard some other person say so. Sure I am that the testimony will show that the statement of Mr. Heath cannot be received as correct I impute no criminal intention to the witness; this is not my habit; but, for ascertaining the weight which it ought to have, I will collect and compare the several parts of the testimony on this point.

It appears that Mr. Heath was at the judge's chambers but once. Mr. Marshall, the clerk of the court, called on Judge Chase the same morning that Mr. Heath was there—he cannot recollect whether Mr. Randolph went with him, according to his usual practice, but he is certain, from a conversation he states, that they walked together to court; he met Mr. Heath either in the act of coming out of the judge's room, or exterior to the door; and he heard no such conversation as he relates. What says Mr. Randolph? That no such conversation ever did take place. Here, then, the testimony is directly opposed. But it is said that our testimony is negative, and is therefore outweighed by the positive testimony of Mr. Heath; this, however, is not the fact. Much of our testimony is positive. Mr. Randolph declares that he has never shown the panel of a jury to a judge, except in the case of a grand jury offered to the court to select a foreman; and he is positive that the panel in the case of Callender was not made out until the morning of the third of July, in court, when his deputies came forward with the names of the jurors they had summoned on small slips of paper; and in corroboration of this evidence, it appears, on the testimony of Mr. Basset, who was sworn on the jury, that he was not summoned until the third of July; and that the marshal sent out his duputies that very morning to summon jurors. We oppose, then, to the simple declaration of Mr. Heath, unaccredited by other witnesses, the clear and strong evidence of Mr. Randolph, corroborated by that of Mr. Marshall and Mr. Basset.

It does, then, appear to me that none of the alleged facts are so supported as to show an indecent solicitude on the part of the respondent.

It may perhaps be proper to take a general view of the conduct of Judge Chase, after his arrival at Richmond.

The court met on the 22d of May; on the 24th in the morning a presentment was found against Callender; and an indictment late in the day. When Callender was brought into court an application was made for a continuance, on a general affidavit, drawn by Callender. When this was about to be presented, if the judge had been anxious for the conviction of the prisoner would he not have suffered it to be filed, and then said no supplementary affidavit, such is the strict principle of law, can afterwards be received. Instead of taking this course, the judge told the counsel that,

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if the affidavit were filed it would not be regular to withdraw it; that they had better draw up a special affidavit, and take till to-morrow to consider of it. This was done. A new affidavit was offered. It did not contain grounds for a continuance of the cause to the next term; but the court offered a delay of two, four, and even six weeks; all of which were rejected.

The cause came on for trial on the second of June. Two witnesses summoned had not arrived, and a delay of two hours was prayed for. The court postponed the trial until the next day. The testimony of Colonel Taylor was rejected on account of its illegality, and its not applying to the whole of any one charge; still the judge asked the prosecutor to admit it; and afterwards tells the counsel for the traverser, such is my opinion; but I am a fallible man, I may be mistaken; and if you desire it, you may state your exceptions, and a superior tribunal shall decide—but the offer was not accepted. Callender, in truth, was out of the question; it was not the man, but the cause in defence of which the counsel came forward; their great object was, through an address to the jury, to impress the public mind with the unconstitutionality of the sedition law. So often as they attempted to do this, they were interrupted by the court, and all their sensibility and indignation grew out of this refusal to allow them to argue the constitutionality of the law before the jury to the by-standers.

Carry, Mr. President and gentlemen of the Senate, in your minds these facts, and you will find that the conduct of the respondent was during the whole course of this trial, not only free from criminality, but, in all respects, justified by law and propriety.

Mr. Lee.—May it please this honorable Court: We are now arrived, Mr. President, in the course of the defence, to the fifth article of impeachment. I have, sir, been led to believe, that the present prosecution is brought before this honorable Court as a court of criminal jurisdiction, and that this high Court is bound by the same rules of evidence, the same legal ideas of crime, and the same principles of decision which are observed in the ordinary tribunals of criminal jurisdiction. The articles themselves seem to have been drawn in conformity to this opinion, for they all, except the fifth, charge, in express terms, some criminal intention upon the respondent. This doctrine relative to impeachment is laid down in 4 Black., 259, and in 2 Woodeson, 611. "As to the trial itself, 'it must of course vary in external ceremony, but 'differs not in essentials from criminal prosecu-'tions before inferior courts. The same rules of 'evidence, the same legal notions of crimes and 'punishments prevail. For impeachments are not 'framed to alter the law, but to carry it into more 'effectual execution, where it might be obstructed 'by the influence of too powerful delinquents, or 'not easily discerned in the ordinary course of 'jurisdiction, by reason of the peculiar quality of 'the alleged crimes. The judgment, therefore, is 'to be such as is warranted by legal principles 'and precedents." The Constitution of the United States appears to consider the subject in the same light. By the third section of the third article, "the trial of all crimes, except in cases of impeachment, shall be by jury;" and by the fourth section of the second article, the nature and extent of the punishment in cases of impeachment is defined. Hence it may be inferred that a person is only impeachable for some criminal offence. With this view, I have examined and re-examined the fifth article of impeachment, to know against what the defence should be made. Looking at it with a legal eye, I find no offence charged to have been committed, and although it may seem strange, it is not the less true, this circumstance has produced the greatest difficulty and embarrassment in what manner the defence should be made.

That this honorable Court may perceive that I have not misapprehended the article, I will pray leave to read it: "And whereas, it is provided by 'the act of Congress, passed on the twenty-fourth 'day of September, one thousand seven hundred 'and eighty-nine, entitled 'An act to establish 'the judicial courts of the United States,' that, 'for any crime or offence against the United States, 'the offender may be arrested, imprisoned, or 'bailed, agreeably to the usual mode of process 'in the State where such offender may be found; 'and whereas it is proved by the laws of Virginia, 'that, upon presentment by any grand jury of an 'offence not capital, the court shall order the 'clerk to issue a summons against the person or 'persons offending, to appear and answer such 'presentment at the next court; yet the said 'Samuel Chase did, at the court aforesaid, award 'a capias against the body of the said James 'Thompson Callender, indicted for an offence not 'capital, whereupon the said Callender was ar-'rested and committed to close custody, contrary 'to law, in that case made and provided."

This article charges no evil intention, no offence, no crime, yet the respondent is required to make a defence, and is to address defence to this court as one of criminal jurisdiction.

I do not mean to produce authorities to this high and learned tribunal, to show that a judge cannot be impeached for a mere error of judgment in any instance of his judicial conduct. I wish for none better than those produced by one of the honorable managers of the prosecution (Mr. Clark) to prove this position, 2 Bacon, 97, and Jacobs' Law Dictionary, title *Judges*. The elegant advocate that has just sat down (Mr. Key) has fully established the same doctrine. If then this be admitted, where or what is the crime charged in the fifth article. The whole charge is, that by authority of the judge a process called a capias was awarded against Callender, when that process ought to have been a summons. It is not alleged that the capias was awarded with any corrupt or evil intention of any kind. If then the article contains no charge of a crime, there must be an acquittal. Upon this point I hope I may be permitted to remind the court of an observation of another of the honorable Managers, who opened the comments upon the evidence for the prosecu-

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tion (Mr. Early.) He stated, and he stated truly as a general rule of jurisprudence, that if there be no evil intention set forth in the charge and proved, the party accused must be acquitted. With these remarks, if this was an ordinary case before an ordinary tribunal, I might dismiss this part of the accusation, and it may seem scarcely proper to occupy the precious time of this honorable Court, so near the close of its session, in defending the respondent any further against such a charge, but I feel too much respect for the House of Representatives who have preferred this article, and the honorable Managers who support it, not to give it a fuller investigation.

The article may perhaps be understood to produce an important inquiry: the inquiry how far the power of impeachment possessed by the House of Representatives shall extend. Although the Constitution declares that "the House of Representatives shall have the sole power of impeachment," yet I trust there is some limit to this power, and that a judge cannot be impeached for a mere legal error in his judicial conduct, when no crime is imputed to him. An impeachment is an accusation of a most serious nature, and the people of the United States have not vested the power of impeachment exclusively in the House of Representatives in Congress, but in their State governments they have established tribunals who are to possess the power of impeachment. I hold in my hand a little book which contains the most valuable matter; it contains the constitutions of the several States. By referring to them we find, in almost every instance, that a power of impeachment may be exercised under the State authority. When, therefore, the doctrine of impeachment is about to be fixed in regard to the limits of the power of impeachment by a judgment of this high and honorable Court, a judgment is about to be given that will be a precedent for the tribunals of the different States. An example is about to be set to the tribunals of the several States, that will influence and direct their decision in the construction of their constitutions relative to the power of impeachment. The words used in some of these instruments are the same, and in others nearly the same with the words in the Constitution of the United States upon this subject.

Is there not some limit to the power of impeachment, a power which we find can be exercised by so many authorities in this country? If there is a limit, what better limit can be set, than that of high crime and misdemeanor in office, as appears by the language of the Constitution to have been intended.

Let us now examine whether Judge Chase, in issuing a capias against Callender after he had been presented for an offence not capital, has been guilty of a high crime or high misdemeanor in office. Surely the Managers should have pointed to the proofs, if any there were, of a corrupt and evil intent with which this act was done. I have already referred to those parts of the Constitution which show that no impeachment can be maintained but for a crime. If the court will turn their attention to the article now under consideration, they will perceive that no crime is charged in express terms, and therefore the accused ought not to be held to answer it; but an idea has been suggested by the honorable Managers, that as the article charges an unlawful act to have been done, a criminal intention must be presumed, unless the respondent shows it to have been innocent. This principle, however true it may be in some cases, is not applicable to the present case. If the act charged be *malum in se*, the rule of law may be as has been stated, but if the act be *malum prohibitum*, the rule is otherwise.

In order that the honorable Court may not have the least difficulty on this subject, I will undertake to show that the learned judge acted, in this instance, strictly according to law, and if this be shown there will remain no foundation for the present charge.

It is well established as a general rule of jurisprudence, that a court which has jurisdiction over an offence, may award process concerning it, and compel the party to appear. This may be seen in 2 Hawk. Pleas, ch. 13, sec. 15, 16. The cognizance of offences against the statutes of Congress is vested in the circuit courts of the United States, 1 vol. Laws of U. S., p. 55. From the principle just stated, the circuit court acquired the power of awarding process to compel such offenders to appear in that court when they became vested with a power to try the offence. A presentment or indictment of a grand jury is sufficient evidence to authorize the court to award process against the offender. This is not only the evidence upon which a court usually proceeds, but it is recognised in the fifth article of the amendments to the Constitution. We find there a restriction upon the power of the courts; "no person shall be held to answer for a capital or other infamous crime, unless by a presentment or indictment of a grand jury, &c;" which restriction carries the implication, that by a presentment or indictment, the party shall be held to answer. If an offender may be held to answer to an accusation in this form, it follows, as a matter of course, that the court is bound to award process to compel him to answer.

I know no process by which a person can be apprehended except by a capias. In the present trial we have heard of a bench warrant, but that too is a capias awarded by a judge sitting in court. In all cases of misdemeanors, where the punishment is by imprisonment or fine, a capias is proper process, according to the practice of the King's Bench in England. For this I refer the court to a passage read at another day from Gilbert's treatise upon the origin of the King's Bench, page 308. So also the doctrine is laid down by Judge Blackstone, in regard to those cases where it is not intended to proceed to outlawry—4 Black. Com. 319.

A capias, therefore, in the case of Callender, was the proper process, according to common law principles, and the English authorities of modern date. In reason and common sense, a capias is the proper process where the offence is punishable by imprisonment, and we all know that Callender was charged with an offence punishable by fine and

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imprisonment. In such a case, a summons would be a notification to the offender to abscond or remove himself out of the reach of the court.

If any doubt can yet remain as to the propriety of issuing the capias, it will be entirely removed by attending to the laws of the United States. The 14th section of the "act to establish the judicial courts of the United States," gives power to the circuit courts to issue all writs necessary for the exercise of their jurisdiction, and agreeable to the principles and usage of law, and the 11th section of the same act gives exclusive cognizance of all crimes and offences cognizable under the authority of the United States to the circuit courts, except otherwise directed by that or some other statute. The court which awards the writ, is to decide what process is necessary for the exercise of its jurisdiction, and agreeable to the principles and usage of law in each particular case.

The 33d section of the same statute contains a great deal of important matter in regard to the present inquiry. "That for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found, agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States, as by this act has cognizance of the offence: And copies of the process shall be returned as speedly as may be, into the clerk's office of such court, together with the recognisances of the witnesses for their appearance to testify in the case; which recognisances the magistrate, before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender, or the witnesses, shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute a warrant for the removal of the offender, and the witnesses or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of the district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence and the usages of law. And if a person committed by a justice of the supreme, or a judge of a district court, for an offence not punishable with death, shall afterwards procure bail, and there be no judge of the United States in the district, to take the same, it may be taken by any judge of the supreme or superior court of law of such State."

Here it is expressly authorized that a judge of the circuit court may order a process for the *arrest* of the accused for any crime or offence against the United States, agreeably to the usual mode of process of arrest against offenders in the State where the court is holden and the offence committed. A summons is not authorized by the section, because a summons is not a process of *arrest*. I call upon the learned Managers to point out any other process by which a person can be arrested, even in Virgina, except by a capias. In England, in Virginia, in Maryland, in every State, the process of arrest is by a capias.

There is another statute of Congress on the subject of process, which passed on the second of March, 1793. It contains eight sections, and relates as well to *criminal* as *civil* matters. The seventh section is in the words following: "That 'it shall be lawful for the several courts of the 'United States, from time to time, as occasion 'may require, to make rules and orders for their 'respective courts, directing the returning of writs 'and processes, the filing of declarations and other 'pleadings, the taking of rules, the entering up 'judgment by default, and other matters in the 'vacation, and otherwise in a manner not repugnant to the laws of the United States, to regulate the practice of the said courts respectively, 'as shall be fit and necessary for the advancement of justice, *and especially to that end to* '*prevent delays in proceedings.*"

I know not what language can convey a more complete power to the court over its process, than is given by the passages from the statutes which have been cited. An uniform rule in the courts of the United States is very desirable, that criminals may be brought to trial by the like forms in every State, for violations of the statutes of Congress. To allow one kind of process in Virginia, and a different one in Maryland for the same offence, would be a heterogeneous and unequal mode of administering justice. A construction ought not to be given to the statutes of Congress, which admits of such a system, if it may possibly be avoided. Shall it be said that in one State a man who publishes a libel shall be arrested immediately and brought to trial and punished, while in another State, another person who has committed the same offence, shall be served with a process that shall be notice to him to make his escape: and shall it be said that such a rule shall be applied to cases where imprisonment is part of the punishment? It has been in proof, that in Maryland it is usual to arrest by capias in cases of misdemeanor, and to try the traverser at the same term at which he appears. Are the courts of the United States if sitting on one side of the Potomac, to be governed by one rule, and if sitting on another side of the same river, to be governed by another rule in cases of crime or offence against the laws and Constitution of the United States? It can never have been the intention of Congress that any such variety of proceeding should be allowed in practice, or that the process should be anywhere a summons, in cases of offences which were to be punished by imprisonment.

This can be further illustrated by attention to the laws of Congress, inflicting punishment upon certain crimes, passed in the year 1790. For perjury, for bribery, for obstructing by force the ser-

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vice of legal process, for importing slaves from foreign parts, for violence to an Ambassador and for other offences relative to Ambassadors, the punishment is fine and imprisonment. See 1st vol. *Laws of the United States*, page 111. The process in all these cases is to be the same; if a capias is proper in one it is proper in all, or if a summons is necessary in one it is necessary in all. Suppose in regard to an Ambassador who has applied to our Secretary of State for the punishment of an individual who may have done violence to his person or one of his family, that a summons shall have been issued to the offender, who should abscond or remove himself; it would be deemed very strange, perhaps incredible to the Ambassador, if he should be told by our Secretary of State that, the offence being committed in Virginia, it was necessary to summon the party to appear before the court, and instead of obeying the summons he had removed himself entirely, but if the same matter had been prosecuted in Maryland, the offender might have been instantly arrested and punished; the President of the United States regretted that the offender had escaped with impunity, but the escape was according to law. Would not such an explanation be apt to be conceived an affront to the understanding of the Ambassador?

On a former occasion I read a rule of the Supreme Court made in August, 1792, by which the judges declared, "that they considered the 'practice of the Courts of the King's Bench in 'England, as affording outlines for the practice of 'this court, and that they will, from time to time, 'make such alterations therein as circumstances 'may render necessary;" and on the same occasion reference was had to the practice of the King's Bench to show that a capias was a proper and usual process. But it is neither necessary nor correct to admit that the rule of the King's Bench in England is absolutely a rule for the circuit courts of the United States. It furnishes a good outline of practice. The true position is, that neither the King's Bench nor the State laws furnish rules to the federal courts in regard to process which are positively binding on them, but these courts are to establish their own rules, under the direction and control of the statutes of the United States.

It is a known and undisputed maxim, that the criminal code of each sovereign State furnishes the rule in prosecutions in the State courts, and is confined to offences against such State. An offence against the commonwealth of Virginia, is not an offence against the United States, and therefore the laws of Virginia which regard offences against itself, will have no effect touching offences against the United States, unless Congress by their express statute has given to them some effect. The laws of Virginia, and of every State, have declared how an offence against such State respectively shall be prosecuted, but they are not to be applied to the circuit court of the United States sitting in such State, and holding cognizance of crimes against the United States. In confirmation of this doctrine, suffer me to avail myself of the opinions of some very distinguished characters in the Virginia Convention which adopted the Constitution. An eminent judge who presided in the highest court of that State for a long space of time, I mean Judge Pendleton, laid it down as too clear to be disputed, that the powers of the federal Judiciary should be co-extensive with the powers of the federal Legislature. In this opinion, Mr. George Mason coincided with that gentleman, although he was opposed to him on almost every other. Of the same opinion was another distinguished member of the convention who now holds the high office of Secretary of State. (3d vol. *Virginia Debates*, pages 108, 121, 190.)

Unless then Congress has made the laws of each State the rule of process to bring offenders before the circuit courts, those laws do not bind the circuit courts, in this respect, and there will be no foundation for the doctrine, that a circuit court of the United States ought to be governed by the laws of a State in respect to process to bring the party to answer. Where is such a statute of Congress? Not in their statute books, as I humbly conceive, none such has been produced.

The honorable Managers have referred to the thirty-fourth section of the statutes already mentioned, and upon that alone they rely. The words of the section are as follows: "And be it further 'enacted, that the laws of the several States, except where the Constitution, treaties, or statutes 'of the United States shall otherwise require or 'provide, shall be regarded as rules of decision in 'trials at common law in the courts of the United 'States, in cases where they apply." We are to take the whole expressions of the section together, and this section is to be considered conjointly with all the other provisions of the statute. It makes the laws of a State the rules of decision in trials at common law where they apply. The laws of the State are to be rules of decision in trials. The process which is awarded to bring in a party to stand his trial, is obviously different from the trial itself: rules *of decision in trials*, are not rules of *process* antecedent to the appearance of the party. What is a trial at common law? A trial may be said to begin with empanelling a jury, and to end with the judgment of the court—4 *Black.* 352. A capias that is issued for the purpose of bringing the party to a *trial* by arresting his person, cannot therefore be deemed a part of the trial itself. Whether the traverser appears with or without process, is seldom deemed material; it is only after he is brought to answer that his trial can commence.

If the construction contended for by the Managers be admitted, it will make this section militate against the 14th and 33d sections of the same statute, which expressly provides upon the subject of process. Besides, it is unnecessary to give this construction, inasmuch as the statute provides amply respecting the steps preparatory to the trial. The 29th section regulates the mode of summoning a jury. There is no defect in the provisions of the statute which establishes one system that is to prevail everywhere, in regard to matters prior

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to the trial. Why would Congress provide, in respect to process, as they have done in the 14th and 33d sections, if they meant to adopt the various laws of each State in regard to process, as has been contended by the Managers? Congress has declared what kind of process may be used in the circuit courts, and that process of arrest may be used. Our construction is warranted by the rule of the Supreme Court that has been quoted, which rule was made long after the statute of 1789, and which statute is as obligatory on the Supreme Court, as upon a circuit court. It is also warranted by the judgment of the circuit court in Pennsylvania district, in the case of the United States against the insurgents, determined in the year 1795, before the respondent was elevated to the bench of the Supreme Court. (2 *Dal.* 340, 341.)

In giving his opinion on the 34th section of the statute, Judge Peters observes, "although in ordinary cases it would be well to accommodate our practice with that of the State, yet the judiciary of the United States should not be fettered and controlled in its operations, by a strict adherence to State regulations and practice. As to the clause in the law of the United States, directing that the laws of the States (with great exceptions) shall be regarded as rules of decision in trials at common law in the courts of the United States, I do not think that it applies to the case before us."

In conformity to the rule of the Supreme Court and the authority of the case just cited, Judge Chase determined that the laws of the State of Virginia, which require a summons to be issued in cases of the Commonwealth, did not apply to the courts of the United States. Why, let me again ask, should this section receive the construction contended for by the honorable Managers? It has been shown that the laws of the United States provide fully in regard to the process to be issued by their courts: that, for the furtherance of justice, such a construction is neither necessary nor convenient, and is inconsistent with other parts of the same statute. It is therefore perfectly correct in the court to bestow no attention upon the laws of Virginia concerning the process to be awarded against Callender. When a presentment was found by the grand jury, it was the duty of the court to act; it was their duty to award a proper process for arresting the offender. This is not only warranted by the principles and reasons already adduced, but is inferrible from various passages of the laws of Congress, particularly from the 19th and 20th sections of the statute passed 30th April, 1790, 1st vol. page 108.

The learned counsel who defended Callender, appear from the testimony to have taken up some improper opinions relative to the criminal code of the United States. The subject was, as they say, new to them, and for this reason let me remark, they might readily have fallen into error. It appears that they had not only thought it was competent for a jury to decide upon the Constitutionality of a law, but also that it belonged to the jury to assess the fine upon the traverser, because a jury has that power by the laws of the State in respect to offences against the State. In the like manner it is erroneously said, in the present prosecution, that the laws of the several States in respect to process, are the rules which should guide the circuit courts of the United States.

I have, sir, endeavored to show in the first place, that there is no charge of criminality stated in the fifth article of impeachment, and therefore the respondent ought to be acquitted. And, in the second place, I have endeavored to satisfy this honorable Court, that the act stated in the article to have been done by Judge Chase, was correct and legal in itself, and if legal, there remains no ground to presume or infer the smallest degree of evil intention. In this point of view he will also stand acquitted.

I will now proceed to make some observations upon the sixth article of impeachment: "And whereas it is provided by the 24th section of the aforesaid act, entitled 'An act to establish the judicial courts of the United States,' that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall be made; yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided."

The charge in this article against the respondent is in substance that he, with intent to oppress and procure the conviction of Callender, ruled him to trial during the term at which he was presented and indicted, contrary to the laws of Virginia, which it is alleged have provided that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the next succeeding court.

This article it is admitted does contain an accusation of crime; but I hope I shall be able to satisfy this honorable Court, that in this instance no crime or offence was committed. I shall undertake to show that no error in law was committed, and that if the judge had done otherwise he would have been more liable to censure than he now is. If this be made to appear, as a supposed illegality of his conduct is the foundation of the charge, there will remain nothing to support the charge.

The accused judge had sworn to support the Constitution of the United States, and to administer justice without respect to persons, and to perform all the duties of his office according to the laws of the United States. If in ruling Callender to trial at the same term at which he was indicted, he acted according to law, the judge per-

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formed his duty and ought not to be charged with oppression.

The article may be understood as affirming, that there exists some law of Virginia which positively prohibits the trial of a misdemeanor at the same term at which the indictment is found. No such law has been produced, and I must be allowed to deny that any such law of Virginia exists. The act of Assembly of 1788, which provides that "upon presentment by any grand jury of an of-'fence not capital, the court shall order the clerk 'to issue a summons or other proper process 'against the person or persons offending, to ap-'pear and answer such presentment at the next 'court," appears to have given birth to the idea that an offender may not be tried for a misdemeanor at the same term he is indicted. It however does not warrant the position. When the party appears and answers the presentment, the trial may immediately take place. When the party appears and answers an indictment, the trial may immediately take place, *if* so ruled by the court. who are vested with a discretion unfettered by any positive statute. The defence of this article may therefore be placed on two grounds, either of which will be sufficient. 1st. There is no law of Virginia which prohibits the trial of a misdemeanor at the same term the indictment is found. And, 2dly. If there be such a law, the same is not binding on the courts of the United States, in respect to offences against the United States.

With respect to the first ground, in addition to what was said, it may be observed, that some instances have been proven before this honorable Court, of trials in the State courts of indictments for misdemeanors, at the same term they were found. Mr. Robertson stated two specific cases where the, punishment might be imprisonment. These instances show there can have been no such positive prohibition by the laws of Virginia as the article of impeachment has alleged; howsoever that may be, such a law, and that in the general practice of that State there are some exceptions, or such a general practice would not be obligatory on the courts of the United States, which is the second ground of defence against this charge.

A great deal which has been said in relation to the 5th article, applies with equal force to the article now under discussion.

When the Supreme Court, by their rule of court deliberately formed, declared that the practice of the King's Bench should form outlines for the practice in their court, subject to the alterations they might make, it was reasonable and natural for the circuit court, composed of justices of the Supreme Court, to conduct its business upon the like principle. In the King's Bench, process may be returnable immediately.—Gilbert's origin of King's Bench, page 313; 2 Hawk, ch. 8, sec. 14; 4 Black, 319. And such is the practice if the offence is committed in the county where the court sits; but if the offence is committed in another county, the process may be returned to any day the court will appoint. The object of the court in using its discretion will be to insure the service of the process, and its due return, by allowing sufficient time according to circumstances for that purpose. It is not denied that *venire facias* is *a proper* process in cases not capital, but it is not *the only* process that may be issued. Judge Blackstone, who wrote since Hawkins in the passage cited, declares that a capias is a usual process from the King's Bench, and may be returnable at the pleasure of the court, but that in strictness there ought to be a *venire facias* where it is intended to proceed to outlawry. In the United States, under the statutes of Congress, there can be no proceeding to outlawry, and therefore the reason for awarding a *venire* in England does not hold in the United States in regard to prosecutions in their courts. But let the practice of the King's Bench be as it may, it is merely to be used as an outline by our judges who will guide and direct themselves by the statutes of the United Ststes, and will act in conformity to them. When process has been served, and the offender brought into court to answer an indictment already found, it is the duty of the court to proceed to the trial. Such will be shown to be the manifest direction of the laws of the United States. As to the laws of Virginia, it is repeated, there is no Legislative act of that State which fixes positively the time of trying an indictment for a misdemeanor, and if there were, it would not bind the federal court. The *time* of a trial is not the trial, but a circumstance which, as well as the *place* of trial, is subject to the laws of the United States.

But it has been said in support of this article, that in England it is not usual, or according to the general course of proceedings, to try petty misdemeanors at the same court that the traverser pleads. For this is cited 4 Black. 351; and it is also said that the practice of Virginia conforms to the practice in England in this instance. Let this be admitted, and what does it avail? The practice that has been mentioned applies only to *petty* misdemeanors, and the law has always distinguished between petty misdemeanors and those of a greater malignity. The practice does not apply to what are termed *crimina majora*. Can it be said that such a rule of practice applies to the case of Callender? Was he indicted for a petty misdemeanor? No, sir, he was not. I have long learned to abhor the detestable crime of calumny. A calumniator is the greatest of criminals, and Callender has been the greatest of calumniators. All have agreed in reprobating the wickedness of his calumnies; and ought the honorable judge, who is now answering before you, to have applied the rule of English and Virginia practice concerning petty misdemeanors to such a case as that of Callender? Certainly not.

To place this matter still more clear of doubt, I wish the honorable Court to turn their attention to the Constitution, and to a few clauses of the laws of the United States. The sixth amendment to the Constitution provides, "that in all 'criminal prosecutions the accused shall enjoy 'the right to a speedy and public trial by an im-'partial jury of the State and district wherein the 'crime shall have been committed." In the same

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spirit of speedy justice, a clause in the 33d section of the statute directs, that "copies of the process 'shall be returned as speedily as may be into the 'clerk's office of such court, together with the re-'cognisances of the witnesses, for their appear-'ance to testify in the case, which recognisances 'the magistrate before whom the examination 'shall be, may require on pain of imprisonment; 'and if such commitment of the offender or the 'witnesses shall be in a district other than that 'in which the offence is to be tried, it shall be the 'duty of the judge of that district where the de-'linquent is imprisoned, seasonably to issue, and 'of the marshal of the same district to execute, a 'warrant for the removal of the offender and the 'witnesses, or either of them, as the case may be, 'to the district in which the trial is to be had. 'And upon all arrests in criminal cases, bail shall 'be admitted, except where the punishment may 'be death," &c.

With the same view to a speedy trial, the 7th section of the statute of 2d March. 1793, enacts, "that it shall be lawful for the several courts of 'the United States, from time to time, as occasion 'may require, to make rules and orders for their 'respective courts, directing the returning of writs 'and processes, &c., and otherwise in a manner 'not repugnant to the laws of the United States 'to regulate the practice of the said courts re-'spectively, as shall be fit and necessary for the 'advancement of justice, and especially to that 'end to prevent delays in proceedings." Hence it is evident, that in bringing Callender to trial at the same term at which he was indicted and at which he pleaded, the court obeyed the injunction of the Constitution, and it obeyed the injunction of the laws of the United States.

In cases where bail is requirable to delay, the trial may be used to the oppression of the accused. It is therefore enjoined by the Constitution and by the laws that there shall be no delay. If the honorable judge, who stands accused of trying Callender too soon, had deferred the trial to another term, that is to say six months, and the traverser could not have given bail, he would have been imprisoned six months without a trial. After he was convicted, the sentence of imprisonment pronounced by the same judge was only an imprisonment of about nine months. He had acted, therefore, not only according to law, but with humanity in bringing the traverser to trial at the same term at which he was indicted. If the trial had been postponed to another term, and Callender in the meantime had been imprisoned, such a conduct in the court would have given cause of complaint against the judge, who would then have been accused of postponing the trial of an innocent man, for the purpose of oppression. What in such a case ought the judge to have done? Exactly what he did. Obeying the Constitution and the laws of the United States, he brought the traverser to a speedy and public trial.

It is, may it please the honorable Court, upon these grounds that the respondent stands justified in his conduct, in relation to the charge contained in the sixth article of impeachment.

In the distribution of the articles of impeachment among the counsel of the respondent, he assigned to me the 5th and 6th, and I humbly indulge the hope that the defence which has been made will be deemed satisfactory. But before I conclude, I hope I may be allowed shortly to advert to some of the remarks which have fallen from the honorable Managers in respect to this part of the accusation.

The honorable Managers have attempted to show a difference between a presentment and an indictment, and that until the indictment was found, a capias ought not to have been issued, even if it were lawful to issue it upon an indictment. That there is no such distinction, I appeal to those passages of the acts of Congress to which reference has been already made. I appeal to the reason of the thing and to the nature of a presentment. It is a species of indictment, an informal indictment; it is an accusation of a grand jury. There are cases where it would be improper in a court to wait until a presentment shall be put in the form of an indictment. Circumstances may be such that the offender would escape if process was not issued upon the presentment.

One of the honorable managers charged the respondent with precipitancy in awarding the capias. If this gentleman had recollected the testimony, he would not have made that remark. It was undeniably proved that the respondent inquired of the clerk of the court and of the district attorney, what was the proper process. These officers answered, that a capias was the proper process. Upon such subjects it is usual to inquire of such officers, and their answer is generally deemed sufficient by the courts.

It was in proof, that Judge Chase informed the counsel of Callender they might except to any opinion given by the court, he would sign their bill of exceptions and be the first man to grant a writ of error; this was intended to show, that the respondent had no disposition to injure or oppress the traverser. To obviate any influence of this circumstance favorable to the respondent it was intimated, perhaps asserted by some of the Managers, that no writ of error could be maintained in such a case of criminal prosecution, and that Judge Chase well knew it, and the offer was made merely for a cloak to his injustice and oppression. This idea seemed to be derived from certain opinions of Virginia jurisprudence, and it was attempted to be proved that in Virginia, a writ of error did not lie in a criminal case and had never been granted and sustained in that State in its courts. This however can be and will be readily disproved. Although one of the witnesses, Mr. Hay, did not recollect with precision whether there was any bill of exceptions in the cases concerning the Berkley clerk, which were carried from the district court into the court of appeals; yet another of the witnesses, Mr. Nicholas, the Attorney General of Virginia, well remembers there was. Until these cases were decided, which happened several years after the trial of Callender, it was the received law of that State for the court of appeals to hold juris-

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diction as a court of errors over criminal prosecutions. In support of this doctrine I refer to the case of Newall against the Commonwealth, adjudged in the year 1795.—2 Washington's reports, 88. It was against a magistrate for bribery in his office, and the judgment was reversed with costs. Also I refer to the case of Jones against the Commonwealth, adjudged in the year 1799. 1st Call's Reports, 555. This was an indictment for an assault, and the judgment was reversed. It is true that since the trial of Callender these cases have been overruled, yet as the established law was different at the time of his trial, the offer of the judge to grant a writ of error in the manner which has been proved, ought not to be attributed to any unjust or improper motives.

The learned counsel who spoke last stated the practice in Maryland to be, to award a capias and to try the traverser at the first term at which he pleads. This has been fully proved. As the respondent long presided in the criminal court of Maryland, with honor to himself and great usefulness to his country, it was quite natural for him to follow the like practice in Virginia.

It has been objected that the judge misconducted himself towards the counsel during the trial of Callender in various instances, which it has been argued proceeded from a desire to convict and punish the traverser, howsoever innocent. I will observe with great deference, that if in the opinion of some gentlemen the judge did not act with becoming politeness to the counsel, it is not a high crime or misdemeanor that may be examined or tried in this honorable Court. But I trust upon a view of the circumstances as they have been given in evidence, that this Court will be of opinion that the respondent behaved to the counsel with sufficient propriety. One of the counsel, Mr. Wirt, offered to the court a syllogism, to which the honorable judge promptly replied in a technical phrase of logic, and this excited in the audience some diversion. When another of the counsel, Mr. Nicholas, was speaking on the favorite topic of the right of the jury to consider the constitutionality of the sedition law, he was not interrupted by the judge. But Mr. Nicholas has been proved to have been always civil, always respectful to a court of justice, consequently the court would be civil to him. A third counsel, Mr. Hay, who was extremely desirous, as he has himself testified, to make an oration, not only for the purpose of satisfying the jury but the audience that a jury had a right to judge of the constitutionality of the sedition law, was interrupted by the judge, who denied his position. Mr. Hay had stated other matters during the trial which appeared to the judge to be erroneous. He had stated that a jury in this case of Callender, was the proper tribunal to assess the fine, in which he had been corrected by the court; that one of the jurors, Mr. Basset, was not qualified to serve, &c. His zeal in the cause of liberty and the Constitution, made him pertinacious in some things which the judge pronounced to be errors. It was no wonder then that such an advocate was stopped and often interrupted by the court. If anything was done amiss by the judge during the trial, it was his desiring Mr. Hay to proceed in his own way, and promising to interrupt him no more let him say what he would; but this circumstance plainly evinces that the interruptions did not arise from corrupt motives. It may truly be said that Judge Chase, in his behaviour to counsel, was "all things to all men." To the logical Mr. Wirt, he was logical; to the polite Mr. Nicholas, he was polite; to the zealous and pertinacious Mr. Hay, he was warm and determined. If the counsel had conducted themselves with propriety towards the court there would have been no interruptions; but when the judge found that the opinions of the bench were slighted, and that the conduct of the bar had a tendency to mislead and influence the public mind against a statute of Congress, he endeavored to turn their sentiments and reasoning into ridicule, and he produced by his wit a considerable degree of merriment at their expense, of which no doubt Colonel John Taylor, who has proved it for the prosecutors, was, from his natural temper, a full partaker.

Mr. President, it is now a very late hour, and I will bring my observations to a close. The articles relative to Fries and Callender have been fully investigated; there is neither uncertainty or doubt as to the facts. I flatter myself that it has been shown that those charges have not been supported by the evidence, and that the impeachment has proceeded from misinformation. If the honorable House of Representatives had known as much as has been disclosed to this honorable Court, they would not have deemed it necessary to have brought forward an impeachment. All must now be satisfied that the information on which the articles are grounded has been derived from mistaken sources, both in regard to fact and law. An aggregate body cannot be better guarded against misinformation than an individual; and I am induced to believe from the known integrity and virtue of the House of Representatives, they will hear with satisfaction, that the evidence which they received was not the same which has been delivered before this honorable Court, and that they will take pleasure in the acquittal of the respondent.

You are now about to set an example in a case of impeachment which will have a most important influence in our country. It will be an example to the tribunals in the several States who like you possess the power of trying impeachments, and who may learn from you by what rules the doctrine of impeachment is to be regulated. It will be a polar star to guide in prosecutions of this kind. You are about to set an example to the ordinary tribunals of justice in every corner of the United States. They will know how this high Court has done justice between the House of Representatives of the American nation and a single individual, and hence they may learn how to do justice to the most weak and friendless individual, when accused in their courts by the most powerful. An upright and independent judiciary is all-important in society.

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Let your example be as bright in its justice as it will be extensive in its influence. If the people shall find that their confidential servants, the House of Representatives, have brought forward an accusation against another of their servants for high crimes and misdemeanors in his exalted office, which after a fair and patient hearing has not been supported by evidence, it will afford them pleasure to hear of his honorable acquittal, and such may it please this honorable Court will be, I trust, the result of your deliberations.

SATURDAY, February 23.

Mr. MARTIN.—Mr. President: Did I *only* appear in defence of a friend, with whom I have been in habits of intimacy for nearly thirty years, I should feel less anxiety on the present occasion, though that circumstance would be a sufficient inducement; but I am, at this time, actuated by superior motives. I consider this cause not only of importance to the respondent and his accusers, but to my fellow-citizens in general, (whose eyes are now fixed upon us,) and to their posterity, for the decision at this time will establish a most important precedent as to future cases of impeachment.

In the discussion of this cause, I fear I shall occupy a greater portion of your time than I could wish, but, as the charges are brought forward by such high authority as the House of Representatives of the United States, it becomes necessary to bestow upon them more attention than they would deserve, were they from a less respectable source.

We have been told by an honorable Manager, (Mr. Campbell,) that the power of trying impeachments was lodged in the Senate with the most perfect propriety; for two reasons—the one, that the person impeached would be tried before those who had given their approbation to his appointment to office. This certainly was not the reason by which the framers of the Constitution were influenced, when they gave this power to the Senate. Who are the officers liable to impeachment? The President, the Vice President, and all civil officers of Government. In the election of the two first, the Senate have no control, either as to nomination or approbation. As to other civil officers, who hold their appointments during good behaviour, it is extremely probable that, though they were approved by one Senate, yet from lapse of time, and the fluctuations of that body, an officer may be impeached before a Senate, not one of whom had sanctioned his appointment, not one of whom, perhaps, had he been nominated after their election, would have given him their sanction.

This, then, could not have been one of the reasons for thus placing the power over *these* officers. But as a second reason, he assigned, that, if any other inferior tribunal had been entrusted with the trial of impeachments, the members might have an interest in the conviction of an officer, thereby to have him removed in order to obtain his place; but, that no Senator could have such inducement. I, sir, disclaim, I hold in contempt the idea, that the members of any tribunal, would be influenced in their decision by so unworthy—so base a motive; but what is there to prevent this Senate, more than any other court, from being influenced? Is there anything to prevent any member of this Senate, or any of their friends, from being appointed to the office of any person removed by their conviction?

I speak not from any apprehension I have of this honorable Court. In their integrity I have the greatest confidence. I have the greatest confidence they will discharge their duty to my honorable client with uprightness and impartiality. I have only made these observations to show that the reasons assigned by the honorable Manager for vesting the trials of impeachment in the Senate are fallacious.

I see two honorable members of this Court, [Messrs. Dayton and Baldwin,] who were with me in Convention, in 1787, who as well as myself, perfectly know why this power was invested in the Senate. It was because, among all our speculative systems, it was thought this power could no where be more properly placed, or where it would be less likely to be abused. A sentiment, sir, in which I perfectly concurred, and I have no doubt but the event of this trial will show that we could not have better disposed of that power.

Let us now, sir, examine the Constitution on the subject of impeachments, and from thence learn in what cases, and in what only, impeachments will lie. To have correct sentiments on this subject is of infinite importance. An error here would be like what is called an error in the first concoction, and would pervade the whole system.

By the Constitution, it is declared that "the House of Representatives shall have the sole power of impeachment." That section, however, does not declare in what cases the power shall be exercised. This is designated in a subsequent part of the Constitution, and I shall contend that the power of impeachment is confined to the persons mentioned in the Constitution, namely, "the President, Vice President, and all other civil officers."

Will it be pretended, for I have heard such a suggestion, that the House of Representatives have a right to impeach *every citizen indiscriminately?* For *what* shall they impeach them? For *any* criminal act? Is the House of Representatives, then, to constitute a grand jury to receive information of a criminal nature against all our citizens, and *thereby to deprive them of a trial by jury?* This was never intended by the Constitution?

The President, Vice President, and other civil officers, can only be impeached. They only in that case are deprived of a trial by jury; they, when they accept their offices, accept them on those terms, and, as far as relates to the tenure of their offices, relinquish that privilege; they, therefore, cannot complain. Here, it appears to me, the framers of the Constitution have so expressed

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themselves as to leave not a single doubt on this subject.

In the first article, section the third, of the Constitution, it is declared that, judgment in all cases of impeachment, shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit, under the United States. This clearly evinces, that no persons but those *who hold offices* are liable to impeachment. They are to lose their offices; and, having misbehaved themselves in such manner as to lose their offices, are, with propriety, to be rendered ineligible thereafter.

The next question of importance, is, in what cases the House of Representatives have a right to impeach the President, the Vice President, and the other civil officers.

It has been said that a judge cannot be indicted for the same crime for which he may be impeached: "for," says the honorable Manager, (Mr. Campbell,) "it would introduce the absurdity that a person might be punished twice for the same crime."

This honorable Court will observe that the two punishments which may here be inflicted on impeachment and subsequent indictment, amount to no more than in England takes place on a single prosecution; for there, on a single conviction, a judge may be removed from office, and also fined, imprisoned, or otherwise punished, according to the nature of his offence. But the whole of this power the United States have not vested in the same body. To the Senate they have confined the punishment of removal from office, and disqualification of the person from holding offices in future; but can there be a single doubt that a person, by impeachment, removed from office, cannot afterward, according to the nature of his crime, be punished by indictment? Can gentlemen suppose a removal from office was intended to wash away all crimes the officer should have committed? What are the crimes for which an officer can be impeached? "Treason, bribery, and other high crimes and misdemeanors."

Suppose a judge removed from office, by impeachment, for treason, would that wash away his guilt? would he not afterwards be liable to be indicted, tried, and punished as a traitor? Undoubtedly he would; so in the case of bribery. Yet, if the gentleman's idea is correct, a removal from office, on impeachment, for either of those crimes, would free the officer from any other punishment. Consider the monstrous consequences which would result from the principle suggested by the Managers, that a judge is only removable from office on account of crimes committed by him as a judge, and not for those for which he would be punishable as a private individual! A judge, then, might break open his neighbor's house and steal his goods; he might be a common receiver of stolen goods; for these crimes he might be indicted, convicted, and punished, in a court of law; but yet he could not be removed from office, because the offence was not committed by him in his judicial capacity, and because he could not be punished *twice* for the same offence.

The truth is, the framers of the Constitution, for many reasons, which influenced them, did not think proper to place the officers of Government in the power of the two branches of the Legislature, further than the tenure of their office. Nor did they choose to permit the tenure of their offices to depend upon the passions or prejudices of jurors. The very clause in the Constitution, of itself, shows that it was intended the persons impeached and removed from office might still be indicted and punished for the same offence, else the provision would have been not only nugatory, but a reflection on the enlightened body who framed the Constitution; since no person ever could have dreamed that a conviction on impeachment and a removal from office, in consequence, for one offence, could prevent the same person from being indicted and punished for another and different offence.

I shall now proceed in the inquiry, for what can the President, Vice President, or other civil officers, and, consequently, for what can a judge be impeached? And I shall contend that it must be for an indictable offence. The words of the Constitution are, "that they shall be liable to impeachment for treason, bribery, or other high crimes and misdemeanors."

There can be no doubt but that treason and bribery are indictable offences. We have only to inquire, then, what is meant by high crimes and misdemeanors? What is the true meaning of the word "crime?" It is the breach of some law, which renders the person who violates it liable to punishment. There can be no crime committed where no such law is violated. The honorable gentleman to whom I before alluded, has cited the new edition of Jacob's Law Dictionary; let us, then, look into that authority for the true meaning of the word "misdemeanor." He tells us

"Misdemesnor, or misdemeanor, a crime less than felony. The term 'misdemeanor' is generally used in contradistinction to felony, and comprehends all indictable offences, which do not amount to felony, as perjury, libels, conspiracies, assaults," &c. See 4 *Comm. c.* 1, *p.* 5,

"A crime or misdemeanor, says Blackstone, is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which, properly speaking, are mere synonymous terms, though, in common usage, the word 'crimes' is made use of to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentle name of misdemeanors only.

"In making the distinction between public wrongs and private, between crimes and misdemeanors, and civil injuries, the same author observes, that public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties due to the whole community, considered as a community in its social, aggregate capacity." 4 *Comm.* 5.

Thus, it appears, crimes and misdemeanors are the violation of a law, exposing the person to punishment, and are used in contradistinction to those breaches of law, which are mere private

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injuries, and only entitle the injured to a civil remedy.

Blackstone's Commentaries, 4th vol. page 5th. is cited by Jacob, and is as there stated. I shall not turn to it. Hale, in his Pleas of the Crown, volume first, in his *Præmium*, which is not paged, speaking of the division of crimes, says:

"Temporal crimes, which are offences against the laws of this realm, whether the common law or acts of Parliament, are divided into two general ranks or distributions in respect to the punishments that are by law appointed for them, or in respect to their nature or degree; and thus they may be divided into capital offences, or offences only criminal, or rather, and more properly, into felonies and misdemeanors. And the same distribution is to be made touching misdemeanors, namely, they are, such as are so by the common law, or such as are specially made punishable, as misdemeanors, by acts of Parliament."

Thus, then, it appears that crimes and misdemeanors are generally used as synonymous expressions, except that "crimes" is a word frequently used for higher offences. But, while I contend that a judge cannot be impeached except for a crime or misdemeanor, I also contend that there are many crimes and misdemeanors for which a judge ought not to be impeached, unless immediately relating to his judicial conduct. Let us suppose a judge, provoked by insolence, should strike a person; this certainly would be an indictable, but not an impeachable offence. The offence for which a judge is liable to impeachment must not only be a crime or misdemeanor, but a high crime or misdemeanor. The word "crime," as distinguished from misdemeanor, is applied to offences of a more aggravated nature, the word "high," therefore, must certainly equally apply to misdemeanors as to crimes. Nay, sir, I am ready to go further, and say, there may be instances of very high crimes and misdemeanors, for which an officer ought not to be impeached, and removed from office; the crimes ought to be such as relate to his office, or which tend to cover the person who committed them with turpitude and infamy; such as show there can be no dependance on that integrity and honor which will secure the performance of his official duties.

But we have been told, and the authority of the State of Pennsylvania has been cited, by one honorable Manager (Mr. Rodney) in support of the position that a judge may be impeached, convicted, and removed from office, for that which is not indictable, for that which is not a violation of any law.

What, sir! can a judge be impeached and deprived of office, when he has done nothing which the laws of his country prohibited? Is not deprivation of office a punishment? Can there be punishment inflicted where there is no crime? Suppose the House of Representatives to impeach, for conduct not criminal; the Senate to convict, does that change the law? No, the law can only be changed by a bill brought forward by one House in a certain manner, assented to by the other, and approved by the President. Impeachment and conviction cannot change the law, and make that punishable which was not before criminal.

It is true, it often happens that the good of the community requires that the laws should be passed, making criminal and exposing to punishment conduct, which, antecedently, was not punishable; but, even in those cases, Government has no power to punish acts antecedently done; it can only punish those acts done after the enaction of the law. The Constitution has declared, "no *ex post facto* law shall be passed."

Should such a principle be once admitted or adopted, could the officers of Government ever know how to proceed? Admit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may convict, and the officer be removed, you leave your judges, and all your other officers, at the mercy of the prevailing party. You will place them much in the unhappy situation as were the people of England during the contest between the white and red roses, while the doctrine of constructive treasons prevailed. They must be the tools or the victims of the victorious party.

I speak not, sir, with a view to censure the principles or the conduct of any party which has prevailed in the United States since our Revolution, but I wish to bring home to your feelings what may happen at a future time. In republican Governments there ever have been, there ever will be, a conflict of parties. Must an officer, for instance a judge, ever be in favor of the ruling party, whether wrong or right? Or, looking forward to the triumph of the minority, must he, however improper their views, act with them? Neither the one conduct nor the other is to be supposed but from a total dereliction of principle. Shall, then, a judge, by honestly performing his duty, and very possibly thereby offending both parties, be made the victim of the one or the other, or perhaps of each, as they have power? No, sir, I conceive that a judge should always consider himself safe while he violates no law, while he conscientiously discharges his duty, whomever he may displease thereby.

But an honorable Manager (Mr. Campbell) has read to us an authority to prove that a judge cannot, in England, be proceeded against by indictment for violation of his official duties but only in Parliament, or by impeachment; his authority was the new edition of Jacob's Law Dictionary. Let me be indulged with reading to this honorable Court the case from 12 Coke, the case of Floyd and Barker, to which Jacob refers, and it will be found that the reasons there assigned, however correct they might be as to judges in England, can have no possible application to the judges of the United States.

[Here Mr. MARTIN read the following part of the third resolution, to wit:]

"It was resolved that the said Barker who was judge of assize, and gave judgment on the verdict upon the said W. P., and the sheriff who did execute him according to the said judgment, nor the justices of peace who did examine the offender, and the witnesses for proof of the murder before the judgment, were not to be drawn in question, in the Star Chamber, for any

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conspiracy; nor any witness, nor any other person ought to be charged with conspiracy in the Star Chamber, or elsewhere, when the party indicted is convicted or attaint of murder or felony, and although the offender upon the indictment was acquitted, yet the judge, be he judge of assize, or a justice of peace, or any other judge, by commission, and of record, and sworn to do justice, cannot be charged for conspiracy for that which he did openly in court as judge or justice of peace; and the law will not admit any proof against this vehement and violent presumption of law, that a justice, sworn to do justice, will do injustice, but if he hath conspired before, out of court, this is extra-judicial, but due examination of causes out of the court, and inquiring by testimony, and similar, is not any conspiracy, for this he ought to do; but subornation of witnesses, and false and malicious prosecutors, out of court, to such whom he knows will be indictors, to find any guilty, &c., amounts to an unlawful conspiracy.

"And as a judge shall not be drawn in question in the cases aforesaid, at the suit of the parties, no more shall he be charged in the said cases before any other judge at the suit of the King.

"And the reason and cause why a judge, for anything done by him as a judge, by the authority which the King (concerning his justice) shall not be drawn in question before any other judge, for any surmise of corruption, except before the King himself, is for this; the King himself is *de jure* to deliver justice to all his subjects; and for this, that he himself cannot do it to all persons, he delegates his power to his judges, who have the custody and guard of the King's oath.

"And forasmuch as this concerns the honor and conscience of the King, there is great reason that the King himself shall take account of it, and no other."

But, even in England, it has been solemnly determined, that judges may be proceeded against by indictment for the violation of the laws in their official conduct, for which I refer this honorable Court to Viner's abridgment, 14th vol. page 579. (F) pl. 3, and in notes, where he says:

"A justice cannot rase a record, nor imbecile it, nor file an indictment which is not found, nor give judgment of death where the law does not give it, but if he doth this it is misprision, and he shall lose his office, and shall make fine for misprision." In the note "Brooke, Corone pl. 173 cities 2 R. 3, 9, 10, S. C. and P. and that he shall be indicted and arraigned."

And that to Hawkins's Pleas of the Crown, vol. 1, chap. 69, sec. 6, where that author tells us:

"It is said that, at common law, bribery in a judge, in relation to a cause depending before him, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high treason, before the 25th Edward III., and at this day it certainly is a very high offence, and punishable, not only with the forfeiture of the offender's office of justice, but also with fine and imprisonment," &c.

Mr. President, the principle I have endeavored to establish is, that no judge or other officer can, under the Constitution of the United States, be removed from office but by impeachment, and for the violation of *some law*, which violation must be, not simply a crime or misdemeanor, but a *high* crime or misdemeanor.

But an honorable Manager, (Mr. Rodney,) who has this morning referred to some authorities, as to other parts of the case, has also contested the correctness of the foregoing principle, and has introduced the constitution of the State of Pennsylvania, by which he has told us, a judge may, by the Governor, be removed from office, without the commission of any offence, upon the vote of two-thirds of the two Houses for his removal; notwithstanding that constitution has a similar provision for removal by impeachment as has the Constitution of the United States. To this I answer, as we have no *such provision* in the Constitution of the United States, the *reverse* is to be inferred, to wit, that the people of the United States, from whom the Constitution emanated, did not intend their judges should be removed, however obnoxious they might be to *any part* or to the *whole* of the Legislature, unless they were guilty of some high crime or misdemeanor, and then only by impeachment. It is also well known, that the Governor of Pennsylvania has not considered those words in the constitution of that State, "that he *may* remove the judges on such address," as being *imperative*. For, in a recent instance, where he did receive such address, instead of admitting the construction to be, as was contended, "*you must*," he determined it to be "*I will not*," and I have had the pleasure of seeing that judge, some time since that transaction, on the bench with his brethren dispensing justice. I again repeat, that as the framers of the Constitution of the United States did not insert in their Constitution such a clause as is inserted in the constitution of Pennsylvania, it is the strongest proof that they did not mean a judge or other officer should be displaced by an address of any portion of the Legislature, but only according to the Constitutional provisions.

The same gentleman (Mr. Rodney) has told us that the tenure by which a judge holds his office is good behaviour, therefore that he *is* removable for misbehaviour; and, further, that misbehaviour and misdemeanor are synonymous and co-extensive. Here I perfectly agree with the honorable gentleman, and join issue with him. Misbehaviour and misdemeanor are words equally extensive and correlative; to misbehave or to misdemean is precisely the same; and, as I have shown that to misdemean, or, in other words, to be guilty of a misdemeanor, is a violation of some law punishable, so, of course, misbehaviour must be the violation of a similar law.

The same honorable gentleman has mentioned the impeachment and conviction of Judge Addison, and has told us that he was not impeached for the breach of any law, but only for rude or unpolite conduct to his brother judge; that *this objection* was made with much energy on his defence, but that the Senate were convinced, by the great talents and eloquence of Mr. Dallas, and some other gentlemen, that the objection was groundless; they, therefore, convicted and removed him. I have not here the proceedings against Judge Addison, and, therefore, it *is possible* that the Senate of Pennsylvania erected themselves into a court of honor to punish what they

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might consider breaches of politeness; but does this honorable Court sit here to take its precedents from the State of Pennsylvania or any other State, however respectable? I should rather hope that this honorable Court should furnish precedents which might be respected and adopted by the different States. I would also ask, when was that precedent established? Was it not at a time when there is too much reason to believe that the warmth and violence of party had more influence in it than justice: and that the Senate of Pennsylvania overleaped their constitutional limits? But if we are to go to Pennsylvania for a precedent, why should we not be guided by that which the same State has so recently given us in a trial in which that gentleman bore so conspicuous a part? a precedent of *acquittal;* a precedent which we are perfectly willing should be adopted, and which we trust will be adopted, on the present occasion.

My observations thus far have been principally with a view to establish the true construction of our Constitution, as relates to the doctrine of impeachment. I now, Mr. President, will proceed to the particular case before this honorable Court; and, in the first place, I agree with the honorable Managers, that there is a manifest difference even between the credibility of witnesses, and the credibility of testimony, for, I admit, if witnesses are equally credible, and some swear that words were uttered, or acts were done, and others, that they did not hear the words, or that they did not see the acts done, the presumption is certainly in favor of the positive, and against the negative testimony. But this must be admitted with considerable restrictions.

If, immediately after a transaction, there is a full and clear memory of the words spoken, or the acts done, there is great reason to credit the testimony; but, even in that case, if there are a number of persons equally respectable, having equal opportunity to hear and see, and who were attentive to what took place, and none of them heard or saw what is testified by a single witness, there would be great reason to suspect the affirmative witness to be mistaken; more so if the transactions had happened for some years antecedent to the examination.

But, as to *Heath*, we do not contradict him *merely by negative testimony;* we contradict him by a series of positive facts which my honorable colleague (Mr. Key) has detailed, proved by characters, whose *veracity cannot be doubted*, which positive facts incontestably show that what he swore never could have taken place. And, here again, permit me sir, to make a further observation, that, where a person is charged *criminally* for words he is supposed to have uttered, those words ought to be proved *with precision.* Every witness on *this* occasion, who hath been examined as to expresssions used by my honorable client, either on the one or the other charge, which are held as exceptionable, declares he cannot pretend to recollect the express words uttered by the judge, but only to state what at this distance of time he can consider the amount of what was said. Nay, Messrs. Lewis and Dallas declare further, that they cannot pretend to say with accuracy, what part of the conversation, of which they give testimony, took place on the first or the second day, or in what order. Such kind of testimony, therefore, ought to be received with great caution, and not to be considered as conclusive. On this subject I will trouble this honorable Court with a passage, from McNally's Treatise on Evidence, page 518.

"It is no evidence in a criminal case, that the defendant said so and so, or in other words to the like effect, because the court must know the very words to judge of their force and effect.—2 Hawk. ca. 46.

"And the reason of this rule is, that of words spoken, there can be no tenor, that is transcript, for there is no original to compare them with, as there is of words written: and though there have been attempts to plead a tenor of words spoken, it has never been allowed. And therefore if a plantiff declares for words spoken, a variance, in the omission or addition of a word, is not material, and it is sufficient, if so many of the words be proved and found as are in themselves actionable.—12 Vin. abr. 68. pl. 46.

"So in Hussey *vs.* Cooke, Easter, 18. Jac. 1. in the Star Chamber. The court held, that if a witness depose that a defendant did persuade a juror to appear and to do him reasonable favor, or words to the like effect, this is no sufficient proof in criminals, because the court must know the very words to judge of their force and effect.—Hob. 294. Fos. 200. 1 Hale, p. 6. 111. Kel. 14.

"Hale, Coke, and Foster, fully justify the principle of this rule. Foster says, as to mere words supposed to be treasonable, they differ widely from writings in point of real malignity, and proper evidence. They are always liable to great misconstruction from the ignorance or inattention of the hearers, and too often from a motive truly criminal. And therefore I choose to adhere to the rule which hath been laid down on more occasions than one since the Revolution, that loose words to any act or design are not overt acts of treason. —Fost. 200.

"Keyling says, I see no difference between words spoken. Foster answers, the difference appeareth to me to be very great, and lieth here. Seditious writings are permanent things, and if published, they scatter the poison far and wide. They are acts of deliberation, capable of satisfactory proof, and not ordinarily liable to misconstruction; at least they are submitted to the judgment of the court, naked and undisguised as they come out of the author's hands. Words are transient and fleeting as the wind, the poison they scatter is at worst confined to the narrow circle of a few hearers: they are frequently the effect of sudden transport, easily misunderstood and often misrepeated.—Keyling 13. Fos. 200.

"The suppression of a word or syllable may change the sense; so the change of an emphasis. So words spoken in exclamation, conveying by sound and gesture surprise and abhorrence, may be represented in evidence as spoken blasphemously or seditiously."

Sir Michael Foster, a judge whose worth has seldom been equalled, perhaps never surpassed, and who has so correctly observed, that a popular judge, that is, one who in his decisions seeks after popularity, was one of the most contemptible beings in the world, is referred to as an authority.

This principle equally applies, where a person

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is charged *criminally* on account of words spoken, whether the offence is supposed to be treason, or only misdemeanor; the case referred to in Hobart. page 294, is an authority in point; it is true, this case was determined in the *Star Chamber*, but being determined in favor of the person accused, it becomes an higher authority—Star Chamber cases are only complained of on account of their oppression.

I will now, Mr. President, proceed to consider the conduct of my honorable client on the trial of Fries, and to examine the law upon that case, and of course to investigate the rights of judges, in criminal cases, as well as the rights of attorneys. I do not mean to go minutely into the testimony, which has been given in that case; but, taking it up on that given by Messrs. Lewis and Dallas, to examine whether the court is to control the counsel, or be mere cyphers, destitute of authority to restrain and keep within bounds the lawyers when acting improperly. The whole of the practice, of which I have heard during this trial, as being usual in the courts of Pennsylvania and Virginia, hath been to *me at least as novel* as the conduct of Judge Chase appears to have been to the honorable managers. *I*, sir, have *always* considered it the province of the court in the course of a trial in *all* cases, whether civil or criminal, to declare what is the law. This right is admitted in civil cases, but, it seems, is denied in criminal. And therefore, it is contended, that in criminal cases counsel have a right to address the jury upon the law, and to urge them to determine the law in contradiction to the decision of the court. How doth the jury acquire the *power* of deciding the law in *any* case? Because, upon the general issue, having a right to give a general verdict, which involves both law and fact, the jury *incidentally* have the power to decide the law. But this doth not authorize them to give a verdict *contrary* to law. When a case comes before a jury, the court informs them what is the law, if they believe the facts given in evidence. If they do believe the facts they are *bound in duty* to decide according to the law thus explained to them by the court. The decision *ought* to be the same as if the facts had been found by the jury in a special verdict, and the law left to the court. The jury, I admit, have the *power* to decide the law contrary to the direction of the court, but I deny that they have a *right* to do it. No person will deny that it is much more proper for the court to decide the law than that it should depend upon jurors, who in general are ignorant of the law. In civil cases, a jury sometimes give a verdict contrary to the direction of the court, but the court correct this abuse of power by interposing and granting a new trial, thereby correcting the evils which would result from such abuse.

Let us then examine this question as to criminal cases. Is it not as important to society that there should be uniform and fixed principles for the decision in criminal as in civil cases? Would it not be highly improper that one man should be convicted for a crime, and another, who had committed the same, be acquitted, merely from the passions, prejudices, or ignorance of jurors, influenced thereby to *decide* the law differently in the different cases, though perfectly similar in criminality? No person can doubt on this subject.

Where, then, is the difference between the civil and criminal cases? It is not that the jury have a *greater right* to decide the law in the *last* than in the *first;* but that, having the power to give a general verdict, which, *incidentally*, involves the law, they may give a verdict contrary to law, and contrary to the direction of the court; and the courts of justice, not having in criminal cases, through tenderness, enforced the remedy of a new trial, the abuse of power, thus practised in some cases by juries, have been uncorrected. No person can doubt but that juries, in criminal as well as in civil cases, *ought* to give their verdict according to law, and, whenever they do not, they are answerable to their consciences and to their God, however they may be exempt from human punishment.

The *right* of the court to decide the law, is the same in criminal as in civil cases. If there is a demurrer to an indictment, the court decides without the intervention of a jury. If there is a demurrer to evidence, the court decides the law. So, if a special verdict is found, which may be found in a criminal as well as in a civil suit.

The *power* of the jury, as I have before said, to decide against law, doth not give them the right, any more than the *power* of a person to knock down a man weaker than himself, gives him the right so to do. And, if juries, in any case, knowingly give a verdict contrary to law, instead of acting *impartially*—which is the duty of a jury—they act with *criminal partiality*.

So great is the difference of sentiment between the honorable Managers and some of the witnesses who have been examined in this trial, and myself, upon the *right* of juries to decide the law in criminal cases, that, in confirmation of my own sentiments, and to convince this honorable Court I do not wish to impose upon them, I hope I shall be indulged in reading to them a very respectable authority upon this subject. It will be found in Co. Lit. 155, as follows:

"The most usual trial of matters of fact, is, by twelve such men; for, *ad questionem facti non respondent judices;* and matters in law the judges ought to decide and discuss; for, *ad questionem juris non respondent juratores.*"

Upon this is the following note:

"This *decantatum*, as Lord Chief Justice Vaughan calls it, on account of its frequency in the books, about the respective provinces of judge and jury, hath, since Lord Coke's time, become the subject of very heated controversy, especially on prosecutions for State libels; some aiming to render the juries wholly dependent on the judge for matters of law, and others contending for nearly a complete and unqualified independence."

"In respect to my own ideas on this subject, (says Mr. Hargrave,) they are at present to this effect: On the one hand, as the jury may, as often as they think fit, find a general verdict, I therefore think it unquestionable, that they so far may decide upon the law as well as fact, such a verdict necessarily involving both.

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In this I have the authority of Littleton himself, who writes, that, if the inquest will take upon them the knowledge of the law upon the matter, they may give their verdict generally.

"But on the other hand I think it seems clear, that questions of law generally and more properly belong to the judges; and that, exclusively of the fitness of having the law expounded by those who are trained to the knowledge of it by long study and practice, this appears from various considerations.

"1st. If the parties litigating, agree in their facts, the cause can never go to a jury, but is tried on a demurrer; it being a rule, and I believe without exception, that issues in law are ever determined by the judges, and only issues of fact are tried by a jury.

"2d. Even when an issue in fact is joined, and comes before a jury for trial, either party, by demurring to evidence, which includes an admission of the fact to which the evidence applies, may so far draw the cause from the cognizance of the jury, for in that case the law is reserved for the decision of the court from which the issue of the fact comes, and the jury is either discharged, or at the utmost only ascertains the damages.

"3d. The jury is supposed to be so inadequate to finding out the law, that it is incumbent upon the judge who presides at the trial, to inform them what the law is; and, as a check to the judge in the discharge of this duty, either party may, under the statute of Westminister, the 2d. C. 31., make his exception in writing to the judge's direction, and enforce its being made a part of the record, so as afterwards to found error upon it.

"4th. The jury is ever at liberty to give a special verdict, the nature of which is to find the fact at large, and leave the conclusion of law to the judges of the court from which the issue comes. Formerly indeed it was doubted, whether in certain cases in which the issue was of very limited and restrained kind, the jury was not bound to find a general verdict. But the contrary was settled in Dowman's case, 9. Coke, 11. b., and the rule now holds both in criminal and civil cases without exception.

"5th. Whilst attaints, which still subsist in law, were in use, it was hazardous in a jury to find a general verdict where the case was doubtful, and they were apprized of it by the judges, because if they mistook the law, they were in danger of an attaint.

"6th. If the jury find the facts specially, and add their conclusion as to the law, it is nothing binding on judges, but they have a right to control the verdict, and declare the law as they conceive it to be.

"7th. The courts have long exercised the power of granting new trials in civil cases where the jury find against that, which the judge trying the cause, or the court at large, holds to be law; or where the jury find a general verdict, and the court conceives that on account of difficulty of law there ought to have been a special one. Though too in criminal and penal cases, the judges do not claim such a discretion against persons acquitted, the reason I presume is in respect of the rule that *nemo bis punitur aut vexatur pro eodem dilecto*, or the hardship which would arise from allowing a person to be put twice in jeopardy for one offence, and if this be so, it only shows that on that account, an exception is made to a general rule. Upon the whole, as my mind is affected with this interesting subject the result is, that the immediate and direct right of deciding upon questions of law, is entrusted to the judges; that in a jury it is only incidental; that in the exercise of this incidental right the latter are not only placed under the superintendence of the former, but are in some degree controllable by them; and, therefore, that in all points of law, arising on a trial, juries ought to show the most respectful deference to the advice and recommendation of judges. In favor of this conclusion, the conduct of the juries bears ample testimony; for to their honor it should be remembered, that the examples of their resisting the advice of a judge, in points of law, are rare, except where they have been provoked into such an opposition by the grossness of his own misconduct, or betrayed into an unjust suspicion of his integrity by the misrepresentations and ill practices of others. In civil cases, particularly where the title to real property is in question, juries almost universally find a special verdict as often as the judge recommends their so doing; and, though in criminal cases special verdicts are not frequent, it is not from any averseness to them in juries, but from the nature of criminal causes, which generally depend more upon the evidence of facts than any difficulty of law. Nor is it any small merit in this arrangement, that in consequence of it, every person accused of a civil crime, is enabled by the general plea of not guilty, to have the benefit of a trial, in which the judge and jury are a check upon each other; and that this benefit may be always enjoyed, except in such small offences as are left to the summary jurisdiction of a justice of the peace, which exception, from the necessity of the times, is continually increasing, but which, however, cannot be too cautiously extended to new objects. Thus considered, the distinction between the office of judge and jury seems to claim our utmost respect. May this wise distribution of power between the two, long continue to flourish, unspoiled either by the proud encroachments of ill designing judges, or the *wild presumption of licentious juries*."

In this prayer I most cordially join, and, with the learned commentator, hope that this wise distribution of power may long continue to flourish unimpaired either by the proud encroachments of ill-designing judges, or the wild presumption of licentious jurors. Such as I have here stated, I consider the principles of the English law, and to these principles I cheerfully subscribe.

But the principles adopted on this impeachment, and advocated, as I understand, by the honorable Managers, appear to me to have a direct tendency to break down every barrier between the province of the court and the jury, giving everything to the latter and nothing to the former; and so far from placing them or the counsel under the direction and control of the court, prohibit the court from restraining either the jury or the counsel, under the danger of impeachment. I differ with them. If in any case the law is known to be settled by a uniformity of decisions, a court of justice *degrades* itself if it permits counsel to take up their time in arguing against it. If the question is not considered as fully settled, counsel certainly ought to be heard, but it is to the court they ought to address themselves. In England the first lawyers who have ever existed, have not thought themselves degraded by arguing the law in criminal as well as in civil cases, before the court. If counsel should attempt to impose on the jury what is not law, is the court to sit tamely by, and suffer them to proceed? Such has not been the practice in

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the courts which I have attended. Where the law is know to be settled, or where, upon application to the court, a determination is given, the endeavor to distinguish his case, and show that it counsel must go before the jury upon the fact, and doth not come within the law as established; for should counsel attempt to state anything to the jury, which appears designed to controvert the law as declared, they are immediately stopped by the court, and to persist would be considered highly indecorous, nor would the court permit it to be done. In Maryland the lawyers do not claim, as a Constitutional right, to mislead and deceive the judges, much less to mislead and deceive the jurors, free from any control of the court.

But it has been said that juries are most proper to decide the law in criminal cases, thereby to prevent a criminal from being borne down and oppressed by the weight of the prosecuting power. What case can arise in this country, to which this argument can apply? In England, before the Revolution, while judges were dependent on the Crown, if, also, wicked and corrupt, there might, where Government was interested, be some such cases. But is our situation to be compared to that of England, at that time? If so, it was not worth while for us to have taken upon ourselves the risks of the late Revolution to have changed our Government.

Is there anything to induce judges to oppress any individual even though offensive to the Government, while they are *independent?* Any danger of that kind is to be apprehended from judges who are *dependent.*

And hence flowed the great Constitutional provision, which secures the independence of the judges, which secures them from being removed or punished while they discharge their duty.

What probability is there that a judge would do injustice to any person with a view to please any party, when he could have but *very little prospect of reward*, and would be sure that though he did his duty he could not be removed from office or exposed to injury?

I wish this honorable Court to reflect on the nature of man. In a Government like ours, there will always be majorities and minorities. Minorities will often be powerful, and frequently in due time become majorities. If a judge should do an act pleasing to a majority, he must know it may render him hateful to the minority, who, in course of events, may get the power in their hands. If he endeavors to ingratiate himself with the minority, he exposes himself to the displeasure of the ruling majority. It is the duty of a judge to enforce the laws, while they exist, however unpopular those laws may be to any portion of the community. If he enforces such laws, he will gain the approbation of one party, but he will as certainly be disapproved by the other. Would you then wish that your judges should be exposed to be removed from office because, by the *most honest conduct*, they had displeased one party or the other, and leave them at the mercy of those who should from time to time hold the power of Government in their own hands? No, it is the *sacred independence* of the Judiciary, and that alone, which can be the best security that the judges shall not act with oppression.

But let me ask, further, are juries more free from undue influence than judges? Have they greater inducements to do what is right? They do not possess the elevated situation of the judges, they feel not the same responsibility; whatever may be the impropriety of their conduct, it would probably be scarcely heard of out of their own neighborhood, not long even there. They are liable to all the political prejudices of men devoted to the different parties which may exist. They are generally men totally ignorant of the law; nay, I shall prove when I come to speak of Basset's case, that though the Managers contend the jury should decide the law, yet ignorance of the law is by them considered the first recommendation of, nay, a necessary requisite for a juror!

Can it then be wise to reduce a judge to the humiliating situation of having the law decided by such a body, exposed to be led into error by the ingenuity of counsel? Can it be the wish of this Court to trust their property, their lives, all that is most dear to them, *even as to the legal questions*, to the *wild ideas* of jurors, liable to all the frailties of human nature, in preference to the sound discretion of judges well skilled in the law, and holding a high and responsible station?

Having laid down these general principles as to the relative rights and duties of the court, the bar, and the jury, I shall proceed with my honorable client to the State of Pennsylvania.

It was known that John Fries, charged with treason, had, on a former trial, been found guilty, and that a new trial had been granted upon a suggestion, which I hope will not become a precedent; will never be a rule for decisions. When I say this, I mean not to detract from the merit of that highly respectable character who presided, and who granted the new trial. His conduct flowed, I am convinced, from his humanity; his was the error of the heart, not of the head. It was an honest, nay, an amiable error. My honorable client knew, when he arrived at Philadelphia, that the trial of Fries was to take place that term. He has been acknowledged by the honorable Managers, to be a gentleman of the highest legal talents. In this they have only done him justice; and have been as prodigal of their praise as his warmest friends could have wished. It would have given me great pleasure if they had been as just in expressing their sense of his integrity. He had been in the practice of the law for forty years, and also a judge for a number of years, and for about six years, I believe, presided in the criminal court of Baltimore county, where, during that time, there were more criminal trials probably than in any other court in America. I believe I speak moderately, when I say that I have attended on behalf of the State, at least five thousand criminal trials in that court. From those circumstances it is to be presumed that he was not deficient in knowledge of what related to criminal proceedings, but would he have acted the part of an upright judge, if he had not endeavored to make

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himself master of the law of treason. when a case of that nature was about to come before him; particularly the law of treason, as it related to levying war against the United States, or in adhering to those who levied war against them, which is the only kind of treason that our Constitution acknowledges; although I have heard, I must own, of *treason* against the *principles* of the Constitution, and *treason* against the *sovereignty* of the people—words well enough suited to a popular harangue, or a newspaper essay, but not for a court of justice.

When Judge Chase arrived at Philadelphia he had the advantage of perusing the notes of Judge Peters and the District Attorney, relating to the former trial; he thereby became well acquainted with all the points at that time made by the counsel for Fries; and Mr. Lewis has sworn, that all the points which were intended to have been made before Judge Chase had been made at the former trial. Why then should the court either wish, or be obliged to hear counsel again on the law? In two previous cases the law had been settled. Judge Paterson, a gentleman of the first abilities, mild and amiable, whom no person will charge with being of a vindictive, oppressive disposition, and who certainly has more suavity of manners than my honorable client had, after a most patient and full hearing, where eminent counsel attended, decided the law as it was decided by the respondent. Judge Iredell, whose encomium has been most justly given us by the Managers, a gentleman of great legal talents, than whom no worthier man has left this for a better world; and who, while living, honored me with his friendship, after having heard Messrs. Lewis and Dallas, and after full and patient investigation, gave, in the case of Fries himself, a similar decision; in both which opinions Judge Peters perfectly coincided. Under these circumstances, Judge Chase, who had no doubt of the propriety of those decisions, to prevent waste of time when there was so much business to transact, and to facilitate the business, thought it best to inform the counsel on each side, that the court considered the law to be settled, and in what manner. For which purpose they delivered to the clerk three copies of their opinion, one for the counsel on each side, the third to be given to the jury, when they left the bar. On this subject, Mr. Lewis, in his testimony, said it was to be given to the jury when the counsel of the United States had opened, or after he had closed the pleadings, but he believed the last. Mr. Rawle is clear that it was to be given to them, when the case was finished, to take out with them.

No gentleman on behalf of the impeachment has denied the correctness of this opinion. But the criminality of the judge, is, we are told, not in the opinion itself, but in the *manner* and the *time* in which it was given.

Was there anything improper that the opinion should be reduced to *writing*? Why are opinions given? Surely to regulate the conduct of those to whom given; for this purpose they ought to be perfectly understood, and in no degree subject to misconception; delivering the opinion, *in writing*, greatly facilitates these objects; if therefore it was *proper* to give an opinion, it was *meritorious* to reduce it to writing, and Judge Chase, in so doing, most certainly acted with the strictest propriety. And, unless a court of justice is bound to sit and hear counsel on points of law, where they themselves have no doubts, before they give their opinion, my honorable client could not be incorrect in delivering it at the time when it was delivered. If the opinion was *proper*, how, I pray, could any *injury* be done to Fries by its being delivered? The honorable Managers say, it was intended to influence the jury. In the first place, this assertion is not supported by the evidence. When the paper was thrown on the clerk's table, not one word was said of its contents; nor did the court declare any opinion on Fries case. They only determined the indictment correct in point of form, and not liable to be quashed. They determined that the overt acts stated were overt acts of treason, if Fries had committed them, but whether Fries had committed those acts remained for the jury to determine upon the evidence; as to that part of the case the court gave no opinion. But the honorable Managers have told us that Judge Chase must have known what were the facts in the case, because they had been disclosed in the former trial. And I pray you, sir, if he had the knowledge, could it *alter the law in the case*, or render the declaration of what the law was, *more improper?* But, as a new trial was granted, the judge could not know what additional evidence might be brought forward to vary the case from its former appearance.

Nor *did*, sir, the judge's conduct, either improperly influence, nor was it intended so to influence, the jury. No copy of the opinion would have been taken but for the conduct of Mr. Lewis, and no testimony has been offered to show the least probability that one single juryman ever saw the copy, or knew one word of its contents. Nay, sir, it is proved, that Judge Chase took *uncommon* pains to prevent any of the jurors from being prejudiced against Fries; for, although a great number of criminals, indicted for sedition, submitted to the court before Fries was put upon his trial, the judge would not permit *one single witness*, who was summoned against Fries, to be examined on the submissions, lest the jury, by an examination which would have been, as to Fries, *ex parte*, might take up prejudices against him. This, Mr. President, was an act of the judge that carries with it the most convincing proof, that he had no wish to oppress Fries, or to prevent him from having an impartial trial: and I pray that this circumstance may be deeply impressed on the mind of every member of this honorable Court.

But if the opinion had been publicly read and known, how could it have *injured* Fries? He was to have an *impartial* trial. What is the meaning of these expresions? It is a trial according to law and fact, in which, if he is proved innocent, he shall be acquitted; if guilty, convicted. If, then the opinion was agreeable to law, it could not prevent, it could not interfere with his having an impartial trial. If in any case a person is acquitted,

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when the facts are clearly proved, and the law is against him, it must be because he has had a *partial*, not an *impartial trial.*

I again ask, sir, ought the court, who were perfectly satisfied with respect to the law, and who considered it settled by previous decisions, in which they perfectly concurred, to have wasted perhaps several days of the public time before they gave their opinion, in listening to Messrs Lewis and Dallas, exerting all the powers of eloquence and of sophistry to mislead their judgment? Nor did even Judge Chase give *his* opinion without the full consideration of the arguments of each of these gentlemen in the very case of Fries. On his arrival, it is admitted by the Managers, that he became perfectly acquainted with the proceedings in the former trial, as to the legal questions which had occurred, from the notes of Judge Peters and of the District Attorney; and this honorable Court have had an opportunity of witnessing with what precision that gentleman takes down the substance of proceedings on a trial. Judge Chase had an opportunity of examining and considering the arguments used by Messrs. Lewis and Dallas, at the former trial, on the different legal questions then brought forward, the authorities produced, and the applicability of those authorities. He there saw everything that the great legal knowledge and high talents of those gentlemen, indulged to the utmost extent and heard with the greatest patience, had produced in favor of Fries. And he had the opportunity of calmly and deliberately considering the whole of these arguments and authorities in his chamber. And having done this, where would be the propriety of spending day after day in listening to the same arguments orally repeated in court, which he had read in his closet, the merit of which he had there coolly discussed, and deliberately decided?

But the Managers say that this *ought* to have been done. That, though the court had no doubt of the law, and although it is not contended but that the opinion given is correct, yet it was the *duty* of the court to have patiently listened to the counsel, and suffered them to exert all their eloquence, their ingenuity and sophistry, to pervert their judgment, and lead them into error, to prevail over their understanding, and obtain from them an erroneous opinion. And yet in the same breath we are told, by one of the honorable Managers, (Mr. Campbell,) that if a judge gives an erroneous opinion, the presumption is that he doth it from corrupt and criminal motives: and that on impeachment, it is necessary that he should prove the uprightness and integrity of his intentions.

Thus, then, they insist, that if a judge, intelligent, sensible, well acquainted with the law, doth not indulge counsel in their attempt to lead him into error, he is to be impeached for it. And, if the judge should listen to counsel against his well formed opinion, and, by their ingenuity, be led to give up his better judgment, and pronounce an erroneous opinion, he is to be impeached for that also?

Nay, it is expressly said, that the more completely the law is considered to be settled, the more absolutely necessary it is that the criminal's counsel should be permitted to argue the law to the court, and to contend against the law so settled. Thus, then, I suppose, if a person is tried for an assault and battery, the prisoner's counsel must be indulged by the court, and that under pain of impeachment, in spending as much time as they please, in endeavoring to convince the court, that, to come up behind an innocent, inoffensive man, and fracture his skull with a bludgeon, doth not amount to an assault and battery; or, if a person is tried for a burglary, his counsel must also, under the same penalty, be indulged in the endeavor to convince the court, that to break into a dwelling-house in the night time, and steal therefrom, is not the offence of burglary.

But the honorable Managers do not stop even here. They say that even had Judge Chase indulged the counsel of Fries with all the length of time they might think proper, in an endeavor to pervert the judgment of the court, and their endeavor had proved unsuccessful, the court was further under pain of impeachment, after they had correctly declared the law to the jury, to suffer the counsel to take up as much more time as they pleased in endeavoring to mislead the jury, by impudently and insolently, in the face of the court, attempting to impress them with the idea that the court, though acting under a solemn oath, and having no interest to mislead them, had given an erroneous opinion; and, to induce them to receive the law from the counsel themselves, acting not under similar obligations, but whose fame and whose fortunes might be materially benefitted by deceiving the jury—from counsel whose every interest might be to pervert justice.

All which indulgence, the court, it seems, is also equally bound to give to the counsel in endeavoring to mislead the jury, and pervert justice, in the cases I have before mentioned, of assault and battery, or burglary, or, in reality, of any other offence, however incontestable the principles of law in such cases may be. Such are the Constitutional rights which criminals and their counsel, we are told, possess—the Constitutional right, if possible, to impose upon the court—and, if they fail there, the Constitutional right to impose upon the jury; in other words, the Constitutional right to *pervert* justice!

Nay, we are told the more manifest the guilt, the more indisputably criminal the offender is, the more necessary that he should enjoy these Constitutional rights; and so it would be if the Constitution intended, as seems to be the idea of the Managers, that guilt should go unpunished; since such offenders can have no chance to escape unless justice be perverted, through the ingenuity of counsel operating upon the ignorance, the passions, or the prejudices of judges or jurors.

The Managers have, consistent with the above idea, which they seem to have adopted, exclaimed, "what good could counsel do to Fries after the 'court had decided the law? As to the facts there 'was no dispute. Under such circumstances, to 'assign counsel to him was mockery, was insult."

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In reply, I will admit that Fries's case was such that counsel could not render him much service, but this was not the fault of the court, it was the fault of the case itself, it was because the law was clearly against him, and because the evidence indisputably proved that he had committed acts which brought him within the law.

In such cases, what is the duty of the counsel, whether assigned by the court or employed by the prisoner? It is to advise the prisoner to plead guilty, and throw himself upon the mercy of his country, instead of taking up the time of the court, and creating expense by a jury trial; but such advice, however agreeable to the Constitution of our country, would not, I admit, agree very well with the constitution of a lawyer, as thereby he might occasionally lose large fees extorted from a criminal, fed on a vain hope that the eloquence and chicanery of his lawyer might procure his acquittal, contrary to law and contrary to evidence.

But counsel *may be* of service to a criminal however guilty he may be, and has duties which he may correctly perform. The counsel may with propriety avail themselves of any defect in the indictment or other proceedings; they may take care that the panel of jurors are legally and impartially returned; they may direct the prisoner as to his challenges to jurors; they may take care that no incompetent witnesses are sworn, and that no improper testimony is given; they may, in any questions of law not considered settled, be heard, and have the questions decided; in fine, they may take care that the prisoner has a *fair trial;* but, when all this has been done, if agreeably to law and clear undoubted evidence, the prisoner is guilty, it is the duty of the counsel to submit his client's case to the honest decision of the jury, without any attempt to mislead them; and this, whether the counsel are appointed by the court or employed by the criminal. Thus lawyers in Maryland are in the habit of conducting themselves in such cases, and thus ought lawyers who respect themselves, and have a regard for their own characters, to conduct themselves in all places.

I have heard so much, Mr. President, in this case about the Constitutional rights of criminals to have counsel; and that the counsel should argue to the jury upon the true construction of the law, against the direction of the court; and that the jury have the right to decide the law without regard to such direction; and finding, also, that this article of impeachment, as well as the arguments in support of it, appear to be grounded on these principles, that I had been almost induced to suppose I had mis-read the eighth amended article of the Constitution; but, on turning to it, I find that the Constitution secures to the criminal the assistance of counsel, to see that his trial is fairly and correctly conducted, but has not given to the person charged with an offence, or to his counsel, if he is guilty, any Constitutional rights for the purpose of his evading punishment by the imposition of counsel either on the judge or the jury.

Whatever may have been the *practice*, I have ever considered it contrary to the *duty* of counsel, either in civil or criminal cases, to exert their abilities in attempting to procure a decision which they are conscious is unjust. The duty of a lawyer is, most certainly, in every case to exert himself in procuring justice to be done to his client, but not to support him in injustice.

Having made these observations on the relative duties of the court and counsel, let me advert a moment to the conduct of Mr. Lewis, as appears from his own testimony. When my honorable client delivered at the clerk's table the copy of the opinion designed for the defendant's counsel, having taken it in his hand—without opening it, without reading one word—Mr. Lewis contemptuously threw it from him, publicly declaring that he "would never contaminate *his hand* by 'receiving into it a *prejudicated opinion* in any 'cause where he was concerned, from any judge 'whatever." What insolence! Would to God no lawyer may ever *contaminate his hand* in a more disgraceful manner, than by receiving therein a sensible, correct, legal opinion, in a cause about to be tried, at whatever time it may be delivered to him!

He also informs us, that he declared to the court that he never had, nor ever would so far degrade himself as a lawyer, as to argue a question on law, in a criminal case, before the court. What arrogance! Sir, the most eminent, the most respectable lawyers both in England and America, have been in the constant habit not only of arguing questions of law in criminal cases before the court, but in modestly submitting to their decisions, without ever considering it as lessening their consequence. I have long been at a loss, sir, for the enmity the State of Pennsylvania has shown for its bar, and the desire of its citizens to get rid of their lawyers; but if such is the manner in which the lawyers conduct themselves to their courts, if they, when they are employed in a cause, claim the Constitutional right, uncontrolled by the court, instead of furthering justice, to pervert it, I wonder no longer why the citizens of that State wish to be freed from them, and will readily join in the sentiment, "the sooner the better." I will go further, and say if their courts submit to such conduct, and think themselves bound to be the passive witnesses of such perversion of justice, it is not much matter how soon they also get rid of their courts, for they might as well be without them.

The principles which have been advocated in support of this article, are subversive of the whole order of things; instead of lawyers being the officers of the court, subject to their control, and amenable for the propriety of their conduct, the judges must be the menial, degraded instruments of the lawyers, and must suit their conduct, not to propriety and justice, but to the pleasure of any haughty, overbearing lawyer possessing abilities and popularity, and that too under the hazard of being impeached, and turned out of office if his principles should, on any occasion, render him restive, or, in the language of the testimony, if he should "take the stud."

And here, Mr. President, I hope I shall be in-

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dulged with some inquiry as to this "prejudicated opinion," which Mr. Lewis seems to think has such a contaminating, polluting tendency to the hand of a lawyer, and of which he was so apprehensive, that he would not retain it for a moment. I confess I feel myself here at a loss to know exactly what the witness meant by a "prejudicated opinion" on the law. I should suppose that the expression, if it can in any instance be correctly applied, must mean the same as to prejudge the law; which if used to signify anything improper, must be confined to the case where a person forms an *erroneous* opinion of the law, without using *all due means* to acquire correct information.

To *prejudge* any case, I consider as meaning, that a person without competent knowledge of facts, hath formed an opinion injurious to the merits of the case. If the term "prejudication" is used in this sense, there is no pretence that my honorable client gave a *prejudicated* opinion in the case of Fries; for it is not alleged that the opinion given was not strictly legal and correct; neither Mr. Lewis nor Mr. Dallas have ever attempted to hazard their characters by suggesting the contrary, nor have the honorable Managers taken that ground; they do not contest its propriety. Should they, in their reply, I shall cheerfully rest that question upon the well known legal abilities of Judges Iredell, Paterson, my honorable client, the associate judges who concurred with them, and the legal knowledge of this honorable Court.

But if by a prejudicated opinion, is meant that the judge, from his great legal knowledge, and familiar acquaintance with the law as relative to the doctrine of treason, particularly levying war against the United States, had formed a clear, decided opinion that the facts stated in the indictment against Fries, if proved, as laid, amounted to treason, I will readily allow that I have no doubt my honorable client had *thus* prejudicated the law, not only before Fries was brought to trial, but before he had committed the treason for which he was tried. But if this manner of prejudicating law is thought improper, nay, criminal, in a judge, a prejudication which is nothing more than an eminent and correct knowledge of the law, why, I pray, are gentlemen of great talents and high legal attainments sought for in your appointments of judges? How, sir, are they to free themselves from this obnoxious prejudication of the law and acquire the contended fitness for the trial of a cause, but by forgetting all that legal knowledge which had been a principal inducement to their appointment? If I understand the gentlemen, to gratify their ideas we ought to have judges, who, when they take their seats on the bench to preside at the trial of a criminal, should not have one single legal idea relative to the offence about to be tried, but should have their minds exactly in that state in which some ingenious metaphysicians tell us the human soul is, when first united to the body, like a pure, unsullied sheet of white paper, ready to receive any impressions which may be made upon it.

Well, be it so, and let us consider the trial of Fries as if it had been conducted on that principle. The judges, with their minds like this white sheet of paper, were to sit still and suffer the counsel to scrawl thereon whatever characters they pleased, to blot and to blur it until they were perfectly satisfied. After this ceremony, the judges, examining the impressions thus made upon the antecedent clean sheet, were from these, and these *only*, to form their opinion of the law; and this opinion, having been thus formed from nothing but what occurred *during* the trial, and *after* the jury were sworn, would not be called a prejudicated opinion, and therefore, I presume, would be perfectly satisfactory to the honorable Managers. So far we should have done very well as it related to the trial of Fries. But next day another criminal is to be tried for a *similar* offence; Messrs Lewis and Dallas are not his defenders. Getman has selected Mr. Tilghman for his counsel. How, I pray you, are the judges to be qualified to preside with propriety in this trial? Yesterday they gave a solemn determination in Fries's case upon the *same* question of law which now must come forward in the case of Getman. Mr. Tilghman was not then heard. The opinion then given is, as *to Mr. Tilghman and his client*, as much a prejudicated opinion, an opinion as contaminating to the hands of a lawyer to receive, and as highly criminal for a court to give, as was the opinion given by my honorable client. What can be done? The minds of the judges are *no longer a pure, unsullied sheet of paper*. Yesterday, in the trial of Fries, they had been scrawled upon and sullied by Lewis and Dallas; the impressions still remain. I, sir, can think of no remedy in this difficulty, except that the judges should be supplied with a reasonable quantity of *India rubber*, or something which will answer in its place, with which they might wipe off and erase every impression which had been made the day before by Lewis and Dallas, during the trial of Fries; and thus *once more* take their seats on the bench for the trial of Getman, with minds again like clean sheets of white paper, ready to be again scrawled over, again to be blotted and blurred at the pleasure of Mr. Tilghman, and from these scrawls, blots and blurs, and from these *alone*, to take their impressions as to the law, and form their decision as to Getman's case, without regarding, or even *remembering* the decision they had given the day before; and in this manner to proceed in every case that might come before them successively in their judicial capacity.

If, sir, judges are to be censured for possessing legal talents, for being correctly acquainted with the law in criminal cases, and for not suffering themselves to be insulted, and the public time wasted, by being obliged to hear arguments of counsel upon questions which have been repeatedly decided, and on which they have no doubt; I pray you let not our courts of justice be disgraced, nor gentlemen of legal talents and abilities be degraded by placing them on the bench under such humiliating circumstances! But let us go to the corn-fields, to the tobacco plantations, and there take our judges from the plough and

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the hoe. We shall there find men enough possessed of what seems to be thought the first requisite of a judge, a total ignorance of the law! That degradation which no gentleman of merit and abilities could endure they will not feel.

In reply to an observation made by my very respectable colleague who opened our defence, and which I have endeavored to enforce, "that, if 'the opinion given by the court was correct, Fries 'could receive no injury thereby, though Messrs. 'Lewis and Dallas had not been suffered to argue 'against that opinion, because the opinion ought, 'notwithstanding, to have been the same;" one of the honorable Managers has said, that had Judge Chase sentenced Fries to death without the verdict of a jury; had he decided the fact as well as the law, and he says he might have done the one with as much propriety as the other, it might have been urged in the same manner in defence of the judge, "that it was of no consequence to 'Fries, for the fact being clearly against him, had 'he been tried by a jury, the jury must have 'found him guilty, and then the judge must have 'done what he did, sentence him to death."

This argument is totally fallacious. By the Constitution and laws of the United States, the criminal has a right to demand that the facts shall be decided by a jury. This the court cannot refuse if the criminal requires it. Was a judge to refuse the criminal the trial of the fact by a jury, he would violate a well known legal and Constitutional right of the criminal. But as the criminal has a right that the jury should determine questions of fact, so do the principles of jurisprudence equally declare it to be the right of the court to decide questions of law, and the Constitution in no part contravenes this right; it no where says that the judges must be ignorant of the law, and take their impressions from the counsel of the criminal, or that it is the right of counsel to be heard where the court has no doubt of the law, or to argue to the jury that the law is contrary to the direction of the court, or that the jury should have a right to decide the law contrary to such direction. Hence, therefore, there is this great distinction between the two cases; in the first the court only exercise their own rights, infringing no right of the criminal; while in the last, the court would act in direct violation of his well-known legal and Constitutional rights. But though the criminal has the Constitutional right to have all facts decided by a jury, he may waive this right, in which case the court may pass sentence without the intervention of a jury; as where the criminal demurs to the indictment, and rests upon his demurrer, or where he pleads guilty, in which cases the court, without the intervention of a jury, proceed to pass sentence according to law and the nature of the offence.

In the opening of our defence, it has also been urged, that if there was any impropriety in the conduct of the court respecting the trial of Fries, on the first day, it was amply compensated by the conduct of the court on the second day, in having called in the written opinions, and the copies which had been taken, and given the counsel liberty to proceed in such manner as they should think proper.

In answer to this the honorable Managers have replied that it was then too late. The mischief that had been done the first day was irretrievable; the sin that day committed was inexpiable: Nay, one of the Managers has told us that the excuse is as absurd, as would be the excuse of a person who, having thrown a firebrand into combustibles, and set the whole neighborhood in a blaze, should attempt to excuse himself by saying "he had again got into his possession, and extinguished the brand with which he had enkindled the fire, although the conflagration was still extending, and consuming everything before it"—a most happy simile.

But let us examine wherein the mischief was so irretrievable—the sin so inexpiable. Neither more nor less than in this: that as the written opinion only contained the impressions on the minds of the judges, the destruction of that written opinion would not prevent the same impressions remaining on their minds, and those impressions would be as difficult to remove after the opinions were called in as before. It is all very true; but how came the judges to have on their minds those impressions? Not from having committed them to paper, but from their correct knowledge of the law. And how were those impressions to be removed? Certainly by no means, unless that correct knowledge of the law could also be removed. To accomplish which, I know of no means that could be used, unless the judges could have been supplied with a quantity of our India rubber, or with a few barrels of the water of Lethe, with the one to rub out and efface from their minds all their legal knowledge, or by copious draughts of the other to wash it away. But, sir, I have not made, nor shall I make any use of the proceedings of the second day as an excuse for any impropriety of the court on the first; I only consider them as incontestable proofs, that the court had no other object in view, on either of those days, than conscientiously to discharge their duty by giving Fries a fair and impartial trial; that if he was guilty, he might be punished; if innocent, acquitted. I deny that the court was guilty on the first day of any impropriety; I take higher ground, and have contended, and do contend, that the conduct of the court on the first day was correct and proper, and during the whole trial I find nothing improper in their conduct, except their almost humiliatingly soliciting the counsel of Fries to do their duty, instead of committing them to jail for the impropriety of their conduct, which the court ought to have done; but even in this the court has afforded the strongest proof of their solicitude that Fries should have every legal and Constitutional benefit of counsel at his trial.

Reflect, also, that at the time when Mr. Lewis thus contemptuously dashed from his pure hand the contaminating opinion, he had not read a single word, nor received the least intimation of its

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contents, nor did he know its contents until long after, and yet he instantly formed the determination not to appear for Fries, and to advise their client not to accept the assignment of any other counsel should the court offer it. Whence this conduct? How did he know the opinion was not favorable to his client? His conscience told him it was not. His own great legal knowledge confirmed to him the truth. He well knew the law; he was acquainted with the correct decisions which had been before given. He well knew the great legal knowledge of the judge, who on this occasion presided; he was certain my honorable client could not but concur with his brethren. He acknowledges they had no hope to change the opinion of the court, and that they had not the vanity to suppose the jury would, under their influence, decide the law contrary to what the court should direct; therefore that they had no hopes of the acquittal of their client by the jury on the trial, whatever services they were permitted to render him, and therefore, as the only chance which they had to save his forfeit life, they assumed that line of conduct which has been disclosed in the evidence. When Mr. Lewis, in giving his testimony, mentioned, "Judge Peters asked us on the next day whether 'if the court had got into a scrape the first day, 'the counsel would not let the court get out of 'it." "No," said Mr. Lewis, "we were determined not to let them get out of it, as the only means to save our client's life;" and in the conclusion of his testimony he repeated that they were actuated in their conduct, from considering it the only chance they had to save the life of their client, and not from any other motive. And Mr. Dallas also observed in his testimony, that when the court on the second day pressed them to continue their services as counsel of Fries they refused, determined not to depart from the policy they had adopted, and to withdraw, as the most probable means of benefiting their client.

I shall conclude what relates to this article by observing, that the conduct of Fries's counsel to the court on that trial was such as nothing can excuse. It can only be palliated by the reflection, that for his crimes he was liable to suffer death. Feelings of humanity and compassion, independent of interest, might excite in their bosoms an earnest anxiety to save his life, this may serve to mitigate censure; but even those feelings, however amiable, ought not to be gratified at the expense of national justice, nor by an endeavor to stamp upon judges of uprightness and integrity the dishonorable charge of partiality and oppression. I fear, sir, I have been tedious on this article; but it will be considered that, whatever may be my own sentiments of the futility of any part of these charges, I cannot determine how far this honorable Court may correspond with me in sentiment; nor can I do otherwise than treat as of consequence, any charge brought forward by the honorable House of Representatives, or not consider it as being of importance.

I will now, Mr. President, proceed to those articles which arise out of the trial in Virginia; and I find it stated in the beginning of the second article that my honorable client went there prompted by the *same* shameful spirit of persecution and injustice, the truth of which I am ready to acknowledge, after having satisfactorily proved that at Philadelphia he had not shown in any manner whatever a spirit of persecution and injustice, but had acted with uprightness and integrity; and that his greatest fault on that occasion was, that he did not commit the counsel of Fries to the public jail for their insolent, their arrogant, their contemptuous behaviour to the court; and I flatter myself that I shall be able to show that my honorable client acted with the same uprightness and integrity in the case of Callender as I have shown he acted in the case of Fries.

The second article goes on to charge Judge Chase with overruling the objection of John Basset, who wished to be excused from serving on the jury in the trial of Callender, and causing him to be sworn, and to serve on the said jury by whose verdict Callender was convicted.

This article requires a discussion of the law relating to challenges of jurors, and whether Mr. Basset was legally sworn on that jury. And here again, as well as in the case of Fries, I meet with the most perfect novelties, for except in those trials I never heard of jurors, when called to be sworn, examined on oath whether they had formed, or formed or delivered, or whether they had formed and delivered an opinion on the subject about to be tried. And here also let me observe that there is no just grounds for the charge that Judge Chase from partiality administered the oath differently in Callender's case from the manner in which he administered it to the jurors in the case of Fries; for Mr. Rawle, referring to his notes taken at the time, has told us that in the case of Fries, one or two of the first jurors were only asked whether they had formed an opinion, after which the question was put, whether he had formed *or* delivered an opinion, but ultimately the question asked was, whether they had formed *and* delivered an opinion, which question was put to the greater part of the jurors; so that the interrogatory *ultimately* fixed upon in the case of Fries is the same which was put to all the jurors who were interrogated in the case of Callender.

I have, Mr. President, been in the practice of the law for thirty years. Before the Revolution I attended, two or three years, the two counties on the Eastern Shore of Virginia—Sussex county in Delaware, and Somerset and Worcester in Maryland; since the Revolution I have constantly attended the general courts on the Western and Eastern Shores of Maryland, and the civil and criminal courts of Baltimore county, and for about six years several other counties in Maryland. In the whole course of my practice, I have never known a single case, either civil or criminal, in which the jurors have been, when called to the book, demanded to answer upon oath either of the aforesaid questions which the defendant's counsel requested to be put to them.

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If either party choose to challenge a juror for favor, on account of declarations made by the juror, the only ground for it is that he has used expressions showing his determination to decide for one party or the other without regard to truth and justice. In which case the party makes his objection to the particular juror specifying the expressions uttered by the juror indicative of such improper determination, and produces witnesses to establish his objection; for the juror cannot be examined on oath to substantiate the charge; and, unless by mutual consent, the objection made must be decided, not by the court, but by triers. And the only matter to be decided is, whether the juror has made any declaration of a design to give a verdict one way or the other, whether right or wrong; for if the juror made the declarations from his knowledge of the facts in the case, this would be no cause of challenge, nor any objection to his being sworn on the jury. And as the juror himself against whom such objection is made cannot be examined on oath, it follows, of course, he cannot be challenged for having formed an opinion, but only for having delivered it, as third persons cannot know of an opinion being formed but by its having been delivered. And, as I have observed already, even the delivery of an opinion is no cause of challenge, if it appears to have been founded upon the juror's knowledge of facts, and not from partiality. In consequence of this principle of law, it can be no objection against a juror being sworn, even though he should have the most perfect knowledge of every fact relative to the issue, to try which he is about to be sworn; on the contrary, the principal reason assigned why trials ought to be by jurors from the vicinage, is the presumption that they will be best acquainted with the facts which will be put in issue for their decision.

Suppose a person, summoned as a juror to try an indictment for assault and battery, or any other offence, had seen the offence committed and perfectly knew the offender, it would be no cause of challenge against the juror, nor could he for that reason be rejected at the trial; on the contrary, the law considers him the better qualified to serve in that case as a juror, in consequence of that knowledge. If, in the instance I have put, such juryman had declared that the criminal had committed an assault and battery, and that he was determined to find him guilty, this declaration being founded on the knowledge of the juror as to the truth of the case would be no ground for challenge; to support a challenge, the juror must show an intention to act partially, through favor or malice. It is, therefore, no objection to a person serving as a juror because he is also a witness.

And so far is it from being the case that a juryman's knowledge of the law, or his having declared his opinion of the law arising in the case to be tried, should be a cause of challenge, that, if two or more persons are indicted in the same indictment for the same offence, and one is tried and convicted, a juryman, who served on that trial, may be sworn on the subsequent trial of the other person joined in the indictment, and cannot be challenged, although as to the law arising in the case he had not only declared his opinion, but even declared it on oath in the former trial. So, also, is the case of a judge, whether he is to decide the law only, as in jury trials, or the law and fact both, as here in the case of impeachments; his knowledge of the facts in the cause is no objection to his acting as a judge, and he may be called on to give testimony, and yet give his decision in his judicial capacity. In support of these principles, in addition to the authorities adduced by my very respectable colleague, (Mr. Key,) I will trouble this honorable Court with Brookes's Abridgment, title Challenge, pl. 90, where he says: "It is a cause of challenge to the favor if the juror has declared that should he be empanelled he would give a verdict for the plaintiff."

This authority shows that a declaration, as I have contended, must have been made; but I shall now also show that, as I have before stated, the declaration must be made from motives of partiality, that is, from favor or ill will, to the one or the other party. For this purpose I will read 2d Hawkins, chapter 43, section 28: "It hath been allowed a good cause of challenge on the part of the prisoner that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. Yet it hath been adjudged that if it shall appear that the juror made such declaration from his knowledge of the cause, and not out of any ill will to the party, it is no cause of challenge." This doctrine is as old as the seventh of Henry VI.; during whose reign it was determined that though a juror had said twenty times that if he was sworn he would give his verdict for one of the parties, yet, if he said this from the knowledge which he had of the matter in dispute, and the truth of the case, such juror was indifferent; but, if he said this from any affection to the party, the juror in that case was favorable, and thus Judge Babington directed the triers. See Brookes's Abridgment, title Challenge. pl. 55.

In Viner's Abridgment, vol. 21, p. 266, we find the same principle recognised. It is there stated that "if a juror says twenty times that he will pass for the one party, this is not a principal challenge, for it may be that he speaks it for the notice which he has of the thing in issue, and not for affection." A decision in the seventh of Henry VI., and another in the twentieth of the same King are referred to; and the authority from Brooke, Challenge, pl. 55, before mentioned, is in the note introduced with approbation,

In 2 Hawkins, chapter 43, section 29, we find in confirmation of the positions I have taken, the law thus declared: "It hath been adjudged to be no good cause of challenge, that the juror hath found other persons guilty on the same indictment, for the indictment is in the judgment of law several against each defendant, for one must be convicted by particular evidence against himself." The same principle is established by the decisions in vol. 4, State Trials, pages 141 and 175, (which he turned to and read.) Volume 2, State

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Trials, 255, 256, also show that, though a person is a witness in the cause, it is no reason he should not serve as a juror, and also the knowledge which a juror may have of the case to be tried by him, is no disqualification. It also shows how questions of this nature are to be tried.

And to prove that the knowledge of the facts to be decided doth not in any degree interfere with the right of a judge to decide in the case, and that any member of this honorable Court might be sworn as a witness, and yet give his decision in the cause. I will read an authority from State Trials, vol. 2, page 632, where Lord Stafford, on his trial, puts this question to the court. "If I shall name any of the House of Lords as my witnesses, can that exempt them from being judges?" The answer given by the Lord High Steward was, "No, my Lord, if your Lordship has any witnesses 'among my Lords here, they may well testify for 'you, and yet remain in the capacity of your 'judges, for my Lord of Strafford had a great 'many witnesses, who were Peers."

Thus, though in this instance the judges had to decide both the law and the fact, the knowledge of any one of them in no respect formed an objection to his deciding as a judge.

I have said, also, that a juror cannot be examined on oath to prove that he has made any declaration which would be a good cause to challenge him for favor. To support this position, I will trouble the honorable Court with two authorities. The first from Leitch's edition of Hawkins, 2d vol., page 589, in the note. In the text it is mentioned as a cause of challenge, "that a juror hath said the prisoner is guilty, or will be hanged, or the like," &c. In the note it is stated that the prisoner shall not examine a juror, concerning such matter, on a *voir dire*, because it sounds in reproach.

The second, from Cooke's case, 1 Salk. 153, where it appears that Cooke, being indicted for high treason, offered to ask the jurors when called, in order to challenge them, "if they had not said he was guilty, or would be hanged." And, by the court, "this is a good cause of challenge, but then the prisoner must prove it by witnesses, not out of the mouth of the juryman."

With these observations, I shall rest the question as to what disqualifies a juror, and shall proceed to examine whether Basset was improperly or illegally sworn upon that jury which tried Callender. I have shown that he might not only have formed, but delivered an opinion respecting the conduct of the criminal, and yet that, unless his declarations tended to prove that he did not mean to give a just and impartial verdict, but to decide against propriety and right, he was competent to be sworn on the jury. The question which was put to the jurors by the court, no law required to be put, nor was any of the jurymen bound by any law to answer the question; and the judge was perfectly correct when he said, upon the counsel insisting that the indictment should be read to the jurors, and that they should then be asked if they had formed or declared an opinion as to the charge in the indictment, that the court had already indulged them beyond what they were entitled to by law. But, to proceed with Basset: What was his situation? He expressed no wish to be excused, provided there would be no impropriety in his being sworn, but, from a delicate scruple, he informed the court that he had seen in the newspapers, extracts said to be taken from "The Prospect Before Us;" that he had no knowledge whether they were truly extracted, but if they were, and the context did not explain away the apparent meaning of the extracts, he had made up his opinion unequivocally that their author came within the provisions of the sedition law. But let us suppose that Mr. Basset had actually seen and read "The Prospect Before Us," and had found the extracts fairly taken from it, and had formed and declared his opinion. that it was a publication which came within the sedition law; as to Callender, it would have amounted to no more than this, that if he was the author or publisher, and could not prove the truth of his charges, and had published them maliciously, to defame the President of the United States, he ought to be punished. And what honest man ever thought differently? None, whom I ever heard speak of the book. Whether the extracts he had seen agreed with the contents of the book; whether the context supported the apparent meaning; whether the charges were true; whether Callender was the author or publisher; and if so, whether he wrote or published them maliciously to defame, &c., were subjects of which Mr. Basset was ignorant, and on which he had declared no opinion. On these questions he was at liberty freely to decide, according as the evidence in the case should justify him.

But, it is said, this opinion formed, and declaration made, was improper, because they say the criminal ought to have the law and the fact both decided by the jury; and a juror should have his opinion as little made upon the law as on the fact. Hence, then, we are to infer, that as want of knowledge of the law is the best qualification for a judge, so the ignorance of the law is the best qualification for a juror; and yet, we are told, that a juror has a Constitutional right to determine the law, and that too, in defiance of the opinion of the court! Thus, it seems, the more ignorant they are, the greater our security for obtaining a just decision! I admit, the greater their ignorance, the better will they be qualified for taking what is contended to be the due impression from the exercise of what, we are told, is the Constitutional right of counsel!

But, in this case, as appears from the testimony, there were others besides Callender, concerned in printing and publishing "The Prospect Before Us;" suppose some other person, for instance, Mr. Rind, had also been indicted; that, on the trial of Rind, Mr. Basset had served as a juror, and had found him guilty; that Callender had afterwards been brought to trial, and Mr. Basset had been called as a juror, he could not be set aside, according to the authorities I have produced, although in the case of Rind he had, and that on oath, declared his opinion of the law.

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Mr. Basset, although being possessed of a liberal fortune he doth not now practice, was bred to the law; his legal knowledge was such that he could not doubt but that such publications as "The Prospect Before Us," came under the provisions of the sedition law. And it is, for this reason, that the Managers contend that he ought not to have been sworn. Yes, sir, this very knowledge of the law which rendered him a more proper character to serve on the jury, is by honorable Managers insisted on as what ought to have been his disqualification! And yet they contend that the jury have the uncontrolable right to decide upon the law!

Suppose, Mr. President, a person to be indicted for an assault and battery, or for burglary; if any person should be summoned on the jury who had so much common sense and general information as to know that the man who comes behind the back of another and knocks him down, is guilty of an assault and battery, he would be unfit to serve as a juror in the first case; or to know that if a man breaks into a dwelling-house in the night time, and steals therefrom, such offender is guilty of burglary, he would be equally unfit in the last case.

Hence, then, it follows that, in the opinion of the honorable Managers, that as judges ought to have no previous knowledge of the law, relative to cases which are to be tried before them; so, also, jurors ought not to have any knowledge of what is the law, in cases to be tried before them; and that if any juror, with such legal knowledge, should be summoned, he ought not to be admitted to serve, unless, indeed, he can be rendered properly qualified by the application of the India rubber, or by the use of the Lethean waters; by the one mode or the other, to be reduced to that happy state of ignorance thought by the Managers to be the essential requisite of a juror.

I would, before I conclude this subject, remark upon an observation made by one of the honorable Managers (Mr. Campbell;) he has charged Judge Chase with having caused Mr. Basset to be sworn as one of the jury for the very purpose of convicting Callender, from his knowledge of Basset's political principles.

My worthy colleague (Mr. Key) has with great strength of argument shown that Judge Chase could not, from the facts proved, be otherwise than a stranger both to the person and to the political principles of Mr. Basset. But I am aware that, in reply, it will be said the declaration Mr. Basset made in court showed what were his political sentiments. He only there declared that "The Prospect Before Us," if the extracts he had seen were justified by the book, was a seditious publication. This could be no proof that he was a federalist. I never knew a gentleman of any political principles that did not uniformly declare, that if the sedition law was Constitutional, that publication was clearly within the provisions of the law. Even his counsel have declared that they did not appear on his account, that they despised the wretch, and considered him as a disgrace to society. They have declared they had no hopes of saving him unless by establishing the unconstitutionality of that law.

But even had Judge Chase known the political principles of Mr. Basset to have been federal, it would not have justified him in excusing him from being sworn; nor would he have been justified in setting aside a juror because he was a republican, unless there had been in each case some other legal objection. There is no distinction between the two cases; the political principles of a man is not the test of his fitness to serve as a juror. If Mr. Basset had been exempted from being sworn on the jury in consequence of the scruples he suggested, the court must have exempted all who should make similar excuses, or they must have given just cause for complaint. It was the duty of the court to direct the jurors to be sworn, as they were called, against whom there was no legal objection. I flatter myself, I have sufficiently shown that, against Basset, there was no such objection; that the judge was not only free from impropriety in directing him to be sworn, but that his conduct would have been censurable had he acted otherwise; and here, sir, I conclude my observations upon the second article of impeachment.

I now come, Mr. President, to the third article, wherein my honorable client is criminally charged for the rejection of the evidence proposed to be derived from Colonel John Taylor.

In this part of the case the facts are admitted. The next question of law, therefore, which presents itself for discussion is, whether or not Col. Taylor's evidence ought to have been received, or was properly rejected. Here again I must observe that the honorable Managers, to support their charge, resort to principles which are to me, to the last extremity, strange and novel. We are told that the court has no right to order questions which are meant to be put to a witness to be reduced to writing. Nay, that the court have no right to know what evidence is meant to be given by the witnesses, or its connexion with other testimony, or its bearing on the cause, but to receive it drop by drop, as the counsel think proper to deal it out. In answer to these extraordinary ideas which we have had thus introduced, I must be permitted to assert that the court have, in my opinion, an undoubted *right* to require of the counsel that they should open their case, explain the nature of the evidence meant to be given, and on the production of a witness, state what they expect to prove by such witness. In the course of my practice it has been the usual method of proceeding for counsel to conduct themselves in this manner, and on this subject McNally, in his rules of evidence, page 14, expressly lays it down as a *rule*, "that counsel ought not to call a witness without first opening to the court the nature of the evidence they intend to examine into. This has been *often solemnly adjudged*, though *not strictly adhered to in practice*." And in page second he gives us as the *first* rule, "that no evidence *ought to be admitted to any point* but that on which the issue is joined." But how is a court to prevent, and it is only the court which can

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prevent, evidence being admitted which is not pertinent to the point on which the issue is joined, unless they are first informed what evidence is meant to be given? It is then upon the authority of McNally established that the court have the legal right to know what counsel mean to prove by a witness; and having that right, they may exercise it whenever, in their discretion, they may think it necessary.

To determine, therefore, whether they acted correctly in rejecting the testimony of Colonel Taylor, let us examine what testimony they hoped to obtain from him; and for this purpose, what were the questions proposed to be put to him.—They were,

1st. Did you ever hear John Adams express any sentiments favorable to monarchy, or aristocracy, and what were they?

2d. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

3d. Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?

Colonel Taylor's testimony was offered as being relevant only to one set of words stated in the two counts of the indictment, to wit: "he (meaning the said President of the United States) was a professed aristocrat; he (meaning the President of the United States) had proved faithful and serviceable to the British interest—(inuendo) against the interest and welfare of the United States."

Need I state to this honorable Court, that words which do not in themselves, or on the face of them, purport anything criminal, cannot be made so, or considered as libellous, but by laying an *inuendo*, giving them a criminal meaning, without which they would be innocent; and, also, that the criminal meaning laid in the inuendo must be strictly proved?

Let us now examine the set of words to which Colonel Taylor's evidence was meant to apply; they were without any inuendo, as follows: "He was a professed aristocrat; he had proved faithful and serviceable to the British interest."

This sentence consists of two separate distinct clauses or parts; the first, that "he was a professed aristocrat;" the second, that "he had proved faithful and serviceable to the British interest." I ask this honorable Court if either of these clauses or parts, of themselves, and without an inuendo, carry with them any charge of criminality, or any thing libellous? To say that a man is an aristocrat, a democrat, or a republican, is not of itself charging the person with anything criminal, nor is it slanderous, unless indeed the charge is accompanied with an inuendo, stating that, by the epithet so *used*, something very bad was intended; and *that* Government would indeed merit contempt in which a person should be punished upon such a charge. So, also, to say that a man had been faithful and serviceable to the British interest charges him with nothing criminal, and therefore cannot be slanderous, because the British and the American interest in many instances have been and may be the same.

There may be a variety of instances in which the interest of two nations may concur. There have been many in which the interest of America and of Britain did concur; many also in which the interest of America and France have combined. In the first instance a man may have been faithful and serviceable to Britain; in the other to France, without the violation of any duty to the United States—without having been guilty of the least criminality.

The sentence then taken altogether, connecting the two clauses, does not of itself import anything criminal, and consequently is not slanderous, if it remained without any inuendo; and if it was free from an inuendo, being not slanderous, would not require any evidence relative thereto. Nay, it would be no part of the charge put in issue, for in legal construction it is only such part of the publication stated in an indictment which is slanderous; that is the point in issue.

I will now, sir, read that part of the indictment in connexion with the inuendo: "He (meaning the President of the United States) was a professed aristocrat." Here there being no inuendo, this clause or part of the sentence remains in its primitive innocency; he (meaning the President of the United States) had proved faithful and serviceable to Great Britain" This of itself, as I have observed, is perfectly innocent; but here comes the inuendo with its sting in its tail—"inuendo, against the interest and welfare of the United States of America." Thus it was only the *latter* clause in the sentence that was presented as being libellous; and how was that part of the sentence to be justified? By showing that the President had, in the high station he had occupied, prostituted his character by sacrificing the interest of the United States to the interest of Great Britain. And how was this justification to be proved? Not by any answer Mr. Taylor could give to the *first* question, for that, as far as his answer could have relation, could only relate to the first clause; but that clause being of itself inoffensive, and not made criminal by any inuendo, was no part of the *criminal charge in issue*, but was merely introduced as being part of a sentence, the latter clause of which was only charged to be criminal. Any evidence from Colonel Taylor as to the first clause was therefore totally irrelevant, as not going to the point in issue, and as only going to prove the truth of what was neither stated nor relied on as being criminal, and therefore was properly rejected by the court.

As to the second question, to wit: "Whether Mr. Adams, while Vice President, had expressed his disapprobation of the funding system?" The question could not be in any degree relevant to the one or the other clause in the sentence.—Whether Mr. Adams expressed his disapprobation while he was Vice President, of the funding system, or not, could in no respect go to prove or disapprove his being a professed aristocrat, or his having sacrificed the interest of the United States to the interest of Great Britain. The court there-

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fore, considering this question totally irrelevant to the "point in issue," did as was their duty to do, they refused to suffer it to be put to the witness.

So much for the two first questions. We now come to the third, respecting the votes of Mr. Adams, when Vice President, against the bill for the sequestration of British debts, and the bill for suspending intercourse with Great Britain. For the conduct of my honorable client in refusing to permit this question to be put to Colonel Taylor, two reasons may be assigned; the first, that if the fact was as stated, it could not be proved by Colonel Taylor. The second, that if the fact was established, it would be totally immaterial to the issue. Colonel Taylor's evidence was not the best which the nature of the case admitted. I will not say that the traverser, in order to prove this vote, was under the necessity of procuring a copy from the Journal of the Senate, properly authenticated by their clerk, but he certainly ought at least to have produced a printed copy of the votes and proceedings of the Senate as published by them. One thing at least is certain, that the traverser could not consistently, with rules of law, give parole evidence to establish the vote of Mr. Adams, and therefore that Colonel Taylor could not be legally examined on that subject. But I will go further in defence of my client, and will say, that if they had had the best possible evidence of the fact, if they had had an attested copy from the records of the Senate, the judge would have departed from his duty if he had permitted the evidence which was wished to have been obtained from Colonel Taylor to have been given to the jury. Ought any evidence to be given to a jury which is not proper and pertinent to prove the *fact in issue*, or to prove some fact from which the fact in issue *ought* legally to be *inferred*—evidence not relevant to the point before the court and jury? Was not, as to this part of the charge, the fact in issue, whether Mr. Adams had swerved from his duty by intentionally prostrating the interest and welfare of his country to the interest and welfare of Great Britain? Should not a charge of so atrocious a nature be proved by some direct act of this criminal sacrifice of the interests of the United States to the interest of Great Britain, or by the proof of some other act from which such criminal sacrifice must and ought on principles of law to be clearly and necessarily inferred? And what was the proof proposed to be offered for this purpose? That upon the question whether British debts should be sequestered, and whether our intercourse with Great Britain should be suspended, after full discussion one-half the members of the Senate voted in favor of those measures, and one-half of the Senate against them; and that in this situation Mr. Adams thinking them of too hazardous a nature, and such as might involve our country in a war, did not choose to take upon himself so great a responsibility as to give his casting voice in the affirmative.

I have, Mr. President, neither time nor inclination to enter into a discussion of either the propriety or policy of those measures, but I have no hesitation to express my belief, that the honorable members who voted for or against those measures, were equally actuated by the same purity of motive. That those who voted on the one side or the other acted from the sincerest desire to promote what they respectively considered the best interests of their country.

Shall then the rejection of the evidence, that Mr. Adams, on measures in *fieri*, on which the Senate was equally divided, gave his casting vote with the Senators whose political sentiments accorded with the then majority; and which evidence, if admitted, would have proved nothing, be considered as a ground of impeachment? I say evidence, which, if admitted, would have proved nothing; for that act of Mr. Adams certainly would not have proved that he had corruptly and wickedly sacrificed the interest and welfare of the United States to Great Britain; nor would it have proved anything, from which such sacrifice ought legally and necessarily to be inferred. Where is the man who would dare say, that the members of the Senate who voted for or against the bill for sequestration of British debts, and the suspension of our intercourse with Great Britain, acted from corrupt motives? Is there a member of this honorable Court who believes that the Senators who voted against those measures were actuated by a desire to promote the interest of Great Britain at the expense of their own country? Or, that those who voted in favor of those measures were actuated by a desire to promote the interest of France at the same expense? The heart of every member of this honorable Court, I am confident, revolts at the idea! Ought then any judge to have suffered this act of Mr. Adams to have been offered to a jury as evidence directly to establish that he had wickedly and corruptly preferred the interest and welfare of Great Britain to that of the United States, or as an evidence from which the jury ought, upon legal principles, necessarily to infer that he had thus acted?

The judge who would have permitted such evidence to have been given for such purpose, in my opinion, ought much rather to be impeached for his conduct, than the judge who should reject it.

It is the sole province of the court to determine what evidence shall go to the jury, either as proper, directly to prove the fact in issue, or to prove any facts from which that fact ought to be inferred. The court are the sole judges of the competency and admissibility of the evidence—the competency depends upon its legality; the admissibility upon its relevancy to the question in issue. If illegal, it is their duty to reject it; but though legal in its nature, yet if not relevant to the point in issue, it ought equally to be rejected; because its production only wastes time, and has a tendency to mislead the jury.

The right of the court to decide what evidence shall go to the jury I never heard questioned till in the course of this trial. The honorable Managers appear disposed to advocate a different doctrine, and as they claim the right that the jury should decide the issue without regarding the opinion of the court as to the law, so they seem to think

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that the court ought not to restrict the evidence to the jury. And hence they have expressed some indignation against my honorable client, because he told the counsel in Fries's case that they might go on as they pleased, but still subject to the direction of the court as to what evidence they might offer. On that occasion they exclaimed "the court took upon themselves to decide what evidence should go to the jury! But perhaps that evidence which might have been rejected might have influenced the decision of the jury, and as the jury have a right to decide the law, uncontrolled by the court, they ought to have before them all that evidence which might possibly influence their decision!" Charming doctrine! Thus the jury are not only to decide the law on the issue, but likewise all questions of law which arise upon the proceedings in the cause and upon the evidence that is to be admitted. The honorable Managers seem to forget that it is only in consequence of the right of the jury to give a general verdict that they get incidentally the power of deciding the law in any case, but that this cannot in any manner enable them, either as to power or right, to have any control over the court in any collateral questions.

The maddest enthusiast that ever yet advocated the rights of jurors, has never questioned the right of the court to determine upon the competency and admissibility of evidence. Such being the law, it was the duty of Judge Chase, when the question meant to be established was, that Mr. Adams wickedly and corruptly sacrificed the interest of the United States to Great Britain contrary to his duty, to prevent the vote of Mr. Adams on that occasion being given in evidence to the jury, either as proper directly to prove the fact, or from which they ought necessarily to infer it. And I again repeat, if he had suffered such evidence to have been given to them as proper and relevant, he would have been much more deserving of impeachment.

I have stated that there are two ways of proving the issue—either by directly proving the *fact* in issue, or by proving some fact from which the fact in issue ought legally to be inferred; and that, in the one case and the other, the court are the judges as to the competency and the admissibility of the testimony. But I go further; it is the court who have a right to determine whether or not the fact in issue *ought* to be inferred from a fact proved, or what fact being proved will justify a jury in inferring and accordingly finding the fact in issue. I will, sir, explain my meaning—the question in issue is a grant or no grant of a tract of land; the grant is the fact to be established; no grant can be produced, but evidence is given of possession for a great length—a regular transference of the property as having been granted—payment of rents to the successors of the supposed grantor, &c.; the court not only determine what testimony is proper to establish these facts, but they direct the jury that, if they believe the evidence, they then ought to find that a grant had been given. On this point I refer to Cowper, page 112, and 12 Coke, 2. So, sir, if, in an action of *indebitatus assumpsit* for money due, the defendant pleads the act of limitation, and the plaintiff replies a promise to pay within three years. If on the trial of the cause the plaintiff proves an *acknowledgment* of the debt within the limited time, the court will instruct the jury, that, if they believe that fact, they ought to find from it, as being sufficient evidence for the purpose, the fact in issue, that he did *promise to pay*. Yet, if the jury was to find a special verdict, stating that within three years the defendant had acknowledged the debt, the court could not give judgment, but must order a *venire facias de novo*, because the jury would not have found the fact in issue, but only a fact which was, as evidence, sufficient to have justified them to have found by their verdict that the defendant assume. Again, in the case before supposed, if evidence was given to the jury that the defendant had acknowledged the debt as aforesaid, the court would instruct the jury that upon that evidence they ought to find the defendant had promised; and if the jury did not give their verdict for the plaintiff, the court would grant a new trial. So, sir, in an action of trover and conversion. If it was proved that the defendant had the thing in possession for the conversion of which the suit was brought, and evidence is given that the plaintiff demanded the article from the defendant, and that he refused to deliver it, though this is not itself a conversion, and if the jury was to find a special verdict stating these facts, the court could not give judgment, yet the court would direct the jury that, upon such fact being proved, they ought to find the fact in issue, to wit, the conversion; and if the jury was not to find for the plaintiff the court would grant a new trial. Again, in the case of an action brought to recover money, and the statute of limitation pleaded; if the defendant acknowledges the justice of the debt, but at the same time absolutely and unequivocally declares that he never will pay any part of it, the court would instruct the jury that upon such evidence they could not find for the plaintiff, for that the acknowledgment of the debt being only presumptive of a promise to pay, that presumption was taken away when the acknowledgment was accompanied with a direct unequivocal declaration that he never would pay any part of it. So in the case of trover and conversion, if the thing in question was large, heavy, and unwieldy, as a large piece of mahogany or other timber, and when the delivery of it was demanded, the defendant was to refuse troubling himself on the occasion, but to direct him to where this ponderous article lay, and tell him that he might take it into his possession when he pleased; the court would certainly say there was no proof of conversion—the *prima facie* evidence being defeated by the circumstances of the case.

I have introduced these cases by way of illustration; and to show that the court determines what is proper evidence to prove the fact in issue, from what fact the fact in issue may be inferred, and also what evidence is admissible to prove this secondary fact; and therefore as the vote given by Mr. Adams of which Callender wished to give evidence was not sufficient to prove directly the charge that Mr. Adams had wickedly, and against his duty, sacrificed the interest of his

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country to that of Great Britain—nor was a fact from which the jury, on principles of law, ought to have inferred it; and I am sure no person will attempt to support the contrary, therefore, that my honorable client instead of being impeachable for rejecting such evidence, would have exposed himself to censure had he admitted it.

Nor can I doubt but that the respectable counsel who were concerned for Callender, would have cheerfully acquiesced in and approved of my honorable client's conduct in this respect, had it not been for a cause, which they honestly acknowledged—their extreme ignorance of the law which relates to the doctrine of libels; and which had induced them to use every exertion to obtain a continuance of the cause to a future term; that in the mean time, either in their own offices, or under the instruction of some legal character, they might acquire a more accurate knowledge of that branch of the law. An indulgence that it seems they could not prevail upon the court to give—for the refusal of which, however, I hope my honorable client will not be thought impeachable.

I have now, sir, finished my observations on the third article, and am under the direction of this honorable Court whether I shall proceed to the fourth, or wait till they take some refreshment. (It was now three o'clock, and the Court adjourned for half an hour.)

[The Court having again met, Mr. MARTIN continued.]

I shall now, sir, proceed to the fourth article, which charges the respondent's conduct to have been marked during the whole course of the trial by manifest injustice, partiality, and intemperance.

From the evidence it certainly appears that Judge Chase prevented the counsel from arguing to the jury that the sedition law was unconstitutional; and this seems to have given rise to a great portion of the altercation and ill humor between the court and the bench.

I admit that the Constitution gives to a criminal the right of having counsel; but the Constitution has not defined the rights or duties of counsel, or to what extent they are to exercise them. One thing, however, is certain; that they have no Constitutional right to impose upon the court or mislead the jury.

When Callender's counsel contended that if the jury have a right to decide questions of law, then the Constitution being the supreme law of the land, the jury must of course have the power of deciding on the *constitutionality* of a law; the judge might well say it was a *non sequitur*.

What has been allowed to the jurors as their incidental right on the general issue? Not to decide whether there is an existing law, or whether a law is in force, but to declare the true construction of an *existing* law, and whether the case at issue comes within the true construction of such law.

But those who contend that the jury have a right to determine the constitutionality of a law, insist not for the power of the jury to decide its true construction and whether the prisoner's case comes within it, but to decide whether what is produced as law is not void, a mere nullity, a dead letter; or in other words whether such a law is in existence. The maddest enthusiasts for the rights of jurors, their most zealous advocates, have never contended for such a right before the cases of Fries and Callender. Whether a law exists, whether a law has been enacted, whether a law has been repealed, whether a law has become obsolete or is in force? The decision of these questions hath always been allowed the exclusive right of the court. The power of the court to decide exclusively upon these questions hath never been before controverted. Nay, the very right claimed on behalf of jurors, that they may determine what is the true construction of the law, and whether the case is within its provisions, of itself necessarily presupposes, and is predicated upon the *existence of a law*, the *construction or meaning of which* they are to determine. It has indeed been seriously questioned, and that by gentlemen of great abilities, whether even the Judiciary have a right to declare a law, passed by the Legislature, to be contrary to the Constitution and, therefore, void! I shall not enter into an examination of that question, but I have no hesitation in saying that a jury have no such right, that it never was intended they should have such right, and that if they had the right, we might as well be without a Constitution.

The first specific instance of my client's unjust, partial, and intemperate conduct, which is stated in this fourth article is, that he compelled the traverser's counsel to reduce to writing the questions which they meant to propound to Colonel Taylor. The correctness of this procedure will depend on the question whether the court had by law such a power, for if such a power was possessed by them, it is to be presumed that they, on that occasion, exercised it according to their best discretion, nor can it be inferred that their conduct was criminal, because the procedure was *novel* in Virginia. There are cases in which the practice of a court may be considered the law of the court; but these are not in any manner analogous to the case in question; nor do I find the *practice* of the State courts is obligatory "in any case of this kind on the courts of the United States." My honorable client did not consider what was usual in Virginia, but what was correct and proper; he knew that the law authorized him to make this demand. In Maryland, where he imbibed his legal knowledge, and where at the bar and on the bench he had carried it into practice, nothing was more common than for questions to be reduced to writing at the request of counsel, or at the request of the court. If counsel doubt of the propriety of the evidence meant to be drawn from the witness, or the correctness of the question meant to be propounded to him, they have a right to request it to be reduced to writing. So also, if the court, without whose approbation no testimony can be given to a jury, and whose duty it is to prevent improper testimony to be given, has reason to suspect an intention to introduce such evidence, they have a right, and they ought to require the questions to be reduced to

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writing, that there may be no misapprehension of the tendency of the question, and that they may more deliberately decide whether it is proper to be put to the witness. And in this case, the counsel were not required to reduce their questions to writing in the first instance, or before they had stated what they had meant to prove, as hath been suggested. When Colonel Taylor was called and sworn, the court desired to be informed what they meant to prove by him. McNally is an authority that in so doing they acted legally. The counsel stated the facts, to prove which Colonel Taylor was called; upon which, the court doubting the admissibility of the testimony directed the question to be reduced to writing for their consideration. It cannot for a moment be seriously contended, but that the court had a right so to do. As my respectable colleague (Mr. Key) has observed, the practice of this honorable Court during this trial, hath perfectly sanctioned that part of my client's conduct. If at any time a question has been put, the propriety of which hath been doubted, it has been directed to be reduced to writing. It is true, that this has been, principally, when an objection has been made by the counsel; but there can be no doubt, that if any honorable member of this court had apprehended the question to be improper, the court would have had a right, and would have directed the question to be propounded in writing for their consideration. The propriety, the principle, in each case is the same. On this part of the charge I need not dwell any longer.

The *next instance* of the judge's conduct specified in this article is his refusal to continue Callender's case to the next term, notwithstanding the affidavit filed, and the applications made. On this subject, I shall not make many observations as to the law; but I may venture to assert that the conduct of Judge Chase in this instance also appears to have been free from any corrupt or oppressive motive or design; no part of his conduct on this occasion has been produced to show that he entertained a disposition to prevent Callender from obtaining the testimony of his witnesses, or deprive him of the necessary time to procure their attendance. Let it be recollected that the first affidavit prepared and proposed to be filed in order to obtain a continuance of the cause was a general affidavit. By the laws of England a general affidavit is not sufficient to entitle the party to a continuance, and upon principles of law as adopted in England and the United States, at least in Maryland, a supplemental affidavit cannot in a case of this nature be received.

If, then, Judge Chase had wished that Callender should have been, at all events, prevented from a continuance of his cause, he would have suffered them to file their general affidavit.

According to the laws of England, and so is the law considered in Maryland, to entitle the party to a continuance, he must file an affidavit showing what witnesses he wants—what he expects to prove by them—that he has used due diligence to procure them—and that he has a reasonable expectation to procure their attendance at some time. Judge Chase, had he wished that Callender should be deprived of a continuance of his cause, would have suffered them to file their general affidavit, but what was his conduct? Desirous they should not improperly and hastily commit themselves, and lose advantages to which they might be entitled, he gave them a caution, and time till next day to profit by it. On the next day they did, it is true, file a *special* affidavit; but this special affidavit, so drawn up, under the caution given them by the court, is not such as can, in any degree, stand the test of legal investigation, even under the authority which one of the honorable Managers (Mr. Rodney) hath this day introduced. Callender did not, in his affidavit, state that he expected to be able to procure his witnesses at the next term, the term after, or at any term. He also stated that there were certain books necessary for his defence, but he could not state that he had endeavored to procure them before, or that he expected to get them against the next term. And surely, if when Callender wrote that libel, he founded any part of his charge upon books which had been published, he ought to have had them by him when he wrote and published, and to have kept them by him for his defence whenever he should be called upon to answer for that publication, and could have no right to claim a continuance for the purpose of obtaining such books. One of the honorable Managers, (Mr. Rodney) has this morning referred us to 6th vol. Bacon's Abridgment, from page 650 to 652, upon the subject in contest, the mode of putting off a trial, and there, as he acknowledges, and as the authority enforces, "if there is any cause of suspicion that delay is the object, the court should be satisfied, from circumstances, that the person absent is a material witness; that the person applying has been guilty of no laches or neglect; and that he is in reasonable expectation of being able to procure his attendance at some future time." That the court had, in Callender's case, just reason to believe that delay was the sole object of the counsel, no person can doubt. Nay, the counsel themselves have upon oath declared that delay was their object; that they had no hope or expectation that witnesses could be of any service to them; that they considered Callender's cause desperate, if the law was Constitutional; and that their great object was to continue the cause to another court, that it might not be tried by my honorable client, of whose conduct in the case of Fries they had heard, and against whom they had formed, it seems, the most decided prejudices.

This authority, then, produced by the honorable Managers, perfectly justifies the conduct of my client in refusing, upon that affidavit, to continue the cause to the next term. The court was then sitting to hear the charges brought before them; it was their duty to have them determined without unnecessary delay, that if the party was innocent he should be acquitted; if guilty, he should be brought to speedy punishment. The same honorable Manager has, from the same authority, shown "that, upon the particular circumstances of the case the court will make a rule for putting

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'off the trial of a cause to the second term after 'the rule for putting off the trial is made." I admit the law, and will therefore readily admit that if an affidavit had been made by Callender, stating that he expected to be able to prove certain facts, stating what the facts were, by witnesses, who, from their particular situation, could not with any probability be produced before the second term, after the affidavit, and could then probably be had, the court might with propriety, and perhaps ought to have continued the cause to the second court, but no such affidavit was made; therefore, not having made out such a case, they have no reason to complain that they had not the benefit of it. They did not even swear that they expected to be able to procure the attendance of their witnesses at any time whatever.

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 plaintiffs would not consent to have the deposition of such witnesses 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 witnesses, yet here the court has a power to issue a commission for that purpose. The 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. If the honorable Managers know of such a law, they will be so obliging as to refer us to it. But I will take up the objection upon each view. Suppose a commission might have been issued, the counsel of Callender did not apply to the court to grant a commission, and to continue the cause till the commission was returned; suppose a commission could not be issued, Callender's counsel did not apply to the Attorney General of the district for his consent that these witnesses should be examined where they lived, and their deposition be read in evidence on the trial; they did not apply to the court for their determination, that the counsel for this prosecution should consent to this, and that if he refused, the cause should on that ground be continued. Had they prayed a continuance on either of these grounds, and it had been refused, they might have had some pretext under their authorities for complaint, but this ground they never attempted to take.

Had they prayed for a commission, and the law authorized it, it is to be presumed the court would have granted it. If the court could not grant a commission, and the defendant's counsel had proposed that the depositions of absent witnesses should be taken to be read at the trial, it is possible the court would have continued the cause, unless the prosecutor would have consented that depositions should be thus taken. Hence, therefore, on no principle doth it appear that there was anything improper, incorrect, or illegal, in refusing a continuance of the case of Callender.

But, sir, there is another ground upon which the conduct of the court was strictly justifiable, in requesting to know by the deposition what the absent witnesses were expected to prove, and also in refusing to continue the cause. Upon their own statement, the witnesses wanted were only material to a few of the charges in the indictment. Their absence, therefore, could not be a sufficient reason to put off the trial. The Attorney might have struck out of the indictment those sets of words to which their testimony was wanted, and proceeded to the trial upon the other part of the charge. And as the punishment both as to fine and imprisonment was discretionary, not exceeding a certain sum and time, Callender was equally in the power of the court, convicted on a part, as if he had been convicted of the whole of the charges; and the court having the discretion, and having refused a continuance for the want of the testimony suggested, had it in their power, when they passed sentence, to throw out of their consideration those parts of the charge for which the testimony was wanted.

And on this subject, the case put by my respectable colleague (Mr. Key) is perfectly in point; he supposed the case of a person indicted for stealing a horse, saddle, and bridle; to delay the trial, the prisoner suggests the want of witnesses; the court compel him to declare in his affidavit what he expects to prove by them. It appears that he only wants to prove that the bridle was his own! This, surely, would be no cause for delaying the trial. The prosecutor might instantly strike out of the indictment the bridle, and there could not be the least pretext for not going to trial upon the residue of the charge—the stealing the horse and saddle. So in Callender's case, the want of witnesses to justify as to a few sets of words could afford no reasonable cause why he should not be tried upon a dozen or more sets of libellous words, charged in the indictment, as to which he did not pretend to allege that he wanted a witness.

In Maryland, it has ever been the practice to try criminal prosecutions of what nature soever at the first court, if practicable, and not to continue them unless some legal cause is shown. Judge Chase had been accustomed to this mode of procedure. It was in Maryland that he acquired the first rudiments of law. It was in that State that his legal knowledge was matured by practice.

Why should capital cases, rather than inferior crimes, be tried at the first court? The honorable Managers admit that it is the general rule not to continue, but to try at the first term, capital cases. Surely if indulgence, if delay is necessary in any case, it is in a capital case, where life is at risk; where an injury, if done, is irretrievable!

There are many reasons which show the propriety that prosecutions of every kind should be decided with as little delay as possible. One of the principles as to criminal jurisprudence, as Governor Claiborne has justly observed, is, that though punishments should be mild, yet they ought to be *speedy;* by having an immediate decision

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there is a great certainty that the criminal shall not elude justice by flight. The expense, whether to the criminal or to the public, is increased by delay; delay also hazards the loss of testimony by the death or absence of witnesses; and therefore diminishes the chance of having justice done, either to the party or to the public, the one or the other of whom may be essentially injured for want of testimony, which might have been had if the trial had not been delayed; but even if witnessess live, and can be had at the trial, yet the lapse of time impairs memory, and their testimony cannot be relied upon in the same manner as if they were examined immediately after the transaction, when every circumstance would be fresh in their memory. These, with many other reasons which might be given, have actuated our courts of justice in Maryland, never to continue criminal prosecutions of any kind, if it can be avoided; and show the propriety of their conduct.

The next specification, in this article, of improper conduct in the judge, is, that he "used *unusual*, '*rude*, and *contemptuous expressions* towards the 'prisoner's counsel; and insinuated that they 'wished to excite the public fears and indignation, 'and to produce that insubordination to the law, to 'which the conduct of the judge did at the same time 'manifestly tend." As to this part of the charge, there is but little of a legal nature contained in it, I shall therefore hastily pass over it. If true, it seems to be rather a violation of the principles of politeness, than of the principles of law; rather the want of decorum, than the commission of a *high crime and misdemeanor*. I will readily agree that my honorable client has more of the "*fortiter in re*," than the "*suaviter in modo*," and that his character may in some respects be considered to bear a stronger resemblance to that of Lord Thurlow than to that of Lord Chesterfield; yet Lord Thurlow has ever been esteemed a great legal character, and an enlightened judge.

But let me ask this honorable Court whether there is not great reason to believe that the sentiments my honorable client expressed with respect to the conduct of the counsel, and their object, was just and correct? What was the conduct of Callender's counsel? Was it not such as immediately tended to inflame the minds of the bystanders, and to excite their indignation against the court, and highly insulting to the judges? In the first place, they endeavored to obtain a continuance of the cause to the next court, merely with an intention to procure delay, and to prevent the cause being tried before Judge Chase, acknowledging that they had no hopes or expectation from *any testimony* to save their client if the law was determined to be Constitutional; and yet they brought forward their client to swear just what they pleased, in order to procure this delay, with respect to the necessity of witnesses, whose testimony they acknowledge they were conscious could be of no service to them, and yet they wished the bystanders to consider the court acting highly *improper* for not granting that continuance? Was this even to serve Callender? No, they avow they did not appear to serve him, but to serve *the cause*. Sir, it appears from their own evidence that Callender would have submitted to the court, but for their interference; that they volunteered on the occasion not for *him*, but for *their cause*; and yet the volunteers wanted the court to give them to another term to prepare themselves, and made Callender swear what they pleased to effect their purpose. They said they were not well acquainted with the law upon libels, and therefore wanted time to examine the subject; but surely when persons undertake to volunteer their services on any subject, they ought to be masters of it, and are entitled to no indulgence of delay. And as they declare they had formed the determination, on the first instance of an indictment under the sedition law, to come forward and volunteer their services for the sake not of the man, but of their cause, common decency to the court, and a proper respect for themselves, ought to have dictated to them in the interim to have made themselves fully acquainted with all the law relative to that subject in which they had thus determined officiously to interpose.

In the next place, when the jury were about to be sworn, they challenged the array in order to set aside the whole panel. Such challenge can never be made correctly, but for the jury being returned by an officer not authorized, or for unfair and partial dealings in the officer who summons the jury. The reason assigned was that one of the jurors who was returned had expressed sentiments inimical to Callender. This, if true, might be a good cause to challenge the individual juror for favor, but no boy, who had read in an office six months, would have supposed this a sufficient cause to have challenged the array, unless it had been further alleged that the marshal knew the juror had expressed such sentiments before he had summoned him, and had summoned him for that reason; which was not suggested. Is it possible to believe that legal characters of so great estimation, that one of them was then the Attorney General of the State of Virginia, another almost immediately after appointed Attorney General of the United States for the district of Virginia, and the third, appointed one of the chancellors of that State, should have been so utterly ignorant of the law relative to the challenge of the array, as to have made the motion they did? If not, it must be presumed their conduct was influenced by a wish to embarrass the court; to hold up the prosecution as oppressive; to excite public indignation against the court and the Government, who endeavored to enforce it, by attempting to impress a belief on the public mind, that even their marshal had, in the very beginning, violated his duty to gratify the wishes of an oppressive Government, and that for that purpose he had unfairly packed a jury! Was not this immediately, was it not designedly done for the purpose of exciting public indignation? What was the conduct of the same counsel when the court desired them to reduce to writing the questions they meant to propound to Colonel Taylor? They have declared they hesitated whether they would do it; and before they did comply with the court's direction, they made a

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direct effort to hold up to the bystanders that the court was acting with oppression and partiality, to the prejudice of Callender, by imposing on his counsel difficulties and impositions which the court had not imposed upon the counsel for the prosecution! Whereas in fact the counsel for the prosecution had fairly stated the testimony he meant to offer, before he produced his witnesses, having no desire that the jury should be surprised with improper evidence,—whereas the counsel for Callender wished to have witnesses examined to the jury, without the least previous disclosure, to the jury or court, of the evidence meant by them to be given; most evidently that they might have testimony illegal thus imposed upon them; and because they were, by the correct interposition of the court, defeated in this object, they could not consent even to let this act of the court pass, without a direct attempt to impress upon the bystanders that it was another instance of the unfair and oppressive conduct of the court, which ought to excite their indignation! And here let this honorable Court remember that Callender, in his Prospect Before Us, had in the most solemn manner appealed to the State of Virginia, that if ever the time should come, when the Government of the United States should attempt to prosecute him and make him a victim under the sedition law, that State was bound under every principle of interest, of justice, and of the claims he had upon them, to come forward, and at *all risks* and *by all means* to protect him. Is there not, sir, great reason to believe, that the object of counsel was to second this appeal so made by Callender, and to induce the people of Virginia to come forward to save their client from the pretended oppression of Government,—to rescue him from their fangs!

One of the gentlemen who was counsel for Callender, has told us, that whenever a prosecution should be attempted under the sedition law, he had formed the determination to come forward and prove its unconstitutionality. That, in consequence of this determination in Callender's case, and *only* for that purpose, he did appear in order to argue its unconstitutionality. He has told us further, that he had no hopes of convincing the court, and scarcely the faintest expectation of inducing the jury to believe that the sedition law was unconstitutional; but yet, that he wished to argue the question, with a view of making a proper impression upon the public mind; and yet he has disclosed to us upon his oath, that when the court had charged him with wishing to address himself to the populace and not to the court, he denied the charge, and told the court he only wanted to address himself to and to be heard by the court, and did not wish to be heard by the jury and by the bystanders! When, at the same time, he knew he could not be heard by the court without also being heard by the jury and the bystanders, unless they had all been, a thing unknown, sent out of the court-house; or what is equally unknown, had their ears stuffed with cotton, or filled with wax; and yet the same gentleman has said on oath, notwithstanding that declaration, that it was his chief, almost his sole, object upon that subject, to be heard by the bystanders, and on them to make proper impressions! What barefaced, what unequalled hypocrisy doth he admit he practised on that occasion! What egregious trifling with the court! But, I would ask this honorable Court, what were the impressions which Mr. Hay was so solicitous to make on the people? Was it merely to convince them that the sedition law was unconstitutional, and ought not to be enforced? Had not the Legislature of his State, some time before, denounced this law as unconstitutional, and destructive to liberty? Had they not circulated the denunciation throughout every part of their own State, and sent it to every Legislature in the Union? Do not let me here be misunderstood to censure that honorable body, or to question the propriety of their conduct, or the rectitude of their motives; far be it from me to doubt that they honestly believed the law to be unconstitutional, and fraught with all the evils which they suggested would flow from its execution; and, therefore, that they thought it a sacred duty to act as they did. I am not in the habit of questioning the motives which influence public or private bodies; it is my duty to leave that question to their own consciences and to their God; I myself view them in the most favorable light. I only mean to state, as a fact, a transaction of notoriety; but can it possibly be supposed, after this, the people of Virginia wanted a speech from Mr. Hay, to induce them to consider the sedition law unconstitutional, or could he expect that those who doubted, after being so well acquainted with the sentiments and conduct of their Legislature, would be made converts by anything they should hear from him? No, sir, no person can think it. What, then, was his motive? Was it not to impress on the people that, not only an unconstitutional, oppressive law, was about to be enforced, but also that the court, in order to enforce it, was acting in the most unfair and oppressive manner, as well as the marshal; and thereby to inflame the resentment and indignation of the populace against the court? I will not say that he really wished so far to have excited their violence against my honorable client as to have endangered his life; but it is impossible that I should doubt but that it would have given him pleasure, that their violence should have been so far, at least, excited, as to have intimidated the court from executing this obnoxious law.

When my honorable client went from Baltimore to Richmond, to hold the circuit court, he knew how violently that State was opposed to the enforcement of this law; but he equally knew that it was his duty to carry it into execution, without regard to the sentiments of any portion of the community, or however disagreeable it might be to them. Under these circumstances he went to Richmond, and found the counsel, from the first step in this cause, attempting, as he could not but consider it, to inflame the audience and excite their indignation against him. My honorable client, who well knows mankind, and has been accustomed to popular assemblies, appears to have

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been anxious, as his best security, to keep the bystanders in good humor, and to amuse them at the expense of the very persons who were endeavoring to excite the irrascibility of the audience against him. Hence the mirth, the humor, the facetiousness, by which his conduct was marked during the trial; and which, most fortunately, was attended with the happy consequence he hoped from it, for it is admitted that he kept the bystanders in great good humor, and excited peals of laughter at the expense of the counsel, as the witness very justly concludes, for he says, "the counsel did not appear to join in the laugh." And this, sir, most satisfactorily accounts for the more than usual exertion of his facetious talents on the trial of Callender; and I doubt not was the real cause of that exertion.

Among the different charges made against Judge Chase of rudeness, and unusual language by him used towards the counsel of Callender, we find it stated that, when the judge had repeatedly declared the counsel could not be permitted to argue to the jury the constitutionality of the law, and one of the counsel, who appears to have felt particularly sore on the occasion, still urging that question to the jury, the judge interrupted him, and declared that the counsel of Callender had, from the first, mistaken the law, and that they had persisted in pressing their mistakes on the court. Never was a more proper or correct expression used by a judge. Never, I believe, did the conduct of lawyers more fully justify such a charge! And, if the abilities of the counsel are as great as they are represented to be, it is almost impossible not to believe their errors were intentional, and with the express view to embarrass the court. In the first place, they insisted that the jury, not the court, was, on the indictment of Callender, to assess *the fine* which should be imposed on him, if found guilty. This was one of their errors, and a most egregious error it was. And yet, my honorable client has been charged with *rudeness* for calling it, as one witness states, "a wild notion;" or, as Mr. Robertson has it in his *short-hand*, "a mistaken notion." Either of these expressions was, in my opinion, extremely mild. I, sir, should not have hesitated in calling it a *mad* notion.

The idea that the array was to be quashed, because there was returned an individual juror who was supposed to be liable to be challenged, was another mistake; a mistake that even a schoolboy in law could scarcely be expected to have made. The affidavit, so incorrectly drawn, and their insisting on a continuance of their cause in consequence of that incorrect affidavit, was another mistake.

An additional mistake was, their idea that the court had no right to know what testimony they meant should be given by the witness produced, and that it was improper to require that the questions meant to be propounded to Colonel Taylor, should be reduced to writing. And the attempt to obtain from the jury a decision that the sedition law was unconstitutional, in which they so pertinaciously persisted, was also an error. I ask, then, whether, when the counsel had been *guilty* of all these mistakes, it did not perfectly justify my honorable client in the expressions he used, that they had been from the first mistaken, and that they had continued throughout pressing their mistakes upon the court? Nay, did it not justify the observation used by him, which has been urged as most exceptionable, "that they must know better; and that their conduct was intended to influence the bystanders?" That the counsel's great object was to give an impression to the people has been acknowledged on oath; and the court must have had a very moderate idea, indeed, of the legal abilities of Callender's counsel, if they could have supposed such a succession of errors to have arisen from ignorance.

But the judge is also charged with great rudeness in the manner in which he replied in one part of the argument to Mr. Wirt, just at a time when that gentleman had finished a syllogism, by replying that it was a *non sequitur*. I will state the transaction: Mr. Wirt having, as he supposed, established the position, that the jury had a right to decide the law as well as the fact, he proceeded to state that the Constitution was the supreme law of the land, and, therefore, that since the jury had a right to decide the law, and the Constitution was also the law, the jury must certainly have a right to decide the constitutionality of a law made under it; and this conclusion was, as he declared, perfectly syllogistic. As Mr. Wirt had assumed the character of a *logician* in his argument, nothing could be more natural than for the judge, in his answer, to assume the *same character;* he therefore replied, like a logician, "a *non sequitur*, sir"—the correct answer to a syllogism, which is rather lame in its conclusion. But it seems this answer was accompanied by a *certain bow*. As *bows*, sir, according to the manner they are *made*, may, like *words*, according to the manner they are *uttered*, convey very different meanings; and as it is as difficult to determine the merit or demerit of *a bow* without having seen it, as it is the expression of words without having *heard* them; to discover, therefore, whether there was anything *rude* or *improper* in this *bow*, I could have wished that the witness, who complained so much of its effect, had given us a *fac simile* of it. Had we been favored not only with the answer, but also with a complete *fac simile* of the *bow*, we might have been enabled to have judged of the propriety of my honorable client's conduct in this instance. But it seems this *bow*, together with the "*non sequitur*," entirely discomfitted poor Mr. Wirt, and down he sat "and never word spake more!" If so, it was a saving of time. But we have no proof that Mr. Wirt meant to have proceeded any further in the argument, even had he not been encountered with this formidable bow and non sequitur. And the presumption is, that having condensed the whole force of his argument into a syllogistic form, and, finding his syllogism did not produce the conviction intended, he took his seat without wishing to spend more of his breath in what, after the failure of his logical talents, he no doubt considered a

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fruitless attempt. Mr. Nicholas followed Mr. Wirt. He is a gentleman mild and polite in his manners; he was treated by the court with politeness. He did not *persist* in addressing the jury contrary to the decisions of the court; he, therefore, met with no interruptions.

We have now more particularly to discuss the charges made against Judge Chase, as they relate to Mr. Hay, the other counsel for Callender. Mr. Hay insisted that the indictment could not be supported, because the title of Callender's publication, parts of which were charged to be libellous, was not inserted in the indictment, to wit, because it was not stated in the indictment that the book, which contained the libellous matter was called "The Prospect Before Us." And to support this objection, he went on to prove that, when an indictment states libellous writings in tenor following, the libellous part of the writing set forth, and on which the indictment is found, must be set forth "verbatim et literatim!" There was no attempt to shew that any expression in the indictment was not stated correctly both *verbally* and *literally*, as published by Callender. The indictment did not charge the title of the book as being libellous. It did not notice the title of the book in any manner. If the title of the book was necessary to have been inserted, which I deny, there could not have been a more absurd or inconclusive argument to support the position, than that upon which Hay relied; and the judge showed great temper in merely exposing it to ridicule in the manner he did, by observing that, as he insisted the libellous matter should be set out *verbatim et literatim*, he wondered he had not also insisted it should be set forth *punctuatim*. An observation, by the by, which, perhaps, contained full as much of good sense as of smartness, since we all know the same words written or printed, will be liable to different constructions, and convey very different meanings, as they are punctuated. Mr. Hay, it appears from his own testimony, as well as the testimony of the other witnesses, was guilty of very improper conduct to the court. He insisted that, if the prisoner was convicted upon that indictment, he might again be indicted for the same offence, and could not defend himself by the conviction on the indictment then before the court. When the court assured him he was mistaken in the law, Mr. Hay still persisted, and declared that he should not be more surprised, even if Mr. Callender should again be indicted for the same offence, and should be punished a *second time* for the same offence, than he was surprised at the indictment then before the court, and the attempt to punish Callender in consequence of that indictment. What language, I pray you, could be used to the court, but in reality addressed to the populace, more derogatory to the then Administration, as being unprincipled and oppressive, or containing a more direct attack upon the integrity of the judges, holding them up as the venal tools of the then Administration, ready to be the instruments of its oppression!

What was also the final conduct of Mr. Hay, when having repeatedly attempted to argue to the jury against the direction of the court, and having as repeatedly been interrupted and stopped by the court? He took up his papers to withdraw; upon which the court told him, if he pleased he might proceed. His answer was, "*I will not.*" When the court further observed, you will not Mr. Hay be captious, go on if you please in any manner you choose, and we will not interrupt you. Even then, when in my opinion the court had, as in Fries's case, made improper concessions, what was his answer? "I am not captious, *but I will not proceed.*" And he folded up his papers and withdrew.

How came he thus to act? As to Callender, he acknowledges he despised the wretch; that his object was to serve *the cause*, not Callender. How was he to serve the cause? By giving an impression to the public mind. What impression did he wish to give? By holding up the idea of oppression on the part of the Government, and corruption on the part of the court. But finding himself thus foiled in his attempt by the superior abilities of my honorable client, and his superior knowledge of mankind; finding that instead of exciting indignation against my client, my client most fortunately had excited against him the laughter and ridicule of the auditors, he went out in a passion. At the same time, even the manner in which he left the court showed his wish to impress the public mind, as far as possible, with sentiments disadvantageous to the court. And as to the interruptions Mr. Hay received, they are clearly proved to be in consequence of his pertinaciously attempting to act contrary to the direction of the court, and in that case the only question could be, whether the court or Mr. Hay had the control over the other.

But, sir, there is another charge which has been made against my honorable client, to justify that part of the article which accuses him of *rudeness*. It is said that speaking of Callender's counsel, or addressing himself to them, he called them "*young gentlemen.*" To me it appears astonishing that these expressions, if used by the judge, should be thought reproachful to the counsel, or a proper subject of a criminal charge; and it gave me real pleasure to find that Mr. Nicholas, whose whole conduct marks him as a gentleman, did not consider them as offensive. He has observed that he was young at the time, and whoever has seen him as a witness, must be convinced of the truth of his assertion. But we are told that Mr. Wirt was at that time about thirty years of age, had been a married man, and was then a widower. It doth not appear that Judge Chase knew of these circumstances; but if he had, considering that Mr. Wirt was a widower, he certainly erred on the right side, if it was an error, in calling *him* a *young* gentleman. But, sir, let it be considered that my honorable client has been stated by the honorable Managers, to be nearly three score and ten. let also his great legal attainments be considered, and let me ask, if any person can think his addressing gentlemen, so much inferior to himself in age and knowledge, by the epithet of "young

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gentlemen," offensive to them, much less criminal as to the public? But as another instance of his rudeness we are told, that, addressing himself to Mr. Wirt, who observed that "he was going on," the judge replied, "No, sir, I am going on, therefore sit down, sir." This address was made by the judge to Mr. Wirt, when he (the judge) was about to give a long opinion to him and the counsel employed with him, which opinion, upon Mr. Wirt's sitting down, the court did give: and pray, sir, was there the least impropriety in a situation of that nature, that the court should desire the counsel to be silent and to take their seats?

Before Judge Chase went from Baltimore to hold the circuit court at Richmond, he knew that the sedition law had been violated in Virginia. I had myself put into his hands "The Prospect Before Us." He felt it his duty to enforce the laws of his country. What, sir, is a judge in one part of the United States to permit the breach of our laws to go unpunished because they are there unpopular, and in another part to carry them into execution, because there they may be thought wise and salutary? And would you really wish your judges, instead of acting from principle, to court only the applause of their auditors? Would you wishthem to be what Sir Michael Foster has so correctly stated, the most contemptible of all characters, popular judges; judges who look forward, in all their decisions, not for the applause of the wise and good, of their own consciences, of their God, but of the rabble, or any prevailing party? I flatter myself that this honorable Senate will never, by their decision, sanction such principles! Our Government is not, as we say, tyrannical, nor acting on whim or caprice. We boast of it as being a Government of laws. But how can it be such, unless the laws, while they exist, are sacredly and impartially, without regard to popularity, carried into execution? What, sir, shall judges discriminate? Shall they be permitted to say, "this law I will execute, and that I will not; because in the one case I may be benefitted, in the other I might make myself enemies?" And would you really wish to live under a Government where your laws were thus administered? Would you really wish for such unprincipled, such time-serving judges? No, sir, you would not. You will with me say, "Give me the judge who will firmly, boldly, nay, even *sternly*, perform his duty, equally uninfluenced, equally unintimidated by the "*Instantis vultus tyranni*, or the "*ardor civium prava jubentium!*" Such are the judges we ought to have; such I hope we have, and shall have. Our property, our liberty, our lives, can only be protected and secured by such judges. With this honorable Court it remains, whether we shall have such judges!

The remaining part of this charge states that my honorable client "betrayed an indecent solicitude for the conviction of the accused, unbecoming even a public prosecutor, and as highly disgraceful to the character of a judge as it was subversive of justice!" I am not certain, sir, whether I exactly know what is here meant by a *public* prosecutor. If thereby is meant the public officer who prosecutes those charged with being guilty of crimes against the public, I am indeed sorry to find that those officers, so necessary, are holden by the House of Representatives of the United States in so incorrect a point of view. I deny, sir, the propriety of the remark, and must be permitted to rescue the public prosecutor from a remark so derogatory. He is as much the protector of innocence as the avenger of guilt; his duties are as clearly marked as those of a judge. They have both one common object in view, though acting in different characters. The prosecutor and the judge are equally bound to shield the innocent and to punish the guilty. The prosecutor does the same benefit to his country by saving the innocent from punishment as by preventing the guilty from impunity. Neither the judge nor the prosecutor ought to attempt to injure innocence. It is equally the duty of both to punish guilt. Such, sir, are my ideas; such, sir, I have ever understood the duties of an office, which I have held in the State of Maryland for twenty-seven years or more; and if my conduct had not been during that period consonant to these sentiments, I should indeed feel myself degraded and dishonored.

I have now, Mr. President, gone through the observations which have appeared to me necessary upon the four first articles. If I have been thought tedious, my apology is the respect I feel for the dignified source from which these charges have proceeded; from my inability to decide which of the charges the honorable Managers will most rely upon in their conclusion, and the consequent necessity of dilating upon them all; sensible of the extreme danger that, for want of exertions which indeed require greater abilities than I am able to bring into action, erroneous impressions should remain in any instance upon the minds of this honorable Court, in a case of such public magnitude, and in which my honorable client is so deeply interested, for his sake, for the sake of my country, I have felt it a sacred duty to exert those few talents which Providence hath been pleased to bestow upon me!

[It was now five o'clock, when Mr. Martin informed the Senate that he had not breakfasted that morning, and had not during that day taken any refreshment of any kind, except two glasses of wine and water; that the fifth and sixth articles yet remained to be investigated by him, as being altogether of a legal nature; and that he felt himself too much exhausted to proceed—solicited the indulgence of the Court to permit him to conclude on Monday, which was granted, and the Court accordingly adjourned.]

MONDAY, February 25.

Mr. MARTIN proceeded as follows:

After having returned my very sincere thanks to this honorable Court for their polite attention on Saturday, in giving me time till this morning, I will now proceed to the further investigation of the case in which we are engaged. But before I call your attention to the fifth and sixth articles

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of impeachment, permit me to notice some few points that I find had been unattended to by me on Saturday.

When a witness (Mr. Rind) who had been in some degree concerned in printing "The Prospect Before Us," appeared at the trial of Callender to give evidence against him, we are told Judge Chase assured him that he might be under no apprehension from giving testimony, for that he should not be prosecuted on account of anything he should disclose on that trial.

What is the fact from the evidence? Mr. Rind, it seems, was summoned as a witness. He came forward, without any objection on his part, to give evidence. It was then that Mr. Hay, in order to throw impediments in the way of the prosecution, undertook to interfere with the witness of the United States, and to tell him that he was not obliged to give testimony, as it might criminate himself. The judge replied, it was very true, but that the court would take care that the witness should not be prosecuted on account of anything he should disclose in his evidence, which might affect himself. By this the court only meant that they would not institute any criminal prosecution against the witness, and if any indictment should be found against him grounded on the testimony thus given by him, they would interfere with Government to procure a *nolle prosequi*, or pardon; and on these conditions, and under such promises, it is a most usual practice to introduce associates and accomplices to give evidence for the conviction of other and greater criminals. But this is suggested to have been improper in the judge; and one of the witnesses, the present Attorney General of Virginia, has, on his examination, rather hazarded the idea, that any interference of the nature in question ought to have been by the United States Attorney for that district, and not by the court.

The gentleman is mistaken. In Great Britain when an accomplice is produced to be a witness, his production, and the security he hath against prosecution on account of anything which he may disclose having a tendency to criminate himself, is the act of the court, and not of the public prosecutor, except so far as it is done under the direction and with the court's approbation. To support this position I will again turn to M'Nally, page 203:

"The admitting an accomplice as a witness for the Crown, is not a matter granted by the court as of course, but depends upon the question, whether the indictment can be found, and supported without his evidence. As in the King *vs.* Robert and William Luckhurst, Maidstone, Lent Assizes, 1798. Counsel for the Crown moved that Avery, an accomplice, might be brought before the grand jury to give evidence on a bill of indictment. Justice Buller said it was not a motion of course, and he desired the counsel to read over his brief, and certify that there was not sufficient evidence to convict without the testimony of the accomplice, otherwise he would not allow the motion, because it might be the means of letting off the worst offender, and punishing those to whom otherwise, according to circumstances, mercy might be shown, and he instanced a similar case which happened at York Assizes. The counsel then stated that this offender had been before admitted King's evidence against the others by the *committing justice*. Buller said that he would not pay any regard to that, because it ought not to be in the power of a justice of the peace to say who ought and who ought not to be admitted King's evidence. The counsel thereupon said, that on reading the indictment and his brief, he thought the accomplice ought to be admitted as evidence, *and his motion was granted*"—that is, by the *court*.

This authority clearly shows, that in England it is considered the province of the court to decide when, and on what terms accomplices shall be introduced as witnesses; and such has been the uniform practice in Maryland. And here let me observe before I quit this subject, as to Mr. Hay's conduct, that although this witness came forward voluntarily to give testimony, without making any objection on his part, Mr. Hay, to obstruct the prosecution, officiously interfered as far as he could, to deprive the United States of the testimony necessary to convict the offender, and to dissuade the witness from being sworn. A conduct, I confess, I cannot but view as being at least highly censurable; yet, sir, my honorable client suffered it to pass without even the smallest reprimand! This did not show a disposition on the part of Judge Chase to be captious, even with Mr. Hay.

There was another part of the testimony which I omitted to notice. I will now do it, lest the gentleman who comes after me might make the same omission. It has been suggested by two of the witnesses, that the court, in one instance, used the word "we," in the plural number, as identifying the court with the prosecutor of the United States. Mr. Hay has stated it to have been on the following occasion; when the counsel for Callender reproached the court with being guilty of partiality, in requiring the questions by them propounded to Col. Taylor to be reduced to writing, although the court had not made a similar requisition of the prosecutor; the court, in reply, observed: "The attorney, when he opened his case, stated what he expected to prove; but although he did, we were not obliged to." He was asked if he was satisfied as to the correctness of these expressions; he replied in the affirmative, and being taken down as I have now introduced them, and read to him, he adhered to them. Some mistake there must be, for the words so stated are destitute of sense or meaning. "But though he did we were not obliged to." To do what? I presume to have compelled him to give us his questions in writing.

The sense then must have been, that as the attorney had disclosed what he meant to prove, and as there was no doubt of the propriety of the evidence, therefore they, the court, were not obliged to require of him to put his questions in writing. This construction reduces the answer to common sense and propriety, and frees the answer from obscurity and from censure. Mr.

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Nicholas thinks the word "we" was used in one instance by the court, as understood by him, in the same incorrect manner, as identifying the court with the attorney, but not at the time, or on the occasion to which Mr. Hay alludes; he however is incapable to specify at what time, or on what occasion. I ask, sir, upon such evidence, so uncertain, so vague, so unsupported, can any criminality be fixed, as to this part of the charge, upon my honorable client?

Indulge me, sir, with a few remarks on certain private and social conversations, which it seems have taken place between the judge and some others, and which, though perfectly innocent of themselves, have been pressed into the service of this prosecution, and attempted to be distorted into criminality,—and I will then quit this part of the charges. A very worthy and respectable gentleman, with whom I have long been acquainted, (John T. Mason, Esq.) has been called upon to disclose a jocose conversation, which took place between him and my honorable client, a few days before he went on to Richmond, to hold the court at which Callender was tried. On that occasion he tells us, Judge Chase informed him that he was going to hold the court at Richmond, and that he was determined to teach the Virginia bar the difference between the liberty and licentiousness of the press. That as to himself, there was no person a greater friend to its real liberty, nor a more decided enemy to its licentiousness. Judge Chase further observed that he was in possession of a copy of "The Prospect Before Us," which I *had given to him*, and said *either* that if the State of Virginia was not totally debased, or, that if there was an honest jury to be found in that State, but Mr. Mason thinks the first, he would bring Callender to punishment. Mr. Mason has declared the conversation was open and public, in the presence of a number of gentlemen, perfectly jocular, and in great good humor, and it is proved the conversation was introduced by Mr. Mason himself, whose facetious talents are so well known. That gentleman has declared that it was painful to him to be obliged now to disclose what then passed. Nor can any person doubt it;—or that nothing but a sense of the obligation he owes to his country, when thus called upon to obey the claims society has upon him, could have induced him thus to disclose the particulars of this sportive and facetious conversation, introduced by himself, to gratify the views of any person, who would wish to turn it to the disadvantage of my honorable client.

But, sir, I will ask, in all this what is there that fixes any criminality on Judge Chase, or which indicated on his part a disposition to oppress? It was a fact notoriously known, that the bar of Virginia, in general did, or at least professed to, consider the sedition law unconstitutional, as *unduly* restraining the liberty of the press, that great palladium of our rights. On the contrary, my honorable client with many other respectable characters, legal and other, considered it as a wholesome and necessary restraint upon its licentiousness, and believed that such restraint was the best security for the preservation of its liberty. And on this subject let me introduce the authority of Dr. Franklin, himself a printer, and as great an advocate for the liberty of the press, as any reasonable man ought to be. He has declared that unless the slander and calumny of the press is restrained by some other law, it will be restrained by club law. The sentiment, sir, is just. If gentlemen cannot find in the laws of their country a protection from that profligate conduct of printers, which is at this time so common, or cannot obtain from the laws of their governments ample punishment against their base calumniators, they will become their own avengers. And to the bludgeon, the sword or the pistol, they will resort for that purpose. But to return to my client, it was his knowledge of the prevailing ideas of the Virginia bar that induced him to use expressions which amount to no more than his strong sense, that they had erroneous opinions as to what was the true liberty of the press, and did not properly distinguish between its liberty and its licentiousness.

And as to the determination he expressed that he would bring Callender to punishment, Mr. Mason has declared that everything the judge said on that subject was predicated upon the supposition, that Callender was, in reality, the author of The Prospect Before Us.

There was nothing then personal as to Callender, but only an honest indignation expressed against a vile libeller, whomever he might be.

The judge had in his hands one of the most flagitious libels ever published in America,—a case in which there had been the most impudent and daring violation of a law of the United States; he considered it his duty to put the law in force against such an offender. And was it not? Yes, sir, if a judge, either of his own knowledge, or by information derived from a respectable source, has reason to believe the laws of his country have been violated, particularly in cases of magnitude, it is his *sacred duty* to recommend to the grand jury an examination into such crimes, and to endeavor to bring their perpetrators to due punishment. I, sir, disclaim the idea, that a judge shows a want of impartiality because he is desirous to see *guilt* punished. I, sir have no idea, that our judges should be, like the gods of Epicurus, lolling upon their beds of down, equally careless whether the laws of their country are obeyed or violated, instead of *actively* discharging their *duties*. Judge Chase went to Richmond determined to enforce the laws of his country: it was an honest determination! He might, it is certain, under the frivolous pretexts used for that purpose, have continued the cause to another term; he might by so doing have left the odium of enforcing this obnoxious law to be incurred by some other of the judges; by so doing my honorable client might have avoided the obloquy to which he has been exposed on account of this trial, and the impeachment, as far as it is founded thereon. But had he so done, in my opinion, he would been *guilty of a cowardly dereliction of his duty.*

Mr. Triplet has also been introduced to prove

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casual conversation in the moments of unsuspecting sociality and levity. He it seems travelled in the public stage with Judge Chase to Richmond. On the second day of their journey, having formed an acquaintance during that time, some conversation being introduced relative to Callender, Mr. Triplet informed the judge that Callender had, when he first came to Virginia, been taken up in Berkley county as a vagrant: and Judge Chase replied "it is a pity that they had not hung the rascal." And this is introduced to prove that the judge left Baltimore with a predetermination to oppress and do injustice to Callender!

I have, sir, heard, I believe, more than one hundred of the most respectable gentlemen of all political parties use similar expressions, not only when speaking of Callender, but also of some other printers; but these expressions I only considered as marking their disapprobation of the conduct of those printers, not as a proof they would be guilty of injustice towards them, or that they would do them any unauthorized injury. Triplet had in the stage informed my client that he had never seen Callender; the judge meeting him at the door of the tavern, where they both lodged, as he came from court, the day on which the bench-warrant issued, observed to Triplet, "that the marshal had gone after Callender, therefore that he probably would have the pleasure of seeing him,"—and a day or two after informed Triplet that the marshal had returned without Callender, and he was afraid they should not catch the damned rascal that court. Triplet has told us he boarded with Judge Chase at the same tavern six days; they were travelling together three days: during this whole time of nine days, such only are the scraps of loose, idle conversation, which have been picked up and brought forward as indicating a hostile and oppressive principle towards Callender.

As to the word "damned," which has been introduced in the conversation, however it may sound elsewhere in the United States, I cannot apprehend it will be considered *very* offensive, *even* from the mouth of a judge on this side of the Susquehanna;—to the southward of that river it is in familiar use, generally introduced as a word of comparison,—supplying frequently the place of the word "very,"—not confined to cases where we mean to convey censure, but frequently connected with subjects the most pleasing; thus we say indiscriminately a very good or a damned good bottle of wine; a damned good dinner, or a damned clever fellow.

But, sir, what must at once efface every pretence of a disposition hostile and oppressive towards Callender on the part of Judge Chase is, the mildness of the punishment inflicted.

I now, Mr. President, shall proceed to the fifth and sixth articles of impeachment—these relate to the process issued against Callender, and to the time at which it was made returnable. By the fifth article my client is charged with having "awarded a capias against Callender by which he was arrested and committed to close custody, although it is provided by an act of Congress, passed the 24th day of September, in the year 1789, that for any crime or offence against the United States the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and although it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to appear and answer at the next court."

The criminality alleged against my honorable client by this article, as well as the *sixth*, consists in his violation of a law of the State of Virginia, by which it is supposed his conduct ought to have been regulated.

We find, from the evidence in this cause, that the legal character of that State, whether on the bench or at the bar, cannot agree among themselves as to what is the law of that State,—and that the practice has been and continues to be variant in Virginia. Nay, it is proved that two highly respectable legal characters who successively held the office of Attorney General, (Colonel Innes and General Brooke,) were applied to by one of their deputies, and declared themselves incapable to decide what ought to be the practice, or in other words, to decide in which case a summons ought to be issued and in what cases a capias was the proper process. Surely then Judge Chase, who was a stranger in Virginia, cannot be considered criminal nor even subject to reproach for not understanding a law of that State, the true construction of which remains even now a question, upon which the Virginia judges and lawyers find it impossible to agree.

Upon these observations I think I might safely rest my client's defence, as to this charge—and even consent that he shall be convicted and removed from office, whenever they shall agree among themselves upon the construction of their law,—provided it should be against us.

But, sir, I must request to be indulged in an endeavor to investigate this subject which appears so intricate, and to try if I cannot throw such lights upon it as possibly may be serviceable to the gentlemen of the bar of that State, whose law is in question; and in this attempt I feel a confidence, that I shall be at least able to satisfy this honorable Court, Judge Chase, even if bound to conduct himself according to the laws of Virginia, which I utterly deny, and shall endeavor to disprove, acted not only free from criminality, but with the strictest propriety.

I shall lay down as a position, which will not be controverted, that in all *personal* actions, civil or criminal, instituted against individuals in Virginia as well as in Maryland, the process to bring them into answer to the suits is, and hath always been a capias, or process to arrest the body, except so far as by Legislative acts of the respective States, the law hath in certain cases been altered and *other* process directed. And I mean to show that every case in Virginia, civil or criminal, and some there are of both, where a summons is the legal process, arises out of the Legislative provisions, that is, the acts of Assembly of that State. And by examining the different acts, which have

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been passed upon this subject, we shall be able to ascertain what are the cases, and the only cases, wherein a summons ought to be issued. I have, sir, before me the laws of Virginia antecedent to the American Revolution; it is the edition printed at Williamsburg, by *Rind*, *Purdie*, and *Dixon*, in the year 1769. It appears, sir, that until the year seventeen hundred and forty-eight, suits might be brought in the county court for any sum exceeding twenty-five shillings current money, or two hundred pounds of tobacco; and actions of trover or detinue without regard to the value of the article converted or detained; in all such actions a *capias ad respondendum* was the first process issued, authorizing the sheriff to take the body of the defendant into his custody, and have him before the court at the time when his writ was returnable. In that year a law was passed, chap. 4th, by the 26th sec. of which it is enacted, "that for the more *speedy* recovery of *small* debts, it shall be lawful for the justices of any county court to hear and determine all suits brought for any debt or demand, due by judgment, obligation, or account for any sum or sums of money or tobacco of the value of twenty-five shillings current money. or two hundred pounds of tobacco, and not exceeding five pounds of like money, or one thousand pounds of tobacco, by *petition*, without the *solemnity of a jury;* and where the demand shall not exceed the above-mentioned sums, the plaintiff shall proceed by petition, and *not otherwise*." After directing in what manner the claim is to be set forth in the petition, the same section directs that "upon filing such petition in the clerk's office, a summons of course shall be issued returnable to the next court (the courts were then held monthly,) a copy of which, together with the copy of the petition and accounts shall be delivered to the defendant, or left at his or her usual place of abode, ten days at least before the next succeeding court, and the same being returned executed by a sworn officer, or oath made of the due service thereof, if the defendant do not then appear, it shall be lawful for the said justice to hear and examine into the truth of the matter so complained of, and to determine the cause on the evidence produced, or to dismiss the petition, as to them shall seem just. And if the defendant do appear, he shall forthwith put in such answer or plea thereto as will bring the matter of complaint in issue thereupon: Or if he fails to plead, the court shall instantly proceed to hear and determine the cause in a summary way upon such evidence as shall be given, and shall give judgment according as the very right of the cause and matter in law shall appear unto them, without regard to form or want of form," &c.

By the 22d sec. of the same law, it is enacted "that when any person entitled to an action of trover or detinue shall set forth the value of the thing demanded to be *under the value of five pounds*, in a *petition* to any county court, a *summons* shall issue, and the same proceedings shall be had as in cases for the recovery of small debts." But for the recovery of *any penalty* for the *breaches* of the *penal laws* of the then colony, no change was made as to the mode of instituting the action. The process of capias to arrest the offender, the right of trial by jury in such actions, as to these subjects, the law was left as before: and yet actions of this nature were under the consideration of the Legislature; for we find in sec. 23, of the same law, "that for the easier, speedier, and better advancement of justice in obtaining judgments in any such suit or action, where the penalty sued for shall not *exceed five pounds*, current money, or *one thousand pounds* of tobacco, if in such suit any *demurrer* shall be joined and entered therein, in any court of record within said *dominion*, the judges shall proceed and give judgment according to the very right of the case, and as the matter of the law shall appear to them, without regarding any imperfection, omission, or defect, &c., except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding, &c. And that if any *verdict should be given* in any such action or suit, in any court of record in said dominion, the judgment thereupon shall not be staid or reversed for or by reason of any default in the form or want of form, of any writ, &c., any law, statute, or usage, to the contrary notwithstanding."

And here, sir, it may perhaps be proper to observe, that in Virginia, at least before the Revolution, the *penalties* inflicted for the breach of their *penal* laws, were commonly by the acts themselves directed in what mode to be recovered, which mode was almost universally directed to be "by *information*, bill, plaint, or action of debt, 'in any court of record within said dominion, 'wherein no essoin, protection, or wager of law, 'privilege or any more than imparlance shall be 'allowed." [Mr. Martin turned to a variety of the penal laws to show such were the provisions.] This honorable Court will perceive that under *these provisions*, the penalties could not be recovered by presentment and indictment, as hath frequently been determined; hence the usual suits or actions resorted to in the courts of Virginia, for the recovery of those penalties from the smallest to the greatest, were *informations* or *actions of debts*. And the twenty-third section which I have just read relates to such informations or actions of debt, where the penalty should not exceed *five pounds*, and to those only applies such regulations as are thereby made, which however do not alter the form of action or nature of the process to be issued, even in those cases, but leaves the law in those respects as it was before.

However, during the same session, in their legislatorial disquisitions, they thought proper to take away the trial by jury in proceedings *by presentment*, to recover penalties not exceeding five pounds; to give the courts summary jurisdiction in *those cases;* and to take away the process of a capias therein. And hence having by the first section of chapter 7, (see page 188, laws of Virginia,) enabled *grand juries* to *present breaches* of all *penal laws* of that then colony: by the second section it is thus enacted, "that when any 'offence or offences should be *presented by a* 'grand jury, and the penalty or forfeiture by law,

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'inflicted thereon, shall not exceed five pounds 'current money, or one thousand pounds of to-'bacco, be it to the King and informer, or to the 'party and informer only, or appropriated to any 'other use whatever, such *presentment* need not 'be drawn up in *other form* than as the same 'stands *presented by the grand jury*, and there-'upon the court shall order a *summons* forthwith 'to issue, to summons any person, so presented, 'to appear and answer such *presentment* at the 'next court, (as I have before observed, the courts 'were then held monthly,) and shall not admit of 'any exception or pleading to the form or manner 'thereof, but shall proceed to trial, without *the for-'mality of a jury*, and give judgment upon such '*presentment*, according as the very right of the 'cause and matter in law shall appear to them; 'and if the party summoned fails to appear, the 'court may give judgment for the penalty."

Thus, sir, the law of Virginia remained until the Revolution, and from this view it will appear that the only cases, where, in personal civil actions, the process was to be by summons, and not by capias, were where debts were claimed not exceeding five pounds, or one thousand pounds of tobacco, or property converted or detained not exceeding the same value, in all which cases the suit or action was to be instituted by *petition*, and the *court* was to decide in a *summary* manner, without the *intervention of a jury*.

And that the only case, in *criminal* proceedings, where a summons was directed to issue, is where a *presentment* hath been made by a *grand jury*, for an offence, *the penalty* whereupon shall not exceed five pounds current money, or one thousand pounds of tobacco, which presentment need not be drawn up in any other form; and on presentment the court was to decide in a *summary* manner, without the *intervention of a jury*. This honorable Court will also perceive, that the provision of this act directing summons to issue in the case I have stated can only apply to presentments made under the local, penal laws of Virginia, where the penalty is restrained to a sum not exceeding five pounds current money, or a thousand pounds of tobacco, and cannot extend to presentments for offences at *common law*, such as assaults, riots, &c. since in all such cases the courts have a discretionary power to fine what sum they think reasonable, and therefore, may fine beyond five pounds current money, or a thousand pounds of tobacco. Nor doth the provision extend to any case even under the penal laws of Virginia, where the court may punish by imprisonment. Upon this examination of the subject, it appears that until the time of the American Revolution, according to the laws of Virginia, a capias remained the proper process in all personal civil actions, except where the claim was for money or debts due not exceeding five pounds current money, or one thousand pounds of tobacco; or where, in detinue or trover, the plaintiff laid the value of the property not exceeding the aforesaid sum, and that in criminal cases a capias remained the proper process in all proceedings for offences at common law; and for all offences against the acts of the State of Virginia where the court may inflict a fine of more than five pounds current money, or which were punishable by imprisonment. Having thus shown what was the law on this subject at the time of the American Revolution, I have, sir, to examine what changes and alterations have been made therein since that period.

The first law made since the Revolution was passed in the year 1792, and is to be found in the edition of the Virginia laws, published by Augustine Davis, in the year 1794, page 96; the thirty-seventh section increases the amount of the debt, which may be recovered by the petition in the county, city, or borough court, to a sum not exceeding twenty dollars, or eight hundred pounds of tobacco, directing process to be by summons and the mode of procedure for recovery of the same as for recovery of small debts before and at the time of the Revolution. The thirty-eighth section also increases the value of the property where in trover and detinue, petition may be filed and proceedings be had as before the Revolution, to the sum of twenty dollars, or eight hundred pounds of tobacco.

In the same year an act was passed, to be found page 106, by the sixth section of which it is enacted, "that in a *presentment* to the county or 'corporation courts, if the penalty of the offence 'exceed not five dollars, or three hundred pounds 'of tobacco; or to the district court, if the penalty 'exceed not twenty dollars, or one thousand 'pounds of tobacco, no information thereupon shall 'be filed, but a summons shall thereupon be issued 'against the defendant to answer the said *present-'ment*, and such summons having been served 'upon him, or a copy thereof having been left at 'his usual place of abode, and if he doth not ap-'pear, judgment shall be given by the court against 'him for the penalty, and if he doth appear, the 'court shall in a *summary way*, without the *inter-'vention of a jury*, hear and determine," &c. And by the thirty-seventh section of chapter 74, page 113, there is a general provision, that where no presentment may be made, yet where the penalty incurred by the breach of any penal law shall not exceed twenty dollars, or eight hundred pounds of tobacco, the same may be sued for and recovered in the manner directed by law for debts of like amount.

This clause was designed to prevent informations or actions of debt to be originally instituted for the recovery of penalties not exceeding that sum, where no presentments should be made, and to direct a procedure by petition in which also the process must be a *summons*, and the decision by the court in a summary manner.

One other provision, and one only, hath been made for issuing a *summons*; this is found in the twenty-fourth section of the same act, and runs thus: "No information for a trespass or misde-'meanor, shall be filed in any court, but by ex-'press order of the court entered on record, nor 'unless the party supposed to be culpable shall 'have failed to appear and show good cause to 'the contrary, having been required to do so by 'a *summons*, appointing a convenient time for

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'that purpose, served upon him, or left at his 'usual place of abode."

These are the only acts of the Virginia Legislature I find on this subject—I believe there are no others. If there are any more, the honorable Managers will be so obliging as to point them out; but presuming that they can produce no further provisions, what is the result of this investigation? That even at this time, the only instances in personal civil actions where summons is the proper process, are where the demand for money due, or on account of trover or detinue, doth not exceed twenty dollars, or eight hundred pounds of tobacco, in which case the proceeding is to be by petition and the court determine in a summary manner without the intervention of a jury. And in criminal cases, or for recovery of penalties for the breach of their penal laws, the only cases where a summons is the regular process are where the actions are instituted by presentment of a grand jury, on which presentment no information is to be filed, or without such presentment by petition, for the recovery of penalties not exceeding twenty dollars, or its correspondent value in tobacco; which cases can only arise under the acts of Assembly of Virginia, and not where the offences are at common law—nor in any case even under the laws of Virginia, where punishment may be by imprisonment; that the only additional instance, in which a summons is to be used in a criminal case, is where application is made for an information—and there it is directed in order that the party may have an opportunity to show cause why an information shall not be ordered against him: but even in this case, if the information is ordered, a capias is the process to bring the party to answer the charge contained in such information,—as it remains to be in every other criminal prosecution or suit, except those which I have already particularly designated.

I will now, sir, turn to the law of the State of Virginia, with the violation of which we are charged; but first let me premise it is most erroneously stated in the article of impeachment; how this hath happened is not for me to say, but such is the fact: the article of impeachment sets forth, that "it is provided by the laws of Virginia, that upon presentment by any grand juror of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending to appear," &c.; whereas in truth the words of the law are, "upon presentment made by the grand jury of an offence not capital, the court shall order the clerk to issue a summons or other proper process against the person or persons," &c. (See page 112, section 28, same edition, laws of Virginia.)

Thus then the very law points out that upon such presentments a summons is not in all cases a proper process, but that a summons is to issue, or other proper process, according to the nature of the offences presented. That is, as I have already shown, a summons is to be issued where presentments are made for a violation of the penal laws of their State, punishable by a fine of not more than twenty dollars, or its corresponding quantity of tobacco, nor by imprisonment; but in all presentments for offences at common law, or for breaches of their penal laws punishable by fine beyond twenty dollars or by imprisonment, in such cases the clerk must issue a capias, that being the proper process. And upon these principles it has been determined in the circuit court of Columbia, sitting at Alexandria, acting under the laws of Virginia, that on presentments for assaults and battery, and other common law offences, a capias is the proper process to be issued; and this determination has been made while a gentleman of great legal knowledge, a native of Virginia, and who received his legal education in that State, (John Thompson Mason, Esq.) prosecuted in that court for the United States, upon whose application, I presume, the determination was made.

I will now examine the law of the United States, passed the 24th September, 1789, entitled "An act to establish the judicial courts of the 'United States," section 33; "And be it further 'enacted, That for any crime or offence against 'the United States, the offender may by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of 'the United States, where he may be found, agreeably to the usual mode of process against such 'offenders in such State, and at the expense of 'the United States, be *arrested* and *imprisoned*, 'or *bailed*, as the case may be, for trial before *such court* of the United States as by this act has cognizance of this offence; and copies of this process shall be returned, as speedily as may be, 'into the clerk's office of such court, *together with 'the recognisances of the witnesses for their appearance to testify in the case*, which recognisance the magistrate before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender 'or of the witnesses shall be *in a district other 'than that in which the offence is to be tried*, it 'shall be the duty of the judge of that district 'where the delinquent is imprisoned, seasonably 'to issue, and of the marshal of the said district 'to execute, *a warrant* for the removal of the offender and the witnesses, or either of them, as 'the case may be, to the district into which the 'trial is to be had. And upon all *arrests* in criminal cases, bail shall be admitted," &c. This is the law of the United States, mentioned in the fifth article as governing the question now before us, the basis on which this article is founded. The least examination will show that it provides only for the manner in which offenders shall be arrested under warrants issued by the judicial officers of the United States or of the different States, upon complaint made to them, in order that such offender may be bailed or committed, and witnesses bound over to the approaching proper courts, that the offences may be inquired of by a grand jury, and hath no relation to the manner in which process shall be issued *by a court* to bring in offenders to answer to presentments which are depending in the court. And a similar provision for arrests in such cases is made by the acts of Assembly of Virginia, in that State. [See 17th sec. chap. 67, page 93, same edition of Virginia laws.]

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But that the aforesaid act of Congress can in no manner relate to, or be regulated by, any law of Virginia, directing a summons to be issued as the proper process, appears clearly from this, that the offender is to be *arrested* and imprisoned, or bailed, according to the nature of the offence; but no person can be *arrested* on *process of summons*, or on such process be compelled to give bail, under pain of imprisonment. This can only be done when a *capias*, or similar process, such as a magistrate's warrant, or the warrant of a court, called a bench warrant, is issued! And here, sir, let me explain what is meant by a *bench warrant*. When a presentment is made by a grand jury against a person not imprisoned nor recognised, process is issued to arrest the offender and bring him before the court then in session; as when an application is made to a judge or a justice out of court, and oath made of an offence committed, it becomes the duty of such judge or justice to issue *his warrant* to take the offender into custody, and thereby secure his appearance at court to answer to any presentment which may be made against him; so, when a presentment is made by a grand jury of any offence, that presentment being made by the oath of not less than twelve of the grand jurors, founded also on the oath of witnesses, it authorizes the court upon this proof that an offence has been committed, to issue process commanding the sheriff to arrest the offender presented, and bring him before them, to be bailed or committed, according to the nature of the crime with which he is charged. This process is what in Maryland is called a *bench warrant*. It differs from the warrant issued by a judge or justice, inasmuch as this last is directed to a constable, the other to a sheriff. It differs from the common capias only in this, that the bench warrant is made returnable immediately, that is, during the session of the court, whereas, what is commonly called a capias, is returnable to the succeeding term. And in Maryland, it is the constant practice of our courts, whenever presentments are made against persons not in confinement nor under recognisance, to issue such process in *all cases*, from the highest to the lowest offences, in order to secure the persons presented.

I have said, sir, that the law relied on by the House of Representatives in support of this article doth not relate to process issued on *presentments made* in the courts of the United States; and as a further proof of this, I now refer this honorable Court to the fourteenth section of the same law, where it is enacted "That all the before-mentioned courts of the United States shall have power to issue writs of scire facias, habeas corpus, and *all other writs* not specially provided for by statute, *which may be necessary for the exercise of their respective jurisdictions*, and agreeable to the principles and usages of law." By this provision, a power is given to the courts of the United States to issue such process as in their discretion they shall think best, so that it be consistent with the general principles and usages of law. And the act of the United States, entitled "An act in addition to an act to establish the judicial courts of the United States, passed on the 2d March, 1793," in its seventh section has the following provision, to wit: "That it shall be lawful for the several courts of the United States, from time to time, as *occasion may require, to make rules and orders* for their respective courts, *directing the return of their writs and processes*, the filing of declarations and other pleadings, the taking of rules, the entering and making up *judgment or default*, and other matters in the vacation and otherwise, in a manner not repugnant to the laws of the United States, to regulate the practice of the said courts, respectively, as shall be fit and necessary *for the advancement of justice*, and especially to that end *to prevent delays* in proceedings." This act gives the courts of the United States full power to regulate the return of process as to time and everything else; the former law gave them the power of issuing *such process* as in their judgment and discretion they should think most proper. On these subjects, then, they are uncontrolled, unrestrained by the laws or the practice of any State or State courts. The courts of the United States having this power, can only exercise it as the case comes before them; they then determine what is right and proper, and that becomes a precedent in similar cases, and thus it was the court acted in the case of Callender, as to the process issued and the time of its return, and was perfectly justified by the laws of the United States in so acting.

The sixth article alleges that by the laws of Virginia it is provided, that in cases not capital, the offender *shall not be held* to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall be made, and yet that my honorable client, with intent to oppress and procure the conviction of Callender, did, at the said court at which he was presented, rule and adjudge him to trial during the term at which he, Callender, was presented and indicted, and this, notwithstanding the provisions of the thirty-fourth section of the aforesaid law of the United States, mentioned in the fifth article, which provides "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law in the courts of the United States where they apply."

In answer to this charge, sir, permit me to state there is no law in Virginia that declares the offender, presented for an offence not capital, *shall not be tried until the succeeding term*; it is only an inference, which that honorable body, who formed the articles of impeachment, have made from the supposition that in all such cases a *summons only* could be issued, returnable to the succeeding term, and in consequence that the offender could not be compelled to go to trial before the succeeding term.

But, sir, I have already shown that summons was not the proper process in Callender's case; that the laws of Virginia were not in the least degree operative on either the process to be issued

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nor the time or the manner of its return, but that the one and the other was solely in the power of the court, vested in them by the laws of the United States, unrestrained by any law of the State of Virginia. Thus, then, the premises failing from which the inference was drawn, the inference, of course, must be rejected. Thus, then, the court, unrestrained by any law of Virginia, or by any inference drawn therefrom, not only had a right to try Callender the same term he was indicted, but were bound in duty so to do, unless there was some good cause to justify the delay. When a presentment is made, there is such evidence that a crime has been committed, as to authorize the court, nay, to make it their duty, (as I have before observed,) to issue process to *arrest* the criminal to prevent his escape from justice. Our laws are not founded on the principle that the offender may have an opportunity to escape and elude justice; and hence it is that a grand jury is sworn to secrecy as to their deliberations, lest those offenders against whom inquiries are making, getting information of that fact, may run off before they can be secured. And, when the criminal is arrested and brought into court, it is the duty of the court, both as to the criminal and the public, to have the cause decided as soon as can be, consistent with justice. And now let me turn to the 34th section of the judiciary law of the United States, which is introduced in this article, and on which reliance is placed by that honorable House which hath prepared these articles. It is as follows: "That the laws of the several States, except 'where the Constitution, treaties, or statutes of the 'United States shall otherwise require or provide, 'shall be regarded as rules of decision in trials at '*common law* in the courts of the United States, 'in cases *where they apply*." I shall not, sir, enter here into a discussion whether a prosecution for the violation of a penal law of the United States, can be with propriety, within the meaning of this act, called a proceeding at common law. Nor shall I, sir, rely, as I might do, upon the observation, that they are only to be regarded "*in cases where they apply*," and that it is the court, and the court only, who are to determine in what cases they do apply; in doing which they are only required to exercise impartially their legal discretion; but I shall ask whether this law in any manner relates to the process to be issued to bring into court the party to the suit, antecedent to the *trial*, to compel him to appear in order that a trial may be had? I presume not. The provisions for that purpose are to be found in the 14th section of the law of September 24th, 1789, and in the 7th section of the law of March 2d, 1793, which I have already cited, and which regulate not only the issuing but the returning of process to bring the party into court, to answer to the charge, whether civil or criminal. According to my judgment, sir, the law in question means only to declare that the rules and decisions of the State courts, in any questions as to the right of the parties, shall be respected and attended to in similar questions, which may come into controversy in the courts of the United States, in their respective districts or circuits, as far as they shall be thought to apply in cases at common law; that is, if two cases exactly similar are in litigation, as to civil rights, the one in the State court, the other in the district or circuit court held in the same State, there ought to be in each case the same decision; and that where the law in the case had been settled by antecedent State decisions, the judges of the United States should respect those decisions. And also, that when the courts of the United States try a cause in any district or any circuit, the rights of the parties are to be decided according to the laws of the States under which rights were acquired, as settled by the legal decisions of the State courts, where decisions have been had. To exemplify my ideas, if the courts of the United States have on any occasion to determine, either immediately or incidentally, a right arising under a devise of lands in Maryland, they must determine the devise void, unless the will was attested by three witnesses. But if the devise was of lands in Virginia, the courts would be obliged to determine the devise good, although attested in a different manner. So, also, the obligation contracted by the execution of a promissory note is different if executed in Virginia, from what it is if executed in Maryland. Upon actions therefore which may be instituted in the courts of the United States in such cases, these courts ought to consider what are the rights of the parties according to the laws of the States where the transactions took place, and where there have been decisons of the State courts upon the subject-matter, or any decisions which may be considered as having a bearing on the question, the United States courts are to regard such decisions as far as they think they are *applicable*.

Thus, sir, I flatter myself, that I have upon the fifth and sixth articles shown that there was no law of Virginia by which the conduct of the judge was to be regulated, and that, even if the laws of that State had been operative, they have not been, according to their true construction, in any degree violated.

But surely it can never be seriously contended, that where a gentleman is appointed a judge of the United States, he is thereby expected to become perfectly acquainted with all the local laws, usages, and decisions of every separate State in the Union; no such judge by any possibility can be had. However great the legal knowledge of any gentleman, it has been generally confined to the laws, to the practice, the judicial proceedings of his own State, and to the common law as there used and introduced. From the perfect conviction of this truth, the district judge is appointed an inhabitant of the State which composes the district; he is supposed to know the particular laws, usages, and decisions of his State. It is to him, or the District Attorney in his absence, the judge of the Supreme Court, when he goes to hold the circuit court, is expected to apply for information as to what relates to these subjects; and thus we find Judge Chase correctly acting; for the district judge being absent when Callender was presented, we find my honorable client consulting with the

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District Attorney, whose political principles certainly did not lead him to wish to oppress Callender, and also with the clerk of the district court, who is himself a gentleman of legal knowledge, and a prosecutor in one of the State courts in Virginia; and it was under their advice and with their approbation that the process was issued, of the nature used, and returnable in the manner we have seen. In fine, sir, it is impossible for the Judges of the Supreme Court to have even a general knowledge of the particular State laws and practices, and if, in consequence of that want of knowledge, they were to be subject to impeachment, you would not be able to prevail upon any respectable character to accept the appointment. But I do not apprehend, sir, that the honorable Managers place much reliance at this time on these two articles. Nor do I believe the honorable House of Representatives would have either adopted them or any of the articles which have been brought forward against Judge Chase, had the same evidence been before them which hath been produced before this honorable Court.

In saying this, I do not mean in the slightest degree to censure that honorable body, they were acting as a grand inquest of the nation; they only had, and they only could have, before them *ex parte* evidence. On the evidence which they had before them, I shall not suggest but what there was sufficient foundation for bringing forward the charges. But these charges have been patiently discussed; a mass of evidence hath been produced here, which they had not, and, after this full investigation, the honorable members who impeached him, and who have regularly attended his trial, I doubt not, are perfectly satisfied that he ought to be acquitted, and will rejoice at that acquittal.

Before I conclude, let me add one other proof that the framers of the Constitution never intended that juries should have any power to decide the law contrary to the instructions of the court, much less to decide upon the *constitutionality* of a law. By the 2d section of the 3d article of the Constitution of the United States, it is provided, that in all cases to which the judicial power applies, except cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State is a party, "the Supreme Court shall have '*appellate jurisdiction*, both as to law and fact, 'with such exceptions and under such regulations 'as Congress shall make."

Thus, therefore, it is in the power of Congress to authorize, in all such cases, an *appeal* to the Supreme Court, *even as to the fact*, from the *verdict of a jury*, and empower the Supreme Court to control the jury if they appear to have erred. And such was the intention of the framers of the Constitution.

They assumed as a principle, that the interests of the State governments and of the General Government would often be at variance; that laws passed by the United States, the most wise and salutary, might be very obnoxious to and unpopular in, some of the States; judges holding their commissions under the respective States, that is, the State judges, the framers of the Constitution would not, therefore, entrust with the execution of the laws of the United States. They also considered that, as far as juries were introduced, the jurors would be citizens of the respective States wherein the trials should be had, that they would, in consequence, probably partake of the interests, the prejudices, and the passions prevailing in the State, and therefore might decide contrary to the direction of the judges appointed by the United States, and thereby prevent the due execution of their laws. To obviate this, the Constitution has a provision for an appeal to the Supreme Court, even from the verdict of such a jury. Judge then whether the framers of the Constitution ever contemplated giving power to counsel to argue to jurors *against the opinions of their judges, or juries to decide against such opinions.*

I have now only to return to this honorable Court my sincere thanks for the patient attention with which they have indulged me on this occasion, and to express to you, Mr. President, the high sense I have of the impartiality, politeness, and dignity with which you have presided during this trial.

Mr. Harper.—It was greatly to be desired, Mr. President, and might have been confidently expected, that in a case every way so important, where it so greatly concerns the public happiness that the decision should command the public confidence, nothing would be presented to the view of this honorable Court in aid of the prosecution, except the law which ought to govern the decision, and the proofs relied on for supporting the allegations.

But it has not so seemed good to the honorable Managers. They have thought proper to introduce into the discussion, the political opinions and party connexions of the respondent, for the purpose of throwing a shade of doubt over his motives and of establishing inferences unfavorable to his character. How far this conduct ought to be commended, it is not for me to decide. My confidence in the justice and discernment of this honorable Court forbids me to apprehend that it can be successful.

But since these opinions and connexions have been introduced, permit me to use them for a different purpose.

The duty imposed on judges is at all times delicate, and in criminal cases, where life or liberty may be affected, where reputation, dearer than both, depends on the issue, this duty becomes peculiarly arduous and painful to an honorable and generous mind. But if there be a situation more delicate, more embarrassing than every other to such a mind, it is that of a judge sitting on the trial of a person who, from political opposition, or any other cause, may have excited hostile or angry feelings in his mind. It is then that he most fears to trust himself. It is then that he most dreads the influence of his passions in misleading his judgment. It is then that he feels the strongest alarm for his reputation, lest he should possibly afford ground for the suspicion that he had gratified his resentments under the semblance

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of executing the law. Hence he constantly leans towards the side of the accused, and requires the clearest conviction before he condemns. Hence he rejects all doubtful or contradictory testimony, lays out of the case all little indiscretions and slight shades of suspicion; and is rigid in requiring from the prosecutors the unequivocal proof of unequivocal offences. That his enemy is in his power, is always a reason for the utmost forbearance. The fear that he may possibly be misled by his passions, is always a reason for acquittal, where doubt can exist.

Need I invoke these noble and generous sentiments in the breasts of this honorable Court? No! my heart tells me I need not. I see on those benches distinguished soldiers and eminent statesmen, who have triumphed alike in the fields of politics and war, and who always disdained to tarnish their laurels by the blood or humiliation of a vanquished foe.

If then, the person now arraigned at your bar, be connected with a political party in opposition to any of those who sit as his judges; if it were possible that, in promoting the views of that party, he may have excited feelings of anger or resentment in the mind of any member of this honorable tribunal; if it were possible that any portion of the angry passions engendered by the conflicts of party could find a place within these hallowed walls, and could attach itself to him who stands upon his trial at this bar, the existence of such a possibility would furnish every member of this honorable Court with the strongest motives that can operate on a generous and noble mind, for leaning constantly to the side of the accused, and for pronouncing in favor of an acquittal, wherever there remains a doubt of guilt.

Attempts have also been made to enlist the sympathy of this honorable Court on the side of the prosecution, and for this purpose, a criminal twice convicted, who did not hesitate to risk civil bloodshed in support of political theories, and is now indebted for his life to the clemency of that Government against whose laws he armed his ignorant and misguided neighbors, is presented to view, decked out in all the ornaments which rhetoric can bestow. We, Mr. President, disclaim the aids, and protest against the interference of rhetoric and sympathy. However proper in other situations, they ought to be excluded from courts of justice, whose decisions should be governed by truth and not by feeling.

But if sympathy could find a place in this tribunal, what object more fit to awake it than that now presented at your bar? An aged patriot and statesman, bearing on his head the frost of seventy winters, and broken by the infirmities brought upon him by the labors and exertions of half a century, is arraigned as an offender, and compelled to employ, in defending himself against a criminal prosecution, the few and short intervals of ease allowed to him by sickness. Placed at the bar of a court, after having sat with honor for sixteen years on the bench, he is doomed to hear the most opprobrious epithets applied to his name by those whose predecessors were accustomed to look up to him with admiration and respect, and whose fathers would have been proud to have been numbered among his pupils. His footsteps are hunted from place to place, to find indiscretions which may be exaggerated into crimes. The jests which, flowing from the gayety and openness of his temper, were uttered in the confidence of private conversation; the expressions of warmth produced by the natural impetuosity of his character, are detailed by companions converted into spies and informers, and are adduced as proofs of criminal intention.

This cup, so full of bitterness for one who has been accustomed for forty years to fill the most honorable stations in his country, he drinks to the dregs without complaining. In this sad reverse, he supports himself with a calmness, a fortitude, and a resigned dignity which melt the hearts of those who are not his enemies, and extort the respect of those who are.

If sympathy must be excited, here let it find a nobler object. If from generous breasts it cannot be excluded, let it be turned towards

"A brave man struggling with the storms of Fate,"

and greatly supporting himself under a pressure of evils the most afflicting that an elevated mind can know.

Not content with endeavoring to blow up a flame of party spirit against the respondent, and to engage sympathy in the ungracious, and to her unnatural, task of aiding a criminal prosecution, the honorable Managers have resorted to a principle as novel in our laws and jurisprudence as it is subversive of the Constitutional independence of the judicial department, and dangerous to the personal rights and safety of every man holding an office under this Government. They have contended "that an impeachment is not a criminal prosecution, but an inquiry in the nature of 'an inquest of office, to ascertain whether a person holding an office be properly qualified for his 'situation; or, whether it may not be expedient 'to remove him." But if this principle be correct—if an impeachment be not indeed a criminal prosecution, but a mere inquest of office—if a conviction and removal on impeachment be indeed not a punishment, but the mere withdrawal of a favor of office granted—I ask why this formality of proceeding, this solemn apparatus of justice, this laborious investigation of facts? If the conviction of a judge on impeachment is not to depend on his guilt or innocence of some crime alleged against him, but on some reason of State policy or expediency, which may be thought by the House of Representatives, and two-thirds of the Senate, to require his removal, I ask why the solemn mockery of articles alleging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to the members, of the public examination of witnesses, and of a trial conducted in all the usual forms? Why not settle this question of expediency, as all other questions of expediency are settled, by a reference to general political considerations, and in the usual mode of political discussion? No! Mr. President! This

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principle of the honorable Managers, so novel and so alarming; this desperate expedient, resorted to as the last and only prop of a case, which the honorable gentlemen feel to be unsupported by law or evidence; this forlorn hope of the prosecution, pressed into its service, after it was found that no offence against any law of the land could be proved, will not, cannot avail. Everything by which we are surrounded informs us that we are in a court of law. Everything that we have been three weeks employed in doing reminds us that we are engaged not in a mere inquiry into the fitness of an officer for the place which he holds, but in the trial of a criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable Court, in this case, on questions of evidence—decisions by which this court has solemnly declared, that it holds itself bound by those principles of law which govern our tribunals in ordinary cases. These decisions we accepted as a pledge, and now rely on as an assurance that this cause will be determined on no newly discovered notions of political expediency, or State policy, but on the well settled and well known principles of law and the Constitution.

The honorable Managers, indeed, are as much at war with themselves on this point, as with the Constitution and the laws. For when they have told us in one breath, that this is merely a question of policy and expediency, they resort in the next to legal authorities, both English and American, for the purpose of explaining the doctrine of impeachment, and of proving that the acts alleged against the respondent amount to impeachable offences; thus paying an involuntary homage to truth, and furnishing an instance of the irresistible power with which she forces herself on the mind, even when most obstinately determined to resist her. Let us also, Mr. President, be permitted to adduce the authority of an elementary writer, of very high authority, on the laws of England, in support of the principle for which we contend. Woodeson, in his Lectures, vol. 2, p. 611, treating on the law of impeachment, speaks thus: "As to the trial itself, it must of course 'vary in external ceremony, but differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the 'same legal notions of crimes and punishments, 'prevail. For impeachments are not formed to 'alter the law, but to carry it into more effectual 'execution, where it might be obstructed by the influence of two powerful delinquents, or not easily 'discerned in the ordinary course of jurisdiction, 'by reason of the peculiar quality of alleged 'crimes. The judgment therefore is to be such 'as is warranted by legal principles or precedents. 'In capital cases the mere stated sentence is to be 'specifically pronounced." Thus far this learned professor and commentator of the laws of England; and he cites as authorities for this doctrine Selden and the State Trials; the latter of which, this honorable Court need not be informed, is a collection of adjudged cases in the highest courts of England; and the former, a writer of great learning and very high authority, peculiarly tenacious of every principle tending to the security of public liberty, and not likely to mistake on a point so essential as the law of impeachment.

Thus we find that even in England, where the power of impeachment is subject to no express constitutional restrictions, and where abuses of that power, for the purpose of party persecution and State policy, have sometimes been committed, and more frequently attempted, an impeachment has never been considered as a mere inquest of office, but always as a criminal prosecution, differing not in essentials from those which are carried on before the ordinary tribunals of justice, and subject to the same rules of evidence, and the same legal maxims concerning crimes and punishments, as a proceeding contrived not to alter the law, but to carry it into more effectual execution. These authorities, sanctioned by the practice of one hundred and fifty years, prove the principle for which we contend. Instances may, no doubt, be found in the history of that country where these salutary principles have been disregarded, and impeachments have been converted into engines of oppression. But this abuse does not destroy or impair the principle. *That* remains as eternal as the laws of reason and justice on which it is founded; while the abuse passes into oblivion, with the temporary interests and fleeting projects which it was made to subserve; or remains in our recollection as a sad monument of the excesses into which frail man is hurried by his passions.

And has not this great principle of English jurisprudence, which in that country has weathered so many storms of faction, revolution, and civil war, received the sanction also of this honorable Court? Has not testimony been rejected, because it was judged illegal, according to the ordinary rules of evidence? And how could those rules apply to this case, unless it were considered as a criminal prosecution?

The Constitution of the United States will as little bear out the Managers in their position as the laws of England. That Constitution gives the power of impeachment to the House of Representatives, and to the Senate the power of trying impeachments. Had the authors of that instrument, and those who adopted it, intended to leave this power at large, or to erect it into a general inquest, for inquiring into the qualifications of judges, and the expediency of removing them, nothing more would have been done than merely to give the power. But it will be found that various restrictions are imposed in the subsequent parts of the instrument, which prove that no person can be impeached except for an offence.

Thus, for instance, in speaking of the power of pardoning, the Constitution provides (Art. 2, Sec. 2) that "the President may grant reprieves and pardons for *offences* against the United States, except in cases of impeachment." Is not this the same thing as saying, that cases of impeachment are cases of offences? What, Mr. President, are offences, in the language of the Constitution and

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the laws? For a definition of the term "offence," in a Constitutional sense, we must consult our law books, and not the caprice or the varying opinions of popular leaders or popular assemblies. Those books tell us, that the word "offence" means some violation of law. Whence it evidently follows, that no officer of Government can be impeached, unless he have committed some violation of the law, either statute or common. It is not necessary for me to contend, that this offence must be an indictable offence. I might safely admit the contrary, though I do not admit it; and there are reasons which appear to be unanswerable in favor of the opinion, that no offence is impeachable, unless it be also the proper subject of an indictment. But it is not necessary to go so far; and I can suppose cases where a judge ought to be impeached, for acts which I am not prepared to declare indictable. Suppose, for instance, that a judge should constantly omit to hold court; or should habitually attend so short a time each day as to render it impossible to despatch the business. It might be doubted whether an indictment would lie for those acts of omission, although I am inclined to think that it would. But I have no hesitation in saying, that a judge in such a case ought to be impeached. And this comes within the principle for which I contend; for these acts of culpable omission are a plain and direct violation of the law, which commands him to hold courts a reasonable time for the despatch of business; and of his oath, which binds him to discharge faithfully and diligently the duties of his office.

The honorable gentleman, who opened the case on the part of the prosecution, cited the case of habitual drunkenness and profane swearing on the part of a judge, as an instance of an offence not indictable, and yet punishable by impeachment. But I deny his position. Habitual drunkenness in a judge, and profane swearing in any person, are indictable offences. And if they were not, still they are violations of the law. I do not mean to say that there is a statute against drunkenness and profane swearing. But they are offences against good morals, and as such are forbidden by the common law. They are offences in the sight of God and man, definitive in their nature, capable of precise proof and of a clear defence.

The honorable Managers have cited a case decided in this court, as an authority to prove that a man may be convicted on impeachment, without having committed an offence. I mean the case of Judge Pickering. But that case does not support the position. The defendant there was charged with habitual drunkenness, and gross misbehaviour in court, arising from this drunkenness. The defence set up was that the defendant was insane; and that the instances adduced of intoxication and improper behaviour proceeded from his insanity. On this point there was a contrariety of evidence. It is not for me to inquire on which side the truth lay. But the court, by finding the defendant guilty, gave their sanction to the charge, that his insanity proceeded from habitual drunkenness. This case *therefore* proves nothing further, than that habitual drunkenness is an impeachable offence.

As little aid can the honorable gentlemen derive from the case of Judge Addison, on which also they have relied. The articles of impeachment will show, that Judge Addison was not impeached, as the honorable gentlemen suppose, for rude and ungentleman-like behaviour in court to one of his colleagues; but for a supposed usurpation of power, in preventing his colleague, by an exertion of authority, from exercising the right which he was supposed to possess, to charge a grand jury; and in exerting his official influence and power, to prevent the jury from paying attention to the legal opinions expressed by his colleague, in a civil case. The report of that trial, now in my hand, will attest the correctness of this statement; and will show also that Judge Addison was so far from being charged with rude and ungentleman-like behaviour to his colleague, that the honorable gentleman himself towards whom that behaviour is supposed to have been used, and who gave evidence on the trial, bore testimony to the mildness and politeness of Judge Addison's manner, on the occasions which furnished the grounds of impeachment. Whether the acts done by that learned and distinguished judge did amount to an usurpation of unconstitutional power; or whether his colleague did possess those rights, in the exercise of which he was supposed to have been improperly restricted; are questions foreign from the present inquiry. But I am free to declare, that if Judge Addison's colleague did possess those rights, and if he did arbitrarily prevent and impede the exercise of them, by an unconstitutional exertion of the powers of his office, he was guilty of an offence for which he might properly be impeached; because he must in that case have acted in *express violation* of the Constitution and laws.

The great principle for which we contend, and which is so strongly supported by the clause of the Constitution already cited, that an impeachment is a criminal prosecution, and cannot be maintained without the proof of some offence against the laws, pervades all the other provisions of the Constitution, on the subject of impeachment. The fourth section of the second article declares, "that the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and *conviction* of treason, bribery, or other high crimes and misdemeanors." This provision, I know, has been considered by some as a mere direction of what shall be done, in those specified cases; and not as a prohibition, confining impeachment to those cases. But it must be recollected, Mr. President, that the Constitution is a limited grant of power; and that it is of the essence of such a grant to be construed strictly, and to leave in the grantors all the powers, not expressly, or by necessary implication granted away. In this manner has the Constitution always been construed and understood: and although an amendment was made, for the purpose of expressly declaring and

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asserting this principle, yet that amendment was always understood by those who adopted it, and was represented by the eminent character who brought it forward, as a mere declaration of a principle inherent in the Constitution, which it was proper to make, for the purpose of removing doubts and quieting apprehensions. When, therefore, the Constitution declares for what acts an officer shall be impeached, it gives power to impeach him for those acts, and all power to impeach him for any other cause is withheld. The enumeration in the affirmative grant implies clearly a negative restriction, as to all cases not enumerated. This provision of the Constitution, therefore, must be considered, upon every sound principle of construction, as a declaration that no impeachment shall lie except for a crime or misdemeanor; in other words, for a criminal violation of some law.

The same idea is found in the second section of the third article, third clause; where it is declared that "the trial of all *crimes*, except in cases of impeachment, shall be by jury:" plainly implying that cases of impeachment, are cases of "trials for crimes."

It is material also, Mr. President, to advert to the peculiar force of the term "conviction," which is employed in several parts of the Constitution, in application to cases of impeachment. The third section of the first article, sixth clause, speaking of the trial of impeachments, says, "and no person shall be *convicted* without the concurrence of two thirds of the members present." The seventh clause of the same section, treating on the extent and operation of a judgment in impeachment, says, "but the party *convicted* shall nevertheless be liable and subject," &c. And the fourth section of the second article declares, that certain officers "shall be removed from office on impeachment for, and *conviction* of, treason, bribery," &c. This term "conviction" has in our law a fixed and appropriate meaning. There is indeed no word in our legal vocabulary, of more technical force. It always imports the decision of a competent tribunal, pronouncing a person guilty of some specific offence, for which he has been legally brought to trial. In an instrument so remarkable as the Constitution of the United States, for technical accuracy in the use of terms, the frequent and indeed constant use of this word is decisive to prove, that in the intention of the framers of that instrument, no man could be impeached, except for some offence against law, of which he might in legal language be said to be 'convicted."

In fixing the construction of this instrument, no safer guide can be followed than contemporaeous expositions, furnished by those who made or ratified it; and among those expositions, the most authoritative are to be found in the constitutions of the several States, formed about the same time, and drawn up in many instances by the same persons. Whenever it appears clearly from the context of these constitutions, that they affix a certain meaning to particular terms, we may safely infer that those or similar terms, in the Constitution of the United States, were intended to have the same meaning. And we shall find, by inspecting the constitutions of the several States, that impeachment has been considered by all of them as a criminal prosecution, for the punishment of defined offences against the laws.

Let us begin with that of Pennsylvania. In treating of impeachments, article the fourth, it speaks of conviction on impeachment; and declares that all civil officers shall be liable to impeachment for any misdemeanor in office. The term "misdemeanor" is of as accurate meaning, and of as much technical force, as any term in the law. It describes a class of offences against law, as well defined as any in the criminal code. A still stronger argument is furnished by the second section of the fifth article, which provides that, for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of the judges, on the address of two-thirds of each branch of the Legislature. It is most manifest that this provision would have been wholly unnecessary had the people of Pennsylvania, in framing their constitution, considered impeachments, like the honorable Managers, merely as inquests of office, by which a judge might be removed for any cause, which two-thirds of each branch might think reasonable. And the arguments derived from the constitution of Pennsylvania have more force, inasmuch as the terms "misdemeanor in office," used by it for describing impeachable acts, are much less strong, than "treason, bribery, and other high crimes and misdemeanors," employed by the Constitution of the United States for the same purpose.

The constitution of Delaware, section 22, directs that impeachments shall lie against all persons "offending against the State, either by mal-'administration, corruption, or other means by 'which the safety of the State may be endanger-'ed." This is a very broad description of impeachable offences against the laws, liable to punishment in the regular course of justice. It is declared that all impeachments shall be commenced "within eighteen months after the offence committed," and shall be prosecuted by the Attorney General, or such other persons as the House of Assembly shall appoint, according to the laws of the land." Persons found guilty on impeachment are to be disqualified, or removed, "or subjected to such pains and penalties as the laws shall direct." And the term "conviction," whose peculiar technical force has been already remarked, is applied by this constitution to cases of impeachment.

The people of Maryland did not think fit to invest the Legislature with the power of impeachment; but have directed by their Bill of Rights, section 30, and by their constitution, section 40, that misbehaviour in office shall be proceeded against by indictment, in a court of law only; and that removal, and, in some cases, disqualification, shall be the consequence of conviction. It will not be denied, that "misdemeanor" and "misbehaviour in office" are convertible terms. If there be any difference, the latter is the less strong; and

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yet the people of Maryland have declared that the term "misbehaviour in office" means an indictable offence, of which a person may be convicted in a court of law.

The constitution of Virginia provides, that persons offending against the State by mal-administration, corruption, or other means by which the safety of the State may be endangered, "shall be impeachable by the House of Delegates," in the General Court, according to the laws of the land: "and that if all or any of the judges of the General Court, should, on grounds (to be judged by the 'House of Delegates) be accused of any of the 'crimes or offences above-mentioned, such House 'of Delegates may, in like manner, impeach the 'judge or judges so accused, to be tried in the 'court of appeals." Hence it appears most clearly that these general words "offending against the 'State by mal-administration, corruption, or other 'means by which the safety of the State may be 'endangered," words far more general and indefinite in themselves than those employed by the Federal Constitution, were considered by the people of Virginia as meaning specific crimes or offences, which might be proceeded against in a court of law, according to the usual course of criminal justice. The words "any other means by which the safety of the State may be endangered," are certainly broad enough to embrace those reasons of political expediency and State policy for which the honorable Managers contend that a judge may be removed by impeachment; but we find that the people of Virginia had no idea of giving them a construction so contrary to the notions entertained in this country respecting legal rights, personal safety, and Constitutional liberty.

The provisions made on this subject by the constitution of North Carolina breathe the same spirit. That instrument declares, section 23, "that 'the Governor and other officers offending against 'the State, by violating any part of this constitu-'tion, mal-administration, or corruption, may be 'prosecuted on the impeachment of the General 'Assembly, or presentment of the grand jury, of 'any court of supreme jurisdiction in this State." This plainly implies that impeachable acts, though described in terms the most indefinite, were neither more nor less than offences indictable in the ordinary course of law.

In the constitution of South Carolina, article 5, we find the same idea necessarily implied. The words "misdemeanor in office" are used as the description of impeachable offences; the term "conviction" is applied to impeachments; and it is provided that persons so convicted, "shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law." It is plain, therefore, that the words "misdemeanor in office," were understood and intended by the people of South Carolina to mean offences against the laws, for which the offender might be indicted and "convicted."

The constitution of Georgia contains no words, which can operate in any manner to define or describe impeachable offences. It merely directs who shall have the power of impeaching, who shall try impeachments, and what description of persons may be impeached. But, in that of Vermont, there is a provision on this subject, which, though very concise, is very strong to our present purpose. Among the powers given by it, section 9, to the House of Representatives, is that to "impeach State criminals." This term "criminals," which in our laws is never applied except to persons charged with offences of the highest nature, sufficiently declares that the people of Vermont considered impeachments as applicable to cases of crimes only, and not to removals for reasons of State expediency: not even to cases of smaller offences, much less of indiscretion or impropriety of behaviour, such as is alleged against the respondent in this case. For, surely, it would be an abuse of language to apply the term "criminal" to improper interruptions of counsel; to rude, hasty, or intemperate expressions; to ridicule employed by a judge against counsel, who, in his opinion, conducted themselves incorrectly; or to the precipitate and ill-timed expression of a correct legal opinion. No, sir. This word imports the intentional violation of some known law; the perpetration of some specific defined crime, which may admit of precise proof, which every citizen may be able to avoid, against which, when accused of it, he may know how to make his defence.

Such, Mr. President, is the solemn exposition of impeachable offences, given by the people of the United States, through the medium of their constitutions. Though not accustomed to talk about the will of the people, there is no man that bows with more reverence to that will, when constitutionally declared. And shall we, Mr. President, let go this sheet-anchor of personal rights and political privileges, to commit ourselves to the storms of party rage, personal animosity, and popular caprice? Shall we throw down this great landmark, fixed by the wisdom and patriotism of our fellow-citizens and fathers? Instead of having our best and dearest rights secured, by fixed and known principles of law, shall we leave them to be governed and disposed by the ever-varying whims and passions of the moment? No, sir, I trust not. When I look at these benches and recollect how deep a stake the members of this honorable Court have in those rights which form the palladium of our safety, and are now entrusted to their care and keeping, I cannot but confidently expect that they will feel the whole importance of the great trust reposed in them by their country; that they will regard themselves as acting for future generations, as well as for the present age; and will elevate themselves above the sphere of little views and momentary feelings. They will recollect, sir, that unjust principles, adopted to answer particular purposes, are two-edged swords, which often rebound on the head of him who strikes with them; and that justice, though it may be an inconvenient restraint on our power, while we are strong, is the only rampart behind which we can find protection when we become weak. They will remember

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that power which depends on popular favor, is of all sublunary things the most fleeting and transient; that it must, from time to time, change hands; and that when the change which, sooner or later, must arrive, shall have taken place; when those who now direct the thunder of impeachment, shall be placed, as ere long they must, in a situation to be smitten by its bolts, they will be glad to invoke, and unless they now set a great example of correct decision, will invoke in vain those Constitutional privileges to which we now cry for safety.

Need I, Mr. President, urge the necessity of adhering to those principles, as it respects the independence of the judiciary department? Need I enlarge on the essential importance of that independence to the security of personal rights, and to the well-being, nay, to the existence of a free Government? These considerations of themselves strike the mind with a force not to be increased by any efforts of mine. It is sufficient merely to bring them into the view of this honorable Court.

But it is not to the party accused, to the nation, to posterity, and to the interests of free Governments that the observance of settled Constitutional principles in cases of impeachment, is alone important. It is equally so to the character and feelings of those appointed to judge. Is there any member of this honorable Court, who would wish, nay, who would consent, in deciding this cause, to be set free from the restraints of the law, or, more properly speaking, to be deprived of its guidance, and left to the influence of his own passions, feelings, or prepossessions? Were causes like this to be determined on expediency, and not on fixed principles of law, to what suspicions might not the judges be liable, of having sought the indulgence of some animosity, or the attainment of some selfish end, instead of consulting for the public good? But when they are known to be governed by the settled rules of law, and are considered as merely its organs, their motives will be more respected, and their conduct less liable to suspicion or reproach? Is any member of this honorable body prepared to relinquish the high and venerable station of the organ and expounder of the law, in order to assume the doubtful and dangerous character of a judge, subject to no rule but his own arbitrary will?

To a judge, too, it is the sweetest consolation in the discharge of his painful duties, that when he has doomed a fellow-citizen to dishonor and misery, he has merely pronounced the decision of the law, and not the dictates of his own will; that he is not the author of the sentence by which so much calamity is brought on others, but merely its official organ. This reflection soothes his mind under the anguish which it must feel from another's wo. And is there any member of this honorable Court who would consent to relinquish this consolation? I boldly say, no. I feel that every heart will respond to the assertion. And if any who hear me be capable of entertaining a contrary opinion, or would wish, in the same situation, to hold a different conduct, I envy not their feelings, however highly I may estimate their intellectual powers.

In every light, therefore, in which this great principle can be viewed, whether as a well-established doctrine of the Constitution; as the bulwark of personal safety and judicial independence; as a shield for the characters of those whose lot it may be to sit under the trial of impeachments; or as a solace to them under the necessity of pronouncing a fellow-citizen guilty; it will equally claim, and I cannot doubt that it will receive the sanction of this honorable Court, by whose decision it will, I trust, be established so as never hereafter to be brought into question, that an impeachment is not a mere inquiry, in the nature of an inquest of office, whether an officer be qualified for his place, or whether some reason of policy or expediency may not demand his removal, but a criminal prosecution, for the support of which the proof of some wilful violation of a known law of the land is known to be indispensably required.

Before I proceed, Mr. President, to apply this principle to the case now under consideration, permit me to notice briefly another proposition advanced by the honorable Managers, which I perfectly concur in, and shall take the liberty of using against them. They have laid it down, that the testimony of witnesses equally credible in themselves, is entitled to different degrees of credit, according to the means whch they respectively enjoyed of correctly discerning the truth, in the matter about which they testify. To this proposition I fully assent. Let the principle be applied to the case now under consideration. Look at the witnesses on each side. With some few exceptions perhaps, about which I do not feel it necessary to make any particular remarks, they are equally credible in themselves, equally disposed to state correctly the facts. But who are the witnesses on the part of the prosecution? It must be answered, that almost all of them are persons who have supposed themselves to be ill-treated by the respondent; whose resentment the lapse of four years has not been able to assuage; and who come here under the manifest influence of those angry feelings, to complain of their imaginary wrongs. It is plain that such persons, however correct in their intentions, however desirous of speaking the truth, are liable to be misled by the irritation which these events excited in their minds, and to state as facts the recollection of their erroneous impressions. It is perfectly manifest that those gentlemen were very much irritated by the transactions of which they complain, and in which they were or supposed themselves to be parties. It is equally clear their anger has not yet cooled. And I will ask whether men in such circumstances, giving them the utmost credit for correct intentions, are equally entitled to belief with persons who, like the witnesses on the part of the respondent, were calm, and disinterested spectators of the events which they relate? Equally respectable with the witnesses for the prosecution; much more cool; free from that irritation which the parties in contention can hardly

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ever avoid; and testifying their impartiality by expressing without reserve their disapprobation of some things in the respondent's conduct; it must be admitted that in every collision of testimony, they possess the highest title to belief.

Having taken this view of these preliminary points, I now proceed, Mr. President, to consider the various charges against our honorable client, in the order in which they have been stated by the prosecutors. It is not my design to go over the same ground, which has been so recently trodden by my able colleagues. The task assigned to me, is to range rapidly over the first six articles; to present some views of the subject, which the multiplicity of the matter induced my learned colleagues to omit; and then to discuss at large the law and the facts, under the seventh and eighth articles, which have not yet been touched.

On the case of John Fries, the subject of the first charge, permit me, Mr. President, to avail myself of a distinction, laid down by the honorable gentleman who opened the case on the part of the prosecution (Mr. Randolph.) That honorable gentleman, in his opening address, made a distinction between a general maxim or principle of law, such as the definition of a crime, and a particular opinion on the law, as applicable to a particular case. The former he admits to be proper in a judge at any stage of a trial. The latter he denies to be so. He has chosen the definition of one offence to illustrate his position; I will take that of another. Suppose a man to be indicted, and put on his trial, for burglary. The crime of burglary consists in "breaking and entering a dwelling-house, in the night time, with intent to commit felony." This is the established definition of this offence. According to the distinction of the honorable gentleman, the judge might at the commencement of the trial, or at any stage of it, declare this general principle respecting the nature of the offence, even before counsel were heard. Nay, more, he would be justified in preventing counsel from attempting, before the jury, to controvert this principle. This latter point is not expressly admitted by the honorable gentleman; but it flows from his admission, as a necessary consequence. So far the judge might safely go. But should he advance a step further, and declare, before counsel had been heard, that the acts done by the person on trial did amount to burglary, then he would be culpable, and even criminal; and this, the honorable gentleman contends, was done by the respondent in the case of Fries.

I consent to be judged by the rule which the honorable gentleman has himself established; and I undertake to show that nothing more was done by the respondent in the case of Fries than the honorable gentleman admits may be properly done by a judge; that he merely stated the general definition of the crime of treason by levying war against the United States, but expressed no opinion whether the prisoner was guilty or innocent, whether the acts which he had done amounted to treason. For the correctness of this position I appeal to the opinion itself, as in evidence before the court. It is contained in exhibit No. 2, filed with the answer. In this paper the court, after some preliminary observations to show that the questions relative to the Constitutional definition of treason were questions of law and not of fact, proceed to state as their opinion, "that 'any insurrection, or rising of any body of people within the United States, to effect by force 'or violence any object of a great public nature, 'or of public and general (or national) concern, 'is a levying of war against the United States, 'within the contemplation and construction of 'the Constitution of the United States." "That 'on this general position any such insurrection or 'rising to resist or prevent by violence the execution of any statute of the United States for 'levying or collecting taxes, duties, imposts, or 'excises, or for calling forth the militia to execute the laws of the Union, or for any other 'purpose; under any pretence, as that the statute was unequal, burdensome, oppressive, or unconstitutional, is a levying war against the United States, within the Constitution." "That 'military weapons, as guns and swords, mentioned in the indictment, are not necessary to 'make such insurrection or rising amount to levying war, because numbers may supply the want 'of military weapons, or military array." "That 'the assembling bodies of men, armed and arrayed in a warlike manner, for purposes only of 'a private nature, is not treason, although the 'judges and peace officers should be insulted or 'resisted, or even great outrage committed on the 'persons and property of our citizens." "That 'the true criterion to determine whether *acts committed* are a treason, or a less offence (as a riot) 'is the *quo animo* the people did assemble. That, 'if a body of people conspire and meditate an 'insurrection to resist or oppose the execution of 'any statute of the United States by force, they 'are only guilty of a high misdemeanor; but if 'they proceed to carry such intention into execution by force, they are guilty of the treason of 'levying war, and the quantum of the force employed neither lessens nor increases the crime." "That a combination or conspiracy to levy war 'against the United States is not treason, unless 'combined with an attempt to carry such combination or conspiracy into execution," and that "some actual force or violence must be used in 'pursuance of such design to levy war; but it is 'perfectly immaterial whether the force used is 'sufficient to effectuate the object."

This no doubt is a long definition. Perhaps it might have been expressed in much fewer words, but still is a general definition of the crime of treason by levying war, without application or reference to any particular case, much less to the case of John Fries. It amounts nearly to this, "that for any number of people, however small 'or inadequate, to rise, with intent to resist or 'prevent by force the execution of any general 'law of the United States, and to employ actual 'force for that purpose, amounts to levying war 'against the United States, although neither military weapons nor military array be used." This is the substance of the opinion. All the rest is

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merely illustration, and in this shape it is as much a general definition as that of burglary.

How wide a field of defence do these definitions leave open! In the case of an indictment for burglary, would any counsel peevishly or insolently retire from the prisoner's defence, because the court might, in the commencement of the trial, have stated this to be the legal definition of the crime? Would he insist on the absurd and mischievous privilege of controverting so plain and well-settled a principle of law? No. Far different would be his conduct. He would inquire whether any acts had been done, amounting in law to the breaking open of a house? Whether the prisoner was the perpetrator of those acts, or a party in them? Whether the house was broken open in the night time? Whether it was entered by the prisoner as well as broken? Whether it was a dwelling-house? And whether it was broken open and entered with intent to commit any crime amounting to felony? All these questions would be perfectly open, under the general definition which has been stated; and on the result of these inquiries would the guilt or innocence of the prisoner depend.

So in the case of Fries, it was perfectly competent to his learned counsel, under the general definition of treason given by the court, to contend that the acts proved did not amount to a rising of any number of people; that John Fries was not implicated in those acts; that they were not done with intent to resist or prevent, by force or violence, the execution of any general law of the United States; or that no force or violence was actually employed in pursuance of such intention. All these questions were perfectly open to them, notwithstanding the general definition of treason given by the court. Not one of these questions did the court in any manner decide. These questions involved the application of the general definition to the particular case; an application in which the true, proper, and only defence of the prisoner consisted, and which the court neither made, nor intended to make.

Surely these questions offered full scope to the learned gentlemen for the exertion of those argumentative powers, and the display of that legal learning, of which they have given, in the shape of testimony, so handsome a specimen at this bar. Even that eager fondness for legal disputation, which has carried them on this occasion so far beyond the limits prescribed by the law of evidence, might have been gratified in this ample field. There was room enough for the learned and ingenious distinction, which one of the gentlemen (Mr. Dallas) has told us that he intended to make between the case of Fries and that of the Western insurgents. It was his intention, he says, had he not been prevented by this unfortunate definition, to dwell on several circumstances which, in his apprehension, distinguished the former of these cases from the latter. He tells us that his mind turned itself towards these distinctions, and was occupied upon them from the moment when the court granted a new trial after the first conviction of Fries. His mind was led into this course of reflection by the stress which he had observed the court to lay, in the first trial of Fries, on the decisions in the cases of the Western insurgents. It would surely have been very unkind in the respondent to prevent the learned gentleman from exhibiting the results of these long and profound reflections. But happily the respondent did not prevent him. His disappointment must be attributed solely to himself. The circumstances on which he informs us that he intended to rely for distinguishing the case of Fries from those of the Western insurgents, were the martial array at Braddock's field; the march to Pittsburg, for the avowed purpose of attacking the garrison; and, I think, the attack on Nevil's house. The first of these circumstances applied to the nature of the assemblage, whether it amounted to a rising or insurrection; the second to the intent with which the rising was made, and the third to the degree and nature of the force or violence committed. They were all open to the learned gentleman under the opinion, which did not declare what sort of an assemblage would constitute an insurrection or rising; what circumstances would be sufficient evidence of the improper intent; or what kind or degree of force or violence must be employed; but merely stated that a rising or insurrection, proceeding from such an intent, and accompanied by actual force or violence, would amount to levying war. Whether the assemblage in Bucks and Northampton had the necessary ingredients to constitute a rising or insurrection; whether the acts done afforded sufficient evidence of an intent to resist or prevent by violence or force the execution of the act of Congress; whether the force or violence committed were sufficient in nature or degree; and whether, in all or any of these points of view, the case of Fries in Bucks and Northampton was weaker than that of the Western insurgents, or materially different from it, were questions not at all affected by the opinion, but left entirely open to the learned gentleman, who might, notwithstanding this opinion, have discussed them before the court and jury, at all the length into which the exuberance of his genius so much delights to shoot.

These learned gentlemen possessed, therefore, under the opinion communicated to them by the respondent, even if it had not been withdrawn, all the latitude which moderate counsel could have desired. All the questions of fact; all the questions of intention, which are questions of fact; the whole business of deciding, whether the case proved came within the general principle of law; of applying the general rule to the particular case; remained within the province of the jury, and furnished the only proper means of defence. Even if the facts had been admitted, as the honorable Managers contend, still the intent remained to be ascertained, and was a question of fact solely cognizable by the jury. But it is utterly incorrect to say that the facts were admitted. It was indeed admitted, or rather it was not doubted, that certain acts had been done by John Fries and others; but whether those acts were of

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such a nature, and proceeded from such an intention, as to bring the case within the general rule of law laid down by the court, was a point unsettled, which formed the proper and sole ground of inquiry. And this point was not affected by the opinion communicated by the respondent to the prisoner's counsel.

And here, Mr. President, let me be permitted to notice what I deem a most dangerous error, respecting the Constitutional power of juries in criminal cases. It is constantly asserted that the jury are to decide the law and the fact in criminal cases; and this is correct, when properly explained; but taken in its literal and unqualified sense, it is contrary to every principle of law, and every dictate of common sense. It is the province of the court to expound and declare the law generally, in all cases, criminal as well as civil. To apply the law to each particular case; to decide whether the facts proved in any case bring it within the general rule of law, is the province of the jury, and their only province. They have no dispensing power over the laws of the land. Will any man in the least acquainted with our system of jurisprudence declare that a jury has a right to decide, that breaking open a dwelling-house in the night time with intent to steal is not burglary, unless an actual theft be committed? I presume that no one will hazard such an opinion. The jury, in such a case, may decide that the house was not broken open, that is, was not a dwelling-house, that the fact was not committed by the person accused, that it was not committed in the night time, or that it was not committed with an intent to commit a felony. But if they believe the affirmative on all these points, they must find the prisoner guilty, or commit a direct violation of their oaths. They are bound by the general principle of law as declared by the court. Their duty, and their sole duty, consists in applying it to the particular case. In this sense, and in this alone, are they judges of the law as well as of the fact.

It is well known that a new trial may be granted in a criminal case, where the verdict is against the party accused, and is supposed by the court to be contrary to law. This proves that the jury are not the judges of the law, in the unqualified sense contended for by some persons; for if they were the judges of the law in that sense, it would necessarily follow that a new trial could no more be granted in favor of the prisoner in a criminal case than against him. The rule that it cannot be granted against him has been established by the courts in favor of life, through a laudable motive of tenderness and humanity, and not because they had not power to grant new trials in this case, as well as in others, where the verdict is contrary to law.

So in case of an offence created by statute, a jury may declare that the case proved on an indictment, under the statute, does not come within it, for want of the improper intent, or some other necessary ingredient. But it has never entered into the head of any man to suppose that the jury in such a case has a right to declare that the statute itself is not a law of the land—has been repealed, has expired, or does not create any offence. All these are questions of law, which come within the exclusive province of the court.

This consideration, by the way, furnishes the true answer to the famous Richmond syllogism, of which we have heard so much in this case, and proves the correctness of that decision, by which the counsel of Callender were prevented, most properly, from contesting before the jury the constitutionality of an act of Congress—a decision which the honorable Managers have had the good sense not to call in question. This decision, undeniably correct as it is, and as strange as the absurdities are to which a contrary principle would lead, can be defended on no other ground than that for which I contend.

And I will ask, how the case of treason can be distinguished, in this respect, from that of burglary? If a jury be bound by the general rule of law which defines the crime of burglary, and be confined solely to the inquiry, whether the case proved comes within that rule; upon what principle can it be contended that they are not equally bound by the general definition of treason?

Will it be contended that the latter definition is not as well settled as the former? This position I deny. How was the definition of burglary settled? It was not by any Legislative act remaining on record or known by tradition, but by judicial determinations declaratory of the law. In the same manner has the definition of treason by levying war been settled. Three solemn adjudications in the same court, and one of them in the same case, had declared it to be the law; and it was the law of the land as much as the law defining burglary or any other offence. If gentlemen deny that three solemn decisions on the same point, by a court of the highest jurisdiction, are sufficient to settle the law, will they inform us how many decisions are necessary for that purpose? Or are we never to have fixed principles, or settled definitions of crimes? Is the law of treason never to be established on a certain basis? Are the nature and definition of this high offence to be left forever floating on the uncertain and varying opinions of courts and juries? Is that which was not treason to-day to be treason to-morrow, according to the caprice, the interests, or the prejudices of those who may be appointed to determine, or to the power, influence, or intrigues of the accuser or accused? If succeeding courts and juries are not to be bound by precedents established by their predecessors, then will everything be treason when a man is tried by his foes, and nothing when he is tried by his friends. There will no longer be any security, in times of party contention, for life, liberty, or property; and we are destined to see acted over in this land, vainly boasting of its freedom and happiness, the scenes of judicial murder and pillage which disgraced our mother country during the struggles between the houses of York and Lancaster. Sooner than live under such a system, I would take refuge in Turkey, where, by bribing the Cadi, I might escape from judicial tyranny, and might be safe

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from the oppressions of the Government, provided I avoided the offence of growing rich. Not for one moment would I live in a country where I should be tantalized with the semblance of liberty, and in fact liable to the penalties of treason, whenever I might by any act of opposition, or any assertion of my rights or those of my fellow-citizens, become obnoxious to a party in power. This must be the consequence should the principles contended for by the Managers finally prevail. When the rules of law defining offences are fixed and certain, then is every man safe, because he may know the law, and may avoid offending against it. But if no respect is to be paid to former decisions; if counsel are to be allowed to controvert points, which have been solemnly and repeatedly adjudged; if our courts and juries, without regard to former decisions, are to declare that to be law in each particular case, which the passions, the prejudices, or the political views of the moment may dictate; then indeed have we grasped a shadow, while the substance has escaped from us; and the blood of our fathers has in vain bedewed their native soil. But no. So monstrous a principle cannot be endured, and will not receive the sanction of this honorable Court. Rules of law, once established, must be adhered to. Courts must regard them as sacred, and must not allow them to be called in question. In this case the opinion communicated had been solemnly settled, and was a part and a most important part of the law of the land. There was no superior tribunal to review it; and if there be one, the argument is still stronger: for then the acquiescence of the parties, who took no measures to have these decisions reversed, is added to the authority of the court which made them. The court, therefore, where the respondent presided, was bound to consider these decisions as the law of the land; to declare them as such, and to prevent them from being called into question, for the purpose of misleading the jury.

Another charge urged against our honorable client, under the first article of impeachment, is, that he prevented the prisoner's counsel, in the case of Fries, fron citing to the jury certain English adjudications on the law of treason, and some statutes of the United States. So far as this charge relates to the statutes, I shall leave it most cheerfully where it has been placed by my learned and ingenious colleague who commenced the defence. Nothing can be added to the striking and satisfactory view which he has given of that point. As to the English authorities, I will make one observation, which did not fall within the scope of his argument.

The respondent did say that English adjudications, at common law, on the doctrine of treason, ought not to be read to the jury; that English decisions before the Revolution of 1688, under the statute of treasons, were deserving of very little attention, and ought to be received with great caution; and that such decisions since that Revolution, though proper to be cited, were not to be considered as absolute authorities, but merely as strong arguments. Into the legal correctness of this opinion, it is not now my purpose to inquire. That point has been sufficiently discussed. But I beg this honorable Court to remark, that this opinion of which the learned counsel for Fries so loudly complain, was an opinion precisely in their favor, and gave them all the advantage on this subject that they expected to derive from citing these English cases. It was, they tell us, to convince the jury of the very thing which the court thus declared to them, namely, that these English decisions before the Revolution of 1688, were entitled to little or no attention; and that even those since the Revolution, being in some degree founded on the former, ought to be received with caution, and not to be considered in the light of absolute and binding authorities. These were the points which they wished to establish, by citing the English adjudications; and these were precisely the points which the court established. The decision was completely in their favor, and yet they complain of it as a grievous injury. They complain of it, though in their favor, because it was made without giving them an opportunity of speaking. Whence this causeless discontent, this most unreasonable complaint? Did it proceed from the disappointment of a childish and little vanity, which made them wish to exhibit their talents before the public? Surely we cannot suspect those learned gentlemen of so contemptible a motive. Why then, I repeat, do they complain of a decision made in their favor? They have been compelled by the force of truth, to explain the reason. The truth is, as it appears on their own testimony, that they complained, not because they thought themselves or their client injured, by this decision, but because it suited their purpose to represent themselves as injured, their client as oppressed, the case as prejudged, and the conduct of the court as arbitrary and precipitate; in order to excite odium and resentment against the court, and commiseration towards their client, and to induce the President, by erroneous impressions thus made on his mind, to extend his mercy to a person, who could not have been thought a fit object for compassion, had the truth been known. The whole of this pretended displeasure, all this affected outcry about the privileges of counsel, the rights of jurors, and prejudged opinions, was a mere finesse, an artful contrivance, to procure the pardon of a criminal twice convicted of treason, and to procure it by holding up a falsehood to the view of the President, and of the public; by calumniating the court, deceiving the Executive, weakening the confidence of the people in the administration of the laws, and sacrificing truth and justice to the attainment of a momentary purpose.

The learned gentlemen thought themselves justified in all this, by their duty to their client. It is not for me to condemn them. I am here to inquire into the propriety of their conduct. But I may be permitted to ask, whether such a contrivance ought to receive the countenance of this high court? And whether gentlemen who have thought it right thus to act, ought not to be list-

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ened to with caution, when they come here, after their finesse has completely succeeded, to complain of injuries, which in the same breath they tell us are entirely fictitious? I will ask whether this honorable Court ought not to discountenance such proceedings in future, by vindicating the conduct of the respondent in this particular? Counsel, Mr. President, have duties to themselves and to the public, as well as to their clients. They are at all times bound by the obligations of candor and of truth. They are at all times bound to respect the courts of justice and themselves. They owe to their clients every honorable exertion of their talents and industry, and the zealous use of every fair means of defence. In criminal cases, and especially when life is in jeopardy, we expect more zeal, and are willing to allow greater latitude. In favor of this zeal, we are disposed to excuse some departure from the strict line, which propriety would in other cases prescribe. But to be countenanced, upheld, and commended, for attempting to excite odium unjustly against a court; and to induce the President to believe, that the prisoner was deprived by the court of a fair trial, when they know the fact to be directly otherwise; is more than modest men would ask, or any man has a right to expect.

But let it be admitted for a moment, Mr. President, that on the first day of the trial of Fries, the respondent committed an error. I ask if it was not atoned for by his full and honorable retraction on the second? By the pains which he took to do away all the proceedings of the first day; to induce the prisoner's counsel to go on with the defence, and to secure to him, in the utmost latitude, every advantage for making that defence? One of the honorable Managers has told us that the respondent's conduct on the first day was an unpardonable sin; that repentance, if it came at all, came too late. But this, sir, is not the rule by which we hope one day to be judged. We live in the comforting hope, that repentance, if sincere, can never come too late. We hope, by a short or death-bed repentance, we may obtain pardon for a life of errors and sins. Our holy religion permits us to believe, that there is but one unpardonable sin, and that is hardness of heart, or refusal to repent. And shall we, frail and sinful mortals, mete to each other a measure, which an all just and all powerful God does not mete to us? Shall we refuse to each other the effects of that repentance, by which alone we can ourselves hope for happiness hereafter? If for one error, thus atoned for, the respondent must be punished, let the first stone be cast by him who has always retracted and corrected his errors, as soon as he was made sensible that they had been committed.

I do not, Mr. President, with my learned colleague who commenced the defence, disclaim the term "repentance" for my honorable client. Repentance is a term that suits creatures so frail and liable to error as men, even the best of men. We all have need of it, and I trust that we shall be ashamed of our errors, but not of our repentance. I have often had occasion to repent myself. I fear that I have not done it often enough. And however slight the error which the respondent may have committed, I am willing, in his behalf, to rely on the plea of repentance and amendment.

But this amendment, we are told by the honorable Managers, was a mere pretence, a cloak beneath which the respondent sought to hide the supposed deformity of his conduct, when he found that it began to attract attention. But I ask was it a pretence to entreat, to supplicate the prisoner's counsel to proceed with the defence, till the cup of humiliation was drained to the dregs? Was it a cloak to be anxiously solicitous, after the prisoner was abandoned by his counsel, to protect him from the dangers into which his ignorance of the law might betray him; to urge his acceptance of other counsel; to inform him carefully of his right of challenge; to assist him in cross-examining the witnesses; suggesting such questions as might be to his advantage, and guarding him against such as might draw forth unfavorable answers; to prevent the witnesses in the submitted cases from being examined before his trial, lest the jury might hear testimony unfavorable to him, which he could have no opportunity of cross examining? Was this the conduct of a designing hypocrite, seeking to gloss over his wicked purposes, by a fair outside of humanity and justice?—of an artful and ruthless oppressor, thirsting for the blood of an innocent victim? If this be oppression, God grant that I and mine may never be otherwise oppressed!

I come now, Mr. President, to the case of Callender. But before I enter into those views which remain to be taken of the charges arising out of that case, let me be indulged in some preliminary remarks, on that part of the evidence adduced in their support, which was supposed by the honorable Managers to furnish direct proof of corrupt intentions, on the part of the respondent.

This evidence was given by Mr. Mason, Mr. Triplet, and Mr. Heath. As to the first gentleman, his testimony relates to a private and jocular conversation, no part of which he recollects perfectly, and the most material part of which, the part that furnishes the true explanation of the whole affair, he has entirely forgotten. It cannot be doubted that this honorable gentleman was dragged with extreme reluctance to detail, at the bar of a court of justice, a private and of course a confidential conversation, the most material parts of which a lapse of five years has effaced from his memory. It must have been to him a most painful necessity, a most cruel violence, which obliged him to do an act that, if done voluntarily, would have amounted to a violation of that confidence which in the intercourse of society men of honor place in each other. Ought a species of examination to be countenanced, which must place honorable men in so painful a situation, and subject them to so cruel a necessity? Which must compel them, after having been considered as companions, and perhaps as friends, to assume the odious character of spies, and to fulfil the detestable functions of informers? Which must destroy all the confidence, and of course all the pleasure of social intercourse, that great sweetener of the ills of life; must spread the gloom of mistrust over

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all our moments of hilarity and relaxation; and must convert our parlors, our breakfast tables, and even our friendly suppers, where the bosom is wont to expand, and the heart is laid on the table, into scenes of watchful jealousy, of dark and cautious silence? Ought a practice to be tolerated, which thus strikes at the root of social harmony, private honor, and public morality?

How dangerous too is this species of testimony, to the interest of truth and the safety of innocence! In this very case, the honorable witness, with all his accuracy of recollection, and all his desire to represent the transaction in a light as favorable to the party accused as the truth would permit, has forgotten the most material part of the conversation; that part in which he himself was immediately concerned, which drew forth the rest, and which furnishes the true explanation of the respondent's meaning. The part which he has thus forgotten, has been happily supplied by another witness, Judge Winchester, who was also present at the conversation. But what might have been the situation of the respondent, had Judge Winchester's memory been equally frail, or had he died before this trial? That most satisfactory explanation which he has given, and which has removed every shadow of doubt from this part of the case, would then have been wanting: and the respondent might have been convicted, on a recollection which would in that case have appeared complete, though we know it to be utterly imperfect.

This explanation proves the whole conversation to have been a mere jest, and a jest provoked and drawn out by Mr. Mason himself. Without the explanation, it might have borne an improper, though not a criminal aspect. With the explanation, it amounts to nothing more than an expression of the respondent's intention, made in jest, by way of reply to a jest of Mr. Mason, to have the affair of "The Prospect Before Us" investigated, when he should arrive at Richmond, and to bring the author and publisher to punishment. Will it be said that in this there is anything criminal, or even improper? Is it not the duty of a judge, presiding in a court of criminal jurisdiction, to cause inquiry to be made into offences which he knows to have been committed, and to take steps for bringing the offenders to justice? Suppose that instead of a libel, a piracy had been committed; and that the respondent, being informed that the parties were lurking in the district of Virginia, had declared that he would have them brought to trial, if they could be caught; and punished if guilty? Would this have been improper? And does the difference between offences make any difference in the duties of a judge? Is he not equally bound to execute all the laws? If gentlemen say no, will they be pleased to draw for us the proper line of discrimination, between those laws which a judge must execute, and those which he ought to neglect? Or is this line to be drawn by his own caprice? Was not the sedition act a law of the land, and was not "The Prospect Before Us" a violation of that law? If there were any circumstances which rendered it proper to dispense with the penalties of this law, or to pardon the offences committed against it, there was a power in the Constitution to do so; but that power resided in the Executive department, and not in the Judicial; whose duty it was to execute all the laws, without respect to circumstances, persons, or cases.

As to the testimony of Mr. Triplet, I cannot conceive what proof it can furnish of criminal intentions. It amounts to this, and nothing more, that the respondent, in the course of some very loose and thoughtless conversation, from which it would have been much more prudent to abstain, applied some harsh epithets to "The Prospect Before Us," and its reputed author; and expressed an apprehension that he would escape punishment. But does it follow, that because a judge remarkable for hasty and strong expressions, has applied some harsh and angry epithets to a person believed to be an atrocious offender, he will not do him justice, when he comes on trial? It must also be remarked, that Mr. Triplet is manifestly in a mistake, respecting the last conversation which he has attempted to detail. He represents the respondent as saying, that the marshal had returned without Callender. But we know that the marshal did not return without Callender. This mistake on the part of Mr. Triplet, may induce us to doubt, whether with the most sincere desire to represent nothing but the truth, which I have no doubt that he felt, he may not have viewed the other circumstances also in too strong a light. We well know that facts of this nature derive their complexion, almost entirely, from small circumstances of time, manner, and connexion; and when we find so candid a witness mistaken in so material a circumstance, we may fairly conclude that he has omitted on one hand, or too much heightened on the other, some of those finer shades, on which the character of the piece always depends.

With respect to the facts related by John Heath, I have no difficulty in admitting that, if true, it fixes the stain of corruption on the character and conduct of the respondent, and ought to produce his conviction. Juries in every case, and especially in criminal cases, ought to be selected without respect to any circumstance but their impartiality and legal qualifications. Of all circumstances, that of political opinion and party connexion is the most improper to govern, and ought the most carefully to be avoided. For a judge to interfere with the marshal, and direct him to strike off from a jury list, in a criminal case, all those persons who were supposed to agree in political opinion with the party accused; or, in other words, to combine with the marshal in packing a jury, for the purpose of insuring the conviction of the party accused, would be an offence for which he ought to be punished. But this testimony of John Heath is deeply shaken by one witness, and flatly contradicted by another. I will not inquire into the character of John Heath; which I have no means of knowing or of making known; but I will say that it cannot stand on higher ground than that of David Mead Randolph, who has flatly contradicted Mr. Heath; or of

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William Marshall, who has gone as near to a positive contradiction, as it is possible to go without making one. There must be a mistake somewhere. But we cannot believe the fact stated by John Heath, without believing that David Mead Randolph has been guilty of a flat and wilful perjury, and that William Marshall has gone as near it as possible. These gentlemen are known to all Virginia. The evidences of their character are to be found in the breast of every man in that State. But as to Mr. Randolph, there is direct evidence in this case to support his veracity. Mr. Hay has declared at this bar, that he did not recollect having used certain expressions which were attributed to him, but had no doubt that he used them, after Mr. Randolph said so. Such was his reliance on Mr. Randolph's veracity and recollection! It is not possible to have stronger testimony in favor of a witness. If stronger could exist, it would be found in another circumstance which has appeared in evidence. When one juror whom he had summoned for the trial of Callender, told him that he had made up his mind to convict the traverser, and urged that circumstance as an excuse, the excuse was admitted by Mr. Randolph, and the juror was discharged. But when Colonel Harvey applied, through the Chief Justice, to be excused in a similar situation, and alleged as a reason that he was predetermined to acquit Callender, let the evidence against him be what it might, because he believed the sedition law under which he was indicted to be unconstitutional, Mr. Randolph would not excuse him. This fact appears by the testimony of the Chief Justice. Can it be for a moment believed, that a marshal acting in this manner would enter into a corrupt and profligate combination with a judge to pack a jury for the conviction of Callender; and would come to this bar and complete his turpitude by a flat and wilful perjury? His conduct in office; the universal respect which he enjoys in his county, among men of all parties and opinions; his manner of giving testimony at this bar; and the evidence which his political enemies have here borne in his favor, all preclude the idea.

This witness, so honorably supported by the principal witness on the part of the prosecution, so high in his character, so scrupulously delicate in his conduct, so ready to discharge a juror who had made up his mind to convict the traverser, while he refused to discharge one who was predetermined to acquit him, is said by John Heath to have presented the panel of jurors to the respondent, who told him that if he had any "of those creatures called democrats on it," they must be immediately struck off. He positively declares that no such conversation as that stated by Heath ever took place; that the respondent never saw the panel; and that it was not completed till after the meeting of the court, when the respondent was on the bench, and therefore could not have been shown to him.

In this positive contradiction of Heath, he is strongly supported by William Marshall; the irresistible effect of whose testimony, derived from the peculiar candor, solemnity, and precision with which it was delivered, as well as from his high character, all who have heard him, have felt and acknowledged.

Heath has declared that the incident which he relates took place at the lodgings of the judge; that he was there but once, which was in the morning a little before the time when the court usually met; that he remained about half an hour; and that no person was present except the judge, the marshal, and himself.

William Marshall declares, that in the morning he called on the judge, according to his custom, a little before the meeting of the court: that when he entered the room, Heath had left it, or was in the act of leaving it, and immediately went away; and that the judge did not say one word in his hearing which it was possible for Heath to hear. Thus far he speaks positively. He adds that he firmly believes, but cannot positively assert, that the marshal, David M. Randolph, went with him to the judge's lodgings, and left them with him; and that they both together attended the judge to the court-house. His reasons for this belief are, that he has a strong impression of the facts on his mind, though not a perfect recollection; that it was his daily custom to call on the judge in the morning, on his way to the court-house; that in going from his own house to the lodgings of the judge, he passed by or near to the office of the marshal, who usually accompanied him, in order to attend the judge to court; and that he perfectly recollects a conversation between himself and the marshal, on the way from the judge's lodgings to the court-house, in which he remarked to the marshal the circumstance of having seen Heath with the judge. This conversation with Mr. Randolph Mr. Marshall perfectly recollects, and that it took place on the way from the judge's lodgings to the court-house; and he very naturally infers from it, that they left the judge's lodgings at the same time; as the circumstances which he has stated induced him to believe with equal probability that they went there together.

If they went together, then is Mr. Marshall also in positive contradiction with Mr. Heath. The only way in which they can be reconciled, is to suppose that Mr. Randolph went there without Mr. Marshall, and had, before that gentleman's arrival, the conversation which is related by Mr. Heath. It could not have been afterwards; for Heath went away as Marshall entered, and did not return. He has said that he was there but once; and that when he left the judge he went immediately on the hill, and related the conversation. That Marshall and Randolph went together, is in the highest degree probable; not only from Marshall's belief of the fact, and the strong impression of it remaining on his mind, but also from the circumstances which he has stated. If they went together, then it is clear, if Marshall tells the truth, that Heath left the room as they entered it; that no conversation could have taken place between Randolph and the judge, in the hearing of Heath, without being heard by Marshall also; and that none in fact did take place. Consequently it is manifest, that un-

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less we believe, contrary to all probability, and to the belief and strong impressions of Marshall himself, that Randolph went to the judge's lodgings before him, we must admit that his testimony, as well as that of Randolph, is in flat contradiction to the testimony of Heath.

To this double contradiction we must add, the extreme improbability of the fact itself. A judge having a design to pack a jury for the purpose of procuring the conviction of a person, whose supposed offence was intimately connected with the political struggle, in which the country was then so warmly engaged; about to execute this design, at the place where the prosecution had excited the greatest irritation; surrounded on all sides, and watched at every moment, by those whom he knew to have most zealously espoused the cause of the supposed offender; and entering into a corrupt combination with the marshal, for the purpose of carrying this criminal design into effect; a judge in these circumstances and with these views, developes his plan to a perfect stranger, whom, if he had known anything of him, he must have known to be perfectly devoted to the political friends and supporters of the party accused! Sir, the thing is incredible. The judge must have been a fool as well as a knave to act in this manner. Conspiracy, sir, seeks darkness and not light. Its plots are formed in secret corners. Its communications are wrapt up in cyphers, or conveyed in cautious whispers. Had the respondent intended to hold such a conversation with the marshal, he would have waited till Heath was gone, would then have drawn his accomplice into one of those dark hiding places which conspirators love, and there would have muttered his corrupt orders. If the words which Heath relates had been spoken, the single circumstance that they were spoken openly in his presence, would be sufficient to prove that they were nothing more than a foolish jest, devoid alike of criminal intent and serious meaning. It is indeed possible that Heath may have heard the respondent utter some inconsiderate jest about democrats on the jury, which his zeal led him to mistake for a direction to the marshal to strike them off. I am desirous of supposing that something of this sort may have happened, for I can see no other way of rescuing this man from the imputation of wilful false swearing; which it would be most painful to see fixed on any person, and especially on one who has filled an honorable station under the Government of his country.

Before I quit the subject of Heath's testimony, let me be permitted, Mr. President, to ask why, if it was believed, it was not taken a year ago when witnesses were convened from all parts of the continent, and the testimony was collected on which these articles of impeachment were founded? It must have been well known at that time, for he has declared that he mentioned the fact to Hugh Holmes, Meriwether Jones, and some others, as soon as it happened, and to a great many persons afterwards. Had this testimony then been taken and presented to the public, with the rest of the evidence, we might have been prepared to contradict or explain it. I will ask why the honorable Managers have not summoned some of those persons to whom this story was related by Heath, and who might have corroborated or refuted his testimony? Those persons were fully within their reach. Nay, the minutes of this Court show that Mr. Hugh Holmes has actually been summoned; and, if I am rightly informed, he has attended for three days past. Why is he not produced? I will not undertake to account for this omission, but I will say, that if Heath's testimony was believed, it ought to have been taken at first, so as to give us an opportunity of investigating it fully; and that it appears probable that the Managers would have adduced the witnesses who were certainly in their reach, to corroborate Heath, did they not apprehend a contradiction instead of a corroboration.

So much for the proofs adduced of a previous corrupt intention in the respondent, to procure the conviction of Callender! Weak as they are in themselves, and broken by the opposing testimony, let us complete their overthrow by bringing against them the proofs which the evidence exhibits of a disposition full of justice and humanity. It is written that "by their fruits ye shall know them." Let us then look to the fruits. Let us examine the conduct of the respondent towards Callender throughout the trial, and inquire whether it bears the marks of a disposition to oppress. And first, let us oppose conversation to conversation; the conversation with William Marshall about the jury to those with Mr. Mason and Mr. Triplet. William Marshall has informed us that the judge, having heard the name of Mr. Giles mentioned in court, inquired if that was the celebrated Mr. Giles, member of Congress; that he afterwards asked the witness whether it was probable that Mr. Giles would remain in Richmond till the trial of Callender, and afterwards added, that he should wish Mr. Giles to be on that jury; and indeed, if it were proper for him to give any intimation to the marshal respecting the jury, would request him to compose it entirely of persons who agreed with Callender in political opinions. What is to be inferred from this conversation? That he wished to convict Callender? No. But that, as he knew the case to have excited strong party feelings, he wished the person accused to have a trial which would silence clamor, and preclude all suspicion of improper bias; so that a conviction, should one take place, being free from the imputation of party vengeance, might operate more strongly as an example to check the licentiousness of the press. Surely this motive was humane towards the party accused, and highly patriotic as it respected the public.

When Callender was taken, the respondent, instead of committing him to prison, as he might have done, there to wait till bail should be offered, manifested the utmost readiness to let him go out and seek for bail, and an anxious solicitude that he should find it. Instead of demanding bail in a large sum, one, two, or three thousand dollars, for instance, which it was in his power to do, he

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demanded only what Callender himself declared that he could give; and bail was actually taken in the very moderate sum of two hundred dollars. After the counsel of Callender had been most properly overruled, on legal grounds, in their attempts to obtain a continuance; the respondent, being obliged to refuse the continuance for which no sufficient ground was laid, humanely offered to postpone the trial for weeks and months, for the accommodation of the traverser and his counsel. When this was refused, he postponed it from day to day, as long as they desired, to give the witnesses who were within reach an opportunity of coming in, and offered to issue attachments for those who did not appear, which would have induced necessarily a further delay.

And, lastly, when Callender was convicted and thus placed completely within the power of the court, the respondent, instead of going to the utmost verge of the law in the severity of punishment, fined him only one tenth of the sum, and imprisoned him only for but little more than a third of the time which the law allowed. The sum limited by law was two thousand dollars, and the fine imposed was two hundred. The term of imprisonment which the law allowed was two years, and the time fixed by the court was nine months.

Are these, Mr. President, the fruits of a disposition, oppressive and corrupt? Again I say, if this be oppression, God grant that I and mine may never be otherwise oppressed.

It is urged against the respondent, under the second charge, that he refused to let the indictment be read to the jury, when it was requested by Callender's counsel. Why did they wish the indictment to be read? It was, they tell us, for the purpose of making known to John Basset and the other jurors, before they were sworn, the nature of the charges, and thereby enabling them to declare whether they stood indifferent, or had made up and expressed an opinion as to the matter in issue. But John Bassett has informed us, that when the question whether he had formed and expressed an opinion was put to him, he was perfectly apprized of the nature of the charges, and knew that Callender was indicted under the sedition law, for printing and publishing "The Prospect Before Us." As to the other jurors, it is in evidence that before the question was propounded to them, the respondent explained to them fully the subject and object of the prosecution, and the nature of the issues which they were called upon to try. Where then was the necessity, where would have been the use of reading the indictment? It could have informed John Basset of that only which he knew before; and the other jurors, of that which the respondent explained to them much better than they could have understood it, by merely hearing a long indictment read in court. The object of the counsel, they say, and certainly the only proper object, was to inform the jury. The judge took a shorter and much more effectual method of attaining the object. He clearly and fully stated to the jury the matter in issue, the points in dispute, and the legal principles which ought to govern their determination. He told them that Callender was indicted for printing or publishing certain libellous matter, extracted from "The Prospect Before Us;" that he must be proved to be the author or publisher of that book; that the passages stated in the indictment must appear to be contained *verbatim* in the book, and to be false, scandalous, and malicious; and that the book must appear to have been published with intent to defame the President of the United States, and to bring him into disrepute and contempt. All this he fully explained to the jurors before the question was propounded to them. Will any one say that all this could have been as clearly understood by the jury from simply hearing the indictment read? And is a judge to be censured because, instead of consuming the time of the court in reading a long indictment, he took a shorter and more effectual method of attaining the only proper object that could be attained by the reading?

As to the main point of the second charge, the overruling of Mr. Basset's supposed objection to serving on the jury, I leave the legal correctness of that decision where it has been placed by the testimony of Mr. Basset himself, and by the very learned arguments of my two colleagues, who took up this part of the case. But admitting it for a moment to be incorrect, it is not impeachable, unless it proceeded from an improper motive. And what evidence of an intention to oppress, or other improper motives does it furnish? The respondent did not know, and had no means of knowing the political opinions of Basset. And if he had known them, they could have furnished no reason for a particular wish to retain that gentleman on the jury. It would have been very easy to find another juror of the same opinions, who would have answered the purpose equally well. It is in evidence that the city of Richmond, where the court sat, and from whence a new juror must have been summoned had Basset been excused, abounded with persons of the same politics. Why then commit a crime, from which it was manifest that no advantage could have been derived?

Stress has also been laid on the question propounded to the jurors in this case; "whether they had formed and delivered an opinion on the charges in the indictment?" But this question, it will be recollected, was the same which had been settled in the case of Fries, after much deliberation. This appears by the testimony of Mr. Rawle. If, therefore, it were an improper question, it would furnish no proof of improper intentions against Callender; since it merely followed a precedent, which was established without the least reference to his case; a precedent too, in which Judge Peters concurred; and although Judge Peters was, I presume, included in the general charge of imbecility of character, advanced against the district judges by the honorable Manager who opened the prosecution, he has never been charged with a deficiency in legal knowledge.

It has moreover been proved undeniably, by my two learned colleagues who discussed this charge,

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that this question, as propounded to the jurors in the case of Callender, was a great relaxation of the law, in favor of the traverser. It was therefore an indulgence instead of an act of oppression; and adds one more to the numerous proofs displayed by the respondent in this case, of a disposition full of humanity and kindness towards the party accused.

Under the third charge, which is founded on the rejection of Colonel Taylor's testimony, it has been contended by the honorable Managers, that the respondent rejected this testimony without knowing what it was. But this, sir, is an utter mistake. No part of Colonel Taylor's testimony was rejected except what related to the three questions stated by the counsel for Callender. From anything that appears we cannot conclude, that any other testimony which Colonel Taylor might have been able to give, would have been rejected. It was not suggested that he could give any other, and there was no question about any other. Into the legal correctness of rejecting those questions, it is not necessary for me to inquire. That point I most cheerfully leave to be decided on the very learned and conclusive arguments of my two colleagues. But I will request the indulgence of this honorable Court, while I advert, as briefly as possible, to some of those considerations which show conclusively to my mind, that admitting the decision on this doubtful and difficult point of law to have been incorrect, it could not have proceeded from improper intention.

And here let me remark, that the respondent could not have been ignorant of Colonel Taylor's high standing and character in the State of Virginia, of the influence attached to his name and his opinions, or the resentment which must in all probability be excited by any act of oppression or impropriety, whereof he might in any degree be considered as the object. The respondent could not be ignorant of the state of irritation which then existed, in that part of the nation, on the subject of the sedition law; nor of the extreme offence which must be given by any conduct of the court having or capable of receiving the appearance of oppression, under that law. He could not be ignorant that to reject Colonel Taylor's testimony was extremely capable of receiving that appearance, and could hardly fail to assume it in the state of personal and political feeling which then existed. He is admitted on all hands to be a man of sense: and would a man of sense, without some strong motive, commit deliberately a crime, so likely to blow up a flame of resentment against himself, and those with whom he was connected?

What motive could the respondent have for rejecting improperly this testimony? To secure the conviction of Callender? No: for he was equally sure of that without the rejection; Colonel Taylor's testimony applied to but one charge, and there were nineteen others undefended. If then he rejected this testimony, knowing it to be proper, he committed, without motive or object, the crime the most like to heap odium on himself, and to bring disgrace and ruin on the party with which he was connected.

Had he been actuated by a criminal intention to oppress Callender, it is far more probable that he would have received this testimony, believing it to be improper, than that he would have rejected it, believing it to be proper. A judge capable of acting deliberately under the influence of such a design, must be as regardless of the law as of his oath. His considering the testimony as illegal would not prevent him from receiving it, if receiving it could serve his purpose better than its rejection. In this case it would have served his purpose better. To reject it gave him no additional hold on Callender, who was placed completely in his power by the nineteen undefended charges; but to receive it would throw a cloak of fairness and humanity over his conduct, under cover of which he might more safely and more fully glut his vengeance. The more he had saved appearances in this respect, the more safely might he have indulged his vindictive temper afterwards.

But it is clearly proved, by his requesting the District Attorney to consent to this evidence, that he was actuated not by a wish to exclude it, but by a conscientious belief that it was illegal and inadmissible. This request may perhaps be represented, and I think already has been, as a mere cloak; as an artful subterfuge, to escape from the indignation which he saw rising. But how does this agree with the character of open and high-handed violence, which the honorable gentlemen attribute to the respondent? How does it agree with that incautious openness in his conversation, that indiscreet promptness in his conduct, almost amounting to precipitation, which appear throughout to enter essentially into his character? And had he been thus artificial, thus capable of throwing an hypocritical cloak of candor over his wickedness, must he not have perceived that his true policy consisted in receiving the testimony without regard to its illegality.

If there could remain any doubt as to the correctness of his motives in rejecting this testimony, it would be removed by his offer to submit the question to the judges of the Supreme Court, and to respite the sentence until their opinion could be known; the traverser, in the mean time, remaining at large on bail. It is distinctly stated by Mr. Robertson and Mr. William Marshall, that this offer was made in reference to the decision of this point. We have had, indeed, some cavilling about bills of exceptions in criminal cases; perhaps the judge may have expressed himself inaccurately. He may have spoken of a bill of exceptions instead of a case stated; or he may have been misunderstood by the witnesses in this particular. But it is unquestionably proved, that in substance he offered to submit the question, whether this testimony was properly rejected or not, to the revision of all the judges of the Supreme Court; to let the sentence await the result of their deliberations; and to grant a new trial if they should think the decision erroneous. It is well known to every lawyer, that although no writ of error or bill of exceptions lies in criminal cases, yet it is the usual practice, in England as well as in America, when any new and difficult

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point arises in a criminal trial, to state it for the consideration of a superior court, and to respite the judgment till the decision of that court can be had. The point in such cases is regularly argued by counsel before the superior court, to whose decision the judgment of the inferior court is made to conform. It is also known that a new trial may be granted in a criminal case where there is a conviction, though not where there is an acquittal. What the respondent offered in this case might have been done; and he went further. He offered to assist Callender's counsel in doing it. He offered them the assistance of his legal knowledge and experience in framing the case to be stated on the record, for the consideration of the Supreme Court. This appears from the testimony of Mr. William Marshall. It is not for me to decide or inquire why these offers, and all the others made by the respondent in this trial of Callender, were contemptuously rejected by his counsel. It is enough for me that the offers were made, and that the conduct of my honorable client in making them, taken in connexion with the other circumstances which have been noted, proves beyond all possibility of doubt, that however erroneous in point of law his rejection of Colonel Taylor's testimony may have been, it proceeded from his honest judgment, and not from a corrupt intention to oppress.

I come now, Mr. President, to notice some of the charges embraced by the fourth article; and first the refusal to continue the case of Callender till the next term. To prove the correctness of this refusal in point of law, I desire no better authority than that produced by the honorable Managers themselves, from 6 *Bacon's Abridgment*, new edition, page 652. It is there laid down on the authority of *Tidd's Practice*, 500; 3 *Burrows*, 1514, *and* 1 *Black. Rep.* 436, that, "where 'there is no cause of suspicion, the affidavit to 'put off the trial on account of the absence of a 'material witness, is sufficient in the common 'form, namely: that the person absent is a mate-'rial witness, without whose testimony the de-'fendant cannot safely proceed to trial; that he 'has endeavored without effect to get him subpœ-'ned, but that he is in hopes of procuring his 'future attendance. But if there be any cause of 'suspicion, the court should be satisfied from cir-'cumstances—first, that the person absent is a 'material witness; secondly, that the party ap-'plying has not been guilty of any laches; and 'thirdly, that he is in reasonable expectation of 'procuring his attendance at some future time." Here it appears that even where there is no cause of suspicion, that is, no cause for suspecting that the application for a continuance is made merely for the purpose of delay, still the affidavit must state, that the party applying for the continuance "is in hopes of procuring the future attendance of the witness." The affidavit in Callender's case is contained in the exhibit, No. 5, filed with the answer. Let it be examined, and contrasted with this authority. It will be found to contain no such statement, and is therefore clearly insufficient, even had the case been free from suspicion of affected delay. But is it possible for any man to say that it was free from such suspicion, after having heard the testimony delivered at the bar? Has not the leading counsel for Callender, who filed the affidavit and made the motion for a continuance, impliedly acknowledged that his sole object was delay? Has he not acknowledged that he knew Callender to be incapable of defence on any other ground than the unconstitutionality of the sedition law, and consequently, that he knew the absent witnesses to be unnecessary, and was as well prepared for trial without them as he could be with them, since nothing that they could prove could have any effect on that question? Has he not expressly declared, that one great object which he had in wishing for the continuance was, to get the trial before a different judge? And when this is admitted by the learned gentleman himself to have been the truth, was it very unnatural that the respondent should suspect it? If he had grounds for suspecting it, of which he was to judge, the authority informs us that there ought to have been circumstances stated by the affidavit, sufficient to satisfy him that the absent witnesses were material, and that the party applying was in reasonable expectation of being able to procure their attendance at some other time. No such expectation is stated in the affidavit, which was clearly insufficient on that ground, and a comparison of it with the indictment plainly shows that the absent witnesses were not material. The learned Managers are therefore entitled to our thanks, for furnishing us with an authority which conclusively establishes our case.

But admitting the respondent to have decided incorrectly in refusing this continuance, where is the evidence of improper intention? If it were an honest error in judgment, he is free from blame. And how can we doubt the uprightness of his intentions, when we recollect that although he considered himself unauthorized to grant a continuance till the next term, because it was not a matter of mere discretion, and no legal ground for it was in his opinion shown, he yet offered a postponement for six weeks, which it was in his power to grant without legal cause? This offer to postpone for six weeks, which throws so strong a light of upright intention and humane indulgence on the whole conduct of the respondent, has been forgotten by Mr. Hay, but fortunately for us it is remembered distinctly by three or four most respectable witnesses, and especially by Mr. Edmund Lee and Mr. William Marshall. There can be no doubt of the fact. It is even manifest that three or four months would have been allowed, had they been asked for. To give six weeks would have made it necessary for the judge to return home, in order to hold the court in Delaware; and when he had returned, it would have been more agreeable and convenient to remain some time at home, than to hurry immediately back to Richmond, in order to hold the court at the end of six weeks. How is this humane and accommodating offer to postpone, at a great inconvenience to himself, to be reconciled with a

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corrupt disposition to oppress Callender? And why should the respondent refuse to continue the case till the next term, which would have exposed him to no inconvenience or trouble, and yet offer to postpone it for six weeks at the expense of a new journey to Richmond? It could have been for no other reason, than a belief that he was obliged by the law to refuse the continuance, and a desire to indulge the traverser and his counsel as far as the rules of law would permit.

Here again I forbear to inquire into the motives of Callender's counsel for refusing this indulgence, by which they would have completely obtained all the legal and proper objects of a continuance. With their motives we have nothing to do. It is into the motives of the judge alone that we are bound to inquire, and of the purity of them, this offer so indulgent and humane, and so unaccountably rejected, leaves no doubt.

As to the rude, unusual, and contemptuous expressions, which are charged under the fourth article, and have been detailed by one of the witnesses for the prosecution, it is material to remark, how different an impression these expressions made on different persons, according to the various states of mind in which they were heard. Mr. Hay was so highly irritated, as to construe a bow into an affront. There had been much mirth at his expense, in which Colonel Taylor tells us that he did not at all partake; and he thought these expressions rude and contemptuous. To Colonel Taylor, who, though perhaps not inclined to view the respondent's conduct with very favorable eyes, had not the same causes of irritation with Mr. Hay, and was far more cool, they appeared in the less exceptionable light of "imperative, sarcastic, and witty." Mr. Gooch may be considered, perhaps, as favorably inclined toward the respondent, but has shown no disposition to extenuate his conduct; and he regarded these expressions, as mere efforts on the part of the respondent to show his wit. Wit, I allow, has nothing to do on the bench. If a judge should happen to possess it, attempts to display it in the discharge of his official functions, would, perhaps, be unbecoming, or even improper; but certainly not criminal. To Mr. Basset, who appears to be of a warmer temperament, and whose feelings seem to lean toward the respondent, those expressions appeared to be firm without being imperative, and facetious but not sarcastic. And is criminality to be inferred from acts which thus receive their hue, not from anything in themselves perceptible to this honorable Court, but from the characters, the feelings, and the modes of thinking of those who relate them? If so, then innocence and guilt must depend not on the conduct of the accused, but on the temper and discernment of the witnesses. The Chief Justice of the United States, who was present during all these transactions, saw nothing improper or unusual in the conduct of Judge Chase. These expressions, which so forcibly struck the heated and angry mind of Mr. Hay, conveyed no idea of impropriety to the mind of the Chief Justice; a gentleman as remarkable for the delicacy of his manners, as for quick discernment and sound understanding. Mr. Edmund Randolph was in court during a great part of Callender's trial, and he perceived in the conduct of the court, nothing rude, unusual, or indicative of a disposition to oppress. I appeal to all who have the pleasure of knowing that gentleman, whether such conduct could have taken place without arresting his attention. So remarkable himself for urbanity of manners, and correctness of personal deportment, he must have been shocked by so glaring a departure from them in a judge seated on the bench. That lively and instinctive sense of propriety, which forms the basis of refined good breeding, would have made him feelingly alive to such a departure, in such a place, from that line of conduct which decorum no less than duty prescribes to a judge. On those finely attuned nerves, which render him the delight of every social circle where he appears, expressions rude and contemptuous would have grated most harshly, and would have made an impression not to be forgotten. Yet Mr. Randolph remembers no such expressions.

And we find no less difference between the different witnesses, respecting the specific terms of those expressions, than respecting their general character. Of this, one instance may suffice. Mr. Hay has stated that the respondent interrupted Mr. Wirt, and rudely and peremptorily ordered him to sit down. The expressions which this witness attributes to the respondent, on this occasion, are, "sit down, sir;" than which the language furnishes none more harsh or indecorous. But from the testimony of Mr. Robertson, a disinterested spectator, who took down in short-hand all that passed at the trial, it appears that the expressions addressed to Mr. Wirt, were, "please, sir, to be seated." And Mr. Gooch, who attended the trial for the express purpose of observing all that passed, states that the respondent, being about to deliver an opinion while Mr. Wirt was up, said to that gentleman, "please, sir, to take your seat." Thus it is that passion distorts every object to the view, magnifies mole-hills into mountains, and converts the most complaisant phrases into "rude, unusual, and contemptuous expressions." To the heated imagination of Mr. Hay, the expressions which he has detailed, no doubt, appeared in that light; but this honorable Court will be guided, not by the exaggerated and distorted views presented to his irritated mind, but by the testimony of those calm and dispassionate witnesses, who were able to view the subject through an uncloudded medium.

Let me now, Mr. President, be indulged in one or two remarks respecting the interruptions of counsel, which form one of the charges under this article. Mr. William Marshall has told us that he remembers a case, in which counsel were more frequently interrupted by Judge Iredell, than they were, on this occasion, by the respondent. We all know the character of that eminent and excellent judge, whose just eulogium the honorable Managers have pronounced at this bar, and whose example they have set up as a standard, whereby to measure the conduct of the respondent. Will

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they not, in this instance, consent to be judged by their own rule? Will they still insist on condemning, in the respondent that which has been practised to a greater extent by Judge Iredell?

But we know the cause which produced the greater part of these interruptions, and which rendered them proper and necessary. Mr. Basset has informed us that Callender's counsel appeared to rest their case wholly on the unconstitutionality of the sedition law; that they wished to argue this point before the jury, and had flattered themselves with the hope of success; that after the court had formally declared this attempt to be improper, and that the jury could not take cognizance of the question, they continually renewed the attempt, and as often as they did they were stopped by the court. This statement is supported by Mr. Gooch and Colonel Gamble. And will any man say that, under such circumstances, it was not proper to interrupt the counsel? Will any man say, that counsel ought to be suffered to fly in the face of the court's authority, and to set at naught its orders and decisions?

These interruptions, moreover, as the Chief Justice has informed us, were made in the ordinary manner of the judge, and were not more frequent than was usual with him in civil cases. Therefore, they afford no proof of an oppressive disposition toward Callender, or of an improper disposition toward any person. They afford proofs of that promptness, sometimes bordering on precipitation, which is well known to make part of his character. It is in proof by the testimony of Mr. Purviance, who has long practised in courts where the respondent presided, that he is much in the habit of interrupting counsel, even those to whom he is known to be most strongly attached; that in his interruptions there is no discrimination between his friends and those who are not so; and that if counsel, when thus interrupted, keep their temper, and coolly and respectfully insist on their right to be heard, they never fail to obtain a hearing, and frequently succeed in removing impressions which the judge had too hastily taken up against their cause. If here be weakness, there is magnanimity which atones for it; and if, in this case, Mr. Hay, instead of contemptuously leaving the court, when he thought himself improperly interrupted, had maintained his ground with firmness, but with that respectful manner, also, which was due to the age and station of the judge, and which would have been highly becoming in himself, there is no doubt that he would have obtained as full a hearing as he could have desired.

On the "indecent solicitude" charged by this article to have been manifested by the respondent for the conviction of Callender, I will remark that, if its existence had been proved, still it broke out into no overt act of oppression or injustice, and, therefore, is not the object of punishment, or of judicial cognizance. Intentions, unless accompanied by acts, solicitude, and wishes, unless carried into effect, are offences unknown to our criminal code, and inconsistent with the principles of our Constitution.

The fifth and sixth charges, relative to the operation of the Virginia laws on the case of Callender, and their supposed violation by the respondent, have been so ably and clearly refuted by my two learned colleagues, who immediately preceded me, that nothing remains to be said on those points. I will merely remark that, had an error been committed, in awarding a capias against Callender on the presentment, and making it returnable to the court then sitting, it would have been the error of the District Attorney and the clerk, for which the respondent could have been in no manner answerable. It is in evidence by the testimony of the clerk himself, Mr. William Marshall, that when the presentment against Callender was returned into court, the respondent, then sitting alone, asked Mr. Nelson, the District Attorney, what was the proper process in such a case? who answered, a capias; and that the capias, actually issued, was immediately drawn up at the bar by the clerk, was inspected and approved by Mr. Nelson, and was then ordered by the judge. In a case of this nature, relating to the local laws and practice of the State, the respondent being then unassisted by the district judge, could apply to no better guides than the clerk and the District Attorney, both at that time practitioners in the State courts; and had they led him into an error, which they certainly did not, it would be the height of absurdity as well as of injustice, to impute it to him as an offence.

I have now, Mr. President, concluded my remarks on those charges which arise out of the trial of Callender.

[Mr. Harper was proceeding to the next article, when, it being three o'clock, a motion was made to adjourn till the next day. When the question was about to be taken, Mr. H. observed to the Court that, although an adjournment would be a personal convenience and gratification to him, yet if his wishes could be at all consulted, he would prefer to conclude his argument on that day; that the time had become very short, which afforded some ground to apprehend that a postponement of the decision till next session might be thought necessary; and that it was, therefore, extremely desirable, and very much desired by his client and himself, to close the argument as soon as possible.

An adjournment for half an hour was then moved and carried.]

When the Court met again,

Mr. Randolph said that, with the leave of the counsel for the respondent, he would offer one or two observations, which might save that gentleman and the Court some trouble. We know, said he, we cannot lay much stress on the testimony of a single man, rebutted by that of another respectable witness. Among the persons summoned to appear, who are able to give evidence of the declaration of Mr. Heath respecting the conversation between Judge Chase and Mr. Randolph, are Messrs. Meriwether Jones and Hugh Holmes. Mr. Jones, we are advised, is, from extreme indisposition, unable to attend. Mr. Holmes, the Speaker of the House of Delegates, did not attend

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until since the evidence on the part of the prosecution was closed. That honorable and respectable man is, however, now in the lobby. I only state this circumstance in tenderness to the character of the witness, and that Mr. Holmes is ready to prove that, pending the trial of Callender, Mr. Heath did declare to him as having passed in his presence such a conversation as the witness has stated. It is not our wish to press his evidence, because we know that the evidence of a witness thus rebutted can establish nothing material to the prosecution. But we are ready, if the Court and counsel for the respondent agree, to receive his testimony.

Mr. HARPER.—It is not for us to say how the honorable Managers shall proceed in conducting this prosecution. We have no objection to Mr. Holmes being examined; and we feel perfectly indifferent whether Mr. Heath be abandoned or not. Should Mr. Holmes not be examined, I presume it will be understood that he was offered to support the declaration of Mr. Heath.

Mr. RANDOLPH said it was not intended to abandon Mr. Heath.

Mr. HARPER inquired how long Mr. Holmes had been in the city. If correctly informed he had been here three days, and if so, his testimony might have been adduced before the defence on the part of the respondent was made.

Mr. RANDOLPH said, the not previously offering Mr. Holmes to the Court arose solely from an indisposition to interrupt the counsel for the defendant. The character of Mr. Holmes stood too high to be impeached. It was only when they heard the correctness of Mr. Heath's testimony questioned, that the Managers deemed it necessary to do that, for the not doing of which they had received the censure of the counsel for the respondent. Mr. Randolph then moved that Hugh Holmes should be sworn.

The PRESIDENT said, the reasons assigned for the admission of Mr. Holmes's testimony, so far as they arose from tenderness to the character of Mr. Heath, could have no weight with the Court. The only question for them to decide was, whether his testimony was or was not material.

Mr. NICHOLSON said, he held it to be the right of either party, at any stage of the trial, when the evidence of a witness was impeached, to justify it by the testimony of another witness. He asked the receiving, therefore, of Mr. Holmes's testimony as a matter of right, not of favor.

The yeas and nays were taken on examining Mr. Holmes, and were—yeas 21, nays 11.

Hugh Holmes, sworn.

In answer to an interrogatory put by Mr. Randolph,

Mr. Holmes replied: I was at Richmond when the circuit court sat there. I am told they sat on the 22d of May, 1800. On the Sunday following I left Richmond. My impression is, that Mr. Heath, between Wednesday and Sunday, told me in substance what I understand has been related to this honorable Court. It has been detailed to me, and I cannot trace any difference between it and my recollection.

Mr. Harper. Please to state it.

Mr. Holmes. It was this: That he (Mr. Heath) had business with Judge Chase of a judicial nature, and waited upon him; that while he was there Mr. Randolph came in; that he held a paper in his hand; the judge asked him what it contained; he replied, the panel of the jury for the trial of Callender. The judge asked if there were any persons of a particular description, I think democrats, on it. Mr. Randolph said there was. The judge then said no such persons must be on the panel.

Mr. Harper. Are you confident that you left Richmond the Sunday following?

Mr. Holmes. I think so. It is possible that I may be mistaken. As to the substance of the conversation I cannot be mistaken, though I may as to the time. Mr. Heath may have given me the account in the following September, when I was at Richmond.

Mr. Nicholson. Were there any persons present when Mr. Heath gave you this information?

Mr. Holmes. I think Judge Brookes and General Minor were.

Mr. Martin. Did you leave town on the Sunday before or after Callender was tried?

Mr. Holmes. I left town before he was tried.

Mr. Randolph. I understand you as stating that you are positive as to the substance of the conversation, but not as to time?

Mr. Holmes. I think it was during the first time I was in Richmond, but it may have been during the second time. But I think I may speak positively of the substance of the conversation.

Mr. HARPER. This testimony of Mr. Holmes, Mr. President, completes the overthrow of John Heath, whom it was adduced to support. It adds the last clench to the nail, by which his testimony is fixed on high. This honorable Court will recollect that John Heath declared that, as soon as the conversation between Judge Chase and the marshal about striking those "creatures called democrats," from the jury summoned to try Callender took place, which was in the morning before the court met, he went immediately on the hill and related that conversation to Hugh Holmes, This, consequently, must have happened before Mr. Holmes left Richmond. He tells us that he left Richmond on Sunday, the 25th of May. We know from the record evidenced in the cause, as well as from the testimony of Mr. William Marshall, and some other witnesses, that Callender was not brought to Richmond until the 27th of May. And it is well known that, by the practice of Virginia, a jury is never summoned to try an offender till he is before the court, and puts himself upon trial. Consequently, at the time when John Heath informed Mr. Holmes that he had seen the marshal present to the respondent the panel of jurors summoned for the trial of Callender, and heard the respondent tell the marshal to strike off all the "creatures called democrats," it is perfectly certain that no jury had been summoned; that the marshal had not taken Callen-

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der; that it was perfectly uncertain whether he would be taken; and that no such circumstance as Heath related to Mr. Holmes, could possibly have taken place. For this flat contradiction of their witness, we are indebted to the honorable Managers, and we tender them our thanks. They have furnished us, by the same respectable testimony, with another contradiction of minor importance, but not undeserving of notice. Heath says that he made this communication to Mr. Holmes in the morning. Mr. Holmes states, as his strong belief, that it was made in the evening. So much for the testimony of Mr. John Heath; which I leave, without further remark, where it has been placed by Mr. David M. Randolph, Mr. William Marshall, and Mr. Holmes; and proceed to consider the transactions at Newcastle, in Delaware, which form the matter of the seventh charge.

And here three questions present themselves for examination: What was the repondent's conduct on that occasion? How far was that conduct conformable to duty and propriety? What were the motives from which it proceeded? On all the previous articles the same division of the matter presented itself to the mind; but the two first grounds were fully occupied by my learned colleagues. What remained for me belonged almost entirely to the third division. Here, on the eighth charge, being deprived of their able assistance, it is incumbent on me to consider the subject under each of these three points of view.

As to the conduct of the respondent, he admits, in substance, that he did, on the first day of the court, decline to discharge the grand jury on their request; did state to them some information which he had received respecting a seditious printer in the town of Wilmington, who was said to be in the habit of violating the act of Congress called the sedition law, and did inform them that it was their duty to inquire into that affair. He also admits that he requested the District Attorney to assist them with his advice in making this inquiry. But he denies that he did utter those expressions relative to a seditious temper in the State of Delaware, or any part of it, with which he is charged.

That he uttered those expressions is sworn by Mr. George Read, the District Attorney of Delaware, and Mr. Lee, one of the grand jurors. Four witnesses, on the contrary, equally respectable and equally intelligent with Mr. Read and Mr. Lee, have deposed that they were present, that they attended particularly to what passed, and that they heard no such expressions. First, Judge Bedford, who sat by the side of the respondent at the time, who must have heard all that was said, and who appears to have remarked particularly what the respondent said on the subject of seditious publications; for he afterwards told him that he had used expressions which would give offence; yet Judge Bedford did not hear any such expressions as are stated by Mr. Read and Mr. Lee. Next, Mr. Vandyke, the Attorney General of the State of Delaware; a gentleman of high character, whose manner of delivering his testimony, proves him to be very capable of accurate observation. He attended in court at this time, and was attentive to the proceedings, but he heard nothing of these remarkable expressions. Then, Mr. Hamilton, who attended the court as an assistant to his father, the marshal, sat near the judges, listened to the conversation between the respondent and the jury, but heard nothing of those remarkable expressions. And fourthly, Mr. Hall, was in court during the whole time, paid particular attention to what passed, but heard nothing of this seditious temper in the State of Delaware, and particularly in the county of Newcastle, and more especially in the town of Wilmington. On Mr. Moore, so much stress cannot be laid as on the former witnesses, because he was not particularly attentive to what passed on the first day. Laying him, however, out of the case, we have four witnesses against two; and these four witnesses were so situated that they must have heard those expressions had they been uttered, and must have remarked them. Judge Bedford did remark expressions far less strong, which he was apprehensive might give offence. Is it possible then to believe that those very offensive expressions, had they fallen from the respondent, could have escaped his notice?

But there is another piece of evidence still stronger than the testimony of these witnesses. We know that within a day or two after these transactions took place, an account of them was published by the printer, and in the gazette which had been the object of the respondent's animadversions. The publication is in evidence before the court. It is sufficiently exaggerated, but it makes no mention of those remarkable and offensive expressions. The printer, it is evident, was extremely well disposed to represent the respondent's conduct in the most unfavorable light that truth would justify. He no doubt received his information of what passed from persons who felt the same disposition. Those persons must have heard these expressions, had they been uttered, must have been struck by them, and surely would not have suppressed them.

When this mass of evidence stands opposed to Mr. Read and Mr. Lee, can we hesitate to pronounce that they have stated what never took place? I am far from intending to charge them with intentional departure from truth. No doubt they understood, in this manner, something that was said. But it is plain that there must be a mistake somewhere. Their testimony cannot be reconciled with that of the four witnesses for the respondent, or with that of the printer, which, under the circumstances of this case, is stronger than all the rest. And it is much more probable that two men should be mistaken than four; and that all the six should have been mistaken, than that this printer should have been uninformed of, or should have omitted to notice, those expressions, if they had been used by the respondent.

These expressions, indeed, contain nothing criminal. To have used them would not have been an impeachable offence; but it would have been an act of great indecorum and impropriety. It

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was the duty of the judge to charge the grand jury, and to point their attention to any specific offences against the laws of the United States, which had come within his knowledge or information; but, to utter indiscriminate abuse against a whole State or county, to charge the people of it, generally, with a seditious temper, would have been equally extrajudicial and unbecoming. This consideration, we hope, will be admitted as an apology for occupying so much time in the refutation of a charge, which, in every other point of view, is manifestly frivolous and futile. We wish to rescue the conduct of our honorable client from the imputation of impropriety as well as of guilt.

It may, perhaps, be replied, that we rely on merely negative testimony to disprove these expressions, while positive testimony is adduced to prove them. But whether testimony ought to be regarded as positive or merely negative, depends on the situation of the witnesses and the circumstances of the case. When a man swears he did not see a transaction which might have taken place without his seeing it, his testimony is merely negative, and can have no weight against that of a witness who swears that he did see the transaction. But when it is of such a nature that it could not possibly, or within the bounds of reasonable probability, have taken place without being seen by the person who swears that he did not see it, the testimony of such person then assumes the character, and possesses the weight, of positive testimony. It is the same as if he had sworn positively that no such transaction did take place. If, for instance, a witness were to swear that he saw a man standing with his hat on during the whole of the trial, in the open space on the floor, between the President and me; and every other person present were to swear, as they no doubt would, that they had seen no such person—surely no man in his senses would put this on the footing of merely negative testimony, and contend that the first witness was to be believed against all the others! And where is the difference between the two cases? It consists, I answer, solely in the number of witnesses; for it is as impossible that these expressions should have been uttered by the respondent, without being heard by Judge Bedford, Mr. Vandyke, Mr. Hamilton, and the persons who gave information to the printer, as that a man should stand for an hour with his hat on, in the middle of this floor, without being observed by the audience.

We are therefore warranted in laying these expressions out of the case; and then to what does it amount? There was a law of the United States for the punishment of seditious libels, which the respondent, as judge of the circuit court of Delaware, was bound to enforce within that district. On his way to the court he receives information that certain habitual violations of this law are committed within the district. This information is given to him, as appears from the testimony of Mr. Hall, by a justice of the peace for that district, whose duty it was to attend to such offences, and to take all legal steps for bringing the offenders to justice. This information, derived from this official and authentic source, the respondent communicates to the grand jury, observing to them that it was their duty to inquire into the matter, and that they must remain in session one day more for that purpose. He goes further. He requests, or, if the honorable Managers will have it so, he orders the District Attorney to assist them with his advice in making this inquiry, and directs a file of the newspapers supposed to contain these libellous publications, to be procured and laid before them. This is "the head and front of his offending." And will the honorable Managers be pleased to point out the rule or principle of law that was violated by these acts? Will they be so good as to inform us whether it was not the duty of the grand jury to inquire concerning offences within the district; and of the judge to give in charge to them all such offences as had come to his knowledge? Suppose that, instead of a breach of the sedition law, a piracy had taken place on the high seas, and information had been given to the judge that the pirates were lurking in the district of Delaware; would it not have been his duty to state this information to the grand jury, and to direct them to inquire concerning the offence? And I again call on the honorable gentlemen, as I had occasion to do in a former part of the case, to inform us by what authority, and what criterion, a judge is to distinguish some offences from others—to prosecute some and let others, as far as depends on him, escape with impunity.

The honorable gentleman who opened the case on the part of the prosecution, admitted distinctly, in his opening speech, that a judge may properly be zealous and active, in the execution of the criminal law generally; and he bestowed very high, and probably very just encomiums on a judge of Virginia, whom he represents as thus vigilant, zealous and active. But it is zeal and activity in the execution of this particular law, that he imputes as a crime to the respondent.

But if this zeal and activity of the respondent be not confined to this particular law, of which there is not the least proof or pretence, how, I ask, can it be an offence, according to the principle of the honorable gentleman? Surely each particular law is a part of the whole body of the law. Will the honorable gentleman be pleased to inform us how it is possible to be zealous and active as to the whole, without being so as to each of the parts? Will he inform us how the laws can be executed, except by parts; and whether it ever did or could happen that they were all violated at once?

There is, however, a more serious objection to this principle; which, if it be correct, goes to invest the Judiciary with a power infinitely more formidable and alarming than has ever yet been contended for in this, or, as far as I know, in any country.

In what part of our Constitution, or of our system of jurisprudence, have the honorable gentlemen found this dispensing power of the judges, over a part of the laws? Was not the sedition act, while in force, a law of the land? Were the

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courts of justice to neglect its execution, because it had been opposed by a political party in the Legislature, or was disagreeable to a portion of the people? Are the honorable gentlemen willing to be tried by this their principle? Let them, before they answer in the affirmative, examine how far it will carry them. We now have circuit courts, and associate justices to hold them. We now have, and probably always shall have, parties in Congress and in the country. It is very possible that laws may be pased, which will be highly disagreeable to one of those parties. Are gentlemen prepared to say, that judges may dispense with the execution of all laws, which they may suppose to be of this description? If gentlemen find this principle intolerable and absurd, when applied to laws passed by themselves, will they still insist on its application to such as were heretofore passed against their opinion? Or will they contend that the question, whether a person shall be punished for the violation of a law, shall depend on the popularity or unpopularity of the law, in the particular district where the offence is committed? Is a judge appointed to hold a criminal court, to inquire from the people of the district, or from popular leaders, what laws he shall execute? Ought he to take his information on this subject from political parties, or from the statute book? Would this be living under equal laws equally, impartially, and steadily administered? And do not such laws, so administered, constitute the very essence and definition of free government?

On principle then—even the principle admitted by the honorable gentleman himself who opened the prosecution—the conduct of the respondent in directing the attention of the grand jury to this offence, is strictly justifiable. But it does not rest on principle alone. It is strongly supported by precedent, both in England and this country. In the Lawyer's Magazine, an authentic collection of legal proceedings and adjudications, vol. 3, page 333, we find a charge delivered to a grand jury by Chief Baron Perryn, in which he calls their attention to certain particular offences. In page 384, of the same book, we find Lord Loughborough calling the attention of the grand jury to particular offences. In the fifth volume of the same work, page 199, there appears a charge of Judge Ashurst, in which he directs the attention of the grand jury to certain seditious societies. And in the report of Hardy's trial, we see the celebrated Chief Justice Eyre, as illustrious for his justice, humanity, and love of liberty, as for his profound knowledge of the law and his great talents as a judge, directing the attention of the grand jury to a particular offence.

Passing from England to this country, we see Judge Iredell, whose example has so often been held up for imitation, directing the attention of the grand jury, in a very particular and emphatical manner, to the particular case of the Northampton insurgents. This took place at the circuit court at which those insurgents were to be tried; and the charge was delivered to the same grand jury which found the first indictment against John Fries. And we have another authority more directly in point, because it occurred in the case of a supposed libellous publication. It is also furnished by a judge of great legal reputation and talents, whom I trust the honorable gentlemen will not consider as inimical to liberty, or disposed to judicial oppression—I mean Mr. McKean, formerly Chief Justice, and now Governor of Pennsylvania. In a charge delivered to a grand jury of the city and county of Philadelphia, on the 27th of November, 1797, after a very elaborate and luminous exposition of the law relative to libels, he informs them that a certain printer in that city, meaning Cobbett, the publisher of Porcupine's Gazette, was, and long had been, in the habit of offending against this law, by the publication of scandalous and malicious libels; that he had interfered and endeavored to arrest the progress of this offender, by binding him over to good behaviour; that the printer, in contempt of his recognisance, and in defiance of the authority of the law, persisted in his mischievous course; and that the duty of arresting him devolved on the grand jury, by whom alone the strong correctives appearing to be necessary could be applied. The expressions used by this learned and able judge are strong and remarkable. I will take the liberty of presenting them to the court in his own dress. [Here Mr. Harper read the charge from Claypole's Gazette, of November 28th or 29th, 1797.] It will be remarked that the printer in this case had not been bound over to appear at the court and answer for a libel, but had been bound in a recognisance to be of good behaviour, which he was supposed to have violated by publishing further libels. On this recognisance a civil action had been brought; and the grand jury, who had nothing to do with the recognisance, nor any information before them, were thus called upon to apply a further corrective, by presenting the offender. It is impossible that a case should be more exactly in point. Indeed it goes much farther than the conduct of the respondent at Newcastle.

I am far from condemning or calling in question the conduct of the late Chief Justice of Pennsylvania, in this instance. But I contend that the same act which has been considered proper in him, ought not to be imputed as a crime to my honorable client.

Thus we see that the conduct of the respondent, in this instance, was strictly correct, whether it be tested by principle or precedent. If this could be doubted, if it were even admitted that he acted incorrectly, it would still be clear that he acted from proper motives; that his error was a mere error of his judgment, and consequently cannot be the ground of a conviction on impeachment.

Had he been conscious of improper intentions, how easy was it for him to accomplish his object, without appearing in the business? When Dr. McMechin, from whom, as Mr. Hall tells us, he received the information, mentioned these publications to him, it would have been easy for him to request that gentleman to give the information to the grand jury. Dr. McMechin no doubt would have complied with this request; the grand jury

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would have obtained the information; the printer, had it appeared proper to them, would have been presented; and the respondent would have attained his end without in the least exposing himself to view. Would he not have acted thus had he been conscious of improper designs? With criminal plans of oppression in his mind, would he not have sought concealment, where it was so easily practised, and could in no degree have impeded his projects? Undoubtedly he would. Nothing but a consciousness of upright views could have induced him in such circumstances to act this frank and open part.

In judging of men's motives, it is material also to listen to their private conversations, addressed at the time to those in whom they have confidence. In such conversations the hearts of the most cautious are apt to expand, and the most hidden plans are sometimes disclosed. What was the respondent's reply to Judge Bedford, when that gentleman censured him for acting imprudently in recommending in that part of the country an inquiry into the offences against the sedition law? "My dear Bedford," to use the beautiful language of the respondent as repeated by the witness, "no matter where we are, nor among whom we are, we must do our duty." This, sir, is the language of the heart; not of a corrupt heart, filled with plans of oppression and violence, but of a heart manly, upright, and honorable. It bears the intrinsic character, the genuine stamp, of sincerity and truth. It is a frank and unstudied avowal of motives, made to a confidential friend in an unsuspecting moment; and it is of more avail than volumes of testimony, to show the real impressions under which he acted.

Remember, too, how readily, and in what good humor the respondent gave up this point, and acquiesced in the opinion of the grand jury and the District Attorney, when they declared they had found nothing libellous in the papers. Having acted from a sense of duty in calling the attention of the grand jury to the subject, he was content with having discharged his duty, and pressed the matter no further. But had he acted from a vindictive spirit of oppression, or any other improper motive, inducing him to wish for the prosecution of the printer, would he so readily have desisted? The file of papers was within his reach. We, who have examined it, know that he might have found in it libellous matter enough. And would he not have examined it? Would he not have pointed out the libellous passages to the grand jury? Would he not have sent them out again with stronger injunctions to do their duty? Do oppressors so readily abandon their projects when the accomplishment is so much in their power? No, sir. This conduct in the respondent is utterly inconsistent with any other motive than that sense of duty under which it is manifest that he acted throughout.

We come now, Mr. President, to the eighth charge, under which I find myself again obliged to perform the disagreeable task of contrasting evidence, and controverting the testimony of a witness for the prosecution. This witness, Mr. Montgomery, has attributed to the respondent expressions relative to the character, motives, and views, of the present Administration, which, had he uttered them from the bench, ought to draw on him the censure of the public and the severe animadversion of this tribunal. These expressions I am authorized by him expressly to deny and disclaim. He contends that, according to the custom of this country, subsisting for almost thirty years, without any mark of public disapprobation, he had a right to warn his fellow-citizens, in a charge from the bench, against the political dangers by which he believed them to be threatened; to assist in this manner in averting impending ruin; in snatching the people of his native State from the abyss in which he thought them about to plunge. He contends that, for this purpose, and according to this custom, he had a right to point out what he considered as the pernicious tendency of certain measures of the Federal Government, in order to show in a stronger light the danger of adopting similar measures in the State. This is what he did, and what he supposed himself authorized to do. But he neither claims, nor has exercised, the privilege of abusing those who have been appointed to administer the Government of his country; nor of passing strictures in his official capacity on their character, motives, or general conduct. However he may differ from them in political opinion; however he may disapprove their principles; whatever apprehensions he may entertain about the tendency of their measures, he has always inculcated obedience to them, in the exercise of their Constitutional powers, and has carefully avoided any remarks, in his judicial character, on their system, views, or conduct. When he could not approve their measures he was silent, except in this single instance, where, in order to dissuade the people of Maryland from the adoption of a Constitutional amendment then under consideration, which he conceived to be fraught with so many evils, he adverted to the consequences likely, in his judgment, to flow from one of those measures. These very reprehensible expressions, "that the present Administration was 'weak, incapable, and unequal to the proper discharge of their duties; and that the object of 'their measures was not to promote the public 'good, but to preserve unfairly acquired power," are attributed to the respondent by one witness alone, Mr. Montgomery, of Maryland. How far that witness is entitled to credit, in this particular, it is my duty to inquire.

Let us advert, Mr. President, to the state of mind in which this witness was at the time when these expressions are supposed to have been uttered.

He informs us that he was the author and chief supporter of those measures of the Maryland Legislature, against which the respondent levelled his artillery; that he considered himself as particularly pointed at; and supposed the eyes of the audience to be turned upon him. So greatly was he irritated by this imaginary attack on himself that as he left the room, after the charge was finished, he declared that the respondent should be

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impeached for that charge. This we learn from the testimony of Mr. McMechin, who heard the declaration. After he went home, he wrote an inflammatory piece for the press, purporting to be the substance of the charge. This piece was avowedly written for the purpose of promoting an impeachment. It recommends that measure; abounds with the most opprobrious and abusive language against the respondent; and, what is still worse, it varies very materially from the testimony which the author of it has delivered at this bar.

Is it surprising that a man in this state of mind should misconceive the truth? Is it to be wondered at that he should convert his own inferences, the misconceptions and distortions of his own brain, into facts? Have any members of this honorable Court heard a person give an account in a court of justice, of a quarrel in which he himself had been a party?—of a brawl or riot in which he had been himself engaged, in which he had perhaps been beaten, and of his wrongs of which he came to complain? Have they observed how the truth, in such situations, is distorted by the blindness of passion, the partiality of self-love, and thirst of revenge? I presume that they have; and they will then know how to appreciate the testimony of a witness, in the state of mind in which Mr. Montgomery viewed these transactions, and in which he has given evidence at this bar.

I have said that his publication, purporting to be the substance of this charge, varies materially from his testimony in this case. For the truth of this statement I refer to the publication itself, which is in evidence before the court, and to his testimony, which is in the recollection of the honorable members. But I will point out one of the most remarkable variances.

In the publication he represents the respondent as saying, "that in a country where were equal 'rights and equal laws, that is, laws equally administered, and that operate equally upon the 'rich and poor, there was freedom, but that country was *not* ours; we had no equal rights or equal laws." In his testimony, as taken down by the short-hand writer, he represents the respondent as saying, "that where there were equal laws 'and equal rights, there was freedom, but where 'the administration of the laws was partial and 'not certain, the people were not free: and that we 'were approaching to that state of things." In his publication he accuses the respondent of saying, that we actually were in this condition: in his testimony, that we were approaching to that state of things. Is it possible to give credit to a witness who thus contradicts himself? And what assurance have we that he whose memory is so treacherous, and who is proved by his publication to have been so angry, has not stated his own impressions and inferences as facts?

This witness has indeed made an attempt to support himself, by an explanation of this part of his testimony. In his explanation he tells us, that although he attributed the word "administration" to the respondent, the term used might perhaps have been "government." In this way he endeavors to get rid of the contradiction between himself and the numerous other witnesses. But this cannot avail him. The expressions, whether applied to the Administration or the Government, must, in this instance, have meant the same thing. The charges of weakness, relaxation, incapacity, and a view to the continuance of their unfairly acquired power, instead of the public good, could have had no application to the Government in its general abstract nature. They could have applied to it only as administered by the persons or the party now in power. So that whether the term "government" or "administration" was used, the meaning was precisely the same. The expressions were equally remarkable, in one case as in the other. They must have struck the bystanders as much in one case as in the other. They were in fact the same, with the variance of a single word, which did not in the least vary the sense. The witnesses have all sworn that they heard no such expressions, and the contradiction is as strong after the explanation, as it was before.

Who are these witnesses thus standing opposed to Mr. Montgomery? These witnesses that were present, and attentive, and yet did not hear these remarkable expressions which he heard so distinctly, and which he tells us made so strong an impression on his mind? If, when he stood on his own merits, and on the comparison between his publication and his testimony, he was so weak, how must he appear when opposed by this host of witnesses?

First, Mr. Mason. That gentleman, indeed, was so much occupied by the salutations of his friends, that he did not attend accurately to the whole charge; although he had leisure enough to remark, what nobody else saw, that the respondent, in the intervals of reading his charge, sometimes seemed to introduce extemporaneous observations, by way of comment on what he read. Still he has given us with great confidence, and no less accuracy, the principal points of the charge. He recollects nothing of these expressions. Can it be believed that they would not have struck him, had they been used? Mr. Mason is one of the strongest adherents, one of the warmest and most zealous friends of those who now administer the Government. Indeed he is one of the chief props of the present Administration, united with it in interest, principle, and affection. He is, moreover, so accurate in his observation, and so correct in his recollection, about what relates to the respondent, as to be able, after a lapse of five years, to repeat a casual, and jocular conversation; which is usually forgotten as soon as it passes. Can it be believed that so outrageous an attack upon his friends, by this judge, and in such a place, could have escaped his notice, or been effaced from his memory?

Next Mr. Smith, editor of the National Intelligencer, than whom the present Administration certainly has not a more zealous friend. He is, indeed, remarkable for the devotedness of his attachment to this Administration; his lively and keen sensibility to all its wrongs, real and imagi-

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nary; and his vigilant and unwearied zeal in its defence. He is, moreover, remarkable for his talent for stating in writing, whatever he has heard spoken or read; a talent into the careful cultivation and constant exercise of which he is led by his profession. He listened attentively to this charge. After hearing it he sat down in his chamber, the same evening, and committed the substance of it to writing, for the express purpose of publishing it in his paper. This publication he has produced and attested, and it contains no such expressions about the present Administration, or the present Government, as were heard by Mr. Montgomery. Is it possible to believe that had such expressions been used, they would not have been heard by Mr. Smith; or that, if he had heard them, he would have omitted them in his publication?

Mr. Stephen, too, who is known to be strongly attached to the present Administration, was present at the delivery of this charge, attended to it, but heard no such expressions as those related by Mr. Montgomery. A multitude of other witnesses who stood round the respondent while he delivered the charge, who were all for various reasons very attentive to it, have with one voice declared they had heard no such expressions. Among them is the district judge, who sat by the side of the respondent; the clerk of the court, who sat next to him but one, and who moreover is an adherent of the present Administration; the foreman of the grand jury, who stood close to the respondent, and to whom the charge was particularly addressed; and one of the judges of this district, who attended that court as a witness, and stood very near to the respondent, while he delivered the charge. The others are gentlemen of the bar, men of high character, who have delivered their testimony with great accuracy, and assigned with candor and precision the reasons of their belief. And all these persons declare most positively, that they heard no such expressions as have been related by Mr. Montgomery, about the conduct, character, and views, of the present Administration.

Nay more. The charge was read from a written paper, and that paper is produced in court, and proved by the person who wrote it, from a rough copy furnished by the respondent. Mr. Mason, it is true, states that some extemporaneous comments appeared to him to be made by the respondent, while reading from the written paper; and the inference to be drawn from this, I presume, is that these expressions might have formed one of those extemporaneous comments, and therefore might have been used, though they do not appear in the paper. But Mr. Mason, it will be remembered, though very correct and positive in stating the substance, does not pretend to accuracy in the particulars. He was too much interrupted by the salutations of his friends, who pressed through the crowd to speak to him. And it may very well have happened that when, after these interruptions, he turned his attention again to the respondent, he sometimes found him with his eyes raised from the paper, as those of every man will be who reads his own composition, or any writing with which he is familiar. This might have led him to conclude that the respondent sometimes spoke extempore. But Mr. Montgomery himself has stated that the whole charge was read from a paper; and the same fact has been established by the testimony of nine or ten witnesses, among whom are the district judge and the clerk of the court. Those gentlemen sat near to the respondent while he delivered the charge. One of them sat next to him, and the other next but one. They were both attentive to the manner in which the charge was delivered, and they both say that it appeared to them to be entirely read. They both say that the respondent, in reading it, occasionally raised his eyes from the paper at the close of a sentence, and turned them on the audience; but not longer at any one time than is usual with a person reading. In this the other witnesses fully concur. They all stood round the respondent, had their eyes upon him during the whole time, and were particularly attentive to the manner as well as to the matter of the charge.

Mr. Montgomery, indeed, after he had heard the testimony of Mr. Mason, explained himself on this subject. He said at first that the whole charge appeared to him to be read from a written paper. But after he had heard Mr. Mason state that the respondent, in delivering the charge, sometimes appeared to leave the paper and introduce extemporaneous matter, he was called again, and he then informed us that his eyes were not constantly directed towards the respondent, but were occasionally turned on the bystanders, whose eyes he observed to be directed to him as the known author of the measures reprobated in the charge. From this he inferred, very properly, that the respondent might have spoken extempore from time to time without his observing the fact. This explanation certainly removes the contradiction which at first appeared between Mr. Mason and Mr. Montgomery; and weakens materially the testimony of the latter gentleman as to the fact now in question. But it has no such effect on the testimony of the other witnesses, whose attention was not called off like that of Mr. Montgomery; who had their eyes upon this respondent during the whole time; and who firmly believe that every word which he delivered was read from the paper. This fact, then, I consider as completely established. The paper has been proved, and is in evidence before the court. A true copy of it will be found among the exhibits filed with the answer, No. 8. On examination, it will be found to contain no such expressions as are attributed to the respondent by Mr. Montgomery.

The testimony of Mr. Montgomery on this point, thus liable to suspicion in itself, on account of the state of irritation in which he saw the transaction; thus contradicted by his own written statement, by the testimony of so many witnesses, and by the written charge; is not entitled to belief, but must be laid wholly out of the case. I do not charge him with wilfully misstating the

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fact, but that he has utterly mistaken it cannot be doubted.

There is another point on which some contrariety appears in the testimony. Some of the witnesses have supposed that the respondent concluded this charge with a direct recommendation to the jury to use their endeavors on their return home towards preventing the final passage of the act of Assembly of Maryland for abolishing the Supreme Courts, by procuring in their several counties the election of such persons as would vote against that measure. Others are under the impression that no such recommendation was expressly made, but was merely to be inferred from the general tenor of the charge. That such a difference of opinion should take place is by no means surprising; but the difference is immaterial. The object of the charge undoubtedly was to dissuade the people of Maryland from adopting the measure in question; and to impress on the grand jury and the audience the necessity of exerting themselves against it, at the election which was then approaching, and was to decide its fate.

If this recommendation was not expressly given, it was plainly implied. Such was the intention of the respondent; and his defence rests on the correctness of this intention; on his right, according to the long established custom of this country, to pursue the object in this way.

Let the charge, Mr. President, be carefully examined, and it will be found to have no object in view but to convince the people of Maryland, by arguments drawn from reason and experience, of the danger of adopting a change in their State constitution, which had been submitted to their consideration, and the object of which was to abolish all their supreme courts of law; to introduce a system entirely new and untried; and above all to destroy the independent tenure of judicial office, secured to them by their existing constitution; and to leave the judges dependent on the Executive for their continuance in office, and on the Legislature for their support. The respondent, who had contributed largely to the formation and establishment of the State constitution, was greatly alarmed at these changes. He considered them as of the most destructive tendency to the liberty and happiness of the State to which he belonged, and he resolved to take this opportunity of warning his fellow-citizens against them. This is the whole scope of his address to the grand jury, to show the importance of an independent judiciary, the dangerous tendency of changes already made, and the mischiefs which would result from taking this additional step in the career of innovation. He did, indeed, advert to the act of Congress for repealing the circuit court law, and remarked that it had shaken to its foundation the independence of the Federal judiciary; but the manifest and sole object of this was, to show that the spirit of innovation had gone forth, and ought to be carefully watched; that the public respect for great Constitutional principles had begun to be weakened; and that by how much the security which might have been derived from an independent Federal judiciary had been diminished, by so much the more vigilantly it behooved us to guard our State institutions. No other object can be discovered in the charge, or inferred from its general tenor, or from the language in which it is expressed; neither is there any evidence which has the mos remote tendency to show that he had any other object in view. And was not this an object which a citizen of this country might lawfully pursue? Is it not lawful for an aged patriot of the Revolution to warn his fellow-citizens of dangers, by which he supposes their liberties and happiness to be threatened? Or will it be contended that a citizen is deprived of these rights because he is a judge? That his office takes from him the liberty of speech which belongs to every citizen, and is justly considered as one of our most invaluable privileges? I trust not. And if there could be any doubt on this point, I would remove it by referring to a recent instance of two judges of the supreme court of Maryland, who, in a late political contest, entered the lists as champions for the rival candidates, and travelled over a whole county, making political speeches in opposition to each other. Yet these gentlemen justly possess the confidence and respect of the public; their conduct in this instance has never been considered as a violation of duty; and he who espoused the interest of the successful candidate has been far from receiving any marks of displeasure from the Government of this country.

If, therefore, a judge retain this right, notwithstanding his official character; if it still be lawful for him to express his opinions of public measures, to oppose by argument such as are still pending, and to exert himself for obtaining the repeal, by Constitutional means, of such as have been adopted, I ask what law forbids him to exercise these rights by a charge from the bench? In what part of our laws or Constitution is it written that a judge shall not speak on politics to a grand jury?—shall not advance, in a charge from the bench, those arguments against a public measure which it must be admitted he might properly employ on any other occasion? Such conduct may perhaps be ill-judged, indiscreet, or ill-timed. I am ready to admit that it is so; for I am one of those who have always thought that political subjects ought never to be mentioned in courts of justice. But is it contrary to law? Admitting it to be indecorous and improper, which I do not admit, is every breach of decorum and propriety a crime? The rules of decorum and propriety forbid us to sing a song on the floor of Congress, or to whistle in a church. These would be acts of very great indecorum, but I know of no law by which they could be punished as crimes. Will they who contend that it is contrary to law for a judge to speak of politics to a grand jury, be pleased to point out the law of the land which forbids it? They cannot do so. There is no such law. Neither is there any Constitutional provision or principle, or any custom of this country, which condemns this practice.

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And will this honorable body, sitting not in a legislative but a judicial capacity, be called on to make a law, and to make it for a particular case which has already occurred? What, sir, is the great distinction between legislative and judicial functions? Is it not that the former is to make the law for future cases; and that the latter is to declare it as to cases which have already occurred? Is it not one of the fundamental principles of our Constitution, and an essential ingredient of free government, that the legislative and judicial powers shall be kept distinct and separate? That the power of making the general law for future cases shall never be blended in the same hands, with that of declaring and applying it to particular and present cases? Does not the union of these two powers in the same hands constitute the worst of despotisms? What, sir, is the peculiar and distinguishing characteristic of despotism? It consists in this, sir, that a man may be punished for an act which, when he did it, was not forbidden by law. While, on the other hand, it is the essence of freedom, that no act can be treated as a crime, unless there be a precise law forbidding it at the time when it was done.

It is this line which separates liberty from slavery; and if the respondent be condemned to punishment for an act, which far from being forbidden by any law of the land, is sanctioned by the custom of this country for more than twenty years past, then have we the form of free government, but the substance of despotism.

Let gentlemen, before they establish this principle, recollect that it is a two-edged sword. Let them remember that power must often change hands in popular Governments; and that after every struggle, the victorious party come into power, with resentments to gratify by the destruction of their vanquished opponents, with a thirst of vengeance to be slaked in their blood. Let them remember that principles and precedents, by which actions innocent when they were done, may be converted into crimes, are the most convenient and effectual instruments of revenge and destruction with which a victorious party can be furnished. Let them beware how they give their sanction to principles which may soon be turned against themselves; how they forge bolts which may soon be hurled on their own heads. In a popular government, where power is so fluctuating, where constitutional principles are therefore so important for the protection of the weaker party against the violence of the stronger, it above all things behooves the party actually in power to adhere to the principles of justice and law, lest by departing from them they furnish at once the provocation and the weapons for their own destruction.

I have stated, Mr. President, that the practice of introducing political matter into charges to grand juries has been sanctioned by the custom of this country from the beginning of the Revolution to this day. Need I adduce any other proof of the fact than its general notoriety? Need I refer to the charge delivered in South Carolina, in 1776, by William Henry Drayton, for which he has been so much admired and applauded? Need I refer to the recommendation of the Executive Council in Pennsylvania, at a period something later, in which that body, with John Dickinson at its head, enjoins it on the judges to avail themselves of their charges to the grand juries on their circuits for disseminating correct political information and principles among the people? Shall I refer to the case of Judge Addison, in Pennsylvania, who has delivered many political charges, and against whom, when he was lately impeached, those charges made no part of the accusation? Shall I refer again to the charge of Judge Iredell, delivered to the grand jury, which found the first indictment against John Fries, and containing a variety of political matter? It is unnecessary to dilate on these instances. They have been given in evidence, and are fresh in the memory of this honorable Court. The recollection of the honorable members must furnish them with many others equally striking.

And yet have the authors of none of these political charges been censured. No mark of public or private disapprobation has been fixed on their conduct. No legislative act has forbidden this practice. From the time of Judge Drayton to the time of Judge Chase, it has been considered as innocent. It remained for the year 1803, after a lapse of twenty-seven years, to discover its criminality. But this honorable body will not so determine. It will not forget the distinction between its judicial and its legislative character. In its judicial character it will declare, that an act, however improper in itself or dangerous in its tendency, shall not, if forbidden by no law, be punished as a crime; that the prevalence of this custom for twenty years, the countenance which it received from some governmental authorities, and the acquiescence of all, are sufficient evidence of its legality; and that the criminal intent which constitutes an essential ingredient of the offence, in this as well as in every other case, and of which no direct proof is now adduced, can never be inferred from the act itself, when done in compliance with a custom so long established, and so highly sanctioned. But if the members of this tribunal should be individually of opinion, that this custom is dangerous or improper, they will, after pronouncing a sentence of acquittal in this case, resume their legislative character, and pass a law to restrain the practice in future. Thus will the mischief be prevented on one hand, and the principles of liberty and justice respected on the other.

This charge, therefore, fails like the rest; and what remains of the accusation? It has dwindled into nothing. It has been scattered by the rays of truth, like the mists of the morning, before the effulgence of the rising sun. Touched by the spear of investigation, it has lost its gigantic and terrifying form, and has shrunk into a toad. Every part of our honorable client's conduct has been surveyed; all his motives have been severely scrutinized; all his actions have brought to the test of law and the Constitution; his words and even his jocular conversations, have been passed in

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strict review; and the ingenuity and industry of the honorable Managers have proved unable to detect one illegal act, one proof, or one fair presumption of improper motive.

Perceiving, by anticipation, this desperate situation of his case, the honorable gentleman who opened the prosecution, has devised another expedient to escape from anticipated defeat, and to secure that conviction on which he seems to have set his heart. He has told us, and no doubt will hereafter insist, that in order to form a true judgment on the respondent's conduct, the whole of it must be embraced in one view; and all the particulars regaded as parts of one whole. This means, if it means anything, that although no single act alleged in the articles should be considered as an impeachable offence, and a sufficient ground of conviction, yet all the acts taken together may constitute such an offence. That is, in other words, that many nothings may make something; that many noughts may make an unit: that many innocent acts may make a crime. What is this but recurring, in another form, to the absurd and monstrous doctrine, that judges may be removed on impeachment for reasons of expediency, without the proof of any specific offence? No sir! This last subterfuge will not avail the prosecutors. This honorable Court, adhering to the principles of the Constitution, the positive rules of law, and the plain dictates of justice and common sense, will require, before it convicts, the clear proof of a criminal intent, manifested and carried into effect, by some act done in violation of the laws. Under the shield of this great principle, our honorable client stands secure. In full confidence that you, Mr. President, and the members of this honorable Court will be guided by it, I cheerfully submit the case to you; and when you retire to deliberate on it, remember that posterity will sit in judgment on your conduct; that her decision will be pronounced on the testimony of impartial history; and that from her awful sentence there lies no appeal.

TUESDAY, February 26.

The Court opened at about half past ten o'clock, A. M.; the Managers, the House of Representatives, and the counsel of the respondent having taken their seats,

Mr. NICHOLSON, as one of the managers, addressed the Court in reply to the counsel of the accused. He said the House of Representatives having impeached Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; the evidence on their part having been adduced, and that on behalf of the accused, and the arguments of his counsel having been fully and patiently heard, it now became his duty to reply in support of the impeachment. To me, Mr. President, said he, this duty is an unpleasant one. Upon all occasions and under all circumstances, the office of a public accuser is the most painful that can be imposed on us; but it is more peculiarly so when the object of accusation appears before us covered with age and infirmities. I think I speak the sentiment of my brother Managers of the House of Representatives, when I say, that this impeachment never would have been instituted, that it never would have arrived at its present crisis, if we had not believed that the best interests of our common country required, that the conduct complained of should not go unpunished. There is no nation on earth, sir, in which the freedom of man and the consequent happiness of society are not inseparably interwoven with the full, free and impartial administration of justice.

"Una salus ambobus erit commune periculum."

It was to preserve this unity of safety, to avert this common danger, that we thought ourselves bound by the most solemn obligation, to bring these charges before the highest tribunal of the nation. We may in vain make laws to secure our property, to protect our liberty, and to guard our lives, if those to whom we appeal, and to whose decrees we are bound to submit, shall prove unfaithful in the discharge of their duty. If our laws are not faithfully administered; if the holy sanctuary of our courts is to be invaded by party feeling; if justice shall suffer her pure garment to be stained by the foul venom of political bigotry, we may indeed boast that we live in a land of freedom, but the boast will be vain and illusory.

In this point of view, therefore, this cause may justly be called an important one. I need not however urge its importance to the Court, for the feelings of every honorable member will speak its importance more forcibly than anything that I can utter. But I do trust that those frequent appeals which you have heard, those frequent instances in which you have been reminded that posterity will pass between the accused, his accusers and his judges, will have no influence on your minds. A desire to secure the approbation of posterity is an honorable feeling, pervading every human breast, and is most inseparable from our nature: but to secure the approbation of posterity, we must take care to pursue the dictates of our own consciences, and, by doing justice here, trust to posterity to do us justice too.

Our country, it is true, are now looking on with anxious solicitude for the event of this cause; but the sentence which they shall pass will not depend upon the judgment given here. To the world and to posterity the conviction of the accused, by this Court, will not establish his guilt; and I thank God, as the case has been put in issue between us, his acquittal will not prove his innocence. The facts in the cause, sir, those facts which we have proved by the most undeniable evidence, and upon which your judgment must be given; those facts will be presented to the eyes of the world and of posterity, and upon those only will they decide. If it should ever be the fortune of my humble name to descend to posterity, by the vote which I gave for instituting this impeachment, and by my conduct in discharging the great duty now committed to me, I cheerfully consent to be tried. To this awful tribunal I willingly submit. If the judge is guilty, posterity will heap on him all that

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odium which his guilt deserves; if he is innocent, let that odium be turned upon his accusers.

Because Sidney and Russell bled upon a scaffold, have their names been less the objects of veneration with posterity? and because Scroggs and Jeffries escaped the punishment due to their crimes, have they therefore been less the objects of universal execration? No, sir; and the honorable counsel (Mr. Hopkinson) who first addressed you on behalf of the accused, gave us himself a memorable example of the poor respect which posterity will feel for the decisions of those who have gone before them. That honorable gentleman told you that Warren Hastings was impeached for the murder of princes and the plunder of empires, and yet he was acquitted. But, is there any who hears me, that believes he was innocent? If we read the history of that trial; if we look to the facts charged, and listen to the unexampled eloquence by which they were supported, our only wonder will be, that he was not condemned. Sir, it has been said that those plundered millions were the best witnesses to prove his innocence; and I greatly fear that the day will come when the crying blood of those murdered princes will be the best witnesses to prove his guilt. The most splendid action in Edmund Burke's life was his accusation of Warren Hastings; the foulest stain upon the national justice of England was his acquittal.

We have been charged, sir, by one of the honorable counsel (Mr. Harper) with having endeavored to enlist on our side the sympathies of the Court. Permit me to ask, what sympathy have we endeavored to excite? What feelings have we endeavored to engage? To what passion have we addressed ourselves? None, sir. We came here to demand justice. The Constitution has placed in your hands the power of punishing guilt; we have proved the guilt of the person accused, and at your hands we demand his punishment. To your consciences and your understandings we appeal, and not to your feelings. These have been assailed by our adversaries. They have exhibited their client to you, covered, as they say, with the frost of seventy winters, and have endeavored to hide the magnitude of his crimes, in the length of his years, and the infirmity of his health. In attempting to excite your compassion, they have wished to drown the voice of justice, and have addressed you not as judges but as men. I do trust, however, that if any sympathy is to be excited, it will be neither for the accused, nor his accusers. Let your feelings be turned toward the nation! Let your sympathy be awakened for those who are to come after you, for by the sentence which you pronounce in this case, it must ultimately be determined whether justice shall hereafter be impartially administered, or whether the rights of the citizen are to be prostrated at the feet of overbearing and tyrannical judges. We, who are engaged in this prosecution, feel that our fathers handed down to us a glorious birthright, and we appear at this bar to demand that it be transmitted to our children unimpaired and unpolluted. Do the nation justice, and you will do justice to us, to yourselves, and to posterity.—We were also told by the honorable counsel for the accused, that when we found the accusation shrunk from the testimony, and that the case could no longer be supported, we resorted to the forlorn hope of contending that an impeachment was not a criminal prosecution, but a mere inquest of office. For myself I am free to declare, that I heard no such position taken. If declarations of this kind have been made, in the name of the Managers, I here disclaim them. We do contend that this is a criminal prosecution, for offences committed in the discharge of high official duties, and we now support it, not merely for the purpose of removing an individual from office, but in order that the punishment inflicted on him may deter others from pursuing the baneful example which has been set them.

Nor do we mean to take another ground which the counsel for the accused have thought proper to assign us, for we never entertained the most distant idea that any citizen might be impeached. It was with no little surprise that I heard such doctrines ascribed to us, and I was astonished to hear the Attorney General of Maryland combatting positions which we had not laid down, and searching for argument to prove that which we should not have hesitated to admit.

But, sir, there is one principle upon which all the counsel for the accused have relied, upon which they have all dwelt with great force, and to the maintenance of which they have directed all their powers, that we cannot assent to; we mean to contend against it, because we believe it to be totally untenable, and because it is of the first importance in the decision of the question now under discussion. We do not contend that, to sustain an impeachment, it is not necessary to show that the offences charged are of such a nature as to subject the party to an indictment, for the learned counsel have said that the person now accused is not guilty, because the misdemeanors charged against him are not of a nature for which he might be indicted in a court of law.

To show how entirely groundless this position is, I need only pursue that course which has been pointed out to us by the respondent himself, and his counsel. I might refer to English authorities of the highest respectability, to show that officers of the British Government have been impeached for offences not indictable under any law whatever. But I feel no disposition to resort to foreign precedents. In my judgment, the Constitution of the United States ought to be expounded upon its own principles, and that foreign aid ought never to be called in. Our Constitution was fashioned after none other in the known world, and if we understand the language in which it is written, we require no assistance in giving it a true exposition. As we speak the English language, we may, indeed refer to English authorities for definitions, as we should refer to English dictionaries for the meaning of English words; but upon this, as upon all occasions, where the principles of our Government are to be developed, I trust that the Constitution of the United States will stand upon

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its own foundation, unsupported by foreign aid, and that the construction given to it will be, not an English construction, but one purely and entirely American.

The Constitution declares, that "the judges both of the supreme and inferior courts shall hold their commissions during good behaviour." The plain and correct inference to be drawn from this language is, that a judge is to hold his office so long as he demeans himself well in it; and whenever he shall not demean himself well, he shall be removed. I therefore contend that a judge would be liable to impeachment under the Constitution, even without the insertion of that clause which declares, that "all civil officers of the United 'States shall be removed for the commission of 'treason, bribery, and other high crimes and mis-'demeanors." The nature of the tenure by which a judge holds his office is such that, for any act of misbehaviour in office, he is liable to removal. These acts of misbehaviour may be of various kinds, some of which may, indeed, be punishable under our laws by indictment; but there may be others which the law-makers may not have pointed out, involving such a flagrant breach of duty in a judge, either in doing that which he ought not to have done, or in omitting to do that which he ought to have done, that no man of common understanding would hesitate to say he ought to be impeached for it.

The words "good behaviour" are borrowed from the English laws, and if I were inclined to rest this case on English authorities, I could easily show that, in England, these words have been construed to mean much more than we contend for. The expression *durante se bene gesserit*, I believe, first occurs in a statute of Henry VIII. providing for the appointment of a *custos rotulorum*, and clerk of the peace for the several counties in England. The statute recites, that ignorant and unlearned persons had, by unfair means, procured themselves to be appointed to these offices, to the great injury of the community, and provides that the *custos* shall hold his office until removed, and the clerk of the peace shall hold his office *durante se bene gesserit*. The reason for making the tenure to be during good behaviour, was, that the office had been held by incapable persons, who were too ignorant to discharge the duties; and it was certainly the intention of the Legislature that such persons should be removed whenever their incapacity was discovered. Under this statute, therefore, I think it clear that the officer holding his office during good behaviour, might be removed for any improper exercise of his powers, whether arising from ignorance, corruption, passion, or any other cause. To this extent, however, we do not wish to go. We do not charge the judge with incapacity. His learning and his ability are acknowledged on all hands; but we charge him with gross impropriety of conduct in the discharge of his official duties, and as he cannot pretend ignorance, we insist that his malconduct arose from a worse cause.

If, however, a judge were not made liable to removal, from the very nature of the tenure by which he holds his office, we still insist that every judge conducting himself improperly in office, comes under that clause of the Constitution which declares, that "the President, Vice President, and 'civil officers of the United States, shall be re-'moved from office on impeachment for, and con-'viction of, treason, bribery, or other high crimes 'and misdemeanors."

We do not mean to contend against a position which one of the learned counsel took so much pains to prove, that the word "high" applies as well to misdemeanors as to crimes; nor do we deem it important at this time to inquire whether a civil officer of the United States can be removed for offences not committed in the discharge of his official duties. It will be time enough to make this inquiry when the case presents itself. At present we aver that the party charged has been guilty of a high misdemeanor in office, and that he ought to be removed for it.

Here, however, we are met by being told, that although his conduct may have been improper, yet that he is not liable to impeachment, unless the offence is of such a nature as that he might be indicted for it in a court of law.

If this be true, as it relates to a judge, the Constitution, to be consistent with itself, must make it universally true; and yet, if the doctrine be admitted, the Constitution will be found to be at variance with itself. Treason is an offence which may or may not be committed in the discharge of official duty, and no doubt the party committing it may be indicted. Bribery is an offence for which a judge may be indicted in the courts of the United States, because an act of Congress makes provision for it, and declares the punishment; but there is no law by which any other officer of the United States can be indicted for bribery. If, therefore, the President of the United States should accept a bribe, he certainly cannot be indicted for it, and yet no man can doubt that he might be impeached. If one of the Heads of Departments should undertake to recommend to office for pay, he certainly might be impeached for it, and yet, I would ask, under what law, and in what court could he be indicted?

To this, perhaps, it might be answered, that bribery is one of those offences for which the Constitution expressly provides that the officer may be impeached. This is true; but let us proceed further, and inquire whether there are not other offences for which an officer may be impeached, and for which he cannot be indicted?

If a judge should order a cause to be tried with eleven jurors only, surely he might be impeached for it, and yet I believe there is no court in which he could be indicted. You, Mr. President, as Vice President of the United States, together with the Secretary of the Treasury, the Chief Justice and the Attorney General, as Commissioners of the Sinking Fund, have annually at your disposal eight millions of dollars, for the purpose of paying the national debt. If, instead of applying it to this public use, you should divert it to another channel, or convert it to your own private uses, I ask if there is a man in the world who would

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hesitate to say that you ought to be impeached for this misconduct? And yet there is no court in this country in which you could be indicted for it. Nay, sir, it would amount to nothing more than a breach of trust, and would not be indictable under the favorite common law.

But, sir, this ground, which was so strenuously fought for, will probably be abandoned, and instead of our adversaries maintaining that the offence must be of an indictable nature, they will, like one of the honorable counsel, (Mr. Harper,) go a step back, and say that it must be a breach of some known positive law. Thus they will endeavor to shelter their client by saying that there is no act of Congress declaring it illegal for a judge to deliver his opinion on the law before counsel have been heard, or to make political harangues from the bench.

There are offences for which an officer may be impeached, and against which there are no known positive laws. It is possible that the day may arrive when a President of the United States, having some great political object in view, may endeavor to influence the Legislature by holding out threats or inducements to them. A treaty may be made which the President, with some personal view, may be extremely anxious to have ratified. The hope of office may be held out to a Senator; and I think it cannot be doubted, that for this the President would be liable to impeachment, although there is no positive law forbidding it. Again, sir: a member of the Senate or of the House of Representatives may have a very dear friend in office, and the President may tell him unless you vote for my measures your friend shall be dismissed. Where is the positive law forbidding this, yet where is the man who would be shameless enough to rise in the face of the country and defend such conduct, or be bold enough to contend that the President could not be impeached for it?

It was said by one of the counsel that the offence must be a breach either of the common law, a State law, or a law of the United States, and that no lawyer would speak of a misdemeanor, but as an act violating some one of these laws. This doctrine is surely not warranted, for the Government of the United States have no concern with any but their own laws. In a State court, I would speak of a misdemeanor as an offence against a State law; in the courts of the United States, I would speak of it as an offence against an act of Congress; but, sir, as a member of the House of Representatives, and acting as a Manager of an impeachment before the highest Court in the nation, appointed to try the highest officers of the Government, when I speak of a misdemeanor, I mean an act of official misconduct, a violation of official duty, whether it be a proceeding against a positive law, or a proceeding unwarranted by law.

If the objection that the offence must be of an indictable nature, or against some positive law, means anything, it must be that the misconduct for which a judge or any other officer may be impeached, is either made punishable by, or is a violation of an act of Congress, for we are not to be regulated either by the common law or a State law. What then would be the result? I have pointed out several instances of gross misconduct in violation of no act of Congress, and yet under this doctrine he is to be permitted to pursue his wicked courses until every possible offence is defined by statute. This, too, would teach us that we have done wrong heretofore; for, at the last session a judge was impeached and removed from office for drunkenness and profane swearing on the bench, although there is no law of the United States forbidding them. Indeed, I do not know that there is any law punishing either in New Hampshire, where the offence was committed. It was said by one of the counsel that these were indictable offences. I, however, do not know where; certainly not in England. Drunkenness is punishable there by the ecclesiastical authority, but the temporal magistrate never had any power over it until it was given by a statute of James I., and even then the power was not to be exercised by the courts, but only by a justice of the peace, as is now the case in Maryland, where a small fine may be imposed.

But the Attorney General of Maryland (Mr. Martin) admits that offences may be of so heinous a nature that their punishment carries infamy with them, and that, though not committed in the discharge of official duty, yet if against a State law, the party may be impeached and removed from office. This, though not very material to the present question, may serve us in showing how inapplicable the doctrine is, that the offence must be against a State law or the common law. I will suppose that in New Hampshire there is no law punishing profane swearing. In Maryland a magistrate is authorized to impose a fine of thirty-three cents, and if this is not paid instantly the offender may be put in the pillory and receive thirty-nine lashes. The punishment is infamous, and if inflicted on a judge, according to the idea of this gentleman, he is to be impeached and removed from office. If the same offence is committed in New Hampshire, the judge is not to be removed, not because he has been guilty of a lighter offence, but because there is no State law punishing it. If then the State law is to be made the criterion, a judge in Maryland is to be removed from office for that which he might do with impunity in another State.

To carry this idea a little further:—There was once in the State of Connecticut, and may be yet for aught I know, a celebrated code called the *Blue Laws*. Under the provisions of this code, I believe it is a fact, that a captain of a ship was tied up and publicly whipped, because, on returning from a long voyage, he met his wife on a Sunday at the front door and kissed her. This was deemed a high offence, and was ignominiously punished. Now, if we are to be governed by the State laws, I trust the Blue Laws of Connecticut will be rejected, and that our grave judges may be allowed to kiss when and where they please, as to their wisdom shall seem meet, without incurring the pains and penalties of an im-

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peachment. This, sir, may be somewhat ludicrous, but I hope it is not therefore the less illustrative of the absurdity of the doctrine contended for. It has been said that the offences for which a judge or other officer is to be impeached, ought to be defined by act of Congress. This is impossible. Such is the multiplicity of passions that sway the human heart; such is the variety of human action, that a code of laws never did and never can exist, in which all human offences are defined. The Constitution is sufficiently definite when it declares that a judge shall hold his office during good behaviour, and that all civil officers shall be removed for *high crimes and misdemeanors*. The law of good behaviour is the law of truth and justice. It is confined to no soil and to no climate. It is written on the heart of man in indelible characters, by the hand of his Creator, and is known and felt by every human being. He who violates it violates the first principles of law. He abandons the path of rectitude, and by not listening to the warning voice of his conscience, he forsakes man's best and surest guide on this earth. The best and ablest judge will often err in mere matters of law, but as to principles of duty, in discharging acts of common justice to his fellow-men, he can never err so long as he follows conscience as his guide, and suffers justice to be the only object which he has in view.

How far Judge Chase has governed himself by this great, unerring rule of human action, it is your province to determine. How far he has excused himself by his answer and the arguments of his counsel, I shall now beg leave to examine, premising at the same time that it is my intention to confine myself to the first article.

It has been alleged by the counsel for the accused, that my honorable colleagues have argued this case upon the articles and not upon the evidence; and this allegation contains an admission, that if the articles are proved, the guilt of the party is established. It shall be my endeavor to show that there is no material variance between the charges as laid in the articles, and the evidence brought to support them; but that they are amply and fully proved by the very best testimony which could be adduced.

One of the learned counsel in commenting upon the first article, declared that he discovered but a single truth in it, which was, that the judge had formed and reduced to writing an opinion upon the law; and that gentleman, as well as the Attorney General of Maryland, labored with great zeal and with much display of talent, to convince the Senate that there could be nothing wrong in this. Unfortunately for these learned gentlemen, even that truth is not to be found in it, for by recurring to the article it will be found that the judge is not charged for having formed an opinion, or for having reduced that opinion to writing, but for "having delivered an opinion in writing 'on the question of law, on the construction of 'which the defence of the accused materially de-'pended, tending to prejudice the minds of the 'jury against the prisoner before counsel had been 'heard in his defence."

In this we find no charge against him for having formed an opinion, or for having reduced it to writing, and certainly the learned counsel might have spared themselves the trouble of proving what I am sure every member of the Court was fully convinced of before, that there was no impropriety in a judge's forming an opinion on any subject whatever, whether legal or philosophical. It is not, however, unusual for skilful advocates to attempt to draw the attention from the material points in dispute, for the purpose of fixing it on others of little or no importance. Such has been the course pursued by our adversaries. But, Mr. President, the real charge is, that Samuel Chase did, upon the trial of John Fries for treason, endeavor to prejudice the minds of the jury against him, by delivering an opinion to them upon the law before his counsel were heard; and this too in a case of life and death, where the jury had an ample, uncontrolable right, to decide as well the law as the fact. It is the right and duty of judges to inform their minds upon all questions of law whatsoever, but it is an unwarrantable proceeding, it is an unauthorized assumption of power in them, to deliver that opinion to the jury in a criminal cause before the jury is sworn, and before the counsel of the prisoner have been heard in his defence.

I did not expect to hear the fact denied by the counsel, but I did expect to hear it would be admitted, and attempted to be justified. This, however, has not been done; and they have pretended to deny the fact by insisting on an impossibility, I had almost said an absurdity. They have declared that Judge Chase did not make the opinion known, but that it became public by what they call the warm and improper conduct of Mr. Lewis. Sir, it is impossible. What are the facts, as proved even by their own witnesses? That Judge Chase handed the written opinion down to the bar. That it was put into the hands of Mr. Lewis, who, without reading it, immediately and disdainfully threw it from him, declaring that "his hand should never be tainted by receiving a prejudged opinion in any case." How then, I ask, was it made known by Mr. Lewis? He refused to read it, and threw it from him with the correct feeling and indignation naturally arising from a high sense of the injury done to his client. No, sir, it was made public by Judge Chase, as I will presently prove beyond the possibility of doubt, in the hearing of the whole panel of jurors. But permit me here to meet one of the honorable counsel (Mr. Harper) upon that ground, to which he defied my friend who first opened this cause, (Mr. Randolph.) The learned counsel avails himself, he says, of the difference between a general opinion and a direct application of the law to a particular case, and insists that Judge Chase's was nothing more than an opinion upon the law generally. Here I meet him, and if I do not prove that the judge delivered the opinion; that he applied it in the most direct terms to Fries's case; that he knew there was no controversy about the facts, and of course that the defence must rest upon the construction which the

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jury would give to the Constitutional definition of treason; that he publicly pronounced the opinion so as to make an impression not only upon the jury, but upon the bystanders: If I do not prove all this, then I will agree to surrender this article, and indeed the whole impeachment.

In order to prove this, I might rest satisfied with referring the Senate to the clear and pointed testimony of Mr. Lewis, Mr. Dallas, and Mr. Tilghman. But as Mr. Rawle and Mr. Meredith do not recollect so much as these other gentlemen, and it has therefore been argued that the former must be mistaken, because it is said that their warmth at the moment gave a coloring not warranted by the facts, I shall not rely *solely* on the information derived from them. But I mean to show, that Mr. Lewis and Mr. Dallas are supported in their statement by the judge himself, while Mr. Rawle and Mr. Meredith are pointedly contradicted by him. In truth, sir, it would seem as if the counsel for the accused had entirely forgotten that he had ever filed an answer, or they had never read it. We allege that the judge delivered the opinion, and that he applied it directly to Fries's case in the hearing of the jury; they deny this. We have proved it by Mr. Lewis and Mr. Dallas, they rely on Mr. Rawle and Mr. Meredith who do not recollect it. Let us hear the judge himself. In the 14th page of the answer the judge says:

"It was for these reasons that on the 22d of April, 1800, (acknowledged by all to be the first day of this memorable transaction,) when the said John Fries was brought into court, and placed in the prisoner's box for trial, but before the jury was empanelled to try him, this respondent informed the above mentioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas not being then in court, that the court had deliberately considered the indictment against John Fries for treason, and the three overt acts of treason stated therein: that the crime of treason was defined by the Constitution of the United States: that as the Federal Legislature had the power to make, alter or repeal laws, so the Judiciary only had the power to declare, expound and interpret the Constitution and laws of the United States."

Here then we find the attention of the counsel and of everybody else, called in open court to the case of John Fries, and all the witnesses agree, that the jury though not then sworn, were in the box for that purpose, as might naturally be supposed when the prisoner was brought in for trial. We find too that the court had deliberately considered the indictment and the three overt acts of treason charged in it. Now let us see what the result of that consideration was: in the 15th page of the answer the judge proceeds with the statement then made by him from the bench, in which he declared, "that the question, what acts amount-'ed to treason, was a question of law, and had been 'decided by Judges Paterson and Peters in the 'cases of Vigol and Mitchell, and by Judges Iredell 'and Peters in the case of John Fries, the then 'prisoner at the bar, in April 1799. That Judge 'Peters remained of the same opinion which he 'had twice before delivered, and he, this respon-'dent, on long and great consideration, concurred 'in the opinion of Judges Paterson, Iredell, and 'Peters."*

What opinion was it that Judge Iredell and Peters had before given, and in which Judge Chase then publicly declared that he concurred? Why, that the overt acts charged in the indictment against Fries did amount to treason, for upon those very overt acts, the judge himself admits, Fries had before been tried in April, 1799, when these same acts were decided by Judges Iredell and Peters to amount to treason, and in this opinion Judge Chase then declared that he himself concurred. Here then was a full expression of the opinion. Here it was publicly pronounced in the hearing of the jury, in the face of the prisoner, before his counsel were heard in his defence, and so eager was the judge to make it known that he could not even wait until the jury was sworn. Here too was a direct application of the law to the case of John Fries, then about to be tried for treason, by which application of the law, the fate of the prisoner was fixed, and all hope of life entirely cut off.

But gentlemen say that no opinion was given as to facts. True, sir, for he perfectly knew that there was no controversy about the facts; these were all admitted. And because he knew this, his offence was the greater; for when he was convinced the facts were undisputed, he placed the whole case beyond the reach of hope, by pronouncing the law, before the jury was sworn. That he did know there was no dispute about the facts is proved in the 12th page of his answer, in which he says, "it was not suggested or *understood* that any new evidence was to be offered," and one of his counsel, the Attorney General of Maryland, has said, that the judge had the use of Mr. Rawle's and Mr. Peters's notes of the former trial. From these notes, and from his conversation with these gentlemen, he became perfectly acquainted with the facts in the case. Knowing them to be undisputed, he resolved to seal the doom of the wretched prisoner, by publicly pronouncing his opinion before the trial commenced, in the presence of the jury, thereby attempting to prejudice their minds against anything which might afterwards be urged in his favor.

The learned counsel for the judge having denied that the opinion was publicly delivered, they endeavor to give a coloring to the transaction, by alleging that it was delivered to Mr. Lewis only, as counsel for the prisoner; and this they, as well as their client, pretend was intended for the benefit of Fries, in order that himself and his friends might see the necessity of procuring new testimony This is the excuse offered by the judge in the 12th page of his answer, and it has been reiterated over and over again, by his counsel at the bar. Let us examine it, and determine for ourselves, whether

*Fries had been tried in April, 1799, for the same offences, and had, under the direction of the court, been convicted of treason; but this last was a new trial, granted in consequence of supposed prejudice in some of the jurors who sat on the former trial.

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this could be the motive. In the 10th page of the answer, it is stated, that the indictment against Fries was found by the grand jury, on the 16th day of April, 1800, and "that his trial was appointed to be had on the 22d day of the same month." Thus six days intervened between that on which the indictment was found, and that fixed for the trial, agreeably to the judge's own statement. The court was in session every day, and we may fairly presume that Mr. Lewis and Mr. Dallas, both being extensively engaged in business, attended constantly. If this great favor to Fries was intended, and there was a wish to apprize his counsel of the opinion of the court, in order that new testimony might be procured, one would naturally suppose, that some opportunity of conversing with the counsel *privately*, might have been embraced, and this special favor might have been thus conferred. But what is the fact? This information was never given until the day arrived which was fixed for the trial, nor until after the prisoner was brought to the bar. Was this a time to procure new testimony? Did it afford any opportunity to send fifty or sixty miles into Northampton county, for the purpose of bringing other witnesses? Could this possibly be the motive which actuated the judge? Surely not—or why defer it to the very latest moment preceding the trial? Why deliver the opinion *publicly*, not only in the hearing of the counsel, but of the jury, and every other person present? Sir, I am persuaded the Court will agree with me, that the reason assigned is, as it has been stated in the replication, an unworthy evasion.

The counsel (Mr. Hopkinson) who first addressed the court in favor of the accused, viewed this part of the subject in a different light. He very ingeniously offered another excuse. He considered it a great favor done to the prisoner, not because it was intended to give him an opportunity of introducing new testimony, but he says the judge declared the opinion of the court, for the purpose of drawing the attention of the counsel to those particular points, which it would be necessary for them to argue, in order that the error of the court might be corrected, if it was an error. This he called a very great advantage, and supposed that counsel always ought to be thankful for it. Such a course may sometimes give advantages, but in my judgment the disadvantages are generally much greater. On that occasion, however, it gave no advantage, and could not be intended to give any. The court knew precisely what ground the counsel meant to take. One of them had been present at Fries's former trial, and we are told that Judge Chase had the benefit of his notes, as well as of those of the District Attorney. He knew therefore perfectly well, that the points intended to be relied on, were precisely those which he had peremptorily decided against them. He knew that there could be no necessity for drawing the attention of counsel to them, for they had been relied on at the former trial. This therefore could not be the motive, and is, like the other, nothing more than an evasion.

Let us see, too, how this reason or excuse will correspond with the principal ground of defence set up by the judge, and very much dwelt on by his advocates. In the twelfth and thirteenth pages of the answer, the judge states that there was more than one hundred civil causes then depending in the court, and he conceived that an early communication of the court's opinion would tend to the saving of time. Now permit me to ask if any time whatever could be saved, if, as the gentleman supposes, it was the intention of the court to draw the minds of the counsel to the particular points stated in the judge's opinion? For it must be conceded, that if the counsel were to attempt to convince the court that their opinion was erroneous, no time whatever could be saved, as the very attempt itself would tend to the consumption of that time which the judge deemed so precious.

I have therefore proved that the opinion was publicly delivered; that it was applied by the judge in direct terms to the case of Fries, in the presence and hearing of the jury who were to decide upon his life and death, thus tending to prejudice their minds against him; and I flatter myself I have also proved the entire futility of those excuses which have been set up for him, as well by himself as by his counsel.

Much has been said with a view to convince the court that the opinion thus delivered was a correct one, and it has therefore been argued that his conduct was perfectly justifiable. For my own part, I consider it totally immaterial in the present case whether the doctrine of treason, as laid down by the judge, was correct or not; for even if it were correct, the time and manner of delivering it, and the persons to whom it was delivered, form the substance of the charge against him. It is a misdemeanor, a high misdemeanor in a judge, wantonly to give an opinion upon any case which is to come before him, previously to the swearing of the jury, and the offence is made much greater by the opinion being publicly declared in the presence of the jury, who ought to come to the trial of every cause with minds wholly free from prepossession against either party.

Although the judge has said in his answer, that no gentleman of established reputation for legal knowledge would deliberately give a contrary opinion, yet I have not the slightest apprehension that any little reputation which I may possess, can in any manner be affected by my expressing, as I now do, my entire conviction that the doctrine of treason, as laid down in Fries's case, is wholly repugnant to the spirit and meaning of the Constitution. It is not my intention at this time to enter into an argument to prove this, for I have before said, that I consider it quite immaterial in the present discussion; but I will offer some few observations, to demonstrate to the Senate that there was nothing very unreasonable in the wish expressed by Mr. Lewis and Mr. Dallas, to show that the Constitution was susceptible of another construction.

The Constitution declares that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies,

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giving them aid and comfort." John Fries was indicted for *levying war* against the United States, and the facts I believe were, that he, with some others, did, in a forcible manner, rescue some prisoners from the marshal of Pennsylvania. This was called a resistance to a law of the United States, and, by construction, was determined at the former trial to be the treason of levying war. It was in opposition to this construction of the Constitution that Mr. Lewis and Mr. Dallas wished to be heard. It was certainly not a very extravagant wish on their part, for it ought to be recollected that we are a young nation, and it is deeply interesting to us all that the Constitution of the United States should not receive a construction unwarranted by its letter. After the decisions had taken place in the courts upon the Western insurrection, (I mean in the cases of Vigol and Mitchel,) Congress had passed an act declaring that to resist a law of the United States should be deemed a high misdemeanor, punishable by fine and imprisonment; and they had before provided, by the act of 1789, that to rescue prisoners from the custody of the marshal should also be punishable by fine and imprisonment. Mr. Lewis and Mr. Dallas were desirous of showing that Fries's case came within the provisions of these laws, and that his offence was not of such a nature as to forfeit his life. They also wished to have an opportunity of proving that the terms *levying war* ought not to receive the same construction here as in England. To convince the Senate that they were not singular in their ideas, and that the construction given by the court has not been unanimously assented to, I shall take the liberty of referring to an author of merited reputation, to whom I believe our adversaries will not refuse their respect. Judge Tucker of Virginia, in his valuable edition of Blackstone's Commentaries, in the appendix to the fourth volume, under the title of *Treason*, after reciting that part of the Constitution relating to the subject, observes:

"It is probable that no part of the Constitution of the United States was supposed to be less susceptible of various interpretations than that which defines and limits the offence of treason against the United States. The text is short, and until comments upon it appeared, might have been deemed explicit. It is as follows: "Treason against the United States shall consist only 'in levying war against them, or in adhering to their 'enemies, giving them aid and comfort.'

"From this declaration contained in the Constitution of the United States, the supreme law of the land, and the fountain both of the authority of the Government and of the crime against it, a plain man might draw conclusions very different from the artificial reasoning and subtle refinement of technical men; and seeing that that instrument is to be regarded as the act of the people of the United States, both collectively and individually, it might seem reasonable that the interpretation of nine hundred and ninety-nine plain men, who were parties to it, ought to serve as a guide to the thousandth man, who may happen to be called upon to expound it. But as technical men are not very apt to respect the opinions of such as have not been educated in the same habits with themselves, the probability is, that the opinions of one man in a thousand, or rather in a hundred thousand, will overbalance that of the rest of the community, unless the latter should deem it an object worthy of their attention to express their opinion in some way that may be regarded as obligatory upon the few who dissent from them.

"As new-fangled and artificial treasons have been the great engines by which violent factions in free States have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a Constitutional definition of the crime.*

"Judge Wilson, in the first charge which he delivered in the federal circuit court of Pennsylvania, expressed himself thus on the subject: 'It well deserves 'to be remarked, that with regard to treason, a *new* 'and *great* improvement has been introduced into the 'Government of the United States. Under that Government the citizens have not only a legal but a Constitutional *security* against the *extension* of that crime, 'or the imputation of treason. Treasons capricious, 'arbitrary and *constructive* have often been the most tremendous engines of *despotic* or *Legislative* tyranny.'†

"Judge Iredell, on a similar occasion in South Carolina, observes: "Treasons consist in *two* articles *only*; 'levying war against the United States, or adhering to 'their enemies, giving them aid and comfort. The *plain* '*definition* of this crime was justly deemed of such 'moment to the liberties of the people, that it was 'made a part of the Constitution itself. None can so 'highly prize the importance of this provision as those 'who are best acquainted with the *abuses* which have 'been practised in other countries in *prosecutions* for 'this offence. *No man of humanity can read them* '*without the highest indignation*; nor in particular, 'can they be read by any citizen of America, without 'emotions of gratitude for the much happier situation 'of his own country.‡

"Such probably were the opinions of the citizens of America in general, when they adopted the Constitution; but *technical* men have since made some inferences and deductions from the use of some words in that definition, which are to be found in the statute of treasons in England,‖ from whence they conclude, that the decisions made upon that act in England, during a period of near five hundred years, however contradictory or inconsistent they may be with the text or with each other, have been *adopted* also by the Constitution, 'as a *direction* whereby the *courts* are to *understand* the *application* of that act.'§ And it has even been advanced on a very important occasion, that what in England is called *constructive* levying of war, in this country must be called *direct* levying of war.¶

"It is on the authority of a passage in the Mirror,

* 2 Federalist, No. 43.

† Carey's American Museum, Vol. 7, page 40.

‡ Idem, Vol. XII, part 2, pa. 36.

‖ 25, Edw. III.

§ Trial of Fries, p. 123 and 168.

¶ The passage stands thus. "If you expunge what is a direct levying of war, there can no such thing as treason be found; either the law is wrong, or the arguments used on the other side. Gentlemen, the law is established, but the arguments vanish like vapor before the morning sun; what then in England is called *constructive* levying of war, in this country must be called *direct* levying of war." *Trial of Fries*, p. 161. I should incline to suspect the reporter of some mistake

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that Sir Edward Coke lays it down,* that levying war against the King was treason by the common law. We find then that the common law sense of this obscure phrase, as Sir Matthew Hale calls it†, was *the bringing in or raising an army.* And in this sense it is probable that every man in America [with the exception perhaps of half a dozen lawyers] understood the term *levying* war, when the Constitution was adopted: and in this sense it seems to be still understood by some gentlemen, whose professional talents are both an honor and an ornament to their country‡."

Such we find are the opinions of Judge Tucker, an able and upright lawyer, who thinks that the Constitution ought to be construed agreeably to the plain import of its language, and ought not to be involved in technical abstruseness. In that series of publications entitled the Federalist, written at the commencement of the present Government, by some of the ablest men in this nation, for the purpose of defending the Constitution, it is matter of boast, that treason was fully defined, and not left to wild and arbitrary construction. But what avails the definition, if the constructive treasons of England are to be drawn in as precedents for us?

Sir Matthew Hale, than whom an abler, or a better judge never graced the English bench, tells us that the words *levying war* were formerly construed to mean "the raising an armed force or bringing in an army," and surely such to a man of plain sound sense, would appear to be their true meaning under our Constitution. He says that the first instance which he finds of constructive treasons, was in the reign of Henry the Eighth, when certain persons who had combined for the purpose of raising servants' wages, were adjudged to be guilty of levying war; and the next was in the reign of Elizabeth. Thus, from these two decisions constructive treasons became fashionable, and scarcely anything cauld be done, but arbitrary judges were found to construe it into treason. All was either levying war or conspiring against the life of the King, and executions and attainders innumerable followed. Every new case formed a new precedent, and strengthened the old ones. In the reign of Charles the Second, a number of apprentices were indicted for treason of levying war, and this levying of war consisted in their having pulled down a certain description of houses. Hale was then one of the judges, and although these constructive treasons had been fashionable for a hundred and fifty years, he doubted. His brethren, however, overruled him, and these decisions in the worst of times have governed England since, and are now to be introduced here to govern us. Hale's reasons for differing with the other judges are stated in his Pleas of the Crown and more at large by Keelyng in his reports. Although he lived in bad times, he wished to make them better, by resisting the torrent of oppression which threatened to overwhelm the subject. I am sorry to add that since the Revolution of 1688, the courts of England have thought themselves bound by those prior determinations, and decide accordingly. But we are not bound by them, and I do trust that they will be rejected. It is impossible to say to what lengths we are to be carried, but I cannot help feeling some alarm when I find it declared by Mr. Rawle, the then district attorney, upon Fries's trial, that "what in England is called *constructive* levying of war, must in this country be called *direct* levying of war." (See Fries's trial, p. 161.)

I before stated that I did not mean to enter into an argument against the correctness of the court's opinion; nor have I done so, but have offered these remarks to show that it was not unreasonable in Mr. Lewis and Mr. Dallas to wish that another construction of the Constitution might be received. The counsel for Judge Chase seem to think it monstrous that they should have wished to argue the point after the law had been settled by three former decisions, which had taken place in the course of four years. Let it be remembered that Sir Matthew Hale doubted, after the lapse of one hundred and fifty years from the first of these constructive treasons, and after, for aught I know, one hundred and fifty cases had been decided. Mr. President, far from thinking their conduct on that occasion extraordinary, I, as a free man of America, most cheerfully accord them my thanks for the stand they made; and I do hope and trust, that if ever a similar case should occur, in which the same doctrine of constructive treasons shall be urged to a jury, men like Mr. Lewis and Mr. Dallas will be found, men of exalted talents and extensive learning, who will be bold enough to assert the rights of the citizen, and save the Constitution of their country from destruction.

Another justification of a peculiar nature is set up in defence of Judge Chase, by a statement made in Keelyng's Reports. It is there said that "after the *happy* restoration of King Charles the Second, Sir Orlando Bridgman, chief justice of the King's Bench, and some six or eight others, judges, prosecutors, and King's solicitors, assembled for the purpose of determining in what manner the *regicides* should be tried, and they settled many points which it was supposed would occur upon the trials." This, sir, is an unfortunate period to refer to for justification of the conduct of judges in our day. Never was there a moment of such fawning servility; never was there a period of such unbounded licentiousness. The hope of reward or the fear of punishment brought almost every man crouching at the foot-stool of the throne, and all united in singing hosannas to the King, and crying aloud for the crucifixion of the miserable regicides. This conspiracy (which has been quoted) against the wretched victims whose sacrifice was resolved on, was headed by that most servile of all servile tools, Sir Orlando Bridgman. His character and those of his brother judges who conspired with him, may be recollected from the charge which he gave to the grand

in this passage, but it would seem that it had been submitted to the inspection of the counsel to whom it is ascribed.

* 3 Inst. pa. 9.

† 1 Hale's Hist. P. C. 143.

‡ Trial of Fries, 92, 99, 139, &c.

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jury on that occasion. It will be found in the fourth volume of State Trials, and it will there be seen how flamingly he talked of the *divine right of Kings*, whom he called *God's vicegerents* on earth; their persons he said were too *sacred* for their conduct to be inquired into: *they held their power from God, and were accountable to him alone: it was treason in their subjects to inquire into the propriety of what they did;* with much more of the same cast. These are the times, these the men, and this is the conduct now introduced for the justification of Judge Chase. If they will afford him a justification he is welcome to it for me. They were woful times indeed, one would have thought the Parliament which the King found in session upon his return, was submissive enough; but he was not satisfied, and finding the whole nation ready to bow at his nod, he ordered a new one elected, and they proved so compliant to all his wishes, that he continued them for eighteen years. This sufficiently proves the servile spirit of those whom the King thought proper to employ on this noted occasion, and it is not much to Mr. Keelyng's honor that he was one of them. The points which they did settle were of an extraordinary nature, and one of them was read a few days since by one of the counsel (Mr. Key) to show that Basset was a good juror in Callender's trial.

If, however, this famous precedent had been made in the best of times, it does not apply to the present case. For these judges, bad as they were, yet had modesty enough to keep their opinions to themselves, till after the trials had commenced, and did not deliver them until the occasions arose which called for them. Judge Chase, we have fully proved, delivered his opinion before hand, publicly, and in the hearing of the jury, so that the authority of Mr. Justice Keelyng and Sir Orlando Bridgman does not justify him. He outstripped even them.

Having thus, as I conceive, fully established the first specification contained in this article, and having answered the only colourable excuses advanced in favor of the judge, I shall proceed to the second specification. This is a charge against him for "restricting Fries's counsel from recurring to such English authorities as they believed apposite, and from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client."

The restriction is in some sort admitted, for we are told that the counsel on both sides were restricted, and Mr. Rawle's testimony is relied on to support their allegation. If the counsel on both sides were restricted, it was a restriction of a most curious nature, as far as it related to the district attorney, Mr. Rawle; for the only restriction imposed on him was that he should not defend Fries, which his duty would not permit, nor perhaps his inclination. It is in vain therefore to talk about both being restricted, when the opinion of the court was all on one side; and it was well ascertained by the course taken by Mr. Rawle on the former trial, that he had no disposition to controvert the doctrine of treason, as laid down by the court.

That the counsel of Fries were prohibited from recurring to such English authorities, as they believed apposite, and from citing certain statutes of the United States, I consider entirely proved by the testimony of Mr. Lewis and Mr. Dallas. Without meaning to impeach Mr. Rawle's veracity, or that of any other person, I contend that Mr. Lewis and Mr. Dallas are entitled to more credit than he is, because he took no notes of the first day's proceedings, and is contradicted in many very material points by the admissions of the judge himself. Mr. Lewis and Mr. Dallas gave their testimony a year ago; they have considered it at the bar now, and are supported by the judge in his answer, as far as he thought it prudent to go. That Mr. Rawle is contradicted, and Mr. Lewis and Mr. Dallas supported by the judge in many material points, I will proceed to show.

Mr. Rawle says that the judge, when he handed the written opinion down, declared the counsel on each side were to have a copy, and another copy was to be *taken out by the jury*. Mr. Lewis states this materially different, for he says the judge declared that a copy *was to be delivered to the jury as soon as the case on the part of the prosecution was opened or gone through*. Here these gentlemen differ. Let us see what the judge says. In the 15th page of the answer he says he stated that "three copies were to be made 'out, one to be delivered to the attorney of the 'district, one to the counsel of the prisoner, and 'one to the petit jury, after they should have been 'empanelled and heard the indictment read to 'them by the clerk, and after the district attorney 'should have stated to them the law on the overt 'acts in the indictment, as it appeared to him." Thus Mr. Lewis and Mr. Dallas are supported, and Mr. Rawle pointedly contradicted.

Again, Lewis and Dallas state a long conversation, not of a very mild nature on the part of Lewis, which took place between him and the judge on the first day, in which the contents of the written paper were very fully disclosed by the judge. Mr. Rawle recollects nothing of this, but expressly says the court when they handed down the papers, only stated that they had thought proper to draw up their sentiments of the law, likely to arise in the cases of treason, in order that they might be perfectly understood, which would tend to save time. He does not recollect that anything more was publicly said about it that day. In the 14th and 15th pages of the answer, the judge states a long conversation that took place between himself, Mr. Lewis, and Mr. Dallas, and in this supports the testimony of these two gentlemen, while he contradicts that of Mr. Rawle.

Another fact in which Mr. Rawle differs from Mr. Lewis and Mr. Dallas is as to John Fries being in court that day. Mr. Rawle does not recollect that he was; Mr. Lewis swears that if he was not in the prisoner's box at the moment the paper was handed down, he was placed there

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a few minutes after, and Judge Chase, in the 14th page of his answer expressly states, that Fries was placed in the prisoner's box, before any of the events occured which form the subject of inquiry to day.

When Mr. Rawle's memory is so defective as to these three important facts, in the statement of which Mr. Lewis and Mr. Dallas are so strongly supported by the judge himself, I ask if their testimony ought not to have infinitely more weight than his? In noticing these contradictions, I have not relied on my own notes of the evidence, or on my own memory, but have referred to the three printed affidavits of Mr. Rawle, Mr. Lewis, and Mr. Dallas, made out by themselves last year, and corroborated by the oral testimony which each has delivered in at the bar.

I must therefore be permitted to insist that Fries's counsel were prohibited from recurring to English authorities, and from citing certain statutes of the United States. It is fully proved by Mr. Lewis, and corroborated by Mr. Dallas. The latter was not in court when the conversation took place; but coming in immediately after, he was informed of it by Mr. Lewis, and then stated to the court what Mr. Lewis had told him. The court did not deny it, and certainly it is to be presumed, if Mr. Lewis had made an erroneous statement of facts to Mr. Dallas, and they had been repeated by Mr. Dallas, the court would have contradicted them. This was not done, and both these gentlemen now swear that they were prohibited.

Let us inquire why there was a wish on the part of the prisoner's counsel to recur to English authorities. On the former trial of Fries, the court had grounded their opinion upon the construction which had been given in England to the words *levying war*. The district attorney and his assistant had relied on the same authorities. The counsel for the prisoner were desirous of showing, as they themselves have stated, that although these interpretative treasons had been admitted in England since the Revolution of 1688, yet that they were founded on precedents made during arbitrary reigns, by which the courts in England afterwards conceived themselves bound. I have already shown to you from Hale's Pleas of the Crown, what was held to be the plain and simple meaning of the words *levying war*, antecedent to the reign of Henry VIII., when these interpretative treasons were first introduced, and it cannot be doubted that the object of Fries's counsel was to convince the jury that the Constitution of the United States ought to be construed agreeably to the plain import of its own language, without being subjected to those wild and arbitrary constructions, which had originated in the worst of times for the worst of purposes. The reason why they wished to cite the statutes of the United States I have before mentioned to be, to show that the offences charged against Fries were of such a nature as to subject him to fine and imprisonment only, and not to a forfeiture of his life.

But, sir, a doctrine as novel to me as any I have lately heard, has been advanced on this occasion. A distinction is attempted to be taken between the *right* of the jury to decide the law as well as the fact, and their *power* to do so. I have always thought that in criminal cases the jury had both the right and the power. This is the first time I have ever heard it denied, and I trust it will be the last. This right is one of the most valuable features in the trial by jury, and if a jury should be so servile on a question of life and death, to surrender their own opinions to those of the court, they would be unworthy of the name of freemen. Although the *right* is denied, the *power* is admitted. I contend, therefore, that the power includes the right. For if they have been suffered to exercise this power for more than an hundred years, without being restricted by law, it surely cannot be questioned that they have acquired the right. The right to decide both the law and the fact is admitted in England; it has been acknowledged there for more than two hundred years, although I believe an instance or two may be found in the time of the noted *Jeffries*, when juries were attainted for daring to exercise this right. The power to attaint however has been long since abolished, and no instance can be produced since the Revolution of 1688, in which a verdict of acquittal has been ever set aside, because the jury have ventured to decide against the opinion of the court. The judge in his answer admits the *right* of the jury to decide both the law and the fact, and if he had not, but had taken the ground contended for by his counsel, I should have considered it a strong evidence of his guilt under the third specification.

The third and last specification charges the judge with "debarring the prisoner from his 'Constitutional privilege of addressing the jury '(through his counsel) on the law as well as on 'the fact, which was to determine his guilt or in-'nocence, and at the same time endeavoring to 'wrest from the jury their indisputable right to 'hear argument and determine upon the question 'of law as well as the question of fact, involved 'in the verdict which they were required to 'give."

We do not contend that the counsel were debarred from addressing the jury by the interference of sheriffs and constables, for it is not necessary to prove the actual exercise of force. But we do allege, and we have proved it by Mr. Lewis and Mr. Dallas, that the judge declared on the first day, that they must address the court and not the jury. I have before shown that these gentlemen are entitled to more credit than either Mr. Rawle, Mr. Meredith, or Mr. Tilghman, for their testimony is better supported than that of the others by the answer of the judge. It ought to be remembered, too, that they were more particularly interested in the transaction than the rest of the gentlemen, and therefore the probability is, that the facts were more strongly impressed on their minds.

An attempt however is made to shelter the judge from this part of the accusation, by saying that he declared counsel would be heard although this

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opinion was given. Sir, this is another evasion. The opinion itself carries with it internal, unconcontrovertible evidence of the determination of the court that the counsel should not address the jury. What is the principal ground of the defence? what is the leading reason urged for giving this extraordinary opinion before the jury was sworn? It was, as the judge says, and as his counsel have argued, to save time. They state that there were more than one hundred civil causes then depending, that the delay of business in Pennsylvania had been long a subject of complaint, and the judge was anxious to make Fries's trial a short one, in order that they might have time to proceed with the other business. Now suffer me to inquire how time was to be saved; how the trial of Fries was to be shortened, if his counsel were to be allowed to address the jury on the law which the court had already decided? Was not the opinion of the court given for the express purpose of preventing them from addressing the jury; or, if not for this, let me ask for what purpose it was given? Was it to prejudice the minds of the jury; to close their ears and their understandings against any arguments which might be offered them? Gentlemen say no. Was it to save time? This was impossible, because the time was still to be occupied by the counsel being permitted to address the jury. Why then, let me ask, was the opinion given? The answer is ready. It was intended to produce both these effects. The minds of the jury were to be preoccupied by the imposing authority of the court, and in this manner it was expected to deter the counsel from addressing them on the law. Nothing, therefore, can be clearer, than that the counsel were prevented from addressing the jury, and that the judge "*endeavored* (in the language of the article) to wrest from the jury their right to hear argument, and determine upon the question of law." But it is said that the right of the jury to decide the law does not give them a dispensing power over the law, and that therefore they are bound by the opinion of the court. Nor does the right of the *court* to decide the law give *them* a dispensing power over the law. The jury have a right to decide the law, and are not bound by the opinion of the court. In order to enable them to decide correctly they have a right to hear argument, and any attempt to prevent this, is an attempt to wrest from them their right to decide the law, and is a high misdemeanor.

We are told, however, that if anything wrong was done on the first day, ample atonement was made on the second. It is true that the judge exhibited some appearance of a wish that the counsel would proceed on the second day, but Mr. Lewis well remarked, that although the papers were withdrawn, the impression which had been made on the minds of the jurors could not be removed. What sort of an atonement, too, was this? It carried insult with it; and the language in which it was made had a still greater tendency to strengthen the impression made the day before. The counsel were publicly informed they might proceed as they pleased, *but it must be at the hazard of their characters*, under the direction of the court. Is there a man of reputation on earth, possessed of the smallest spark of feeling, that would consent to disgrace himself by addressing a jury under such circumstances? This alone, if nothing else had taken place, was sufficient to drive them from the defence of their client; and if they thought that their abandoning him might eventually save his life, they were fully justified in doing so.

The learned advocates for the judge have talked highly of the independence of the judiciary, and have asked what inducements any judge could have to act as we have charged Judge Chase with acting. Are there then no inducements for a judge to swerve from his duty? Has he no feelings to gratify, and is it impossible for him to become a partisan? Does his character as a judge divest him of his ambition as a man? Is he so incorruptible that temptation cannot assail him? Look through the annals of other nations—read the history of England for the last forty years. Judicial independence has been for a long time as well secured there as here; and yet how many instances shall we find in that country of prosecutions in which the feelings of the Ministry had been engaged, and in which their influence over the judges has been too flagrant to be mistaken? In Ireland, miserable Ireland, a still more gloomy prospect presents itself. They, too, have boasted an independent judiciary; but an overruling influence has crumbled it into ruins. The demon of destruction has entered their courts of justice, and spread desolation over the land. Execution has followed execution, until the oppressed, degraded and insulted nation has been made to tremble through every nerve, and to bleed at every pore. Let us then be warned by the fate of Ireland. In State prosecutions her judges look to the Castle; although they cannot be put down, they may be elevated. Some of our judges have been elevated to places of high political importance; splendid embassies have been given to them. I will not say that they were given or accepted with improper views; but they have been given, and surely they hold out inducement enough for a judge to bend to the ruling party. It is our duty to prevent party spirit from entering into our courts of justice. Let us nip the evil in the bud, or it may grow to an enormous tree, bearing destruction upon every branch. You have now an opportunity of doing it, and I trust you will not suffer it to escape you. I therefore hope that you will not only remove Judge Chase from the high office which he now fills, but that by your judgment you will forever hereafter disqualify him from holding any office of profit or trust under the Government of the United States.

I have thus, Mr. President, gone through the first article of the impeachment, and will not encroach upon the others; their elucidation I shall leave to my friends, who will follow me. A sense of public duty alone led to the present prosecution, and having discharged this, we shall have nothing to reproach ourselves with, let your decision be what it may.

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Mr. Rodney.—Mr. President, and gentlemen of the Senate: The present trial exhibits a spectacle truly solemn and impressive. A man who holds one of the highest judicial offices under the Government, who, from the period of the Revolution, has filled many of the most important public situations, and whose hairs have been bleached in the service of his country, is charged before this dignified tribunal, by the Representatives of the American people, with the commission of acts in violation of his duty as a judge, and of the laws and Constitution of the land.

On one hand, the character of an aged and respectable individual, which may be dearer to him than the small remnant of his life, is involved in your decision; on the other, the most precious rights of free citizens, and the dearest interests of society.

The mind which could contemplate, unmoved, such a scene, cannot feel for the welfare of the people, or the honor of the nation, and must be equally insensible to the finer sympathies of life and the practice of its charities and affections.

The public anxiety manifested by this deeply interesting trial must be evident to all—a trial of the first importance, because of the first impression—a trial not confined to a single act in the conduct of the accused, but embracing a variety of transactions at different periods of his life—a trial which departs from the ordinary mode of decision, whose novelty and magnitude have excited so much interest and attention that it seems to have superseded for the moment, not only every other grave object or pursuit, but every other fashionable amusement or dissipation.

The task of prosecuting is always very unpleasant, and to me extremely painful; but my rule has ever been not to suffer private considerations or personal feelings to stand in the way of a firm and independent discharge of public duty.

To this exalted tribunal I look with confidence for a display of that dignified impartiality, which will do credit to their elevated situation, and reflect honor on their country. You will raise yourselves, I am convinced, above the common level of human prejudices, personal or political, and will suffer no considerations but those which are perfectly correct to be blended with your inquiries or mingled with your decisions.

Party, it is true, is a spirit of so subtle a nature as to diffuse itself almost imperceptibly over the human mind; it frequently pervades the system without being felt, and sometimes warps the judgment when least suspected. Against the influence of this spirit I need scarcely caution the judges whom I have the honor to address. It cannot approach within the pale of this court or enter their hallowed walls.

I have marked, Mr. President, in the questions which you have so correctly put to the witnesses in the course of their examination, that singleness of eye, which looks to the discovery of truth alone, without reference to the party whose case it may affect; whilst your conduct in maintaining that order and decorum suitable to the solemnity of the occasion has exhibited an example worthy of imitation.

I have observed, with heartfelt pleasure and honest pride, the unwearied and impartial attention paid by the members of this court during the progress of this momentous cause. To my mind it presages a decision worthy of themselves and serviceable to their country, and is a sure pledge that their determination will be honest, upright, and independent.

If, after a fair and full inquiry into the facts, illustrated by the arguments for and against the accused, and a careful examination of the law, commented on by those whose duty it is to support the impeachment, and those who are opposed to it, the Senate shall be of opinion that the charges have not been substantiated, and pronounce a verdict of acquittal, believe me, sir, I, as a citizen faithful, obedient, and affectionate to the laws of my country, shall most cheerfully acquiesce in the decision. But I do confidently trust that it will not take place, on the principles or the precedent established in the case of Warren Hastings, the Governor of Bengal, that plunderer of India, that destroyer of the people of Asia, that devastator of the East, whose crimes were without number, and whose enormities exceeded calculation. What fields have been dyed, what streams have been tinged with the innocent blood of victims sacrificed on the altar of his avarice or his ambition! An obligation however solemn, a treaty however sacred, interposed but a weak and feeble barrier to the views of his personal or political aggrandizement. Even a *zenana*, the sacred retreat of women, holy and consecrated to the fairest work of the creation, by the religious customs of that country, has been violated whenever the silver and the gold, the jewels and the diamonds, were sufficient objects to attract his attention or gratify his rapacity.

Before I proceed to the discussion of those facts and principles more immediately connected with the subject now under investigation, permit me to advert for a few moments to the manner in which the defence has been conducted. I shall also claim your indulgence for a small portion of time, whilst I reply (I fear in a desultory way) to some remarks, and notice some matter which has been blended with this case, no doubt with the view of giving it a complexion favorable to the defence, but which I humbly conceive to be rather foreign and extraneous.

The fascinating voice of eloquence and the deluding tongue of ingenuity, though excited with great address, will produce no other effect before this tribunal than to excite that degree of pleasure which we all feel on the display of professional talents. It shall be my duty (because I believe it to be not only the duty but the interest of every advocate to have a decision on argument and argument alone) to avoid everything like declamation, and to address you in the sober narrative of fact, and the temperate language of reason.

The counsel for the aged defendant have explored every avenue to the human heart to awaken

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your sensibilities, and have appealed to your passions to enlist them under their banners; at one time attempting to excite your sympathies in favor of their unfortunate client, and at another endeavoring to kindle your resentment against the prosecution. They may, perhaps, have been occasionally in the habit of addressing those with whose feelings they could play as the winds do with the waves; and, animated by the trophies of former victories, they have recurred to the same means of conquest which have before crowned their exertions with success. The judges of this court are no doubt alive to the generous feelings of sympathy and compassion, when an object presents itself calculated to excite them. But even when under the influence of this mysterious power, they will always remember that humanity is the second virtue of courts, justice the first.

We have been more than once solemnly reminded that the decision which you may give will be re-examined by those who succeed you, and that posterity will rejudge the judgment which you may pass at this time. To that impartial tribunal let the appeal be made. I fear that when future annals, faithful to the cause of truth and justice, shall record the patriotism and the virtues of my honorable friend who gave birth to this impeachment, the weeping voice of history will be heard to deplore the oppressive acts and criminal excesses of the judge who, with a boldness and violence unparalleled in this country, seems to have trampled under foot, as if conscious of impunity, the established principles of law, and the rules of decency and decorum.

The defendant himself, in his answer, looking beyond the transient scenes of this world, has crossed the stream of time, and carried us, in idea, on the ocean of eternity, to the footstool of that throne which is washed by its waves. It is true ere long we must all embark on that voyage from which no mariner returns; and be borne with myriads on the same swell to the judgment seat, when our fates will be decided for eternity. On that awful day, I trust we shall appear with the hopes and the consolations which beam upon the soul from the everlasting light of Divine Revelation; that, whatever frail passages may chequer the volumes of our lives, though the conduct of the defendant towards the unfortunate, unprotected, and persecuted Fries may appear *scored matters* in the book which records his deeds, infinite mercy will obscure them from the eyes of infinite purity, and a sincere repentance blot them out forever.

It struck me with some degree of surprise, when I heard the language of complaint from my learned friend, (Mr. Hopkinson,) who summed up the evidence on the first article in favor of the accused, because this impeachment was not instituted sooner. He seemed to ask with an air of triumph, when did the transactions take place upon which the prosecution is grounded? I answer with confidence they took place at different and distant periods. Some of them as far back as the year 1800, and others but yesterday, as it were. The whole linked together by the spirit of persecution, and forming a chain of offences against the violated laws of the country and the insulted justice of the land, which cannot be broken by testimony or weakened by argument. And yet because the guardians of the people's rights and liberties have submitted to bear with patience the oppressive acts of the defendant, until they could endure them no longer; because considering him clothed beneath the ermine of justice with the common infirmities of man, they have been slow to anger, and have waited for the season of repentance and reformation; the very lenience and forbearance, which they have manifested by their conduct, to the world, are forsooth used as an argument against the present impeachment. With what justice or propriety this Court will determine. Had they, imitating the example of the accused, employed their time in hunting for criminality, and the instant they suspected an offence, a sentence of condemnation succeeded, quick as the thunderbolt pursues the flash, they would have received, I presume, credit for the zeal and promptness which they displayed in the task of prosecution. Let it be remarked that justice is of slow pace, but of certain step, and that the sufferings and the tears of the innocent, however deeply buried, will rise up in judgment to confound the guilty.

The House of Representatives, so far from deserving blame, in my humble opinion, merit commendation for the reluctance with which they proceeded to accusation, and for the care, caution, and dignity which have marked their steps. I have frequently heard an unbecoming zeal reprobated in a prosecutor; but never before did I hear from the lips of a counsel for an offender, a complaint of delay and remissness in charging his client with guilt. What a striking contrast does their conduct furnish, compared with that of the defendant! They betrayed no thirst for prosecution, but an unwillingness to accuse; no eager appetite for conviction, but an anxious desire that impartial justice should take place between the public and an individual, whom irresistible evidence had compelled them to present before the highest judicial authority of the nation. Not, it is true, for the murder of despotic princes whose will was the law, and whose laws perhaps were as sanguinary as those of Draco; nor for the plunder of empires, swayed by an iron sceptre as oppressive as the dominion of Hastings. Far other crimes are laid to his charge. The defendant, a citizen of this free land, sworn to support our mild Constitution and our equal laws, and bound by his oath of office to administer justice impartially, having a perfect knowledge of his duty, (for of ignorance the whole world will aquit him,) stands charged with plundering, in the holy habit of a judge, a jury of his country of their most sacred rights, and injured and insulted freemen of their Constitutional privileges.

He was indeed providentially prevented from imbruing his hands in the blood of poor Fries, but he stands accused of shedding, with unfeeling severity, the life blood of the Constitution itself.

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Such are the crimes for which he is arraigned at your bar, and which one of the gentlemen has been pleased to term petty offences. In the dark catalogue of criminal enormities, perhaps few are to be found of a deeper dye. If I were an advocate of the doctrines of constructive and cumulative treasons, of which the learned judge appears to have been a great admirer and a zealous supporter, I would say that he himself was guilty of judicial treason against the Constitution of the country, and majesty of the people.

The independence of the Judiciary, the political tocsin of the day, and *the alarm bell of the night*, has been rung through every change in our ears. They have played upon this cord until its vibrations produce no effect. The sound is rather calculated to stun us into an insensibility against real attacks, for the poor hobby has been literally rode to death. To the rational independence of the Judiciary, I am, and ever have been a firm and uniform friend. But I am no advocate for the inviolability of judges more than of Kings. In this country I am afraid the doctrine has been carried to such an extravagant length, that the Judiciary may justly be considered like a spoiled child. They are here placed almost beyond the reach of the people, though not beyond the immediate power and influence of the Executive. I wish not to see them the slaves of any administration, but the faithful and impartial executors of justice. My desire is that the laws, like the providence of the Deity, should shed their protecting influence equally over all.

It will be allowed that the hopes of an individual are as powerful inducements to action as his fears. Whether the Executive can depress or exalt him, his influence is equally great. Whether he can punish his errors or reward his faults, his dominion is the same. We all know that an associate judge may sigh for promotion, and may be created a Chief Justice, whilst experience teaches us, that more than one Chief Justice has been appointed a Minister Plenipotentiary. These facts are staring us in the face, when we talk of judges being independent of the Government.

What has been the natural effect of such conduct? Have the judges stood aloof during the political tempests which have agitated the country—or have they united in the *Io triumphe* which the votaries and idolaters of power have sung to those who were seated in the car of Government? Have they made no offerings at the shrine of party; have they not preached political sermons from the bench, in which they have joined chorus with the anonymous scribblers of the day and the infuriate instruments of faction? Let a recurrence to past events decide.

I wish to be understood as speaking on these topics in the abstract, and not with a view of imputing improper motives to those concerned in the arrangements which have taken place.

The people of the United States, on the other hand, have no offices of profit and emolument to bestow. They have no post immediately in their power to give, except a station in the House of Representatives, which a judge would not accept from their hands. But, let me ask, was there no vacancy in the gift of the Excutive, to which the defendant could aspire, and to which his conduct might furnish him with a passport or a letter of introduction?

Some observations have been made on the independence of the judges in England. In that country they are removable by an address of both Houses of Parliament. By what a slight tenure, by what a slender thread, are their offices held! The voice, nay, the whisper, or the breath of the Minister for the time being, may remove them, and yet they have generally manifested a spirit of real independence, even in the season of alarm and terror, of which I fear our judges at a similar period cannot boast. But in that county, a seat on the bench is considered as a place of rest, and they look not beyond it. There the judges are not made Envoys Extraordinary or Ministers Plenipotentiary.

We ought not to be imposed upon by names in this country. Give any human being judicial power for life, and annex to the exercise of it the kingly maxim "that he can do no wrong," you may call him a judge or justice, no matter what is the appellation, and you transform him into a despot, regardless of all law, but his own sovereign will and pleasure.

I had nearly omitted stating, but it is worthy of remark, that, by the Constitution of the Union, the Chief Justice must preside in case the President is impeached; and, if the President can at any time send him out of the country to negotiate treaties or conventions, he can most effectually prevent the execution of this salutary provision, and shelter himself from punishment.

These ideas are thrown out in reply to the lengthy remarks on judicial independence, and to which it was stated no answer would be given except some jargon about the sovereignty of the people! They contain a concise commentary on the *theory* furnished by the *text* of practice.

In this country, where the people are justly recognised as the real sovereigns of the land, and the only source of all legitimate authority, it is wonderful to observe the manner in which it is too much the fashion of the times to speak of them. The first article of our political creed, that all power emanates from the people, cannot be attacked by argument, and yet they attempt to turn it into ridicule. On this head, they are extremely dexterous. In the course they pursue, they exhibit all the skill of political jockies. They admit the principle that the will of the people should rule, because, forsooth, they dare not dispute it. But it must not interfere with their own views, or it ceases to be that awful object, that just and legitimate sovereignty which commands respect, and to which they bow with submission; it is no longer the voice of the people, but the clamor of faction; it instantly becomes political jargon, grating to the ears of those who claim the exclusive right, as if anointed with holy oil, of protecting the people from the violence of their own passions, or, in plain language, saving them from themselves!

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I cannot subscribe to another doctrine of my learned friend (Mr. Hopkinson)—for such I may style him from the terms of intimacy, at an early period of life—that the people, after delegating a portion of authority for their own welfare and advantage, to different departments and subordinate agents, have nothing to say or do with the manner in which such authority is exercised. My position is the reverse. The people should watch with a jealous eye over those whom they have entrusted with authority, to discover whether it is enacted for their benefit or perverted to their detriment—whether it is exercised for the public good, or prostituted to private purposes. This is the rule in private life, and it will hold equally true in public.

Suffer me, at this place, to notice the remarks of the learned counsel who spoke yesterday, (Mr. Harper,) with so much sensibility and feeling for his client, on the change of parties in popular governments, and the proscriptions, persecutions, and punishments, too frequently inflicted by those who are triumphant, on the fallen victims of their authority; when acts, innocent in themselves, because against no known law, have been converted into crimes to gratify the vindictive passions of the victorious against those whom the fortune of political war has placed within their power. No man can deprecate more sincerely than I do, such a state of things. To the situation of affairs in this country, I presume these remarks cannot have the most distant application. If they were made with reference to the present Administration, to the Executive or Legislative Departments of the Government, the allusion may perhaps have the light support of visionary imagination, but has no substantial foundation in reality. It may be fancy, but is not fact.

The illustrious Chief Magistrate of the Union has furnished a precedent, by his liberal and enlightened conduct, of which the lamentable annals of mankind afford no example. Under his wise and his mild guidance, what auspicious beams of public sunshine have been diffused over the whole face of the country! until, to the discontented few, the language of the Latin poet might justly be applied—

"O fortunati nimium sua si bona norint!"

This enlightened policy has been adopted in conjunction with the luminous constellation of distinguished worthies, by whom he is surrounded; whose exalted character and talents add to the usefulness, the dignity, and splendor of his measures, and increase to an extent almost incalculable the general sum of the happiness of this great and independent nation.

Turning our eyes to those who have exercised the high and responsible functions of legislation, we find their acts equally deserving commendation. Their proceedings are calculated to excite at once the envy and the admiration of their opposers and the world. They breathe not the fell spirit of resentment and persecution. To their honor be it spoken, that, instead of enlarging the circle of offence, they have reduced the scale of criminality. They have abolished an odious, and, I believe, an unconstitutional sedition law, which had been executed with a rigor and severity perfectly congenial with the passionate policy which gave it birth. The decrees under it, if not written in the blood of the sufferers, were written in their tears. A more dreadful engine of persecution and oppression cannot well be conceived. With this instrument in their hands, they could have smote their enemies and shielded themselves. It would have been a sword and a buckler, but they disdained the idea.

Actuated by the best motives, with the honest view of purifying the fountain of justice, and restoring the characters of the American bench, they are now engaged in the unpleasant, but indispensable task of bringing to exemplary punishment a judge who has offended against the letter and the spirit of the Constitution, and the well-known statutes of Congress, who has violated the bounden duties of his office, and that high Legislative act, which, to the sanction of a law, added the solemnity and obligation of an oath.

In this important undertaking they are contending not for themselves, but for posterity; not for those in power, but those whom power has forsaken. Against all the wild theories of new-fangled opinions and the monstrous iniquity of exploded doctrines, they wish to teach a lesson of instruction to future judges that, when intoxicated by the spirit of party, they may recollect the scale of power may one day turn, and preserve the scales of justice equal.

We have now arrived at an important point of the discussion, comprehending the Constitutional doctrine of impeachments. On this ground, the learned counsel have made a formidable stand, and have contended for it with as much zeal and perseverance as if it were the Thermopylæ of their defence. The reason must be obvious. Conscious of the weakness of their cause upon the merits, and sensible that the conduct of their client will not bear the eye of scrutiny, they wish to preclude investigation by arresting us at the threshold of inquiry. To protect a citadel without a palladium, they have endeavored to form of various materials a Scean gate, which it requires no stratagem to enter. The positions they have piled together, without much regard to order and regularity, seem to resolve themselves into the shape of a plea to the jurisdiction of this Court over the case. It appears in a strange, anomalous form, both in the answer and their argument, but this is the result, I believe, when well understood.

One of the counsel has exclaimed, "Look on 'this dignified tribunal, inspiring awe and venera-'tion! Was it constituted for the trial and pun-'ishment of such offences as are charged in the 'articles of impeachment?" Drawing an inference even from the appearance of the judges and of these walls against the exercise of the authority vested in them by the Constitution! I would ask, in turn, the counsel to look on his client, if he were present; to recollect the elevated post that he fills, the powerful talents with which the boun-

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ty of nature has blessed him, the knowledge which he has acquired, the experience he has had; I would say, behold a man, designed to have shone one of the brightest luminaries that ever dignified the profession of the law, formed by nature for the friend and benefactor of society; what has been his conduct? Seated in the curricle of passion, he has driven on, Phæton-like, and destruction has marked his course; persecution and oppression have followed in his wake. His faults and his follies have increased with his years. Age has added to the rashness and violence of youth. His shining talents and superior knowledge have been employed in support of doctrines fatal to the liberties of his country. The Temple of Justice has been profaned by unholy acts, and its altars violated with impious hands. The laws and the Constitution have been trampled under his feet. But shall these acts be perpetrated with impunity in this free country? Is it not becoming the dignity of this tribunal to inquire into offences of the highest grade, committed by a judge of the Supreme Court of the United States? I trust they will consider their talents and their time well employed in this arduous investigation; that neither the elevation of the offender, the boldness with which he avows his acts, nor the ingenuity with which his counsel defend them, will protect him from the impartial sentence of the law. Justice, I must acknowledge, appears in her most attractive form, and with the fairest features, when she presents her helping hand to relieve injured innocence from cruel oppression; but she is not less worthy of approbation, when, with a stern countenance, she hurls the bolt at the head of the offender, and inflicts merited punishment on the guilty. In ordinary cases it is necessary, on every exception to jurisdiction, to state the proper forum which has authority to try the questions involved in a cause. The objection must be predicated on the principle that the right to decide is vested in another tribunal. The gentlemen have not been so good as to point out the authority which has cognizance of the offences of Judge Chase, and can grant adequate redress, if this Court be not vested with that power.

We have been told by that able lawyer, the Attorney General of Maryland, that a judge cannot be impeached for any offence which is not indictable; nor, indeed, for an indictable offence, unless it be a high crime or misdemeanor; and not even for a high crime or misdemeanor, except such as stamp infamy on the character and brand the soul with corruption. A variety of cases have been put to explain his ideas. The law books and the Constitution have been relied on to support those positions, which it becomes my duty to examine. Without troubling you to remove the lumber of the books, let me call your attention, in the first place, to the Constitution. The Constitution shall be my text. I think I shall be able to demonstrate that, in order to render an offence impeachable, it is not necessary that it should be indictable. But, I will go further, and prove that, agreeably to the learned counsel's own principles, Judge Chase has committed indictable offences. Taking his own explanation of crimes and misdemeanors, and recurring to his authority, I will prove that, within the strictest terms of the definition on which he relies, Judge Chase is guilty, not merely of misdemeanors in the various acts of judicial misbehaviour, but of aggravated crimes against the express language of the laws and the positive provisions of the Constitution.

In adverting to the Constitution, when looking at one part, we should take a view of the whole instrument to fix the proper construction. In examining any provision, we should consider the bearing and tendencies of all the rest. By adopting this rule we shall preserve order and harmony throughout the system.

The first place in which the subject of impeachment is mentioned in the Constitution is in the first section of the first article. The language used by those who framed it, is, in my humble opinion, too plain to be misconceived, and too clear to be misunderstood: "The House of Repre-' sentatives shall choose their Speaker and other ' officers, and shall have the sole power of im-' peachment."

This section vests the exclusive authority to impeach in the immediate Representatives of the people. The power thus delegated is general and comprehensive. It is not limited to any particular acts or transgressions, but is coextensive with every proper object or subject of impeachment. The House of Representatives is thus constituted, most emphatically, the grand jury of the nation: A high and responsible authority, which, I trust, will always be exercised with prudence and discretion, directed with impartiality and justice. But I do confidently hope that there will ever be found sufficient spirit and firmness to arraign the guilty delinquent, however elevated his station, when the Constitution or laws have been infringed, the tenure of office broken, or *its* duties violated.

The next passage, in order, which touches this topic, and to which I shall refer, is the third section of the same article: "The Senate shall ' have the sole power to try all impeachments. ' When sitting for that purpose they shall be on ' oath or affirmation. When the President of the ' United States is tried, the Chief Justice shall ' preside. And no person shall be convicted without the concurrence of two-thirds of the mem-' bers present."

This clause establishes a tribunal for the trial of impeachments. To the Senate this important trust is wisely confided. It prescribes the manner in which the jurisdiction shall be exercised, directs that the members shall be under oath or affirmation, and fixes the number necessary to convict. Let us proceed a step further in the path: "Judgment in cases of impeachment shall not ex-' tend further than to removal from office, and ' disqualification to hold and enjoy any office of ' honor, trust, or profit, under the United States; ' but the party convicted, shall, nevertheless, be ' liable and subject to indictment, trial, judgment, ' and punishment, according to law."

The part I have just read contains two very

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salutary provisions. The first limits the extent of the punishment to be inflicted by the Senate. The second, as a necessary consequence of the former, reserves to the ordinary tribunals of law the right to proceed by indictment. This last provision has been a fruitful source of argument to the learned counsel. They have very ingeniously played upon these terms, and, in the zeal of their imaginations, have fancied that they proved to a demonstration the position, that an offence must be indictable, or it is not impeachable. There may be magic in their argument, but I do not perceive there is any logic. The superstructure which they have erected on this basis, is easily demolished. From the language of this clause they draw the inference that the framers of the Constitution intended that no person should be impeached for any offence for which he was not liable to be indicted. Is this the fair import of the expressions? The text of this instrument is remarkably free from ambiguity. Clearness, correctness, and precision, are its leading characteristics. With a very few exceptions, it speaks a language intelligible by all. Had it been the design and wish of the authors of the Constitution that no offences should be impeachable which were not indictable, they would have declared so in express and positive terms, and left nothing for inference or conjecture. This they have not done, and we may reasonably presume they did not intend to do. They prudently looked into the volume of history, where they saw the shocking purposes to which, in evil times, the power of impeachments had been basely and inhumanly prostituted. They read in those instructive pages the dear-bought lessons of experience, and wisely ordained limits, which the authority to punish should not exceed. They fixed a *ne plus ultra* for the tribunal that they established, which their severest judgments should not pass. They knew, at the same time, that crimes might be perpetrated and offences committed, which would demand additional chastisement. The loss of office, and disqualification to hold any in future, the maximum of punishment which they had prescribed, would be very inadequate and bear little proportion to the atrocious guilt which might be incurred. Under the influence of these impressions, they reserved to the tribunals established by law, the right to inflict the just penalties annexed to this class of cases. Without any intention whatever, when any acts had been committed which manifested an unfitness for office, or when there had been a breach of the tenure by which it was held, by malconduct or misbehaviour, to prevent the proceedings by impeachment, although the case might not be such as to warrant any additional punishment at law. This, I apprehend, is the object they had in view, and this is the fair, easy, natural, and obvious sense of they words they have used.

Those conversant with the juridical history of England, or who have studied her political annals, must be sensible of the deplorable situation to which that country has been reduced, at different periods, by the abuse of the power of impeachment. The revengeful exercise of this authority has too often deluged the scaffold with blood. In that country the proceeding by impeachment for any offence supersedes all other modes. The person accused, whether he be acquitted or condemned, cannot afterwards be indicted for the same offence, or called to an account before the ordinary tribunals. The former course is a complete bar to the latter. To prevent those consequences flowing from a proceeding by impeachment under the Constitution, those who formed that instrument, at the same time that they limited the punishment, have expressly declared it shall have no effect to bar a trial before the ordinary courts, but that the party shall be liable to indictment and punishment according to law. Without this positive provision, as we are almost as much in the habit of drawing on the *Bank of England* for law as our merchants are for cash or credit, we might have incorporated a principle into our code totally repugnant to the system. The Constitution has drawn the true line on this subject. From a mere reprimand or temporary suspension, the court may ascend in the scale of punishment to removal and disqualification. But thus far can they go, and no farther. They cannot pass the Rubicon. If the crime deserves a more exemplary sentence, recourse must be had to the ordinary mode of proceeding, and then their judgment is not pleadable in bar to an indictment. By this means adequate punishment may in all cases be inflicted.

In England every person, in a public or private capacity, either as an officer or an individual, is liable to be proceeded against by impeachment. In this country the sphere of impeachment is properly limited. The Attorney General of Maryland has taken a long, tedious and circuitous march to arrive at this point, which I would readily have yielded without an argument. I do not recollect that any of my colleagues contended for the position that every man in this country, in his individual capacity, might be an object of impeachment. For myself I utterly disclaim the idea, Admitting, as I do, in its fullest extent, this wide distinction between the power delegated by the Constitution and that exercised in England, which embraces every subject of that kingdom, how does it bear on the case or affect the argument? After laboring for a considerable time, and employing all his talents, and that fund of legal knowledge which is inexhaustible, to prove that the House of Representatives cannot impeach every citizen indiscriminately, the learned Attorney General has not favored us with any application of his principle to the present cause. It proves certainly one among many other broad lines of difference which exist between the British doctrines on the subject of impeachment and the constitutional provisions of this country. In this respect it adds to the weight of our scale. It shows how cautious we should be in bowing down to British precedents which cannot be perfectly applicable I hope I have satisfied the Court, that the gentlemen are mistaken in their argument on this part of the Constitution. In the general wreck of their defence, I conceive this sinking plank, to which they have clung, cannot afford them the most distant

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prospect of safety. We will now proceed a little further in the broad and plain road of the Constitution, carefully examining the ground on which we move.

By the fourth section of the second article of the Constitution, it is provided that, "The President, 'Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, 'or other high crimes and misdemeanors."

The learned counsel have placed great reliance on this passage, to prove that an officer must be guilty, not merely of an indictable offence (as they concede every crime or misdemeanor to be) but must have committed a *high* crime or *high* misdemeanor to justify an impeachment. One of the learned gentlemen, to fix the true construction of the terms "*or other high crimes and misdemeanors*," commented at great length on the expressions. To illustrate the subject his fancy readily formed an objection, which with logical accuracy he removed. He demonstrated that, agreeably to the strictest grammatical construction and the nicest propriety of speech, the epithet *high* was to be considered as prefixed to misdemeanors as well as to crimes. In this manner the phantom, which his own imagination raised, was laid not by a *spell*, but by the exertion of his argumentative powers. We would willingly have conceded the point, and spared him his labor and his breath.. We mean not to cavil about trifles, or dispute for straws.

Taking it for granted that he has given the proper construction to a *part*, let us examine what is the just sense of the whole of this passage. In plain English, it commands, upon the conviction by impeachment of certain atrocious offences, that the guilty officer shall be removed at all events. Depriving the court thus far of the discretion which they would otherwise have possessed, as to the judgment they might pass. Having previously limited, in general cases, the punishment which they might inflict according to their discretion, by establishing a maximum which they should not exceed, in this particular grade of flagrant offenees, they have fixed the sentence which they shall pass. The language of the Constitution is peremptory and imperative. Those convicted of such daring enormities, of those *high* crimes or *high* misdemeanors, must be removed from office, which they have justly forfeited. This is the minimum of punishment to be inflicted. Perhaps those who penned the great charter of the Union apprehended, that in evil times, some high officer of the United States, clothed with power and armed with influence, might be proved to have committed the base and detestable crime of bribery, or some other equally great, by evidence too strong and too powerful to be resisted, and in an unfortunate hour, awed by fear or seduced by favor, the Constitutional judges would not hurl him at once from the seat which he was unworthy to occupy, but permit him to remain in his station, to the disgrace of the country and to the injury of the people. Hence they were induced to make this wholesome provision, which left nothing to the discretion of the judges. But is there a word in the whole sentence which expresses an idea, or from which any fair inference can be drawn, that no person shall be impeached but for "treason, bribery, or other high crimes and misdemeanors?" It does not pretend to specify the various acts of an officer which may subject him to an impeachment, its whole object is to define and fix the punishment which he shall incur on the commission of particular offences, which is removal from office. This is the least penalty they can inflict in such cases, and God knows it would be much too little, had they not in the former part provided, that after stripping the traitorous impostor of the insignia of office and power, the ordinary tribunals may add to the Constitutional sentence of the Senate the fines or forfeitures imposed by law.

From the most cursory and transient view of this passage, I submit with due deference, that it must appear very manifest that there are other cases than those here specified for which an impeachment will lay, and is the proper remedy. In these particular cases the punishment is ascertained, to wit, removal from office; but in a clause to which I have sometime since adverted, it is discretionary. Where was the necessity or use of *that*, if *this* defined all the impeachable offences, and specified the punishment? We must, if possible, give effect to every sentence of this instrument. We must not suppose that its authors made nugatory provisions. The sense and meaning which I have given to their language, and the constructions which I have maintained, will give force and effect to every word.

The system of impeachment thus understood, and I humbly submit rationally explained, is perhaps as little liable to exception as any branch of the Constitution. It is stripped of those terrible instruments of death and destruction, which have made such dreadful havoc and carnage in the ages that have preceded us. We have been benefited by the sanguinary precedents of barbarous times. We have been taught wisdom ourselves by the folly of others. We have improved the advantages we possessed, and thus, according to his own inscrutable ways, has the benevolent Author of our existence brought good out of evil.

In guarding effectually against the cruel and vindictive punishments which the extraordinary tribunal of impeachment might inflict, in the exacerbations of party violence and personal animosity, the fathers of the Constitution took care to provide that a certain grade of offences should deprive the guilty incumbent of his office, thereby rendering him a harmless object to the community, when dispossessed of his abused authority. Nay, they went further. Their wisdom and prudence led them to make a specific declaration, that after being deprived of his power, he should be subject to the legal consequences of his guilt, upon trial and conviction before the ordinary tribunals at law. Thus rendering the system perfect and complete.

There is an important provision contained in the Constitution, intimately connected with this subject, to which I now beg leave to refer. It will be found in the first section of the third article:

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"The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour."

With this particular part of the Constitution the learned judge must have been more especially acquainted when he accepted of his present office, and must then have expressly accepted it on the terms specified. No man can seriously say that for a judge to continue in the exercise of his authority and the receipt of his salary, after any acts of misbehaviour, is not a violation of this essential provision of the Constitution. He holds his office explicitly and expressly during good behaviour. The instant he behaves bad he commits a breach of the tenure by which he holds the possession, and the office becomes forfeited. The people have leased out the authority upon certain specified terms. So long as he complies with them, and not a moment longer, is he entitled to exercise the power which was not intended for his individual advantage but for their benefit. But, sir, who is to take notice of these acts of misbehaviour? How are they to be ascertained, and what shall be considered as such? Are the people in their individual capacity, *ipso facto*, on the commission of the act to declare the office forfeited, and is a judge then to cease from his labors? Or must it not be officially, or rather judicially ascertained? This, I conceive, would be the proper mode of procedure. Has the Constitution provided no tribunal for this purpose? I answer it has, most indubitably. By the Constitution the Senate, as the Court, and jury too in cases of impeachment, has the sole power of removing from offices those who hold them by the tenure of good behaviour. If a judge misbehave he ought to be removed, because agreeably to the plainest provision he has forfeited his right to hold the office. The Constitution having established this single mode of removal, and having declared that a judge shall hold his office only during good behaviour, it becomes the duty of the Representatives of the People, as the grand inquest of the nation, vested with the general power of impeachment, when they know, of their own knowledge, or from the information of their constituents, that acts of misbehaviour have been committed, to present the delinquent to this high tribunal, whose powers are competent to inquire into the case and apply the remedy; whose authority is co-extensive with the complaint, commensurate with the object, and adequate to the redress of the evil. Shall it be said that it is true the Constitution has declared that a judge shall hold his office no longer than he behaves himself well, and that though he behaves never so ill, it has provided no means to turn him out of office, if he has the hardihood to remain in his seat? If such a doctrine be contended for, it is too preposterous to receive the sanction of this court. It would render this provision nugatory indeed. It would do more; it would be establishing the principle, that whether they behave well or ill, they must continue in office, because there was no mode fixed for removing them. This would be the strongest construction that plain language, obvious to the common sense of the most unlettered man, ever received in a court of justice. The method I have pointed out solves all difficulties at once, and releases us from every embarrassment on this subject. It makes the Constitution consistent with itself, and preserves uniformity throughout all the parts.

The learned counsel were compelled to make a show in maintenance of unsound doctrines, to give the appearance of support to positions equally untenable.

I flatter myself that every member of this Court is by this time convinced that if a judge misbehave, he should be deprived of his office, because guilty of a breach of the tenure by which it is held. That any acts of misbehaviour must be judicially inquired into and ascertained. That the Constitution, having delegated to the House of Representatives exclusively the general power to impeach, acts of misbehaviour are proper subjects of impeachment, upon conviction of which the Senate has the authority to remove an officer, and is bound to exercise it. Shall we be told, then, that no matter how gross the acts of judicial misbehaviour, or how flagrant the misconduct of a judge, he cannot be removed from office, nay, he cannot be impeached, unless guilty of treason or bribery, or some crime equally great? Sir, it is impossible that the intelligent understandings and the mature judgments of this Court could countenance for a moment such an idea.

The terms "during good behaviour," appear to have been considered as very vague and indefinite by the learned counsel for the defendant, from the manner in which they have argued the case. When, in the strong, nervous language of my honorable friend, the conduct of the accused has been described in the most appropriate terms in the articles of impeachment; they have treated them with levity, as if they did not understand their import, because they admitted of no serious refutation. The clear explanation of the expression "during good behaviour," and the lucid exposition of this passage contained in the charges themselves, they seem unwilling to comprehend. The commentary is as unintelligible as the text. When to such conduct as was never before witnessed in a court of justice is applied the epithet of *novel*, we have been told by one counsel that the term is too uncertain to be comprehended—no precise idea can be affixed to it, nor is the language sufficiently technical to constitute a criminal charge. When behaviour the most rude and contumelious, disgraceful on any occasion, but truly degrading on the bench, and unquestionably criminal, because calculated to bring the Judiciary into the lowest contempt, and to excite universal indignation against the tribunals of the country, is portrayed in the impressive style of truth, the age of captious sophistry or technical bigotry is resorted to, for proving there is no sense or meaning in the charge. Upon what an ocean of uncertainty have we embarked when the plainest language is

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not understood! If sound, solid common sense, were to be confounded by technical jargon, the tower of Babel would not present a greater confusion of tongues. Sir, when the gentlemen cannot but feel the force of these charges, with what admirable ingenuity do they attempt to evade them! Is this tribunal, say they, to erect itself into a court of honor, or assume the chair of chivalry, and form a scale by which decorum and good manners may be nicely graduated? Is every slight deviation from the line of politeness at an assembly or drawing-room to be marked with accuracy and chastised with severity? The testimony furnishes apt and ready answers to those questions. The learned judge is not arraigned because he does not possess the polished manners of an accomplished gentleman, but for outraging all the rules of decency and decorum by conduct at which the plain sense of every honest man would revolt.

I beg this Court seriously to consider whether a judge may not be guilty of acts of misbehaviour inferior in criminality to treason or bribery, for which he ought to be impeached, though no indictment would lay for the same. When gentlemen talk of an indictment being a necessary *substratum* of an impeachment, I should be glad to be informed in what court it must be supported. In the courts of the United States or in the State courts? If in the State courts, then in which of them? Or, provided it can be supported in any of them, will the act warrant an impeachment? If an indictment must lay in the courts of the United States, in the long catalogue of crimes there are very few which an officer might not commit with impunity. He might be guilty of treason against an individual State, of murder, arson, forgery, and perjury, in various forms, without being amenable to the federal jurisdiction, and unless he could be indicted before them, he could not be impeached! Are we then to resort to the erring data of the different States? In New Hampshire drunkenness may be an indictable offence, but not in another State. Shall an United States judge be impeached and removed for getting intoxicated in New Hampshire, when he may drink as he pleases in another State with impunity? In some States witchcraft is a heinous offence, which subjects the unfortunate person to indictment and punishment; in several other States it is unknown as a crime. A greater variety of cases might be put to expose the fallacy of the principle, and to prove how improper it would be for this Court to be governed by the practice of the different States. The variation of such a compass is too great for it to be relied on. This honorable body must have a standard of their own, which will admit of no change or deviation. The test by which they will try an impeachment cannot be that of indictment. Even in England, to whose practice and whose precedents such constant recourse has been had, the learned counsel have not adduced a single case where a judge of one of their superior courts has been indicted for any malconduct in office. Nay, I believe I may defy them to show an example of the kind. The best authorities tell us they are not subject to indictment, but may be proceeded against by impeachment. They have been impeached, convicted, and punished for giving opinions which they knew to be contrary to law, and for a variety of misdeeds, but never in a solitary instance that I know of have they been indicted. I think I can put so many striking cases of misconduct in a judge, for which it must be admitted that an impeachment will lay, though no indictment could be maintained, that the learned counsel themselves must be compelled at length to surrender this post at discretion, without any terms of capitulation. I will not state the case of a judge wilfully and designedly neglecting to hold a court on the day prescribed by law, for I am aware of the answer gentlemen would give, that it is an offence against a particular provision. But let us suppose Judge Chase, to comply with the forms of the law at the time appointed, should appear and open the court, and notwithstanding there was pressing business to be done, he should proceed knowingly and wilfully to adjourn it until the next stated period. He would be guilty of no violation of any positive law, for which he might be punished by indictment; but ought he not to be impeached? Suppose he proceeded in the despatch of business, and from prejudice against one party, or favor to his antagonist, he ordered on the trial of a cause, though legal grounds are exhibited, for postponement. Is this not a proper subject of impeachment? And yet there is no express law infringed. If when the jury return to the bar to give the verdict, he should knowingly receive the verdict of a majority; is there any positive provision by which a jury shall be composed of twelve men, and that their decision shall be unanimous? I believe even the learning of that profound lawyer (Mr. Martin,) from the reading of laborious years and the indefatigable researches of a life devoted to the pursuit of his profession, could not show any positive provision in the Constitution of the United States or any statute of Congress on the subject. So far from it being originally necessary in civil cases, that a jury should be unanimous, the late Judge Wilson, (a great and venerable authority,) *magnum et memorabile nomen*, asserts that a majority always decided agreeably to the primary principles of that valuable institution.

Again: there is no man so ignorant as to be insensible to manifest violations of the sanctuary of a court. It was never intended as a stage for the exhibition of pantomimes or plays. Were a judge to entertain the suiters with a farce or a comedy, instead of hearing their causes, and turn a jester or buffoon on the bench, I presume he would subject himself to an impeachment; and yet there is no positive law preventing a court from being converted into a theatre, or of preferring the buskin to the sock: if he should exhibit a tragic scene, in which an unfortunate fellow-citizen might find himself *really* no *actor* in the part which he bore, I presume his conduct would claim the attention of the House of Representatives, as the grand inquest of the nation. It must be un-

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necessary to multiply examples of misconduct in a judge against the known law of his duty, so manifest at first blush that the most callous conscience cannot be insensible to them, not minutely specified and described (for that would be impossible) by particular provision in any Legislative act, but all embraced and comprehended in the solemn oath which he takes to perform his duty faithfully and impartially as a judge. As a judge he is bound to execute the laws. Every opinion which he gives, and every sentence which he passes, must be in conformity to law and be authorized by it. It ought to be the judgment of the law, and not his own individual opinion. If he wilfully make a decree not sanctioned by law, he is guilty of misbehaviour as a judge, for it is a glaring violation of the fundamental principles of his office. I shall have occasion in the course of my argument to advert to judicial opinions delivered by the accused which there was no Legislative act to warrant, no precedent to authorize, no principle to sanction, and which the utmost latitude of legal discretion would not justify. In such a case, if this court be satisfied that he acted innocently wrong, that it was an honest error of judgment which led him astray, he will no doubt stand acquitted. But if, from a concurrence of circumstances, they are convinced that he erred through design, from prejudiced and partial motives, though he may not have been corrupted by a bribe, they will consider him as a proper subject of their jurisdiction, and a proper object for the exercise of their authority.

The doctrines of the learned counsel for the defendant would lead to a conclusion which they may not have contemplated, but which the country would feel. Time would fail me to enumerate the different offences of various grades which a judge might commit, and for which he ought most assuredly to be impeached, though no indictment could be maintained in any of the Federal courts. If their positions were correct, a judge might violate all the Ten Commandments without subjecting himself to impeachment and removal; for I know of no method of removal but through the medium of impeachment. There is no law of the United States prohibiting drunkenness on the bench, or indeed punishing this vice at all, unless we look into the laws of a naval or military court martial, and yet a judge ought certainly to be removed from office if guilty of habitual intoxication. The use of profane or obscene language by a judge is not expressly proscribed by any act of Congress with which I am acquainted, though if it were forbidden in general terms, gentlemen might say with as much propriety as they have done in other cases, in the course of their argument, that every term, considered as such, ought to be enumerated, and yet, I believe, should a judge, in his place, be guilty of taking the name of his God in vain, of cursing and swearing on the bench, or using the obscene language of Billingsgate or St. Giles, he ought to be impeached and removed. The sanctity of a court should be preserved unsullied, and the officer displaced who was capable of exhibiting so shocking an example, calculated to destroy all respect for, and confidence in, the Judicial establishment of the country, and to corrupt the morals of the nation. But, sir, why need I enlarge on this subject? The counsel for the defendant have appeared at one stage of their argument to possess great respect and deference for precedent. To consider cases solemnly argued or deliberately adjudged, as fixing the law so perfectly as to justify a court in absolutely preventing any counsel, even though concerned for a criminal, and that, too, in a capital case, from questioning principles thus established. If precedent will furnish us with a clue to the intricate labyrinth in which they have attempted to involve us, we are in possession of one equal to that of Ariadne.

Suffer me again to refer them to the precedent which I cited a few days since. I allude to the case of Judge Addison, in Pennsylvania One of the counsel, (Mr. Martin,) for whose legal erudition I feel the greatest respect, has endeavored to impeach the authority of the highest tribunal in that State, and has asked if that decision is to be a precedent for this court? I was the more surprised at this, because his colleague (Mr. Lee) had cited, in the course of his argument, a case from Kirby's Connecticut Reports, decided by Chief Justice Ellsworth and his associates. I ask, sir, in reply, whether, when a case determined in one of the ordinary courts of Connecticut has been produced by the opposite counsel as entitled to consideration, the decision of the Senate of Pennsylvania, the highest court of criminal judicature in that Commonwealth, ought not to be respected. Permit me to add, that in my humble opinion, there is as much propriety in referring to such examples as in recurring to British precedents. I have said, and with increasing confidence I repeat it, that this case, under the constitution of Pennsylvania, is emphatically stronger than the present, under the Constitution of the United States, on the much litigated question, whether a judge can be impeached for any act for which he cannot be indicted. In the constitution of Pennsylvania, article 5th and section 2d, there is a provision not to be found in the Constitution of the United States, by which a judge, for any reasonable cause, which shall not be sufficient ground for impeachment, may be removed by the Governor, on the address of two-thirds of each branch of the Legislature. This provision would seem to be intended to meet the distinction which the learned counsel have labored to establish. In this light, Judge Addison himself on his trial considered it, and pressed the point most forcibly on the Senate of Pennsylvania. He had the strongest interest in so doing. If this course had been pursued, he would have merely lost his office, but upon conviction by impeachment he dreaded the disqualification to hold any office which the Senate might annex to the judgment of removal. But, sir, this is not the only reason, cogent as it is, for considering the case of Judge Addison particularly applicable to the present. It so happens that we have a decision of the supreme court of Pennsylvania on the very ob-

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jection which the gentlemen now take, when the conduct of Judge Addison was brought before them previous to his being impeached. If the learned counsel will not give full faith and credit to the determination of the Senate of Pennsylvania, perhaps they will admit the authority of her supreme court. I hope this tribunal, at least, will give it equal weight with that of the supreme court of Connecticut. A very correct account of the case will be found in the statement of the Attorney General on the trial of Judge Addison, taken in connexion with a printed report of the case, which was produced by Mr. Dallas on that occasion. I will not detain this honorable Court with reading all which is there recorded on this subject, but will refer to pages 51, 52, 64, and 69, of Addison's trial, and endeavor to present them an accurate view of the case.

On the ground of an application filed by J. B. C. Lucas, then an associate judge of the same court in which Judge Addison presided, stating that Judge Addison, on a particular occasion, after having delivered a charge to the grand jury himself, had prevented Judge Lucas from addressing them, by ordering a constable to be sworn and the jury to be taken from the box, the Attorney General moved for leave to file an information against Mr. Addison.

The Attorney General made two points. First, that Judge Lucas had an equal right with the presiding judge to deliver a charge to the grand jury, on principle and authority. The Chief Justice, Shippen, immediately observed, that it was unnecessary to speak to that point or to read authorities, "*speak to the second point—Is this conduct the subject of an information?*"

After the argument was closed, the opinion of the court (Judge Breckenridge taking no part) was delivered by the Chief Justice, who stated that the proceeding was arbitrary, unbecoming, unhandsome, ungentlemanly, unmannerly, and improper, but "*but that it was not indictable, nor the subject of an information,*" and that there was another remedy. Referring no doubt to an impeachment; for the Attorney General states, in page 52, "That from what fell from the judges of 'the Supreme Court, when the case was before 'them, it might be easily inferred that impeach-'ment was the proper mode to correct the evil 'complained of."

Thus we have the solemn adjudication of the Supreme Court that conduct in a judge may be impeachable though no indictment can be maintained for it. We could not have formed for ourselves a precedent more apposite.

An impeachment was accordingly presented against Judge Addison by the constitutional authority to the Senate of Pennsylvania. Pardon me for trespassing so much on your time as to read distinctly the articles, in order to put this court in possession of the whole case:

"ART. 1. That the said Alexander Addison, being duly appointed and commissioned president of the several courts of common pleas, in the circuit consisting of the said counties of Westmoreland, Fayette, Washington, and Alleghany, within the territory of the said Commonwealth, while acting as president of the said court of common pleas of the said county of Alleghany, on Saturday, the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and one, in open court of common pleas, then and there holden, in and for the county last aforesaid, did, after John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the court of common pleas of the county last aforesaid, had, in his official character and capacity of judge as aforesaid, and as of right he might do, addressed a petit jury, then and there duly empanelled, and sworn or affirmed, respectively, as jurors in a cause then pending, then and there, openly declare and say to the said jury, 'that the address delivered to them by the said John Lucas, otherwise John B. C. Lucas, had nothing to do with the question before them, and that they ought not to pay any attention to it;' thereby degrading, or endeavoring to degrade and vilify the said John Lucas, otherwise John B. C. Lucas, and his character and office as aforesaid, to the obstruction of the free, impartial, and due administration of justice, and contrary to the public rights and interests of this Commonwealth.

"ART. 2. That the said Alexander Addison, being duly appointed and commissioned president as aforesaid, did, at a court of quarter sessions of the peace and court of common pleas, holden in and for the county of Alleghany aforesaid, on Monday, the twenty-second day of June, in the year of our Lord, one thousand eight hundred and one, under the pretence of discharging and performing his official duties as president aforesaid, unjustly, illegally, and unconstitutionally claim, usurp, and exercise authority not given or delegated to him by the constitution and laws of this Commonwealth, inasmuch as he, the said Alexander Addison, president as aforesaid, did, under pretence as aforesaid of discharging and performing his official duties, then and there, in time of open court, unjustly, illegally, and unconstitutionally stop, threaten, and prevent the said John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the said courts, from addressing, as of right he might do, a grand jury of the said county of Alleghany, then and there assembled and empanelled, and sworn or affirmed, respectively, concerning their rights and duties as grand jurymen, thereby abusing and attempting to degrade the high offices of president and judge as aforesaid, ;o the denial and prevention of public right, and of the due administration of justice, and to the evil example of all others in the like case offending."

You have now a clear and comprehensive view of the grounds on which the impeachment was supported. The first charge accuses Judge Addison of speaking, in terms very unjustifiable for a president of a court, of an address delivered to a petit jury by his associate, Judge Lucas. The language which he used, and the manner in which it was proved to have been delivered, are equally exceptionable. His conduct was rude, ungentlemanly, and utterly inconsistent with that decorum and respect which should be inculcated and practised on the bench, to preserve the credit and the character of a court of justice. Its object and tendency was to deter Mr. Lucas from exercising his judgment and expressing his opinion from the bench, and to reduce him to a perfect cypher.

The other charge was, for preventing Judge Lucas from addressing a grand jury. This was

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effected in the same rude and insolent manner, as will appear from the testimony of Judge Lucas himself, in pages 33 and 37 of the printed trial.

To support the first article, I believe it would not be possible to find any positive act or special provision prescribing what particular language a president of a court may use, and what he shall not, in reference to the opinion which an associate justice may have delivered. There is no legal barometer for weighing words, nor any particular law embracing all the variety of cases of lighter and darker shades which may occur. The learned counsel who supported the prosecution did not cite a single precedent, even, of the kind. There may have been a law to be found in the breast of every man of common sense and common manners, with which Judge Addison was not unacquainted, and upon which the Senate considered themselves perfectly justified in convicting him. This was the general, but clear and comprehensive law, which marked his rights and duties as a judge. The law of his office, prescribed by his oath.

The second article, for preventing an associate judge from delivering a charge to the grand jury, after they had received one from the president of the court, could not have been maintained on the ground of any express statute or legal usage. It is the first time I ever heard of such a case. The uniform practice in the courts to which I have been accustomed is, for the chief justice or president to deliver the charge. This was more especially the case in the court in which Judge Addison presided, for it appears they had adopted a positive rule on the subject. The practice of a court of justice is generally considered as the law of that court. But the Senate, believing on principle (and believing correctly) that the power of all the judges of the court was equal, pronounced a sentence of condemnation.

With these plausible circumstances to countenance him, Judge Addison, a gentleman of considerable celebrity both in the legal and political world, and of unquestionable talents, conducted his own defence. His principal reliance was on the very objection which the learned counsel for the present defendant now make. He contended that he had committed no act for which he was liable to indictment, and that he was, therefore, not subject to impeachment. In the position that his conduct was not indictable, he was supported by the opinion of the supreme court, who had, nevertheless, considered it a fit subject for impeachment. His argument was able and ingenious; but, sir, his objection was anticipated or answered in such a masterly manner, by a chain of reasoning so irresistible, that it produced complete conviction on the minds of the Senate of Pennsylvania. This honorable Court know the result. He has been not only removed, but disqualified to hold the office of judge in any court of law in that State. We have, then, the deliberate opinion of the Senate of Pennsylvania, upon solemn argument, confirming the decision made by her supreme court. If these cases do not furnish us with lessons of instruction, I know not where such lessons are to be read.

I will remark, sir, further, in relation to this case, that had it not been for the extreme anxiety of Judge Addison to propagate his political dogmas from the bench, he would never have been reduced to this serious dilemma. Like the defendant, he converted the sacred edifice of justice into a theatre for the dissemination of doctrines to which I hope I shall never subscribe. If I have a desire relative to the administration of justice, paramount to all others, it is that party and party spirit should be banished from every court. My sincere and fervent prayer is, that the laws, like the providence of God, may shed their protecting influence equally over all, without respect to persons or opinions.

I have been requested by the Attorney General of Maryland to state another and a recent case which has happened in Pennsylvania. For his satisfaction I will briefly inform this honorable Court of all that took place on that occasion, in the least degree applicable to the present trial. Three of the judges of their supreme court were accused of fining and imprisoning, without the intervention of a jury, a fellow-citizen, for publishing a paper which they considered as a contempt of court. The judges were defended by two most able and eloquent counsel, who contended that the constitution, the laws and the practice of Pennsylvania, by adopting the common law doctrines on the subject, justified the proceeding; and that if there was no law to justify it, their conduct flowed from an honest error in judgment, for which they were not liable to impeachment. But, sir, they did not attempt to maintain the position contended for on this occasion, that to support an impeachment the conduct of a judge must be such as to subject him to an indictment. Nor could they, with any consistency, have supported such a doctrine, for their clients had before, in the case of Mr. Addison, decided that his conduct was not a proper subject of impeachment though it might be of indictment.

This precedent, then, fortifies the former decisions on this point, and adds another authority to those which previously existed, and to which I have adverted.

The judges were acquitted, I acknowledge, and were I to hazard an opinion, I would say because some of the members of the Senate of Pennsylvania thought their conduct proceeded from an honest error of judgment. If this court shall be of the same opinion with respect to the conduct of Judge Chase, I trust they will follow the precedent and acquit him, and I shall cheerfully acquiesce in the decision.

I fear I shall fatigue this honorable Court by noticing the various cases on this subject, but I cannot omit pressing on their attention a decision of the most authoritative and binding nature, because it is one of their own. The case to which I allude and its attending circumstances must be fresh in the recollection of every member of the Senate. The district judge of New Hampshire was impeached for habitual drunkenness on the bench, and for using profane and indecent language. It was not in evidence to the court that drunkenness

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or profane and indecent language were indictable by any law of that State. There is no law of the United States, unless we recur to the naval or military code, punishing these vices as offences. Of course, sir, it was not pretended by the Managers on that occasion, of whom I had the honor to be one, that any indictment could be maintained against Judge Pickering in any civil court of the United States, or of the individual State of which he was a citizen. I appeal to your recollection, sir, for the accuracy of this statement; and, let me ask, what was the result? A Constitutional majority of the Senate pronounced a verdict of guilty and passed a judgment of removal.

One of the counsel, (Mr. Harper,) of whose argument I may be permitted to observe, without disparagement to the talents and learning of his colleagues, that it contained an able and masterly defence of the conduct of the accused, sunk beneath the weight of this stubborn and conclusive precedent. It was a stumbling block which he could not remove out of his way; and he seemed compelled, reluctantly, to yield the principle to the decisive authority and pointed application of the case.

We have then the whole weight of American authority in our scale, whilst the learned counsel have not been able to adduce a single precedent, foreign or domestic, against us. When I speak of precedents, I do not allude to the obscure *dicta* which may be found by turning over the dark lantern of tradition in remote ages of antiquity, or to the interpolations which may be scattered through the marginal references to the abridgments, by unknown editors; but to some authoritative case which has occurred since the regular date of parliamentary impeachments. The fines which Edward I. imposed on some of his judges, in what manner is not certainly known, to replenish, as many have supposed, an exhausted treasury, are familiar to every student. But from the period of impeachment to the present time, I believe no instance of an indictment can be shown against a judge of the Common Pleas, Exchequer, or King's Bench in England, nor against a Lord Keeper or Lord Chancellor, who hold their offices to this day, let it be remembered, *during pleasure*. The civil business of the Court of Chancery is more important than that of all the other courts, and the decisions of that tribunal have been as impartial I believe as any, notwithstanding the high sounding doctrines of judicial independence. There have been many impeachments, the judges have sometimes been complained of by information in the execrable Star Chamber, but there have been no indictments at law. The Star Chamber has been long since abolished, and the sole method of proceeding against judges of the superior court now is by impeachment. The best writers agree, "that judges 'of record are freed from all presentations whatever, except in Parliament, where they may be 'punished for anything done by them in such 'courts as judges." Numerous authorities might be cited on this subject, but I shall content myself with barely referring to them.—1 Hawk. 192, chap. 73, sec, 6; 1 Salk. 396; Woodeson 596, Jacob's Law Dictionary, title *Judges*, 12 Co. 25, 26.

Were I to rest the point here, I confidently believe we should be perfectly safe, but I will proceed further, agreeably to my engagement, in the commencement of my argument, and demonstrate that according to their own principles, and authorities, Judge Chase has been guilty of crimes and misdemeanors, in the strictest technical sense of the terms, for which he ought to be punished in an exemplary manner.

In contesting the principles that no act is impeachable unless it also be indictable, I have not contended for the position attributed to me by the learned Attorney General of Maryland, that a judge may be impeached for conduct which is not criminal. On the contrary, we rely on supporting this as a criminal proceeding, and the gentlemen are entitled to every advantage which they can reap from this declaration.

I have had occasion to state that I considered every act of misbehaviour in a judge as a misdemeanor, and the Attorney General of Maryland has expressed in strong terms his perfect agreement in the opinion, that misbehaviour is synonymous with misdemeanor. He appeared to imagine that he gained a great advantage by making this concession, and I am content to give him the full benefit to be derived from it. I shall not shrink from the position, but meet the gentleman with pleasure and confidence on this ground. I love to break a lance in the open field of discussion, and disdain every kind of ambush in argument.

As we agree in one point, that misbehaviour and misdemeanor are convertible terms, Jacob's Law Dictionary, which quotes the language of Judge Blackstone in his commentaries, has been recurred to for a definition of a misdemeanor. Let us try the conduct of Judge Chase by his text. "A crime 'or misdemeanor (says Judge Blackstone) is an 'act committed or omitted, in violation of a public law either forbidding or commanding it." "This general definition comprehends both crimes 'and misdemeanors, which properly speaking are 'mere synonymous terms."

There is a *public law* that prescribes the following oath which Judge Chase took on his entrance into office; 1 vol. p. 53. "I do solemnly swear, 'that I will administer justice without respect to 'persons, and do equal right to the poor and the 'rich, and that I will faithfully and impartially 'perform all the duties incumbent on me as a judge 'of the Supreme Court, according to the best of 'my abilities and understanding, agreeably to the 'Constitution and laws of the United States."

Who that reads this solemn and impressive provision, and looks at the plenary evidence we have before us, can hesitate to pronounce the respondent guilty of violating a public law, which he was bound by the most sacred of all human obligation, to execute with fidelity? His oath informed him that the law, like the Gospel, was no respecter of persons, and yet what have we beheld in his conduct, when a poor, unfortunate Fries, or a wretched Callender was before him, upon a criminal charge? I appeal to the testimony which I shall by and by comment upon, whether his acts do not prove that he marked

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them out as victims to be sacrificed on the altar of party. Sir, I cannot believe that gentlemen will seriously contend that the expressions "faithfully and impartially to perform his duties," have no definite meaning; that conduct grossly prejudiced, and the most shameless partiality, shall be considered as no violations of his solemn oath. If they did, I have too exalted an opinion of the good sense and discernment of the court to believe they would countenance such an idea. Their import is certainly plain and obvious, without recurring to the black-lettered lore for explanation. What, then, was the conduct of the respondent to Fries, if testimony not only unimpeached but unimpeachable is to be believed? Was he not prejudiced both against the unhappy prisoner and his case, which he had from a superabundance of zeal completely prejudged? Or, sir, when he declared Callender ought to be hung, and set off with his miserable pamphlet in his pocket, ready scored for his purpose, and proceeded in the most arbitrary manner with his trial, was he impartial, or was he not guilty of the most manifest and daring partiality? Shall he be guilty of all these outrages against the plain language of a public statute, which combines the obligation of an oath with the sanction of a law, and yet be innocent of any crime or misdemeanor? If gentlemen will hold up the acts of Congress in one hand, and the acts of Judge Chase, proved by the testimony, in the other, they will see and be satisfied, that within the strictest legal definition he has been guilty of repeated and aggravated violations of public law, and therefore unquestionably of crimes and misdemeanors.

The Constitution, however, is declared to be emphatically the supreme law of the land. This sacred instrument he was bound by a twofold oath to preserve inviolate. All executive and judicial officers of the United States, independent of their oaths of office, are bound by oath to support the Constitution—Art. 6, sec. 3.

By the seventh article of the amendments of the Constitution, which have been duly ratified, and therefore now form part of that instrument, it is declared, that "In all criminal prosecutions 'the accused shall enjoy the right to a speedy 'and public trial, by an impartial jury of the 'State and district wherein the crime shall have 'been committed, which district shall have been 'previously ascertained by law; and to be in-'formed of the nature and cause of the accusa-'tion; to be confronted with the witnesses against 'him; to have compulsory process for obtaining 'witnesses in his favor; and to have the assist-'ance of counsel for his defence."

This article secures to every accused individual the right of a trial by an impartial jury. Without their unanimous consent, no matter how eager the Government are for conviction, no person can be punished. Where any man is charged in due form with the commission of a crime, and pleads he is not guilty, the jury are to decide on the whole case whether he be innocent or not. Their verdict must be commensurate with the issue joined, which involves both fact and law, which they have indubitably the right to decide, agreeably to the express and positive provision of the Constitution. This right, therefore, is an original right, flowing from the highest authority. It is beyond doubt a principle and not an incidental right. It is not a right incidental to the trial, but it constitutes the trial itself; for there can be no other trial in the case but by jury.

This same amendment guaranties to the accused the assistance of counsel. How important is this privilege, when it is recollected that veterans of the bar are generally selected to prosecute. The situation too of an innocent man, charged with the commission of a crime, is delicate and embarrassing. It excites frequently apprehensions which unfit him for making a defence. I feel myself compelled to declare, upon the authority of the testimony in this case, that the respondent has been proved guilty of violating the supreme law of the land in those great essential provisions. He has deprived accused individuals of a trial by jury, for he would not suffer the jury to decide, or even to hear argument on the subject of the law, and he has deprived them of the benefit of counsel by conduct which drove counsel from the bar. This has happened in more than one instance, and above all, an injured fellow-citizen has been stripped of his invaluable privileges in a capital case. Is this imagination or is it reality? Let the recorded testimony determine. If, however, I am correct, must I not have satisfied this honorable Court, agreeably to my promise, that taking the learned counsel's own definition, and relying upon his authorities, I have demonstrated that the accused has been guilty of crimes and misdemeanors. But have I not gone further, and shown that he has been guilty of high crimes and misdemeanors, and such as disqualify him for a seat on the bench, so as to come fully within the rule which he has laid down?

God forbid that it should be said, when a judge is guilty of grossly violating not merely a public law, but the supreme law of the land, nay, a law which he was bound by two solemn oaths to support, he is not guilty of any crime or misdemeanor; or that when he violated this supreme law which he is thus obligated to respect, for the purpose of depriving a fellow-citizen, accused of a capital crime, of the benefit of counsel, and the inestimable right of trial by jury, he shall not be declared guilty of high crimes and misdemeanors, which evince a want of integrity, and mark a depravity of heart that completely disqualify him for a judicial office.

I have now finished my observations in reply to the preliminary objections which have been made to this mode of proceeding, and have been reluctantly compelled to discuss them at much greater length than I at first contemplated, from the zeal and pertinacity with which they have been urged and insisted on by the learned counsel opposed to us. Under the impression that I have been successful in this undertaking, I shall hasten to the investigation of the articles themselves.

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To the observations which have already fallen from me on the subject of the technical refined exceptions that have been taken to the language of the articles, I shall only add a remark or two in reply to what fell from one of the counsel, (Mr. Lee,) when commenting on the 5th and 6th articles.

He appeared to consider the House of Representatives bound down to the same strict and technical forms required in the ordinary courts of justice. Even there I believe suitors are too often caught in this miserable net, which is calculated to hold a shadow and let the substance escape. But the legal maxim, if I am correctly informed, applicable to impeachments, is, that they whose duty it is to present them, may speak in plain, common language, *loquendum ut vulgus*—Foster 389, 90; 2 Woodes. Lect. 607. I believe if we were to try the articles either by the test of technical nicety, or the standard of common sense, they would be found on examination correct in form and substance. The articles particularly excepted to charge the respondent with committing acts in violation of certain public laws of the United States, either enacted by Congress or adopted by their statutes. If this be not a sufficient allegation of criminality, I know not what would constitute an offence. Suppose an act of Congress were made to punish an assault or battery committed in any place within their exclusive jurisdiction, and an indictment were to state the fact to have been committed, and allege that it was done against the act in such case made and provided, it would certainly be held sufficient in any court of criminal judicature in the United States.

In examining the various articles of accusation, I will consume no more of your valuable time than the intrinsic importance of the subject absolutely requires. I am not standing in an ordinary court of justice. I do not consider myself arguing a case before an honest, but perhaps an unlettered jury. I feel myself addressing an enlightened tribunal, composed of venerable and illustrious characters, who add to the native virtue of integrity, that intelligence and knowledge which is acquired by the study and experience of years. I am sensible that I am addressing those more capable of communicating information to me than I am of instructing them.

The case of poor Fries, embraced by the first article, presents a melancholy picture, of which I must solicit you, painful as the object may be, to take a view. From this gloomy spectacle you would naturally desire to avert your eyes, and I could wish for the honor of human nature that it had never been exhibited. But your duty compels you to contemplate it, whilst mine compels me to portray it.

In justice to my early acquaintance, (Mr. Hopkinson,) who defended the respondent against this charge, I must observe, that the task assigned him was performed with great ability and address. But my learned friend, (Mr. Nicholson,) in reply to his observations, presented such a clear exposition of the facts, and such a sound commentary on the law applicable to this article, that I am sensible he must have removed the great mountain of objections which overshadowed for a time this part of the case. My share of duty is therefore considerably diminished. It only remains for me to add a brick or two to the wall which he has erected, and to answer some of the remarks of the learned Attorney General of Maryland, and his eloquent colleagues, Mr. Harper and Mr. Key.

On questions of fact I shall rely principally on the admissions contained in the answer, and shall not detain this Court with adverting to the volume of evidence which has been taken, unless where the respondent has thought proper to deny any material part of a charge. I believe his own answer confesses substantially the truth and correctness of the principal facts on which the articles rest. This Court will require no stronger evidence, I presume, than the admissions of the party, deliberately recorded by himself. When he denies facts, it is his duty to support such denial by the necessary proofs. But taking the answer altogether, though a masterly performance in point of style and language, in my humble opinion, it gives a death wound to his case.

It appears that Fries had been tried in the year 1799, before Judges Iredell and Peters, and convicted of the crime of high treason. His counsel afterwards moved for a new trial, on the ground that one of the jury had been prejudiced against him. That he had not in fact been an impartial juror in the case. The court, consisting of the same judges, upon argument, ordered a new trial to be had. A new trial, according to the best authorities, is "a rehearing of the cause 'before another jury, but with as little prejudice 'to either party as if it had never been heard be'fore." In this light Judge Chase should have considered it. He ought to have gone to Pennsylvania with a mind totally unprejudiced, and viewed every circumstance of the case with the utmost impartiality. The very circumstance which produced the second trial ought to have put him sufficiently on his guard. When a new trial has been directed, to use the language of the respondent in his answer, "solely on the ground 'that one of the jury" (a single man out of twelve) "after he was summoned, but before he 'was sworn on the trial, had made some declara'tions unfavorable to the prisoner," how ought an impartial judge to have felt and to have acted? Mr. Chase, let it be recollected, presided in a court composed of but two members. With this lesson before his eyes, we find the respondent forming an opinion in his closet on the law of treason, applicable to the case of poor Fries, and not satisfied with making up his own mind on this subject, he took care to bind the judgment of his associate, by obtaining his approbation of that opinion, which he reduced to writing for the purpose. This irregular and reprehensible measure was adopted before the hour of trial arrived, when the man whose life was at stake was to be heard on a subject that involved his existence. This bold step in the path to conviction, has been

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defended on plausible grounds, and by subtle refinements.

The respondent in his answer and the learned counsel in their defence have endeavored to prove that this conduct was not only right, but perfectly proper and correct. Among the various pretexts eagerly laid hold of to justify this novel procedure, they urge as a reason for prejudging and despatching a capital case, the multiplicity of civil business pending in the same court! I will forbear to inquire into the facts on this point, though I believe there is not a spark of testimony to prove the allegation to its full extent, because, if the docket had been loaded with civil suits, it would form no excuse for hurrying though a criminal trial, on the issue of which the life of a fellow-citizen depended. That cause must be bad indeed that requires to be propped by such miserable expedients. When I first read this passage in the answer, it struck me with astonishment, and excited a burst of indignation which it is my duty to repress. "A multitude of civil business 'is depending, and therefore I must make up my 'mind conclusively on the law in a capital case, 'before the proper season arrives, without hearing 'a single word from the prisoner or his counsel 'in defence!" The learned judge certainly did not reflect on the effect of such an excuse, which instead of palliating his conduct, aggravates it. That he was in a great hurry, every part of his conduct proves. From the opinion, a copy of which is annexed to his answer, it would appear that he did not intend to make it public, at least until after the jury had been sworn and Fries was on his trial. In that we find these expressions: "The court heard the indictment read on 'the arraignment of the prisoner some days past, '*and just now on his trial*, and they attended to 'the overt acts stated in the indictment."

This honorable Court will recollect that the whole current of the testimony proves, and the defendant in his answer admits, that he delivered the papers containing this *ex parte* opinion before Fries's trial commenced. Such was his eagerness to despatch the case, with a view, he says, of reaching expeditiously the civil list. As if gifted with the spirit of intuition and with an infallible judgment, he seems not to have proceeded on the principle of *castigatque auditque*, but to have improved even upon that model, considering it not necessary for him to hear arguments at any stage of a cause, for the purpose of forming a correct opinion. His counsel ask us whether it be a fault in a judge to have a profound knowledge of the law, which will enable him to decide promptly any question that may occur; and the respondent said, on Fries's trial, that "he had an opinion in point of law as to every case which could be brought before the court, or else he was not fit to sit there." Yet, when Callender's trial was progressing, we find this same judge, upon a common point of practice relative to a challenge to the jury, calling out for Coke on Lyttleton to be brought into court before he could make up his mind on the subject.

Sir, I hope always to see more of profound legal erudition and extensive information on the bench. A rational diffidence in their own opinions is the result and the companion of knowledge. Characters of this description, who combine integrity and impartiality, qualities essential for a judge, with their learning, will never form and deliver an extra judicial opinion. They will adopt the maxim, *audi alteram partem*, in their practice. If judges act correctly and properly in deciding the law in a single case, without hearing both sides, the principle will hold good in all cases. Every issue of pure, unmixed law ought to be thus decided. Demurrers, special verdicts, and motions in arrest of judgment, instead of being determined in open court on solemn argument, should be decided by the judges in their closets. Cases in error, removed up to the higher tribunal for the purpose of correcting the mistakes of inferior jurisdictions, would of course be adjudged without argument. The court would only have to meet to deliver the opinions in public, which they had formed in their chambers. Surely when gentlemen contend it was correct in the respondent in a criminal case, when law was blended with fact, and the life of the accused involved in the issue, they must advocate in civil causes, where from the nature of the pleadings, the fact is separated from the law, the practice of their own principle. I agree it would save time and some expense in obtaining decisions, but would causes be decided as justly and satisfactorily?

I have before stated, and endeavored to prove by the letter and spirit of the Constitution, that in all criminal cases the jury have an established right to decide the law as well as the fact. The respondent, whose actions do not always correspond with his declarations, in the charge delivered before they retired from the bar, to the jury who convicted Fries, uses the following language: "But the jury are to decide in the present, and in all *criminal cases, both the law and the fact.*"

It cannot therefore be necessary for me to repeat the same answer to the maxim that has been suggested, *ad questiones facti respondent juratores, ad questiones legis respondent judices*, which Lord Chief Justice Vaughan, on a memorable occasion, gave to the counsel of his day; a very good maxim, but often very improperly applied. It is referable to these cases solely when the law and fact by the pleadings are separated, as in the case of demurrers and special verdicts. It has not the most remote application to criminal cases, on the issue of not guilty, which necessarily blends law and fact together. A pure, unmixed question of law never came before a jury, it is always mingled with fact, and must depend upon the testimony. In such a case the judge cannot give any positive directions of law on the trial; for the law can only arise out of facts, and the judge cannot know what the facts are until the jury have given their verdict. Lord Hale, a great authority in criminal law, also observes, that "it is the con-'science of the jury that must pronounce a pris-'oner guilty or not guilty; for to say the truth, it 'were the most unhappy case that could be to the

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'judge, if he at his peril must take upon him the 'guilt or innocence of the prisoner, unhappy also 'for the prisoner; for if the judge's opinion must 'rule the verdict, the trial by jury would be use-'less." I think I tread on ground which can neither be removed nor shaken, when I assert the unqualified right of the jury in Fries's trial to decide the law equally with the fact, because, added to all the rest, I have the respondent's own authority in support of the position.

Suppose then that Judge Chase had not been so eager and in such great haste to display the offspring of his profound legal reflections. That he had been patient enough to wait as he originally designed, as appears in his answer, "until 'after the petit jury should have been empan-'elled and heard the indictment read to them 'by the clerk," and the jury, "before the district 'attorney should have stated to them the law on 'the overt acts alleged in the indictment as it 'appeared to him;" had presented a set of papers to the court and counsel on each side, containing their decided opinions of the law, that the overt acts stated in the indictment did not amount to treason agreeably to the Constitution. That they would not have this law controverted, nor suffer any cases of construction in the British statutes to be cited. I presume the learned judge would scarcely have brooked such conduct in the jury, though the case is parallel with his own. He declares himself that the jury had a right to decide the law in that cause, and they would only have done what he himself did do, decided it without argument, having made up their minds at home, after hearing the indictment read on the prisoner's arraignment. Had the jury adopted this conduct, which I fear the judge could not have tolerated, and had they persisted in it, the prisoner must have been acquitted, against the predetermined opinion of the court. Sir, notwithstanding the observation of Mr. Harper, that the court refused to grant a new trial in criminal cases in favor of life from motives of humanity, and not because they have not the power if they choose to exercise it. I must beg leave most explicitly to deny this position. The court possess no such authority, nor have they ever attempted it in a single case within my recollection, and certainly the learned counsel produced no example of the kind. Besides, the defendant states in his answer, that "he well knows that it is the 'right of juries in criminal cases, to give a verdict 'of acquittal which cannot be set aside on ac-'count of its being contrary to law."

To bring the case home to the business and bosom of the respondent, let us suppose that when he first appeared before this honorable Court, surrounded by the able and eminent counsel which the laws and humanity afford him, you, Mr. President, had presented to his advocates a paper containing the predetermined opinion of a Constitutional majority of the Senate, that if the facts contained in the articles of impeachment were substantiated by proof, that the respondent was guilty in law of high crimes and misdemeanors, for which he ought to be removed from office and disqualified to hold any other under the United States, would he not have said, and with great justice too, that you had prejudged his case? The refined distinctions so eloquently urged to excuse his own conduct, would have vanished the moment the reality was experienced. The splendor of his sophisms, which have sometimes almost dazzled our eyes, would have been obscured by his own feelings. The instant the case was made his own, his conduct would have furnished us with all the evidence and all the arguments that would have been required. Had this court acted in such a manner, it would have given the respondent a volume of explanation on the subject of *prejudging the law*, which one of his counsel (Mr. Hopkinson) has stated he did not understand. But, thank Heaven, this tribunal has treated the respondent with that indulgence which is due to individuals in his situation. They have given him the full benefit of our equal laws. They have acted upon the humane and benevolent principles of our code, which presumes every man innocent until he is proved to be guilty. The laboring oar is on our side, and unless we satisfy the Senate by plenary evidence of his guilt, they must and will, I trust, acquit him.

The examples of Lord Chief Justice Eyre and of Judge Iredell, in the charges which they have delivered to the grand juries, have been referred to, for the purpose of shielding the respondent. The cases are utterly dissimilar, and bear no analogy or resemblance to each other. Their charges contain a general definition or description of those offences which come under the cognizance of a grand inquest. When they do advert from peculiar circumstances to particular cases, the opinions they express are always subject to correction; for whoever heard of a judge refusing to permit the counsel for an accused individual to controvert any doctrines delivered in his charge to a grand jury? This was not the conduct of Lord Chief Justice Eyre or Judge Iredell. Whatever sentiments they may have expressed in their charges, they were open to conviction, and permitted the counsel to indulge themselves in all the latitude of argument they considered necessary to their client's defence. Would to God, that the respondent had imitated the examples which his own counsel have held up to our view!

As the learned judge had formed this *ex parte* opinion, to which he was determined to adhere, his advocates make a merit of his revealing it at the period he did, and they inform us that he might have kept it locked up in his own bosom, of which he alone kept the key, and have divulged it when it was too late to counteract it. But the express purpose of opening the budget was, to prevent the counsel from controverting the points. For the defendant, in his answer, expressly says: "The court held itself bound by the former de-'cisions, and would not therefore alter its opinions 'in consequence of any arguments." Without this precious confession, we well know the effect of bias on the human mind. Such is its peculiar mechanism and constitution, that when an opinion is once formed on any subject, it is extremely

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difficult to correct it, though erroneous. When once, therefore, the judgment was rivetted against the prisoner, before the season of exertion in his behalf comes round, the tongues of angels would have been insufficient for the task of changing it.

The aid of precedent has been called in to justify this wide departure from principle, and it is contended that the opinion was correct in point of law. My honorable friend (Mr. Randolph) has detected and exposed the fallacy of this species of justification. I will remark that a great and respectable character (Lord Mansfield) has observed, that he is a most unrighteous and wicked judge who decides without hearing both sides—even when he decides correctly—because his judgment is the effect of chance or accident, and not the result of a fair, full, and impartial investigation. Precedents, let me observe, do not make the law, they are merely evidence of it; nor is the law to be absolutely decided by precedents, *judicandum est legibus, non exemplis.* "If a judge 'conceives that a judgment given by a former 'court is erroneous, he ought not in conscience 'to give the like judgment, he being sworn to 'judge according to law," says Lord Chief Justice Vaughan. But Judge Chase declares that, had he differed in opinion from former precedents, even in a capital case, he should have held himself bound by them. But here let me ask what are those precedents to which he subscribes? It is not my intention to go at full length into the discussion of them, or comment at large on the law of treason. My object is, on this interesting occasion, to enter a solemn protest against doctrines which would entail on us all the constructive treasons of another country, and to assign in a few words the reasons of my opinion. I am not to be deterred from my duty by the assertion that no counsel of eminence would controvert the principles laid down by the respondent in his *ex parte* opinion, more especially when characters of such high standing at the bar as Mr. Lewis and Mr. Dallas, have honorably and conscientiously opposed such monstrous doctrines. The Western insurrection in Pennsylvania was materially different from the momentary disturbances in the counties of Bucks and Northampton. The precedents which arose from one could not be applicable to the other, and the cases of Mitchell and Vigol, which have been cited, are readily distinguished from that of Fries.

In the first, the combination was formed and organized to seize *all* records and papers, and to destroy *all* offices, to expel *all* officers in the whole survey. The insurgents traversed the country armed, seized papers, attacked offices, and drove officers out of the country.

They seized and imprisoned the marshal, who escaped and returned to Philadelphia by a circuitous route.

They assembled at Cooche's fort, consulted on the attack upon Colonel Neville's house, marched thither in military array, summoned him to surrender by a flag, set fire to his house, and destroyed his records. They assembled at Braddock's field; deliberated on taking the garrison at Pittsburg; marched thither with that avowed object; but finding the garrison prepared for defence they filed off.

They assembled after the proclamation, and after the militia were ordered to march. They avowed an intention to resist. They compelled the Government to negotiate. The leaders, Bradford and Marshal, fled on the approach of the army, and the insurgents generally accepted the terms of amnesty, as in a case of treason. The army was, however, maintained for sometime in the country.

In the last, the people were illiterate, ignorant of the laws and language. They did not conspire to act themselves, but to prevent *particular* inferior officers from acting, by making the assessments in *particular* townships.

They acted like a mob, in obstructing the progress of the officers by threats, hooting, &c., and once they took an officer's tax list or papers, but immediately returned them.

They assembled expressly to release or rescue a *particular* set of prisoners whom they called their neighbors.

They rescued the prisoners, and withdrew without injuring or attempting to injure the marshal, or the tax officers who were at Bethlehem.

They never suggested the idea of resisting the army. They dispersed as soon as the proclamation was issued, and they never met afterwards.

The distinctions are striking and obvious.

In the insurrection of 1794, the object was general; in the riot of 1799, it was particular.

In 1794, the insurgents *acted* as assailants; the rioters of 1799 stood on the defensive, and only obstructed the officers in attempting to act.

In 1794, the design of attacking a fort and resisting the army was deliberately formed, and overt acts committed to carry it into effect; in 1799, the idea of attacking or resisting the military power of the Government never was suggested.

In 1794, the sedition act had not provided for combinations to impede the execution of a particular law: In 1799 that act was in existence.

In 1794, the outrage extended to the seizure of the marshal to prevent his executing any process. In 1799, it was confined to the release of a particular set of friends and neighbors.

The precedents, therefore, of Mitchell and Vigol, which have been so much relied upon, did not, I humbly submit, apply to the case of poor Fries. But the defendant has dwelt much on the opinion expressed by Judge Iredell, in his charge to the petit jury on the former trial of Fries, notwithstanding the verdict was set aside, which was given on that occasion, and Judge Chase should have proceeded on the second trial, as little prejudiced by any opinions on the former, as if such trial had never taken place. It appears from the testimony of Mr. Dallas, that so confident was he of the broad difference between the cases of 1794 and 1799, that in the first trial he did not advert to the former, little suspecting that they would be considered as precedents for the latter. When he found, by the charge of Judge Iredell, that he did

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unexpectedly rely upon them, his intention was, in the second trial, to direct his arguments to the manifest distinctions between them. In this, however, he was disappointed by the arbitrary conduct of the defendant. Under these circumstances, can this case be considered binding and obligatory; or, is a single precedent to make the law, and absolutely prevent counsel from controverting it?

The learned judge bolsters up his opinion by stating that, it is in conformity to the uniform opinion of British judges since the Revolution of 1688. But these judges were bound by all the precedents which had previously occurred. And is every baneful exotic to be thus transplanted into our soil? If they are, I trust, however they may flourish in their native land, they may wither and die in our clime. The Constitution defines treason, and to that instrument alone we should look for a complete description of the crime. Those illustrious characters who formed it, no doubt supposed they gained a great point in thus ascertaining with precision the offence. The precedent, Montesquieu justly observes, for the crime of high treason to be indeterminate or uncertain, is of itself sufficient to make any Government despotic. The text of our Constitution is sufficiently plain without any British glossary. Let me earnestly recommend, on this point, without reading them myself, the perusal of the observations of a learned and excellent judge (Mr. Tucker) the pure ermine of whose character is not sullied by a single stain, contained in his edition of Blackstone's Commentaries. On this American stock shall we ingraft every scion which we can procure from the luxuriant *upas* of England? No, sir; I trust there will be found independent judges who will prune away such unnatural branches, and restore the original purity to the Constitution.

The Court will indulge me, at this stage, with a few observations in reply to the authority from Keelyng, cited by one of the counsel (Mr. Hopkinson) and which I had nearly omitted. They must have been extremely pressed when they had recourse to this case, where the Judges, the Attorney General, and the Solicitor General for the Crown met together in conclave to decide the fate of those accused of treason. Need I remind this intelligent Senate that this shameful transaction, this gross prostitution of justice, took place before the Revolution, and just after the restoration of Charles II., when pliant judges were selected to bring to punishment the innocent as well as the guilty. The island of Great Britain was at that period a common slaughter-house. Such was the savage thirst of the Government for blood, that they persecuted persons who had fled to the remotest parts of the earth. Is it not surprising that conduct, pursued at a time when proscription was the order of the day, should be produced, to justify the respondent? It proves vastly too much. It evinces that, if precedents in evil times are to be implicitly followed, there is no offence, however great, no conduct, however flagrant, which may not be sanctioned and supported. But, sir, to produce a case which happened before the Revolution of 1688, to excuse the conduct of a judge who refused to hear authorities read prior to that period, is, I must confess, a singular incident in this trial. Independent of the consideration that the court themselves had thus predetermined the case of the unfortunate Fries, what must have been the effect on the minds of the jury summoned on the panel, who were present when this *ex parte* and extra-judicial opinion was published to them and to the world? The agitation produced at the bar has been described by the witnesses in such a manner, that you are capable of contemplating the sum, and of estimating the fatal effects which it must have necessarily produced in the case of the prisoner.

I contend, therefore, from the respondent's confession, and the testimony, that he is guilty of the first specification contained in this article; that he unfairly, and in violation of the plainest rule of duty, prejudged the case of Fries, without any reasonable excuse, much less justification for so doing.

Not contented with prejudging the cause and prejudicing the minds of the jury who were to try the issue, he proceeded still further, with adventurous strides on untrodden ground. Apprehensive that a single ray of argument must dispel the mist which he had raised, he determines that the counsel assigned by the court themselves shall not controvert before the jury the opinion delivered in writing. They were directed to address themselves to the court, who would not, if we believe Judge Chase himself, in his answer, alter their opinion on the subject. And yet the respondent admits the undoubted right of the jury to decide both law and fact.

It appears, from the history we have received of the case, that the counsel for Fries, knowing that the Attorney for the United States would rely on cases decided in England since the Revolution, wished to trace them to their origin. It is a fact which will not be disputed, even by the respondent, that, since the Revolution, the British judges have held themselves bound by the authority of cases previously decided. Sensible, then, that the determinations which resulted from the sanguinary precedents which the rude decisions of barbarous ages had established, would be urged against their client, the counsel for Fries desired to go to the fountain head, to expose the poisonous source from which such streams flowed. Is there any member of this Court who can, for a moment, hesitate to pronounce their conduct correct on this point? Judge Iredell, whose example has been quoted, on the former trial, permitted it to be done.

The advocates of Fries wished also to draw arguments in favor of the defence from some of the acts of Congress, particularly from the sedition law, as it is commonly called. Mark the objection of the respondent: "Treason is defined in 'the Constitution. We can pay no respect to the 'opinion of the representatives of the people of 'the United States on this subject. We will not 'hear them. Much time was wasted on the former

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'trial by citing and commenting on the statutes 'of Congress." The opinions, however, of three or four British judges are entitled to great weight and consideration. Judges who never read or heard of our Constitution, but who paid the debt of nature before it existed. But the deliberate opinion of both Houses of Congress, and the President of the United States, evidenced by a solemn Legislative act defining and punishing the very offence, in my humble opinion, which Fries had committed, was not to weigh a feather in the scale. It might reasonably be supposed that the acts of Congress, though not received as authoritative and decisive of the question, would be respected, and no person could have imagined that counsel were not to be permitted to read them. The Legislative body contained, at that time, characters well versed in Constitutional lore. The sentiments of men, however well acquainted with the provisions of the Constitution, as a matter of study and of duty, were not to be expressed before a jury, to decide law and fact, for the purpose of informing their consciences on legal topics. I will not detain you, by citing cases to prove that acts of the Legislature have been frequently received to assist the judgment even when deciding on a Constitutional question. An able and upright statesman (Mr. Madison) has declared at an early period of the Government, "that as to 'a doubtful part of the Constitution, an exposition, 'may come with as much propriety from the Le-'gislature as any other department of Govern-'ment." The wisdom of judges has not always been thought so paramount to that of legislators, that they would not even hear their opinions. But, then, Fries was before the court, it was perfectly irrelevant and highly improper to refer to an authority so inconsistent with the closet opinion of the court. I have generally understood, in the little experience I have had in courts of justice, that opinions given without argument are never to be relied on, and I question whether any counsel in any court of justice, except where the respondent presided, would think of producing as authority, the singular document, prepared in his chamber, in a case which he had never heard argued. His able defenders assert (in the very face of his own declaration, that his opinion could not be changed by any arguments) that the respondent was willing to hear the counsel for Fries. Such is the testimony of a witness, Mr. E. Tilghman, whose candor and impartiality are beyond the reach of suspicion, and to whom I give the most implicit credit. The learned judge did observe that, "nevertheless, counsel should be heard." Considering that he was resolutely determined never to change his written opinion, one would suppose he might have agreed that they should range as widely as they pleased through the field of argument, and could have safely permitted them to talk until they were satisfied. This, however, was not the fact. They were to be heard in his own way and on his own terms. His memorable expressions in relation to the cases which the counsel for the accused wished to cite and to apply, must be recollected by this Court: "What! cases from Rome, Turkey, or France!" In this emphatic manner did he persevere in preventing any recurrence to the rotten foundation on which the authority that the learned judge considered as conclusive was built. Was this imitating the conduct of Lord Chief Baron Eyre? Let any gentleman peruse the trials of the honest Hardy, the upright Tooke, and independent Thelwall, and he will be struck with the difference of conduct. Throughout those trials the court leaned to the side of the prisoners, as if, in the benevolent language of the law, they really were counsel for the accused. They manifested a becoming indulgence to the celebrated characters concerned for them, and when Mr. Erskine, that distinguished ornament of the bar, who is not more justly admired for his shining talents than his inflexible unblemished integrity, by some animated observations which proceeded from the warmth natural in an honest cause, excited the feelings of the Solicitor General, the President of the court complimented him for the zeal and ability which he displayed in the cause of his clients. Messrs. Lewis and Dallas both declare expressly that the respondent said that they must address themselves to the court and not to the jury. I acknowledge that neither Mr. Tilghman nor Mr. Rawle, for whose characters I feel the greatest respect, recollect this particular fact, but surely this cannot operate against the positive testimony of two witnesses; for though there may be an apparent contradiction to a superficial observer, there is no real difference between them. On the subject of positive and negative testimony, let me refer this Court to what has already happened in the course of this very trial, where the advocates on both sides are attentively taking notes of everything which is said. The gentleman who closed the defence (Mr. Harper) mentioned that one of the Managers had stated that an impeachment was merely an inquest of office. I believe there is not a Manager who recollects that such an observation was made (unless it may be the gentleman who made it) and yet there is not one of us who does not believe that it was actually made. It is precisely the same case with respect to the testimony of Messrs. Dallas and Lewis. There cannot be any exception taken, on this point, to their evidence merely because the other witnesses have not the fact impressed on their recollections. Let me observe, further, that Messrs. Dallas and Lewis particularly state that Judge Chase absolutely declared that the acts of Congress should not be read; the same remarks, which have just been made, will apply to Messrs. Tilghman and Rawle's not recollecting that fact. By the Constitution every accused individual is entitled to the benefit of being heard by counsel. If the court will not permit the jury to hear, or the counsel to speak, any language which they do not approve, they deprive the accused at one and the same time of the right of trial by jury, and of the privilege of being heard by counsel. The learned judge states that the jury have an undoubted right to decide both law and fact, but in the same breath declares that he is to be the exclusive judge of what is law.

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This really reminds me of the story of the sailor in the play of the Tempest, who agreed that his comrade should be the Viceroy over the island provided he were Viceroy over him. As it relates to the counsel you may as effectually deprive a prisoner of this benefit by preventing their speaking on the points which they conceive material to the defence, or by a rude course of overbearing, insulting conduct toward them, which will totally disqualify them for the task, as if you were to nail their lips or clap a padlock on their mouths. Such was the conduct pursued by the respondent in Fries's case that, I hesitate not to pronounce him, on the strength of the facts, guilty of depriving the unfortunate prisoner of the benefit of counsel, and the jury of their Constitutional right. I do not contend that counsel should be permitted to read on a trial anything they please—an idle tale, a novel, or a farce—totally irrelevant to the issue; but I assert and maintain their undoubted right, in the case of Fries, to read and comment at large before the jury on the statutes of Congress, and on those old precedents from which the modern ones sprang, like shoots from a parent stock, which they earnestly wished and desired.

When deprived of their Constitutional privileges they would not degrade the independent character of the profession by becoming the servile instruments of the court. They disdained going through the mockery of a trial, that their client might be hung according to form; and they retired with indignation from a tribunal which had reduced them to this distressing alternative. For this laudable conduct the Attorney General of Maryland has been pleased to say, they ought to have been instantly committed to prison. What, sir! Send counsel to jail for insisting on their Constitutional right to address the jury at large on the law in a criminal case, and on a trial for high treason, and for withdrawing when compelled, by conduct unequalled in the annals of jurisprudence, to abandon the cause of their client, and suffer professional ignominy and disgrace! So far am I from subscribing to this extraordinary opinion, that I think the gentlemen who defended Fries deserved a civic garland or a laurel wreath, for their manly firmness and dignified independence. I was sorry, sir, to hear from the lips of a learned and respectable witness (Judge Winchester) that, in Maryland, it is the uniform practice *in criminal cases* to take the judgment of the court on points of law, and that although counsel seriously differed from them in opinion, it would be thought a high breach of professional decorum to attempt to controvert the point before the jury. When, however, I put a case of gross and palpable error in the opinion of the court, on a trial for a capital offence, and asked the witness whether he would not then argue the case before the jury, that able and humane judge replied that such a case would justify a departure from the ordinary course. Yet even in Maryland the court do not, I understand, decide the point until it is legally brought before them, and fully discussed. When the respondent, therefore, in the case of Fries, determined without hearing any argument, and before the season of trial arrived, he should have recollected the memorable example recorded in Holy Writ. Even Omniscience would not condemn Adam without hearing him: "Adam, where art thou?" And shall man,

> "Proud man,
> Drest in a little brief authority,
> Play such fantastic tricks before high heaven,
> As make the angels weep!"

We find the respondent, after he had thus completely stripped Fries of the panoply with which the Constitution and the laws of his country had clothed him, informing the disconsolate prisoner, almost in the very words of the execrable Jeffries to the unfortunate Sydney, that "the court would be his counsel, and by the blessing of God, would serve him as effectually as his counsel would have done!" Gracious heaven! what must have been the deplorable situation of the accused, and what the emotions of his mind at that awful moment? Before a jury prejudiced by the court themselves, deprived of their rights, without counsel and without friends, standing on the verge of eternity. His senses must have sickened at the scene, and expiring hope reclined upon the tomb. But I will not attempt to portray it; my feeble powers and weak language lag far behind nature. I should do injustice to the subject, which you can better feel than I can describe. On your feelings, therefore, I must draw for the deficiency of expression. It is truly singular that the respondent should rely on the circumstance of Fries's counsel retiring from the case, as a ground favorable to the present defence. This is taking advantage of his own wrong, because it so happened (for the ways of the Deity are inscrutable to the human eye and intellect) that his illegal and unjustifiable conduct rescued Fries from the grave, after he had consigned him to an ignominious tomb, and released the poor victim which he had bound to the altar. Yes, there was an overruling Providence who watched over the prisoner; there was, to use the language of the eloquent Curran, "a redeeming 'spirit in the Constitution, which walked with the 'sufferer through the flames of the prosecution, 'and rescued him unhurt from the conflagra-'tion." The shameful occurrences on the trial of Fries reached the ears of the late President Adams. Through the then Attorney General of the United States, he requested from the counsel for the prisoners, a statement of the grounds on which they intended to rely had they been permitted to defend him. These were candidly and concisely, but with great clearness and perspicuity unfolded, and Mr. Adams, rising superior to the passions of the day and the folly of the times, with a firmness and humanity which did him infinite honor, stretched the arm of mercy to the devoted victim of party. Sir, I will venture to affirm, notwithstanding the confident manner in which it has been asserted, that the respondent's prejudicated opinion on the law of treason in the case of Fries was correct, that, in questioning that opinion, I have the authority of Mr. Adams in my favor, evidenced by an official act, of which I feel it would be impossible for me to speak in terms of

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panegyric too lofty. As I cannot add to the eulogium of my honorable friend, Mr. Randolph, I will not, by any feebleness of expression, take from it. Is the respondent entitled to any share of the merit of this great and good action? Did he intercede at the seat of mercy? And yet, because the life of Fries was saved by the justice and humanity of Mr. Adams, his counsel would almost persuade us that Mr. Chase had this object in view, when he adopted the conduct which he exhibited on the trial. He deprived him of an impartial trial by jury, the adamantine chain which secures the life of a fellow-citizen, and suspended his existence on the slender hair of Executive discretion, and his counsel make a merit of the deed!

Taking the conduct of the respondent altogether, in that unfortunate case, which will be remembered as long as virtue is revered or vice deplored, it exhibits a stupendous colossus of judicial despotism and *legal* injustice, which, standing with one foot fixed on the rights of juries and the other placed on the privileges of the accused, bestrode the prostrate Constitution and laws of the land, and with a look more fatal than that of the basilisk, threatened to destroy the liberties of our country.

The case of Fries was succeeded by that of Callender. There is seldom one act of crying injustice without being followed by another. It is the misfortune, if not the fault, of the respondent, that his conduct compels us to unfold more than one solitary case, in which he grossly violated his duty and the laws of the land.

Callender had written a book, which I never saw until since the commencement of this trial. A wretched performance, which ought never to have excited in the breasts of the honest supporters of the late Administration any passion but contempt. They should have applied to it the memorable declaration of one who once figured in political life, "a wise and virtuous Administration is not to be battered down by mere paper shot." The respondent, it appears, was furnished by one of his present counsel, (Mr. Martin,) when in the act of setting off for the district of Virginia, with a copy of this formidable work, which threatened destruction, in his opinion, to the Federal fabric. The book was ready scored to his hands, so that, with a single glance, he might discover the fatal passages. With this volume for a "*vade mecum*, or travelling companion," he proceeded to Richmond to hold a circuit court. Soon after his arrival a presentment was made and an indictment found against Callender. The miserable object of persecution was hunted up and down the country. At length he was discovered by the marshal and brought into court. To the indictment he pleaded not guilty, and able and eminent counsel appeared to defend him. To avoid any dispute about testimony in discussing this case, I shall rely implicitly on the evidence of their own witness, Mr. Robertson. The case of Callender is comprised by the second, third, fourth, and fifth articles, which specify the particular acts that were committed in violation of the law and of his duty as a judge. I shall advert to the prominent grounds of charge in the order in which they occurred on the trial, without confining myself to the order in which they are stated in the articles.

Callender not being prepared with the testimony necessary to substantiate his defence, an affidavit was filed in due form, which stated ample grounds to postpone the trial of the cause, and upon which the court ought certainly to have granted a continuance. One of the counsel for the respondent has read a rule of the Supreme Court, which declares that they will consider the practice of the King's Bench as forming the outline for them. In the authority which I produced a few days ago, the general doctrine on the subject of postponing trials is laid down in a clear and plain manner. In the case of the King vs. D'Eon, the court of King's Bench state very accurately the rule adopted for the postponement of a cause. It is only necessary to state in the affidavit that a material witness is absent, whom you have used your diligence to obtain, without the benefit of whose testimony you cannot safely proceed to trial, and that you expect to procure his future attendance. The affidavit of Callender stated the absence of witnesses whom he believed material, mentioned their names and places of residence, and the facts which he expected to prove by them. This was the very term when the indictment was found. What are the objections raised against the motion to postpone, founded on this affidavit, and the reasons urged in support of the respondent's refusal to put off the trial? They are truly singular. One is a refined technical objection to the form of the affidavit, because it does not state in strict legal language that Callender expected to be able to procure at a future time the attendance of the witnesses. But he states facts which prove on the face of them, that by postponing the trial he could obtain the benefit of their testimony, for he mentions the places of their residence, all of them within the United States. I say the case is stronger than if, *secundum formam*, he had sworn that he could procure their attendance. When he tells where they lived, the court must have been satisfied on this point. However, the respondent assigns a curious reason, to be sure, for his conduct. If the witnesses who were absent were actually before the court, and were to prove all that Callender had stated or expected, it would not have justified all the libellous passages that had been selected from the book and thrown into the indictment. How was Judge Chase to know but that Callender had testimony as to those points on which his absent witnesses would not have deposed? I have ever understood it to be a sufficient ground of postponement, if a witness be absent who can prove any one material fact in a cause, and I never yet heard of a court after being satisfied of this, attempting to ascertain whether there were other witnesses who would prove all the rest of the facts necessary to substantiate a defence. This would be most effectually trying and deciding a cause upon a motion which was intended to prevent the trial of it at that time. It

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is further contended, that any person who writes on political subjects should have all the documents, vouchers, and witnesses, at his elbow to prove the truth of any fact which he asserted. I have always thought that when a charge is preferred against any man, it is time enough then to look for testimony to prove his innocence. In fact, there is no method which I know of by which he could procure the evidence of any individual until there was a case depending. All the exparte affidavits he could obtain, this honorable court know would be incompetent testimony.

The respondent it seems was willing to postpone it for a particular period, provided he would be present at the trial. Nay, he would go all the way to Delaware, and return again to accomplish an object he seems to have had so much at heart. In my humble opinion this part of the Judge's conduct proves stronger than almost any other of his acts, the motives which influenced him. If I were to select any one circumstance to prove that his intentions were improper, I would lay my hand on this. "I will not postpone this important trial until the next term, because, according to the arrangement, I shall not then be on this bench, but I will agree to delay it for a shorter period, and travel three or four hundred miles in order to accommodate Mr. Callender with my presence on the trial." Did any lawyer ever hear of such conduct? Did they ever hear of a court adjourning to a particular time, to try a single solitary case of a common misdemeanor?

I read a case the other day from Bacon, where the trial of an indictment was postponed until the second term from that in which the motion was made. I referred to another case in Cowper's Reports, where the court declared they would postpone the cause for ever, as the witnesses were not within the power of the defendant, unless the prosecutor would agree that their depositions should be taken and read as evidence.

Let us suppose that Callender had stated in his affidavit that he could not procure the attendance of material witnesses, because the process of the court would not reach them, and that the respondent himself had been of opinion that their testimony could not be taken by commission, the court possessing no such authority in a criminal cause. Ought he not under these circumstances to have imitated the humane example of a British judge, and to have told the District Attorney that he would postpone the cause until he consented that their depositions should be taken. He preferred acting in a very different way. As some of the witnesses were not within the power of the court, no matter how material their testimony might be to the defence, it was an argument sufficient in his own mind to order on the trial of the cause, more especially as the affidavit did not state, what was never before required, that he had other witnesses ready to prove the residue of his case, provided he could procure the evidence of those that were then absent, which was absolutely necessary, fully and completely to substantiate his defence. I take up this case and test the conduct of the respondent by the facts which at that time appeared before him, and not by any subsequent declarations of the counsel for Callender. Was there any legal cause of suspicion in the case, arising from any circumstances which have been related? The wretched author of a vulgar, miserable performance, had been presented, arrested and indicted, and was about to be tried off hand, as if in a court of *pie poudre*, where business is despatched as quick as you can shake the dust from your shoes, when his counsel exhibited an affidavit of the absence of material witnesses, and moved the court to postpone his trial to the usual course. And though strong legal grounds are laid before them, this reasonable request is refused upon the miserable pretexts which have been assigned. Despatch appears to have been a favorite object with the respondent in criminal business. But this extempore mode of proceeding, this impromptu method of administering justice, when an accused individual is praying for time to collect the testimony necessary for his defence, is in perfect hostility with the humane spirit of our laws and the practice of every court with which I am acquainted. I have read as a maxim of law, that in capital cases no delay is long; and I should presume, that in crimes of an inferior grade, a reasonable postponement, as the object cannot be to convict and punish innocence, ought certainly to be granted, and is enjoined in all the authorities, let us turn our eyes to whatever book of practice or precedent we may. I am far from thinking that there may not be such glaring violations of the law by those who are presumed to be best acquainted with it, as at first blush to prove that they were intentional, and proceeded from impure motives, not from ignorance, but design.

Suppose a judge should sentence any person to the pillory for an offence which was by law punishable with a small fine, or condemn him to the whipping post for a crime, the penalty annexed to which was imprisonment. I presume in either case there would be no question about motives. I put these merely for examples, because I take it, whenever there is an unequivocal, glaring and manifest violation of any known principle, or settled rule of justice, with which a man well educated in the legal science, and more especially one who possesses the *viginti annorum lucubrationes*, cannot be unacquainted, no doubt can arise whether he acted from honest mistake, or evil design. The case which was cited on this point by one of the counsel, (Mr. Key,) from Term Reports, does not apply on this occasion. That was an application to the court of King's Bench for an information, which is a more summary mode of proceeding than by indictment, and in such cases it is the practice of that court, unless very strong grounds are laid before them, not to interpose their extraordinary power of granting an information, which deprives the accused party of the security and protection of a grand jury, and will compel the applicant to resort to the ordinary remedy of indictment.

I do respectfully submit, for the reasons assigned, that the conduct of the learned judge, in refusing to postpone the trial of Callender, was a most

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manifest violation of the principles of law, and was attended with such circumstances as render it highly improbable that it proceeded from a mere error in judgment.

Let us examine the subsequent conduct of the respondent. And whilst we view him progressing with the case, we shall find him at every step deviating more widely from the course which he ought to have pursued.

It is in evidence, that a person (Mr. Basset) was called to the book to be sworn as a juror, who suggested to the court facts, which, in my humble opinion, rendered him incompetent for that office. This suggestion was made from laudable motives. It proceeded from a conviction that he was not an impartial juror, whose mind had received impressions unfavorable to the case of the accused. He candidly stated to the court that he had seen in the newspapers extracts, said to be taken from the work called the "Prospect Before Us," and that if the extracts were truly taken, he had formed an unequivocal opinion, that the book was a libellous publication, for he had made up his mind that the sedition law, as it is called in common parlance, was perfectly Constitutional. This very work was the foundation of the indictment, which we may reasonably suppose contained, if not all the passages which had been scored by that profound lawyer the Attorney General of Maryland, a judicious selection of those that were most obnoxious and offensive. I undertake to state as a correct principle of law, that upon an indictment for a libel, though particular sentences may have been culled by the prosecutor, the jury have a right to examine the whole publication, and to judge from the general context of the book, whether the publication be criminal or not. This was universally allowed, even when the powerful talents and commanding influence of a Mansfield had effected a monstrous innovation in the trial by jury, in cases of this nature; when, like the defendant, (but recollect not in a capital case, as on the trial of Fries,) he had reduced the jury to mere cyphers, and had usurped their powers, and arrogated for the court the right to decide what it was the duty and the province of the jury to determine. The poor jury were to be confined to the mere fact of publication, and the truth of the *innuendoes*, and the court were to decide exclusively the law.

It was reserved for that great and enlightened statesman, Mr. Fox, to restore the law to its ancient uniformity, and revest in the jury that power in prosecutions for libels, which they possessed in every other criminal case. It will be remembered that in this arduous and laudable undertaking, he was supported by the eloquent Erskine, and the venerable Earl of Camden, who had resisted, with that independence and integrity which strongly marked his dignified character, the newfangled doctrines of the Court of King's Bench. Since the libel bill has been enacted, in all the cases which have occurred, the subject has been left at large with the jury. I recollect particularly on the trial of the King *vs.* Stockdale, which took place soon after, Lord Kenyon told the jury they were not tied down to the passages selected from the pamphlet, but were to compare the extracts with the whole publication, and judge for themselves from the entire work, as to the guilt or innocence of the accused, and Stockdale was acquitted. If a juror had formed an unequivocal opinion, that the work entitled the "Prospect Before Us" was a libellous publication, he had in fact formed an unequivocal opinion on an indictment predicated on extracts, taken from that book. There is no logic which can destroy or evade this position, drawn from the facts. Observe the subtlety, with which the respondent eludes the most obvious principles. The question put by him to the juror was, "Have you ever formed and delivered an opinion on the charges contained in the indictment?" Remember that the indictment was not read to him, in order that he might know what it contained, and having understood its contents, be able to give a correct answer; he was called upon to declare whether he had formed and delivered an opinion on what he had never seen, nor heard read, and, with sophistry exposed to vulgar inspection, the learned judge proceeds to state, that "he never saw the indictment nor heard it 'read, and, if he had neither read nor heard the 'charges, he was sure he could not form an opinion 'on the subject." But how unjust was the conclusion which the respondent drew from his premises; for the indictment which Mr. Basset never heard read, when he came to read it, might be found to contain those very passages which he considered as libellous; and how in the face of the fact, for the juror had decided "The Prospect Before Us" to be a libel, and the "Prospect Before Us" Judge Chase knew himself to be the sole basis of the indictment. Let us suppose that the respondent himself, after scanning with eagle eyes this terrible publication, had absolutely made up his mind that it was libellous, and had afterwards been called upon as a juror, on an indictment against Callender, which he had never seen or heard read, but which in fact was founded on this publication. Would he pretend to say, because he did not know what the indictment contained, that it was impossible he should have formed an unequivocal opinion on the charges which composed it? I presume not. Behold then the imposition which was practised upon a juror, who had made up his mind absolutely on the very question to be tried. He might as well have asked him whether he had formed and delivered an opinion on any indictment, of which he had never heard before, as one which he had never read, and of the contents of which he was utterly ignorant. To have asked Mr. Basset whether he had formed and delivered an opinion on any particular case in the books with which he was entirely unacquainted, and if he answered from that circumstance in the negative, to have ordered him to be sworn, would have been just as proper as the course the judge pursued. Mr. Basset had formed an unequivocal opinion, that the publication for which Callender was indicted was a libel; and had delivered this opinion to bring it completely within the respondent's rule. Some of the counsel have observ-

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ed, that the objection was not made by the advocates of Callender, and that it proceeded from a mere suggestion of Mr. Basset. And which is the strongest case? I apprehend that where a juror, conscious of his impressions, from motives of delicacy, puts the court in possession of information, on which they were bound to act. Let me ask under these circumstances, whether Mr. Basset was an impartial juror? And does not the imperative language of the Constitution declare, "that in all criminal prosecutions the accused shall 'enjoy the right to a speedy and public trial by 'an impartial jury?" With this plain provision on my side, I want not the glossary furnished by the authorities which have been cited by the counsel for the respondent. Nor can it be necessary to enter into a critical examination of them, as we have a case determined in our own courts, on the motion for a new trial, made on behalf of Fries. On that occasion, this honorable Court will find, that all the precedents relied upon at this time were adduced and urged. The passages from Brooke, Roll, Viner, and Trials per Pais, were cited. The law at large and the law abridged, were brought before the judges, who decided after a solemn argument in favor of a new trial. This single case is sufficient to overturn the authorities, in which the respondent's counsel appear to repose such implicit faith. What were the facts on the motion for a new trial in Fries's case? After a verdict of guilty, an affidavit was made that one of the jurors had said that Fries ought to be hung. Mr. Basset, this court will recollect, in effect declared as positively that Callender ought to be convicted. Mr. Basset had formed an unequivocal opinion, that the publication for which Callender was indicted, was a libel. This opinion, to bring it completely within the respondent's rule, he delivered in open court at the moment of being sworn as a juror. That certainly was giving an opinion that Callender ought to be punished. But the juror in Fries's case, when confronted with the witnesses who deposed to his declaration, denied having made use of the expressions imputed to him.

I do therefore most sincerely believe, that the respondent decided against the principles of law and the plain letter and spirit of the Constitution, when he directed Mr. Basset to be qualified as a juror on the trial of Callender. He decided also against the just construction of his own rule, contained in the question which he had addressed to the jury, and gave it an interpretation which rendered it equally ridiculous and absurd. The question must have presupposed the juror acquainted with the contents of the indictment, and must have been predicated on this principle. Any other supposition would render it not merely idle and nugatory to be put, but truly nonsensical; and yet the respondent made his being ignorant of the charges in the indictment the pretext for swearing him on the jury. So far as relates to the delivery of an opinion which he had previously formed, Mr. Basset, in answer to an interrogatory which was put to him by me, replied, that he did publicly, in open court, pronounce the opinion which he had formed of "The Prospect Before Us," from the extracts which he had seen in the papers. Here then is proof that he did deliver in the most solemn and public manner an opinion on the subject, from which, on his oath as a juror, for he was just about to be qualified, he could not depart without subjecting himself to ignominy and the severest reproach.

The point is, I humbly conceive, too plain to require any further comments, and I shall proceed to another extraordinary circumstance which occurred on this trial, which I am sorry to say was characterized by so many and such strange modes of proceeding, that I think we might safely challenge the profoundest researcher in the judicial history of England to furnish a parallel. Let me remark, that all the questions proposed to the witnesses, on the part of the prosecution, were put *ore tenus*. The tongue and not the pen propounded them. As soon as the examination began on the part of the defendant, or to speak more correctly, before it commenced, the tables were turned, and the counsel of Callender were directed to reduce to writing the questions which they wished to ask. This is proved to be a novelty in trials of this nature. If so, was it an innocent novelty? Why embarrass the counsel for the prisoner with an unusual and unprecedented regulation, and compel them to do that which they did not require on the part of the prosecution. This extraordinary measure has been attempted to be excused, because this honorable Court has adopted, though partially, the same rule upon the request of any of its members. The large number of judges, of which this dignified tribunal is composed, rendered such a rule necessary and proper. It flowed from the very nature and constitution of this court, and is agreeable to constant and general usage. The two cases bear no resemblance nor similarity to each other. The rule operates here equally and fairly, let the question come from what quarter it may, whether from the Managers or the counsel, or whether it be proposed by any member of this honorable body. The counsel for Callender submitted to this new law of the court, promulgated at the instant it was to be executed, and suited to the case before them. They reduce the questions which they wished to ask Colonel Taylor to writing. Immediately an objection is raised against them. And if it were not already known to this honorable Court, I am sure no member could guess what it was. The respondent had first inquired of them what they intended to prove by the witness, and then insisted that their interrogatories should be committed to writing. It will be recollected that from the miserable trash of Callender, the prosecutor had picked and culled here and there the most noxious and loathsome passages. Every offensive paragraph constituted a separate and distinct charge. The charges were of course numerous. The following sentence was selected as the ground of two of them. Alluding to the late President Adams, the publication says, "He was 'a professed aristocrat. He had proved faithful 'and serviceable to the British interest." The

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passage itself contained two distinct assertions, both of which had been charged with the proper *inuendoes*, to explain the intentions of the author, and the tendency of the expressions as highly criminal in the indictment. The District Attorney, it appears from the note taken by Mr. Robertson of his argument, considered the term aristocrat, used in the common political or party acceptation, with the views of Callender as particularly offensive and libellous. Contrary to the precipitate opinion of the respondent, he considered the assertion that Mr. Adams was a professed aristocrat, a substantive offence of itself. Colonel Taylor's testimony it was expected would go to prove the truth and justice of those observations of Callender's. It often happens that counsel are not accurately informed of all that a witness can depose. From the questions drawn up in haste by Mr. Hay, to be put to Mr. Taylor, the respondent drew the inference, but, in my humble opinion, very erroneously, that Colonel Taylor's testimony would not go the whole length of substantiating the facts necessary to evince that Mr. Adams was a professed aristocrat, and that he was faithful and serviceable to the British interest. He thought it could only prove part, and therefore rejected it as inadmissible. For this opinion Mr. Robertson states, that the judge declared that "he took the responsibility on himself, and risked his character on it." His reasons were neither solid nor plausible. He stated that the passage constituted an entire charge, and every part of it must be proven, or none at all. If a person had a respectable witness as to part, and another equally respectable as to the residue, he would examine neither, because singly taken their testimony would not go to all the charge. It is seldom, indeed, any party can make out his whole case by one solitary witness, and when it does happen it is always suspicious. When an individual is selected to prove all that is required, agreeably to the rule of the respondent, no objection of this kind would occur. But is not that case much stronger where a number of witnesses appear, each ready to depose to the particular facts within his knowledge, and where the sum or aggregate of their testimony furnished a complete answer to the charges, however numerous?

I may safely venture to say, that in the annals of any courts of justice or injustice under Heaven, such an exception of testimony is not to be found. The Chief Justice of the United States, a gentleman every way well qualified to judge, declares that he never heard of such an objection before. It is without precedent, and in violation of every rule of the law of evidence. The idea is too absurd to be dwelt upon. It is too distorted in principle to admit of consistency in practice. It is contraband in law, and can only be smuggled by the address with which it was introduced. It requires great talents and ingenuity for a moment to hide its deformity, and in vulgar hands it would become truly ridiculous and contemptible. It is utterly indefensible; and the respondent's counsel themselves have felt it incapable of being justified. They have attempted to excuse it, by endeavoring to show that the learned judge was not influenced by bad motives. For my part I consider it so flagrant that I can ascribe his conduct to no other, especially when taken in connexion with the facts and circumstances proved by the evidence. This will lead me to make a few remarks on the *quo animo*, with which he acted throughout the whole of this transaction. On this topic the evidence is copious and pointed. We have been charged with destroying the confidence of society, because we have given evidence of the declarations of the respondent made to Mr. Mason. These have been stated with all that delicacy which is characteristic of the gentleman. I do not discover from the manner or the circumstances, that the respondent's conversation with Mr. Mason was a confidential one. If I did, I will candidly acknowledge I should feel little disposed to trespass on the walks of private life. It was said to have taken place at an unguarded moment, and that every unreserved expression should not be tortured into an accusation. Let us bear in mind that the respondent was a judge of the land, and about to depart to Virginia to perform the duties attached to his office. He had then in his possession a copy of Callender's work, and declared he would teach the people of Virginia to distinguish between the liberty and the licentiousness of the press, and that if the State was not too much depraved to furnish a jury of good and respectable men, he would certainly punisb Callender. If we pursue him on his way to Richmond, we find him in the stage asking a perfect stranger whether he had ever seen "The Prospect Before Us," and expressing a wish that Callender had been hanged. He actually proceeded to Richmond with the scored book in his pocket, which was delivered to the jury, and Callender was convicted and punished. It is said by his counsel, that these declarations of the respondent's were not made in earnest, they were mere jests. I suspect Callender did not find them so. Like the fable of the frogs, it might have been jest and sport to Judge Chase, but it was cruelty to him. Sir, I will not dwell longer on those unpleasant and painful circumstances. This honorable Court can and will duly appreciate them. Much more might be said on this case, but I will leave the task to abler hands than mine. My honorable friend will do ample justice to those points which I have omitted.

From Virginia, flushed with success and elated with his triumph over Callender, the respondent hastened to Delaware. The night preceding the day on which the respondent was to hold the court, he lodged at the village of Christiana, about five miles distant from the court-house. From this place he rode into Newcastle the next morning with Dr. William McMechin, who was summoned as a grand juror to the court, and it is in evidence, was actually sworn on the panel. This is the very man, who, it is represented, gave the respondent the information relative to the seditious printer. As a grand juror it was his duty to communicate to his fellows any offences against the laws of the land which had come to his know-

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ledge, and it was the duty of the grand jury to present every criminal act punishable by the laws of the United States. We are bound to pronounce that Mr. McMechin put the rest of the grand jury, for he was sworn so to do, in complete possession of all the information which he communicated to the respondent. With these circumstances, the respondent was perfectly well acquainted. He saw with his own eyes the very man empanelled on the inquest who had opened the budget to him, and knew it was his duty to unfold the intelligence to his brethren. The respondent proceeds to deliver an appropriate charge to the jury—a charge free from all those blemishes which stain a subsequent performance of the same kind. He presented to their view in chaste and eloquent language the proper subjects for their inquiry. In my humble opinion it may have been equalled but never excelled. I considered it, according to my poor judgment at the time, a perfect model; the most finished piece in style and substance that I ever heard addressed to a grand jury. Had he stopped here he would have been an object of praise rather than complaint. Had he been contented with discharging his official duty he would have been entitled to our thanks, rather than merited an accusation.

The grand jury retire to their chamber, and after some time return to the box. To the credit of the then marshal of the Delaware district, I must observe, that he had manifested on that occasion, (as I know him uniformly to have done, even when the storm of party raged with the greatest violence) in the selection of his jurors, an independence becoming the responsible station which he filled. They were not men of pliant tempers, nor were they carefully culled from the ruling sect, but chosen without respect to party, from the most respectable of both sides. It gives me great pleasure to speak of such conduct, because I wish to hold it up as an example. The grand jury were asked by the clerk in the usual form, "have you any bills or presentments to make?" Their foreman respectfully answered they "had not." On this, the judge could no longer bridle his temper. He had anticipated perhaps a treat from the prosecution of an obnoxious printer, and expected to regale his palate with a favorite dish. Provoked by disappointment, his passion burst into a flame, and he condescended to stoop from his bench, for the purpose of seizing on his prey. It was at this period he betrayed emotions so highly reprehensible, and so very unsuitable to the dignity of his situation. In a tone, well adapted to the exceptionable language, he observed to the grand inquest "What! no bills or presentments?" This was matter of astonishment to him, and he proceeded to make the observations so correctly described by Mr. Read, the District Attorney of Delaware, a gentleman of irreproachable life and manners, whose character is not only unimpeached but unimpeachable, and Mr. Lea, one of the grand jury themselves, to whom part of the observations were addressed, a merchant of established reputation, and as a man respected by all who are acquainted with him. Sir, after the observations I have made on positive and negative testimony, I will not stop to demonstrate that everything stated by Mr. Read and Mr. Lea was said, though not recollected by some other witnesses. I will barely mention that all the extra-judicial remarks of the respondent were addressed to the grand jury or to the district attorney. They must, therefore, naturally be presumed to have paid the strictest and closest attention to all that fell from the learned judge, and we have produced one of the grand inquest themselves, and the district attorney, to prove the language he used. I feel confident under these circumstances, that implicit credit will be given to them. I am also convinced that the statement made by the respondent is scarcely more favorable to his cause. The grand jury repeat, to the interrogatory put to them by the respondent, the answer which they gave to the previous question of the clerk, and request additionally that they may be discharged, as many of them were farmers, and it was hay harvest, a very busy season with them. But no matter for that, the business of the persecution, for I will not say prosecution, must go on if possible. The judge would not discharge the grand jury on the first day, agreeably to general practice, as proved by Judge Bedford, though pressed so to do. He proceeds to give them information of the seditious temper which had manifested itself in the State, and particularly in Newcastle county: a county, which, suffer me to say, is well known from its old and unshaken patriotism from the Revolution to the present day. But he did not stop here, he proceeds to mention a seditious printer, point out the place where he lived, and the borough of Wilmington, justly celebrated for its uniform attachment to the cause of republicanism, and, according to his own answer, to specify the title of his paper, and just as his name was escaping from his lips, a returning sense of propriety checked his speech. Sensible how deeply he had committed himself already, he paused for reflection. But he had gone too far to effect a safe and honorable retreat. He calls on the district attorney to know if a file of the papers cannot be had. Some officious person offers to procure them, and the respondent directs the district attorney to examine them and lay them before the grand jury, who are ordered to attend the next morning. They do accordingly attend, the file of the papers is laid before them and examined. Behold, after all his exertion, the respondent had his labor for his pains; after all this noise and bustle *montes parturiunt*, and not even *ridiculus mus nascitur*. The grand jury return once more to the box without any bills or presentments, and the learned judge with admirable address covers his defeat. Such appears to have been his conduct on that memorable occasion. Where is the law or the authority which gives him the power to goad the grand inquest to indict an individual, or vests in him the right to order a district attorney to search for criminality? Is the judge himself authorized to hunt up offenders? Or is he justified in pronouncing a person guilty of sedition before he is charged with the offence? Remember, though

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he did not mention the name of the printer, he confesses himself that he named his paper, and *id certum est quod certum reddi potest.* Instead of pronouncing sentence of condemnation on a person before he has been accused, the benevolent language of our laws commands the judge to be his counsel when the constituted authority of the country has put him on his trial. If this conduct be not a violation of his duty, if it be not a case of plain and palpable misbehaviour, I know not what is.

Mr. HARPER. The judge did not undertake to pronounce sentence on his guilt, or innocence. He gave the information as he received it.

Mr. RODNEY. I am now arguing from what I consider in evidence; I am speaking from a copy of the deposition of Mr. Read, taken last winter, in which my honorable colleague, (Mr. NICHOLSON,) has remarked the very expressions used by the witness when he gave his testimony on the trial, and which literally corresponds with his former deposition.

The PRESIDENT (Mr. Burr.) Proceed, sir, if it differs in any respect, the Court will mark the difference.

[Here Mr. Rodney referred to Mr. Read's deposition, and contended that the respondent gave as matter of information part of what he stated, but as to the residue, he undertook to assert it; and proceeded.] But, sir, if it is all to be considered as matter of information, let the respondent's rule in Callender's case operate upon himself. His language there was, you should have the proof at your elbow for everything you publish. Do unto others as you would have others to do unto you, is a golden rule. He undertakes on the credit of another to inform against an independent citizen, and to bring him before the accusing power of the country, who by their solemn act, with one voice pronounce him innocent. A judge who ought to set an example to the nation, and more especially one who had just returned from punishing a person for communicating to the public information which he had received from others, appears guilty of pronouncing from the bench a libel on the character of a county and of an individual, and contends in the face of his own doctrine there is no guilt or criminality in it. But this predetermination of a case not before him, is in my humble opinion extremely reprehensible. To show that the respondent is not culpable, a precedent from the State of Pennsylvania is cited. Much as I venerate the character of the then Chief Justice of that State (Mr. McKean) and esteem him dear as a man, (I should be lost to the sense of gratitude if I did not,) I cannot in the case alluded to, subscribe to the precedent which he established. But even that is clearly distinguishable from the one under consideration. Mr. Cobbet, who undoubtedly was a man of extraordinary talents, not merely for invective and abuse, but for the strength, simplicity, and originality of his style, however much I may dislike the monstrous principles which he espoused, had been previously bound over for various supposed libels against characters peculiarly the objects of protection with the laws of this country. This may be considered as an inchoate accusation, and may have led Mr. McKean to make the observations which he delivered on that occasion.

Though I do not, Mr. President, perceive my voice fail me, I feel myself so exhausted with standing such a length of time this morning, before the court adjourned for half an hour, and so long since that temporary relaxation, that I find myself unable to continue any longer on my feet.

The Court adjourned until the next morning; when Mr. RODNEY proceeded as follows:

Mr. President—Before I resume the discussion of the Delaware charge, I beg leave to return my sincere thanks to this honorable Court for the indulgence which they were kind enough to grant me last evening. It is the first and most sacred principle in our criminal code that a man is presumed to be innocent until he is proved to be guilty. The counsel for the respondent have strenuously urged this principle, and wish it to govern the case of their client. I am willing to give him the full benefit of it. But did the judge himself act in conformity to this in Delaware? No. He did undertake to denounce a person guilty of a crime, before he was charged with the commission of any offence. Did he allow an independent printer who would not sacrifice the freedom of his press, on the altar of the Baal, or the Mammon of the day, the advantage of those principles which his counsel now claim for him? He did not. He pronounced the absent man guilty without waiting to see or hear him. Upon the mere *say so* of another, he took the risk upon himself, to tell the grand jury there was a printer of libels against the Government, when his informant was one of them, and even after they had returned, without any bills of presentments. It manifests a deliberate persistence in accusation, which I will forbear to qualify by the proper terms. The grand jury, upon a careful examination of the very documents on which he relied, can find nothing libellous, nothing seditious, and the contemplated victim is thus preserved by the integrity and the independence of a jury of his fellow-citizens.

The conduct of the learned judge at the circuit court in Maryland, furnishes, I consider, one of the strongest articles of impeachment. I had intended to have dilated very much at length on this charge, but the fatigue of yesterday has really indisposed me, and I have already trespassed too much on your time.

Every member of this Court must have been sensible of the impropriety of the respondent's conduct on that occasion. Every reflecting man must be decidedly opposed to the idea of blending political discussion, with the legal observations which ought to proceed from the bench. A party harangue little comports with the temperate and learned charges to be delivered by the president of a court. The character of an electioneering partisan, whose rostrum is a stump, or whose stage is the head of a hogshead, is utterly inconsistent and incompatible with that of a grave and upright judge. The duty of a judge is to expound the laws, and not to exercise the office of a censor

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over them, and much less to disgrace himself by reprobating them in a manner calculated to excite groundless alarm and apprehensions in the minds of the people, and to alienate their affections from the Government. Every man in his individual capacity possesses the undoubted right to advocate the political principles which he believes most beneficial to his country. The respondent as an individual is entitled to this privilege in common with his fellow-citizens, and to the free exercise of his splendid talents in such a case. But does this justify him as a judge in his judicial character, and from the judgment seat, to preach political sermons, and impose his private dogmas on the people, under the garb of administering the laws? Sophistry may for a moment confound two things perfectly distinct in their nature and effect, but the mist vanishes before the light of argument.

I most ardently desire that the sanctuary of justice may not be profaned by the unhallowed spirit of party. The law, like the gospel, should be no respecter of persons, whatever may be their political sentiments. The virtue and integrity of a judge should keep him within the line of his duty, and form an eternal barrier against the encroachments of party prejudices and partialities. If politics are forbidden to enter, or even to approach a court of justice, neither judge nor jurors will feel those sensations which disqualify them for the impartial discharge of their respective duties. Though party may rage with violence and agitate the country, all will be calm and tranquil in a court, in which every man's property, liberty, and life, will find a safe harbor. This should be inculcated by lessons and by examples, as a primary principle in our judicial system. I am happy to find that we all agree on this great and essential point. It is the anchor of hope amid those storms and tempests in which it is the will of Providence that all human affairs should sometimes fluctuate. The learned counsel, though they acknowledge the conduct of the respondent to have been imprudent, improper, and indiscreet, attempt to justify it by the production of charges, which wear a political aspect, delivered during the American Revolution. I will enter my protest against those, even at so turbulent a season; but none that have been produced furnish any grounds of defence to the respondent. In no instance which has been cited, have they attempted to exclaim against the very Government from which they received their commissions. We behold the defendant, a judge of the United States, passing judgment of condemnation on the laws which he was bound to conform to, and execute, and with the policy of which, in his judicial character, he had nothing to do. Much pains was taken in the examination of the testimony to disprove a fact the defendant himself admits in his answer; to show that the respondent did not censure the Administration, when he himself has furnished us with a copy of the charge in which he condemns in the strongest manner one of the most prominent acts which have passed since a change took place in the politics of the country. He reprobates the late law abolishing the judicial establishment, made under the late Administration. To this law the Senate, who in their Executive capacity form a material part of the Administration, gave their consent, and the President, who is at the head of affairs, gave his approbation. And yet gentlemen contend that the respondent uttered not a syllable against the present Administration! Is it not a plain, incontrovertible act of misbehaviour in a judge to denounce the very law under which he was then exercising his functions, and to hold it up to the people as shaking to the foundation the independence of the national Judiciary?

It will be conceded that there yet exist State jealousies against the General Government, the acts of which are closely watched and scrutinized. When the Constitution of the United States was framed, it was the legitimate offspring of a *liberal* spirit of accommodation which reconciled jarring interests, *discordia semina rerum*. It requires the patriotic exertion of every good man to preserve and to promote a reciprocal cordiality between the General and State Governments. The officers particularly of each should manifest a respect and reverence which would inspire at once confidence and attachment. What language can express the criminality of the respondent, when from the bench of the United States he undertook to thunder anathemas against the act of the Legislature of an individual State! Was this a part of his duty, or was it not? Can there be a doubt, sir, but that it was a gross violation of his duty, and that the respondent well knew it at the time? Yet such were his unbridled passions and his uncontrolled prejudices, that, regardless of the station which he held, and the dignified post which he occupied, he did not hesitate to commit the character of the United States by conduct which must have irritated the audience against the government of Maryland and its officers. If ever a *mobocracy* take place in this country, it will be brought about by such instruments and such conduct. Let those clothed with the laws become the violators of them, let the judges of the United States issue fulminations against the measures of individual States, and the judges of the different States retaliate, by declaiming against the acts of the General Government, and the consequences are easily foreseen.

When a poor miserable object like Callender, without character and without influence, censures the measures of our Administration, or reprobates an unconstitutional law, the respondent considered him guilty of a crime and deserving of punishment. But a man elevated to the bench may declaim in the strongest language against any measure or law of the United States, or of an individual State with perfect impunity! Recollect, sir, that if the defendant be justified in reprobating a single law of the United States, he has the right to reprobate them all indiscriminately. It is without question the duty of a judge to inculcate a respect and a reverence for the laws of the land. But, sir, the respondent, so far as he was able, has endeavored to excite the indignation of the people against them, and to terrify them into an opposition to measures which he has chosen from the

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bench to denounce, by the dread of a *mobocracy* and other alarming stories unworthy the columns of a common newspaper, and scarcely equalled since the days of the Rye House, and of Titus Oates.

Mr. President, I have now gone through the several articles of impeachment, and submitted to your consideration the remarks which I had to offer in illustration of the subject. Permit me, before I conclude, to observe, that in this country, no ignominious punishment follows upon a conviction by impeachment. Your sentence cannot extend so far as to hurt a single hair of the respondent's head. In England, the power to punish is unlimited, and has been but too often exercised with cruel, unrelenting severity. With us, it seems intended to restore and to preserve the purity of office, rather than to punish the offender by a penalty proportioned to his guilt. Remember, if this honorable Court acquit the defendant, they declare in the most solemn manner, and their sentence will be of record, that he has on all the occasions to which I have adverted, behaved himself well, in a manner becoming the character of a judge worthy of his situation. They sanction every act which he has committed, and proclaim them to the world as examples which ought to be followed. Sir, they in effect adopt every part of his conduct and make it their own, thus participating in the actions and transgressions proved against him by the testimony. This is indeed a serious consideration. Are the members of this Court prepared by a solemn judgment, which, proceeding from a tribunal so elevated, will have a powerful and commanding influence, to sanction by their high authority the conduct of the respondent? No, sir; I trust that they will embrace the present opportunity of displaying the virtue, the purity, and the energy of our republican Government, and that, in pronouncing the sentence which they may pass, they will erect a beacon, by which future judges will avoid the rocks on which the respondent now lies shipwrecked.

Sir, I have the fullest confidence, that if in the opinion of the members of this Court the respondent be innocent, they will have the independence to acquit him, and I entreat them to do so. On the other hand, if he be guilty, they will have the firmness to convict him.

With a sincere and a fervent hope that the Supreme Ruler of the Universe may so govern the decision of this case, that it may punish guilt, but protect innocence, I cheerfully submit it to the consideration of this honorable Court.

WEDNESDAY, February 27.

Mr. RANDOLPH.—Mr. President: After the very long and able, though (as I fear it must have proved to this honorable Court) tedious discussion of this important subject, it again becomes my duty to address you. That duty springs not only from the authority with which the House of Representatives have been pleased to invest me, but is enforced by the strong and deep interest which I take in the question before you. It is an interest which I am not ashamed to avow here. Strange, indeed, would be the mechanism of my composition, could I stand indifferent to the fate of this impeachment; if the success of a prosecution instituted at my own motion, of an indictment drawn by my own hand, and backed by the strongest body of evidence that perhaps was ever adduced in support of any accusation, should fail to interest me. My first wish indeed would have been to find this great culprit innocent of the charges which have been preferred against him. But since, by the clearest testimony, and even by his own admission, we are denied this gratification, all that remains for us is to see that signal justice done upon him which the Constitution demands for offenders of his high rank, and which we confidently expect from your decision.

The course which has been pursued by my learned colleagues and right excellent friends leaves but a barren field in which to glean after them. I shall, therefore, present you with the most condensed view that I can take of the subject, endeavoring, as far as possible, to avoid the ground which has been already trodden; and should I fail in this attempt, I hope to be pardoned, as having been absent during a great part of this discussion. Very far indeed is it from my intention, by tiresome repetitions, yet more to weary the patience of the Court, and prolong that decision which is anxiously awaited by all. I was not present when the defence was opened. in a style so honorable to himself, by the junior counsel of the respondent, (Mr. Hopkinson.) I was then ill abed. I regret the loss of the very able argument which he is said to have urged against the first article. God forbid that the time shall ever come with me when merit shall be disparaged because found in an adversary. Report speaks fairly of the gentleman's performance, and I am willing to credit her to the utmost extent.

Suffer me to say a few words on the general doctrine of impeachment, on which the wildest opinions have been advanced—unsupported by the Constitution, inconsistent with reason, and at war with each other. It has been contended that an offence, to be impeachable, must be indictable. For what then I pray you was it that this provision of impeachment found its way into the Constitution? Could it not have said, at once, that any civil officer of the United States, convicted on an indictment, should (*ipso facto*) be removed from office? This would be coming at the thing by a short and obvious way. If the Constitution did not contemplate a distinction between an impeachable and an indictable offence, whence this cumbrous and expensive process, which has cost us so much labor, and so much anxiety to the nation? Whence this idle parade, this wanton waste of time and treasure, when the ready intervention of a court and jury alone was wanting to rectify the evil? In addition to the instances adduced by my right worthy friend, (Mr. Nicholson,) who first addressed the Court yesterday, permit me to cite a few others by way of illustration. The President of the United States has

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a qualified negative on all bills passed by the two houses of Congress, that he may arrest the passage of a law framed in a moment of Legislative delirium. Let us suppose it exercised, indiscriminately, on every act presented for his acceptance. This surely would be an abuse of his Constitutional power, richly deserving impeachment; and yet no man will pretend to say it is an indictable offence. The President is authorized by the Constitution to retain any bill presented for his approbation, not exceeding ten days, Sundays excepted, within which period he may return it to the House wherein it originated, stating his reasons for disapproving it. Now let us suppose that, at a session like the present, which must necessarily terminate on the third of March (and that day falls this year on a Sunday,) the President should keep back until the last hour of an expiring Congress, every bill offered to him for signature during the ten preceding days, (and these are always the greater part of the laws passed at any session of the Legislature) and should then return them, stating his objections, whether good or bad is altogether immaterial. It is true that a vote of two-thirds of each branch may enact a law in despite of Executive opposition; but, in the case I have stated, it would be physically impossible for Congress to exercise its Constitutional power. Indeed, over the bills presented to the President within nine days preceding its dissolution, the Legislature might be deprived of even the shadow of control, since the Executive is not bound to make any return of them whatever. Now, I ask whether such misconduct in the President be an indictable offence? And yet is there a man who hears me who will deny that it would be a flagrant abuse, under pretence of exercise of his Constitutional authority, for which he ought to be impeached, removed, and disqualified? Sir, this doctrine, that impeachable and indictable are convertible terms, is almost too absurd for argument. Nothing but the high authority by which it is urged, and the dignified theatre where it is advanced, could induce me to treat it seriously. Strip it of technical jargon, and what is it but a monstrous pretension that the officers of Government, so long as they steer clear of your penal statutes—so long as they keep without the letter of the law—may, to the whole length of the tether of the Constitution, abuse that power, which they are bound to exercise with a sound discretion, and under a high responsibility for the general good? The counsel who closed the defence (Mr. Harper) felt that this ground trembled beneath his feet; and, fearing to be swallowed up in the yawning ruin, he precipitately abandoned it. He shifts from the position taken by his associates, and lays down this principle, "that an offence, to be impeachable, need not be indictable, yet it must have been committed against some known law." Well, take the question in this point of view, and there is no longer matter of dispute between us; it is reduced to a miserable quibble. For what do we contend?—that the respondent has contravened the known law of the land and of his duty, which required him "to dispense justice, faithfully, and impartially, and without respect to persons." He stands charged with having sinned against this law and against his sacred oath, by acting in his judicial capacity, unfaithfully, partially, and with respect to persons. These are our points. We do charge him with misdemeanor in office. We aver that he hath demeaned himself amiss—partially, unfaithfully, unjustly, corruptly. This is the sum and substance of our accusation, and this we have established by undeniable proof. I will waste no more time in attempting to dislodge our opponents from a position which they have abandoned in the face of day. I will no longer worry the good sense of this honorable Court by combatting the claim set up by the adverse counsel in behalf of the civil officers of this Government, to make their own passions and caprices, personal and political, the rule of that action which should be governed by a sound discretion, and exercised under a high responsibility, to oppress to the last extent of the letter of the law, and set at defiance an abused and insulted people.

The defence on the first article has been so much at variance with itself, the counsel opposed to us have replied so satisfactorily to each other, that the labor of combatting their respective positions is materially lessened. Whilst the honorable Attorney General of Maryland has almost exhausted his ingenuity to prove that the crime charged in the first article was no offence at all; that the judge did not, in that instance, exceed the bounds of his judicial authority; the gentleman who closed the argument on that side has confessed the offence in its full extent; but, in extenuation, avers that it was committed by a man of contrite heart.

Mr. Harper rose and said, that he did not mean to make that admission. He was proceeding, when the President reminded him that he must not interrupt the honorable Manager; that if he conceived any facts to be misstated, he might make a note of them, and have them corrected after the argument was gone through.

Mr. Randolph. The words to which I refer, I took down at the time they were uttered by the respondent's counsel: "the papers were with-'drawn; the prisoner's counsel were entreated to 'go on, until the cup of humiliation was drained 'to the very dregs." I took these words down at the moment. They must still ring in the ears of this honorable Court. To it I appeal for the fidelity of my statement. Did not the counsel declare that whilst, on every other point, his client invoked your justice, on this he implored your mercy? But mercy is not among the dispensations of this honorable Court. You will mete unto him that which his defenders tell you he has measured unto others—justice—to use their own language, "*sheer*" justice—all that he is entitled to at your hands. If the course pursued by the respondent, in delivering a written, prejudiced opinion in the case of Fries, was (as the Attorney General of Maryland has contended) warranted by law, wherefore the recantation on the next day? Was the court ignorant of its own

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authority? or was it willing to surrender to the bar, laboring, too, under its high displeasure, its undeniable and just privileges? Is there anything in the character of the respondent which will warrant either conclusion? Mr. President through every stage of this transaction you perceive every symptom of guilt—trepidation, remorse, and self-abasement. Look at the consultation at Rawle's, who was followed home by the judges as soon as the court rose. Recollect the conversation which ensued, and the conduct of the court on the following day, when the respondent is said to have atoned for his misbehaviour; although, in the same breath, you are told there was no offence to expiate. Do you recognise in that procedure an honorable and manly acknowledgment of unintentional error, which, from a sense of justice, the respondent was anxious to rectify? Or do you behold the sullen perverseness of guilt, half ashamed to confess its offences, yet trembling at their consequences?—now soothing, now threatening, its adversary—every characteristic of conscious crime? Sir, I blush for the picture which the gentleman has drawn of his client; and I ask you, Mr. President, if such a character is fit to preside in a court of justice?—a man whose violent temper and arbitrary disposition perpetually drives him into acts of tyranny and usurpation, from which, when vigorously opposed, he must disgracefully recede; equally ready to take an untenable position, or meanly to abandon it. To-day, haughty, violent, imperious; to-morrow, humble, penitent, and submissive; prostrating the dignity of his awful function at the feet of an advocate, over whom, but the day before, he had attempted to domineer. Is this a character to dispense law and justice to this nation? No, sir! It demands men of far different stamp—firm, indeed, but temperate; mild, though unyielding; neither a blustering bravo, nor a timid poltroon. I speak not of private character; with it I have nothing to do. It is the official conduct only that concerns me. I have no hesitation in saying that such men are not fit to preside in your judiciary; and that the greatest abilities, when joined to such tempers, serve but still more to disqualify their possessors.

I must here reiterate my regret at losing the argument of the gentleman who opened the defence. I understand him to have said, (speaking of Fries,) "could that man be 'innocent,' who 'had been twice convicted of treason? Could he 'be 'illiterate,' who pretended to expound the 'Constitution? Could he be 'friendless,' who 'had arrayed his numerous followers in opposi-'tion to the laws of his country?" Sir, this is a very pretty specimen of antithesis; but, unfortunately for itself, it proves too much, whilst, as to the question before the court, it proves nothing. Does the gentleman believe the London mob, in 1780, to have been among the most influential men in England? or, because their discontents grew out of religion, that they were more deeply read in canon law than any other body of men in that kingdom? They far surpassed the Northampton rioters in depth and intricacy of research. They undertook to expound the Constitution of the Church of England. But, unfortunately for this gentleman, the guilt or innocence of his honorable client is in nowise affected by the guilt or innocence of this poor German and his comrades. The respondent stands charged with a departure from the principles of the Constitution and the established forms of law, in conducting the trial which was to ascertain the guilt or innocence of John Fries. What has this to do with his character? How does that affect the question? Guilty or innocent, he was entitled to a fair and impartial trial, according to the known usage and forms of law; for, be it remembered in such cases, *form* is *substance*. It is the denial of this sacred right, which the Constitution equally secures to the most hardened offender as to persecuted virtue—this daring outrage on the free principles of our criminal jurisprudence, that constitutes the respondent's crime. If Fries was innocent, what language can sufficiently reprobate the conduct of the judge? An innocent man, by his procurement, iniquitously consigned to an ignominious death. If guilty, he ought to have expiated his guilt upon a gibbet. But what was the fact? The President of the United States, in consequence of the arbitrary and unprecedented conduct of the court, was, in a manner, *compelled* to pardon him. The public mind would never have brooked the execution of any man thus tried and condemned. By the misdemeanor of the respondent, then, to rescue the administration of justice from the foulest imputation, to make some atonement for the offended majesty of the Constitution, the Executive was reduced to the necessity of turning loose upon the country, again to sow the seeds of disaffection and revolt, a man represented by the adverse counsel to be every way desperate and daring—a traitor and a rebel. Upon what other principle, sir, can you account for the President's application to the prisoner's counsel, and his subsequent pardon? I repeat, Mr. President, that it is wholly immaterial to the question before you, whether John Fries was or was not a traitor. Either alternative is fatal to the respondent. He is charged with oppression and injustice on the trial, and you have not only the clearest testimony of the fact, but it is in proof before you that such was the President's motive in issuing the pardon. He must have believed that the sentence was in itself unjust, (which serves but to aggravate the respondent's guilt,) or he must have acted (as I am unwilling to concede he appears to have done) on the ground that, however deserving of punishment, the prisoner had been unfairly tried, and his condemnation illegally obtained. Whichsoever of these positions be *true*, the defence set up on behalf of the respondent is *false*. What have you seen? A man condemned to death, unheard, by a prejudiced jury and an unrighteous judge, thirsting for his blood; the Executive demanding to hear that defence, to which the court would not listen, and extending the arm of its protection to snatch the victim from the oppressor's grasp. And will you now turn this man loose upon society, armed with

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the terrors of the law and secure in impunity, to perpetrate similar offences? Let it not be said that the court dealt out justice, and the President dispensed mercy, each in their own province. To extend mercy to the convict, where was the necessity of an application to his counsel for that defence which the court had overruled? It must have been from a conviction that justice had not been done the prisoner by the court, that this application was made. I defy the utmost ingenuity of man to refer it to any other probable or plausible motive. The conduct of the prisoner's counsel merits an abler eulogium than I can pretend to give; it is above my feeble praise; but my gratitude shall never cease to flow for their firm, vigorous, and manly stand against an imperious domineering judge; for their resolute assertion of American rights against a proud and cruel oppressor. The Attorney General of Maryland (whose wit and ingenuity I shall be the last man to deny) has indeed said, that he wishes a lawyer's hand may never be polluted with anything more corrupt than a prejudiced opinion; and I, for my part, most fervently hope that the hand of an advocate may ever thus instinctively shrink from the touch of judicial corruption. "My hand shall never be tainted by receiving a prejudiced opinion in any case, much less in a capital one." The man who uttered those words needs no other monument or epitaph. He gave a lesson, of which the judge might have profited—that, in discharging his professional duty, he was not to be swayed by political antipathies or predilections; he disdained to become a weak and wicked instrument to sanction premeditated, legalized murder; he scorned to assist, in a miserable mummery of law and justice, a man who could invoke the blessing of God at the moment when he was perpetrating a judicial murder. Had the counsel been seduced, or terrified into submission, this enormity (like many others) would have been shrouded under the mantle of form and precedent.

The precedents which are relied upon to justify the respondent in the trials of Fries and Callender, and the law which is adduced by his counsel on the powers and rights of courts and juries, respectively, relate to *civil* cases, where the law and the fact, being always separate and distinct, the first falls under the dominion of the judge, whilst the last only becomes the province of the jury. But, in a criminal prosecution, the verdict embraces both law and fact, of which being necessarily compounded, so much of the law is combined with the fact upon which they are to pronounce, it belongs to the jury, and to the jury alone, to decide and determine. They are inseparably connected; and, therefore, the powers of a jury, in a common lawsuit between man and man, is no measure of their rights in a criminal prosecution. Thus, in a civil action, the court possesses the power of granting a new trial on the motion of either party; whilst in a criminal case, it can exercise this power only in favor of one of those parties—the prisoner; it cannot grant a new trial to the prosecutor if a verdict is found in favor of the accused. It is a final acquittal. That the scope of action in the court is diminished, whilst in the jury it is enlarged, in a criminal case, is notorious; it is not a subject of argument. But our opponents have not only resorted to the practice in civil cases, which here is totally inapplicable, but they have brought forward English precedents before the Revolution, and decisions of the court of *Star Chamber!* Precedents drawn from the worst periods of their history, from hard, unconstitutional times—decisions from the most flagitious tribunals, whose very name has passed into a proverb of corrupt, unfeeling tyranny. For an account of this Star Chamber I would refer you to John, Lord Somers, of whom it has been said, not with more elegance than justice, that, "like a chapel in a palace, he alone remained unpolluted, whilst all around was profanation and uproar."

"We had a privy council in England (says 'this great constitutional lawyer) with great and 'mixed powers; *we suffered under it long and 'much.* All the rolls of Parliament are full of 'complaints and remedies; but none of them effectual till Charles the First's time. *The Star 'Chamber was but a spawn of our council;* and 'was called so only because it sat in the usual 'council chamber. It was set up as a formal court 'in the third year of Henry VIII., *in very soft 'words,* 'to punish great riots, to restrain offenders too big for ordinary justice; or, in modern 'phrase, to preserve the peace.' '*But in a little 'time it made the nation tremble.* The privy 'council came at last *to make laws by proclamation, and the Star Chamber ruined those that 'would not obey.* At last they fell together." (Hatsell's Precedents, vol. 4, page 65, Note.) Is this the court whose adjudications are to justify the decisions of an American tribunal in the nineteenth century? And in a case of *treason,* too? Is this vile and detestable tribunal (whose decisions, even in England, are scarce suffered to be drawn into precedent) to furnish rules of conduct for the courts of this great confederate Republic? Yes, sir, you have not only been obliged to listen to Star Chamber doctrines, but you have been referred to one most arbitrary magistrate to justify the oppressions of another. I allude to Chief Justice Keelyng. Who he was, may be seen in the same volume of Hatsell, page 113.

"On the 16th of October, 1667, the House being 'informed, 'that there have been some innovations 'of late in trials of men for their lives and deaths;' [the very offences charged upon the respondent;] 'and in some particular cases restraints have been 'put upon juries, in the inquiries'—this matter is 'referred to a committee. On the 18th of November, this committee are empowered to receive information against the Lord Chief Justice Keelyng, 'for any other misdemeanors besides those concerning juries. And on the 11th of December, '1667, this committee report several resolutions 'against the Lord Chief Justice Keelyng, of illegal 'and arbitrary proceedings in his office." The 'first of these resolutions is: "That the proceedings of the Lord Chief Justice, in the cases now 'reported, are innovations in the trial of men for

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'their lives and liberties: and that he hath used an 'arbitrary and illegal power, which is of dangerous 'consequence to the lives and liberties of the people of England, and tends to the introducing of an 'arbitrary government." The respondent's own case. The second resolution is, "that in the place of judicature"—[how does this bear upon the eighth article?] "the Lord Chief Justice hath undervalued, vilified, and contemned Magna Charta, the great preserver of our lives, freedom, and property." And the authority of this infamous judge, the minion of Charles II.,—of judges in the most corrupt period of English history, from the restoration of that King to the revolution, is relied upon by his counsel to absolve the respondent from guilt. Permit me to do their client more justice. I do believe that the man who is held up here as a revolutionary patriot of 1776, although in a moment of human infirmity he hath imitated their crimes, would blush to be justified by their example. For his sake I rejoice in that visitation of God which hath saved him this last degradation: from seeing his defence rested upon the authority of those infamous times, and yet more infamous men, with whom, with all his weakness and all his infirmities upon him, he would yet (I am persuaded) disdain a comparison. Yes, I do feel relieved that he hath been spared the disgraceful spectacle of beholding himself defended by his friends on principles more unjust and iniquitous, if possible, than have ever been imputed to him by his enemies: that he hath not been reduced to see those very decisions, prior to the revolution, cited in his defence, which he himself denied to a fellow creature put in jeopardy of life! The benefit of these decisions (it seems) can be taken only by the powerful oppressor—they offer no shelter to his victim. I thank God, sir, that I have indeed studied at the feet of far different Gamaliels from the honorable Attorney General of Maryland, or those by whom, it would appear, he has been brought up; that I have drawn my notions of justice and constitutional law from a far different source—not from the tribunals of Harry VIII., nor the tools and parasites of the house of Stuart, but from the principles, the history, and the lives of those illustrious patriots and their disciples, who brought the Star Chamber to ruin, and its abettors to the block.

But I cannot consider the able Attorney General of Maryland quite sincere in the doctrine which he has advanced. He shines indeed a luminary in this defence. Mr. President, there is an obliquity in human nature that too often disposes us rather to applaud the brilliant, though pernicious ingenuity that can "make the worse appear the better reason," than the humble but useful efforts of a mind engaged in an honest search after truth. There is something fascinating in such a display of the powers of the human mind. The vanity of the whole species soothes itself with the excellence of an individual. We yield to the illusions of self love—"*we* lay the flattering unction to our souls"—and are cheated and abused. It is under this perverse bias of our nature that I render to the honorable Attorney General of Maryland the willing tribute of my admiration. But, he will pardon me, I cannot suppose him serious. I will not do him the injustice to believe that to a noble motive, to long habits of political and social intercourse, a friendship of thirty years standing, he has refused what he himself tells you is done, every day, nay in nine hundred and ninety-nine cases in a thousand, by persons of his profession, for a mercenary consideration. What has he said? "That, in defence of their clients, lawyers are in the daily habit of laying down as law what they know not to be law." Mr. President, when I see a man of his unrivalled resources reduced to the miserable shift of Star Chamber doctrines and precedents before the revolution—and, conscious, no doubt, of the actual weakness of his defence, calling to his aid all the force of wit, ingenuity, repartee, pleasantry, and good humor, what inference must I draw? and what must be the conclusion of this honorable Court?

[Here Mr. Randolph solicited the indulgence of the court for the very desultory style of his address, not less painful to himself than he felt it to be oppressive and irksome to them. This defect, the result of his incompetency, had been aggravated by the loss of the voluminous notes which he had taken, and which, but for that accident, he would have been able to reduce to something like system and method. It was however the strength of the cause, and not the ability of the advocate—the weight of the bullion, not the fashion of the plate, on which he relied. The court would decide according to the evidence, and that was enough.]

I will now, with the Court's permission, offer some observations on the articles growing out of Callender's case. The second article relates to the overruling of Bassett's objection to serve upon the jury. That Bassett did object to serving on that jury is established by the concurrent testimony of Mr. Hay, Mr. Nicholas, and Mr. Robertson, who took down the proceedings upon the trial in short-hand, and of the juror himself, who has appeared as evidence on behalf of the accused. And yet, sir, the counsel affirm that he offered no objection, but merely expressed "scruples of delicacy" against serving. Delicate distinction this! What is an *objection?* A man is called upon to do a particular act—on which he states reasons, or *doubts*, if you will have it so, why he should not do it. This is not a *refusal*, or a *denial*, but what is it, if not an *objection?* And an objection too, which, according to the respondent's own rule, as laid down on that trial, ought to have disqualified the juror. For he has deposed—and if he had not, we have the strongest testimony to the fact—that, from extracts which had appeared in the newspapers, he had formed *and delivered* an opinion, that "The Prospect Before Us" came within the sedition law. Sir, if he had never delivered such an opinion before, he did *then* deliver it, at the time and in the place of all others the most injurious to the prisoner and disqualifying of himself—in open court, preceding the trial. As to the wretched subterfuge that he had not delivered any opinion respecting the charges contained in the "*indictment*," which he had never seen, and which he

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was not permitted to see, or to hear read, it is a mockery of common sense, that gives the finishing stroke to the tyrannous and insulting conduct of the judge. He had formed and delivered an opinion of the publication, from which the charges contained in the indictment were extracted—and although he could not possibly know the particular sets of words selected by the public prosecutor as libellous, he *did not*, he *could not* possess that unbiassed and impartial state of mind requisite to constitute a good juror. The testimony which he has delivered before this honorable Court corroborates every objection which could have been urged to him. He has shown himself too far gone in political gangrene, to have decided fairly any question, in which the feelings of the then party were at all involved. Indeed, he seems to have had some confused perceptions of his own unfitness. But that, which in the estimation of every honorable mind—which even in his opinion constituted an objection to him, was his strongest recommendation to the judge. The objection was overruled—Bassett was declared a good juror—was sworn, and served accordingly. And all this is justified on the authority of the court of Star Chamber, and of Lord Chief Justice Keelyng.

On the subject of Mr. Taylor's testimony, its rejection is attempted to be defended by a solitary precedent, *in a civil case*, drawn from a reporter, who, I am informed by gentlemen of the first professional character, is far from being considered as very good authority. I mean McNally. In support of this article I might urge as well the admissions of the honorable Attorney General of Maryland, as the universal practice of our courts. What said Mr. Robertson—and what said the Chief Justice of the United States, on whose evidence I specially rely? He never knew such a case occur before. He never heard a similar objection advanced by any court, until that instance. And this is the cautious and guarded language of a man placed in the delicate situation of being compelled to give testimony against a brother judge. What more could you expect from a person thus circumstanced? What does it prove but that the respondent was the first man to raise, to invent such an objection to a witness? Can any one doubt Mr. Marshall's thorough acquaintance with our laws? Can it be pretended that any man is better versed in their theory or practice? And yet in all his extensive reading, in his long and extensive practice, in the many trials of which he has been spectator, and the yet greater number at which he has assisted, he had never witnessed such a case. It was reserved for the respondent to exhibit, for the first, and I trust, for the last time, this fatal novelty, this new and horrible doctine that threatens at one blow all that is valuable in our criminal jurisprudence.

Against the fourth article the Attorney General of Maryland hath adduced a similar and doubtful authority, in defence of his client. And here again I bottom myself upon the testimony of the same great man, yet more illustrious for his abilities than for the high station that he fills, eminent as it is. He declares that he has never known a similar requisition made by any court; that where the propriety of questions, verbally propounded, has been denied, or for the sake of precision, (where they were intricate,) they have been reduced to writing, at the request or order of the court; but in the first instance, and before they had been stated verbally, *never*, within the compass of his experience. And what inference can any candid, unprejudiced mind drawn from these repeated and, until then, unprecedented acts of interference by the judge, on behalf of the prosecution, but that, instead of an umpire, he was a partisan?

With regard to his deportment towards the counsel, I shall call the attention of the court not to the statement made by themselves:—Because I question it in the slightest degree? God *forbid*—I know those able and honorable men too well—but because I would deprive our opponents of their almost sole argument—the personal irritation which they allege those witnesses must have felt. Waiving then any remarks on their testimony, powerful as it is, I again ask you, what said the Chief Justice? And, if I may say so, *what did he look?* He felt all the delicacy of his situation, and as he could not approve, he declined giving any opinion on the demeanor of his associate. What does Mr. Robertson say? In substance, everything that has been deposed by other witnesses: "That the judge always spoke in the first person singular." And here I will remark, that the short-hand report which this gentleman made of the trial, and which he has given in evidence, was published, in the first instance, as a defence of Mr. Chase against alleged misrepresentations of his conduct on that occasion. It cannot be considered, therefore, as an *un*favorable view of the transaction, at least so far as the respondent is concerned. What says Mr. Gooch? That the judge was very '*yearnest*' with the counsel: that they were much abashed; that he set them down; that they appeared alternately red and pale; that he exhibited their confusion to the mirth of all the bystanders: and Colonel Taylor tells you, "that the conduct of the judge had the full effect it seemed intended to produce—to abash the counsel for the prisoner, and turn them into ridicule, for that everybody laughed but themselves."

But the ingenious Attorney General of Maryland, whose fruitful invention is never without resource, has endeavored to persuade you, that this conduct was not merely justifiable, but even meritorious. That the design of the counsel was to irritate and inflame the people; and the respondent, dreading a riot, had no object but to keep the audience in a good humor; and that, by a seasonable exertion of his acknowledged wit and pleasantry, he completely succeeded in turning their weapons upon themselves, and totally defeated their purpose. This apology reflects credit on the inventive faculty of him who makes it, and yet what is it but an admission of the charge? Look to the evidence. You will see nothing to support the twist which has been attempted to be given to it—no apprehension of disorder and confusion but what

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grew out of the insufferable tyranny and insolence of the judge. Where was the respondent at this time? In some obscure corner of the Union—some remote district notorious for disaffection, infamous for its spirit of insurrection, far removed from the protection of State or Federal authority? No sir, he was in the enlightened capital of Virginia, a country never disgraced by rebellion—unless the epithet be applied by some squeamish politician to our glorious revolutionary struggle—a State whose soil has never been stained by insubordination to law. No, sir, he was sitting within a stone's throw of the residence of the Governor of Virginia, a man of whom I shall say nothing. Let the exalted stations he has more than filled, the high public trusts on which he has seemed rather to confer honor than receive it, his unshaken constancy in the worst of times, the dismay and confusion of his enemies, whose vain aspersions have passed him like the idle wind—let the confidence of a united people speak his eulogium. The respondent was sitting within musket-shot of a cantonment of Federal troops. Why were these troops placed there at that time, and why were they kept there for some time afterwards, belongs not to my present purpose. It is enough to say that they were a part of our famous provisional army—"*fruges consumere nati*"—to ascertain their readiness to protect, in any outrage on the law, or Constitution, (then practised or meditated,) the Government that maintained them in dissolute idleness. Governor Monroe was more interested in the respondent's safety than he himself appears to have been. He trembled lest the indignation of the people should get the better of their good sense, and hurry them into some act of violence, that would cast an odium on the State and afford matter of triumph to her enemies. That the respondent's object was to goad her citizens to some outrage, which might justify the humiliation that was preparing for her, there is too much reason to believe, and that he would have succeeded, but for the intervention and influence of that excellent man, and the persuasions of the counsel themselves, whom the Attorney General of Maryland would represent as endeavoring to excite public commotion, that he may find some shelter for the enormities of his client.

Another attempt at justification of his conduct on this trial is by reference to the law and practice in Maryland. But surely the judge who scouted the idea of being governed by the law of Virginia, whilst exercising jurisdiction there, shall not be permitted to take refuge under the law of another State. For if the law of Virginia was not binding on the respondent, in Virginia, *a fortiori*, he could not have been governed by the law of Maryland. But you are asked, whether the respondent's conduct as stated by the prosecutors, is too inconsistent with the character universally ascribed to him for discernment, by his enemies as well as by his friends, to be credited? Whether to attain his object (granting it to have been corrupt) he was under any necessity to unmask and wantonly expose himself to future punishment? Without noticing that this is argument against fact, hypothesis opposed to actual experiment, his conduct may easily be reconciled with his character, and with the circumstances attending it. "If his object was oppression, why did he not lie in ambush, (say his counsel) why disclose (nay almost avow) it?" Because caution and circumspection form no part of the charges against him: because (even allowing that he is as conspicuous for these qualities, as he is notorious for the reverse) there is no principle of human nature, or human conduct, more true, more invariable than this: that whatsoever be the general character of a man, he is unable at all times to act up to it. It is the inevitable condition annexed to guilt, that it will betray itself—it is the privilege of truth alone always to be consistent. We find him in the case of Fries not more dictatorial and arbitrary, than wavering and irresolute. On one day arrogant and imperious—on the next alarmed and trying to remove the impression his rashness had made—retracing his steps, sitting (as you are told by his counsel) not on the bench of justice, but on the stool of repentance, "draining the cup of humiliation to the very dregs,"—in a word, a man penitent and of contrite heart. That repentance, although it cannot avail here, will (if sincere) be accepted by another and more dread tribunal. But much I fear that the contrition which is accompanied by a threat will avail but little, although offered at the throne of mercy itself. No, sir, fortunately for us, although the tiger and hyæna too often appear in human shape, there is no disguise that can long conceal them—not even though they crouch upon the judgment seat and under the ermine. Thanks to the beneficence of God! this insidious character cannot always be supported. God forbid it should! "No wonder (says the Attorney General of Maryland) that the people of Pennsylvania wish to get rid of the bar," alluding to the case of Fries. Rather let him say no wonder that they are tired of the bench, for it is against the judges, this very judge, in that very case, that they have protested. They have deprecated his jurisdiction over them, and the solemn protest of their representatives against his iniquitous condemnation of Fries, is the groundwork of the present prosecution.

But our doctrine, it is said, goes to prostrate the rights of the accused—where?—at the feet of juries. There may they forever lie, but never at the foot of a judge. The gentleman from South Carolina (I beg his pardon) deprecates the placing of criminal law solely in the power of juries. He would not have the life of a man depend on their decision of a point of law. But it is the glorious attribute of jury trial, that the question of guilty or not guilty, involving both law and fact, *that* law as well as *that* fact the jury alone is competent to determine. It is the necessary consequence of the general verdict which they are required to find. The very able and learned Attorney General of Maryland indeed says that this is an incidental *power*, rather than a *right* of the jury. But, sir, what is that power which no man may question, but a right? For, whether incidental or direct, the exercise of it is

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final and complete, if in favor of the accused; and the power of the court to award him a new trial is further protection to the prisoner against abuse. There is no specific power given, in so many words, by the Constitution, to Congress, to punish robberies of the mail; but it is incidental to the right of establishing post offices and post roads, and necessary to carry the specified power into effect. This curious distinction between "*right* and *power*, *direct* and *incidental*," is an *ignis fatuus* of the learned gentleman's composition to bewilder and mislead us from our object, that we may be lost and led astray over a wide moor of absurdities. The right of the jury is not the less, whether immediate, or derivative; as Congress possess the power to pass all laws necessary to carry any delegated power into effect, in like manner juries possess every power necessary to the general verdict which they have a right to give. The violation on the part of the judge of the incidental power, as much subjects him to punishment, as if he had invaded the original right over the fact, to which it is appendant. What would he say to a robber of the mail claiming impunity because the power to make the offence penal was incidental, and not specified in the Constitution? But, say gentlemen, we admit the *power* in the jury, we only deny the *right:* and in this tissue of self-contradictions they declare, that whilst a jury is bound by the exposition of the law, as laid down by the court, yet they have not the right to determine whether the facts come within the law. Can there be a greater absurdity?

"Whilst the jury have no right to decide the law, they must decide whether the facts come within the law!" If the jury is tied down by the court's construction of the law, is it not plain that *they* do *not* decide whether the fact is, or is not, embraced by the law? but that whilst they find naked fact, it is the *court* that decides whether that fact does, or does not, come within the law? Gracious God! is it come to this? Are the great principles for which our forefathers contended, and many of yourselves have bled, now to be frittered away by technical sophistry? Is the same doctrine to be established here in capital offences —in cases of treason—that Lord Mansfield attempted to impose on the people of England as the law of libel, and which they would not endure? Shall principles of criminal law which they have scouted, even in cases not capital, be established here for the decision of capital offences? that whilst the jury finds the facts, their application to the law shall depend solely on the will of the court? I deny the gentleman's law; and assert that, as an American citizen, I would refuse to be bound by it. A man is charged with having committed certain treasonable acts. The Constitution has defined treason to consist "in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." But the court, assuming to themselves a more than Papal infallibility—the exclusive exposition and construction of the Constitution—tell me, as a juror, to surrender into their hands my conscience and my understanding; that, as a levying of war is treason, so is the picking up of a pin a *levying* of war; that I, an unlearned layman, must *not* presume to expound the holy scripture of the Constitution, but must leave that to the elect; and, if the fact of his having picked up the pin be proved to my satisfaction, I am bound to find the prisoner guilty of levying war against his country—to convict him of treason. Sir, the parallel runs on all fours; for there is nothing to uphold this monstrous judicial assumption, but that which supported the pretensions of the Roman Pontiff—the willing obedience of ignorant superstition. If the jury is contumacious, if, whilst they confess their entire conviction of the truth of the fact charged in the indictment, they deny the legal doctrine and acquit the prisoner, the court is without redress. They may bully and look big—there is no help. Put the case of murder. A killing with malice aforethought is charged upon the prisoner—there is no dispute about facts—it is admitted that the party arraigned did kill the deceased. Shall I, a juror, contenting myself with deciding a fact that nobody disputes, surrender to the court the question of law, should they attempt to usurp it, (as that killing with a particular weapon is a killing with malice prepense,) and find a man guilty of murder whom I believe to have acted in self-defence?—in defence of life, or, what is dearer than life, of reputation? No, sir; I will not find him guilty, although all the courts in the universe should instruct me to do so. I will look to the great precept, "do as you would be done by," and say, "I would have done so too, and, therefore, I will not say, that man ought not so to have done." And what is there, sir, in the words "*levying of war*," more unintelligible than in the words, "*malice prepense?*" The first, being altogether a matter of fact, would appear more exclusively the province of the jury than the last, which rather partakes of a question of opinion. *If you leave* the law in criminal cases to the jury, (as well as the fact,) you are safe; but *if your decision should* sanction the opposite doctrine, you set all our liberties, fixed by the decisions of ages, afloat on an ocean of uncertainty and contention. We have no beacon, no compass, no polar star to direct our course. If you suffer the rights of a jury to be thus invaded on a criminal trial—on a trial for life and death—you bind us in conclusions more fatal than those of the Church of Rome. You force us one moment to say whether such a fact amounts to such a crime, and, the next, you will not permit us to know what the crime is. I hope the marshal will never summon me on such a jury. I give him warning; I will never surrender the Constitution, my understanding, and my oath to the "*grim gribber*" of a court of law. I should consider myself as much entitled to decide the law for the judge in a civil case, as bound by his decision of it in a criminal one. Vain and futile is the attempt of the Constitution to settle and define treason, if that definition is to mean anything or nothing at the option of a corrupt judge. If this doctrine, sir, be denied by any member of this honorable Court, let him, in his legislative capacity, move for a bill "to render juries more

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obedient to the judges, and *especially in criminal cases.*" Until that is done, I shall refuse obedience to their dictates, and act as a juror upon the principles which I have avowed.

There is an expression, sir, in one of the articles (the fourth) much carped at by the opposite counsel, (Mr. Key,) which, as they have proceeded, every word and tittle, from my pen—and as I believe them correct—I feel called upon to explain: it is the term "*intemperance.*" Intemperance may consist in gluttony, drunkenness, in other sensual and criminal excesses, or *in a want of temper*—its manifest meaning here; and in that meaning, confessed by the respondent's counsel, who excuse a particular act, or rather series of acts of intemperance, by alleging that it is habitual to their venerable client—that it is of seventy years standing—that it is too invetrate to be corrected—that he and they too sir are sorry for it, but it cannot be helped. Whatever you may think of the ingenuity of this defence I am sure, sir, you must allow it candor.

[Here Mr. Randolph entered into a defence of the testimony of John Heath, contending that there was nothing in the evidence of William Marshall inconsistent with it—that it was rebutted only by the evidence of a single witness, who might be considered as implicated in the charge. He also contended for the position that the law of Virginia was binding on the Court, where the law of Congress was silent, adducing several cases in illustration of his argument.]

I will now proceed to the eighth article of impeachment, in my desultory way, and for it I believe I might plead the precedent set me by the Attorney General of Maryland. The time has been, sir, when the sentiments uttered by the judge in his charge to the grand jury would have been denounced as Jacobinical—certain I am they would have come under the sedition law. In England, where the Church is connected with the State—indeed, forms a part of the Constitution—parsons have been impeached (and justly too) for preaching "sermons tending to introduce arbitrary gov-'ernment, and containing tenets derogatory to the 'rights and liberties of the subject."

[Here Mr. Randolph cited the cases of Doctor Mainwaring, in 1628—4 *Hatsell*, 125 to 206—and of the Rev. Richard Thomson in 1680—*ibid*, 118.]

But, sir, we are not reduced to reason from analogy—here is a case in point: "On the 23d of De-'cember, 1680, Sir Richard Corbett reports, from 'the committee appointed to examine the pro-'ceedings of the judges in Westminster Hall, sev-'eral resolutions"—among them is the following: 'That certain expressions in a charge given by 'Baron Weston were a scandal to the Reforma-'tion, in derogation of the rights and privileges of 'Parliament, and tending to raise discord between 'His Majesty and his subjects." To which resolution the House agrees, and resolves "That Sir 'Richard Weston, one of the barons of the Court 'of Exchequer, be immediately impeached;" and a committee is appointed to prepare the impeachment accordingly.—*Hatsell's Precedents, vol.* 4, *page* 17. These, sir, indeed are "cases before the Revolution," but on the eve of it, when the nation was making a stand against the Duke of York, afterwards James II.

In addition, we might cite the respondent's own authority, who, on the trial of Callender, declared that "If he knew himself, the opinion he had 'delivered and the reasons offered in its support 'flowed, not from political motives or reasons of 'State—with which he had no concern, and which 'he conceived ought never to enter courts of 'justice—but from deliberate conviction," &c.—*Robertson's printed statement, taken in short-hand. p.* 71. Try him by his own standard, and you must condemn him. Even-handed justice returns the poisoned chalice to his own lips—let him drain it to the very dregs. The very crimes on which he shows no mercy in others, he himself hath perpetrated. Compare, I beseech you, sir, the ability of this respondent to raise insurrection with that of Fries and Callender; compare his capacity, intelligence, opportunity, and influence, with theirs, and then pronounce who is the greatest criminal. With less bodily strength, indeed, but with gigantic powers of mind, he hath endeavored to alienate the people of Maryland from the General Government, and to excite them to nothing short of commotion against their own.

Mr. President, much as I regret the trespass that I have already committed on your patience, I must (painful as it may be to you, and it is not less so to myself,) attempt something like a review of the conduct of this judge. In May, 1800, you find him in Philadelphia, engaged in propagating and establishing the detestable doctrine of constructive and implied treason, which, in England, has proved the dreadful engine of persecution and murder. From thence you trace him to Annapolis; (not by the blood of John Fries—no thanks, however, to him for that;) you hear his declaration in presence of Mr. Mason. But this, his counsel tell you, was all a joke, nothing but humor, sir; like his conduct at Richmond. If you listen to them, you must become a Pythagorean, and believe that the soul of Yorick himself has transmigrated into the body of this judge. It is true he could not be the king's jester, because, *unfortunately*, we have no king, we have not yet reached that stage of civilization; but, sir, he is the jester of the sovereign people, a jester at your laws and Constitution, and it is for you to say whether he shall continue to exercise his function. This jocular conversation is likely to prove a bitter and biting jest to the respondent. So serious did that most intelligent and respectable witness deem it to be, that he locked it up in his own bosom, without venturing to mention it to any human being. He did not consider himself authorized to play with the fame of the respondent, however disposed *he* might be to sport with the feelings and rights of others. This merry fit lasted a long time. He indulges the same humor in the stage with Mr. Triplett, an entire stranger; and here let me observe, in justice to this gentleman, that never did any man deliver a more clear and unimpeachable testimony in a court of justice than this witness. It is conclusive. When the

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judge made personal declarations against Callender, could he be said to administer justice without respect to persons? But, sir, one of our adversaries (Mr. Harper) protests against this sort of evidence, and deems it highly inadmissible. Why? Because, forsooth, it violates the sanctity of private conversation, and wounds the feelings of gentlemen who may be called on as witnesses. Thank God! sir, we live in a country where the law is open to all, and knows no distinction between *gentlemen* and *simple-men*. No man, I trust, has a greater respect for the real gentleman than myself. When Francis I., the accomplished monarch of the most gallant people of Europe, deemed it his first distinction to be ranked as the first gentleman of his kingdom, he did not hold that sacred character in higher reverence than I do. But the respondent himself has told you that a court of justice is a coarse sort of thing, blind to these nice discriminations; that the polished address of a Chesterfield, and the rugged scowl of a Thurlow, in the eye of the law are equal. Suppose a person killed, will not the court hear evidence of a previous declaration by the prisoner, of ill-will to the deceased, as "that he would be the death of him," &c.? or, will they stop to ask whether it was uttered in a tippling-house, or a drawing-room; by a ruffian in rags, or in ermine? and yet we are accused of lying in wait for the respondent, of watching his unguarded and convivial hours, of wounding the nerve of social intercourse to the quick. We are ministers of justice, and as such, we know nothing of these delicate distresses, equally unknown to our forefathers, to the framers of our free and manly institutions. Their composition was of sterner stuff than this modern, flimsy, fashionable ware. To their robust constitutions and strong common-sense these qualmish megrims, these sickly sensibilities of modern refinement were happily unknown.

Follow the respondent, then, with the steady and untired step of justice, from Philadelphia to Annapolis, from Annapolis to Richmond, and back again to Newcastle. You see a succession of crimes each treading on the heel, galling the kibe of the other—so connected in time, and place, and circumstance, and so illustrated by his own confessions, as to leave no shadow of doubt as to his guilt. You are to take the facts, not, as his counsel would have you, isolated and dismembered, but embodied; a series of acts indissolubly linked together, each supporting, each animated by the vital principle of guilt that pervades and gives life to the whole. God hath joined them; no man shall or can put them asunder. Carry your mind back to the state of things in 1800; then advert to the testimony in the case of Fries. Lewis, Dallas, Tilghman, and *even Rawle*, declaring that they had never witnessed such a proceeding before; pronouncing the conduct of the judge, on that occasion, to be altogether novel in the annals of our criminal jurisprudence. The same spirit pervades his whole career. But you are warned by the counsel (Mr. Harper) not to tarnish the laurels of your political victory by an unmanly triumph over a fallen adversary. He implores the tribute of a sigh for the mournful yew and funeral cypress that bedecks the hearse of his political reputation. Dreading the decision of your judgment, your sympathies are enlisted for his client. An aged patriot, whose head is whitened with the hoar of three score and ten years, is presented to your afflicted imaginations: broken with disease, compelled to employ his few and short intervals from pain and sickness, to spend the last moments of a life devoted to a thankless country's service, in defending himself against a criminal prosecution. Do we thirst for his blood? yet, even there, English authorities would bear us out. Do we seek to lead him to Tower Hill? If his heart will fly in his face, is it we who cast it there? Do we even ask his disfranchisement? No, sir, we only demand the removal of a man, whom the very suspicion of such crimes unfits for the high station which he fills. A man bent with age and infirmity, struggling with misfortune, is a venerable object, entitled to your sympathy, even although he were not a patriot. Mine shall never be denied to such a character. But, sir, mark the difference between Samuel Chase, powerful and protected, and John Fries, feeble and oppressed. Look at the one lodged in a sumptuous hotel, partaking of the best cheer, surrounded and supported by every comfort of life, by a large and respectable circle of friends, indulged with ample time for his defence, assisted by counsel second to none in the land, unrestricted in the conduct of their cause. When I give a man so situated my sympathy, it is not of so jejune a cast as to refuse itself to the victim of his injustice—a hardy yeoman wrestling with indigence and persecution—selling his last bit of property to support a long imprisonment and meet the expenses of this very prosecution; a soldier of the Revolution, with whom the words "stamp act" and "window tax" were synonymous with slavery; who, in a moment of political delirium, perhaps of intoxication, had instinctively raised his hand against what he deemed an oppressive tax—immured in a dungeon, listening only to the clanking of fetters; snatched from the bosom of his family, to whom no doubt he was a kind parent and an affectionate husband—for be it remembered he was popular and beloved among his neighbors—this man, caught in the trap of judicial and constructive treason, at which common sense revolts, laid by the heels, trembling at the charge, ignorant of the extent of the law, without a friend to comfort and console him, no counsel in his defence; such a man, so situated, is as much entitled to my sympathy as any King that ever wore a crown, and he shall have it; he shall have more, he shall have justice from this honorable Court. Yes, sir, to my shame I confess, that my sympathy is not of this exclusive sort. It is not scared by the homely garb of poverty and wretchedness. It can feel for misfortune, even if it be not sumptuously arrayed. But let us suppose the character of John Fries to have been what one of our opponents has represented it; the other, on all sides it is agreed, was every way base and detestable. Yet, sir, this will not render your decision more

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favorable to the accused. If Fries was a dangerous rebel, new cause of discontent and disaffection should not have been given to his countrymen by condemning him unfairly and unheard. Is this the way to extinguish the spirit of revolt, to reconcile freemen to your Government? Sir, we do not appear at your bar the advocates of Fries and Callender, but of the violated laws of your country. We know it is in the persons of the weak, the worthless, and the wicked, that the liberties of every people are first attacked; and we feel that society is as deeply interested in protecting the most obscure and friendless of her members, as her most illustrious benefactor; and more so, for this last may protect himself. Be the character and condition of the prisoner what they may, we say, "*give him a fair trial:*" the greater his guilt, the less the occasion of relaxing the principles of law and justice in trying him. If he be a great State prisoner, dangerous to Government from the number and power of his followers, the greater the necessity for a rigid adherence to those principles, that no pretext for future insurrection be found in the injustice of his sentence. Sir, if these men had had fair trials, our lips would have been closed in eternal silence. Look at the case of Logwood. The able and excellent judge, whose worth was never fully known until he was raised to the bench, who presided at that trial, uttered not one syllable that could prejudice the defence of the prisoner. He felt, he knew that the wretch was entitled to fair play, and he gave it him. We heard of no prejudged (written or verbal) opinion in that case; no denial of testimony, no requisition that questions should be reduced to writing and submitted to the inspection of the court, before they were suffered to be propounded to a witness—none of the respondent's new discoveries in criminal law were there brought into play. The Chief Justice knew that, sooner or later, the law was an overmatch for the dishonest, and leaving the cause of the commonwealth to its attorney, he disdained to descend from his great elevation to the low level of a public prosecutor. He let the law take its course. But, sir, the honorable Attorney General of Maryland has said, that these men had fair trials; or what he terms "*the essence of an impartial trial;* that they were guilty, and found guilty accordingly; and had the verdict (the essence of the trial) been otherwise, it would have been partial and unjust: that is to say, sir, that the end will justify any means resorted to for its accomplishment; that all the forms of law, invented to protect the innocent, may be dispensed with on the trial of the guilty; that you may deny a man the benefit of testimony or counsel in his behalf, on his trial; and, after he is hanged, bring forward evidence of his guilt to justify the deed. Do you want other proof of the weakness of a cause, when men of sense defend it by arguments like these? If the respondent be indeed innocent, in his name I impeach his defenders; if he is not guilty, they have betrayed his cause.

Had I, Mr. President, been governed in this case by considerations of personal feeling rather than by my duty to the public, I should long since have asked a respite from a task to which I feel myself physically as well as morally incompetent. In a little time and I will dismiss you to the suggestions of your own consciences. My weakness and want of ability prevent me from urging my cause as I could wish, but it is the last day of my sufferings and of yours.

We are asked to assign any rational motive for the conduct imputed to the respondent. His object might have been to court the Administration which he upheld and supported, to recommend himself to the President of the United States, to obtain the Chief Justiceship. Those who are anxious to attract the notice and favor of the powers that be, are not apt to put their light under a bushel. The fulsomeness of sycophants, who always overact their part, is proverbial. Sir, he might be aspiring to the Presidency itself, and anxious to engage the favor of the leaders of his party. Let it be remembered, the triumph of that day was complete, and the reckoning of this day too remote from probability to be taken into the account. Here, sir, you have a key to his whole conduct. It becomes you, then, Mr. President and gentlemen of the Senate, to determine whether a man whose whole judicial life hath been marked by habitual outrage upon decorum and duty, too inveterate to give the least hope of reformation, interwoven and incorporated with his very nature, shall be arrested in his career, or again let loose upon society, to prey upon the property, liberty, and life of those who will not rally around his political standard. We have performed our duty; we have bound the criminal and dragged him to your altar. The nation expects from you that award which the evidence and the law requires. It remains for you to say whether he shall again become the scourge of an exasperated people, or whether he shall stand as a landmark and a beacon to the present generation, and a warning to the future, that no talents, however great, no age, however venerable, no character, however sacred, no connexions, however influential, shall save that man from the justice of his country, who prostitutes the best gifts of Nature and of God, and the power with which he is invested for the general good, to the low purposes of an electioneering partisan. We adjure you, on behalf of the House of Representatives and of all the people of the United States, to exorcise from our courts the baleful spirit of party, to give an awful memento to our judges. In the name of the nation, I demand at your hands the award of justice and of law.

Mr. Harper.—I beg leave, Mr. President, to correct the honorable gentleman who has just concluded, (Mr. Randolph,) with respect to what he has called admissions on our part; and to notice a little the authority which he has read respecting Chief Justice Keelyng.

The President observed that it would be necessary for Mr. Harper to confine himself to the facts which he considered misstated.

Mr. Harper. The honorable gentleman has stated that we admitted *our* client to be guilty. I disclaim and deny any such admission. Had

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we made it, we should have admitted what is not true. We did, indeed, admit, that our client has been guilty of some casual indiscretions, such as are common to every man; but we neither did or could admit more.

The honorable gentleman is also incorrect, in his manner of stating John Heath's testimony. John Heath did positively swear, that he told the circumstances to Mr. Holmes, within an hour after the conversation in his presence took place, between the respondent and the marshal.

The honorable gentleman has also said, that I compared the conduct of my client, to a brawl or a riot. This is an utter mistake. I said no such thing. I made no such comparison.

The PRESIDENT here checked Mr. HARPER, who was apparently entering into an argument.

Mr. HARPER. I will confine myself to saying the remark of the honorable gentleman is a mistake. As to the authority cited by the honorable gentleman from Hatsell, to show that Sir John Keelyng was a man of worthless character, whose writings are not entitled to credit; it does, indeed, appear from Hatsell, that Sir John Keelyng, while Chief Justice of England, was cited to appear before the House of Commons, upon charges exhibited against him. But what was the result? The honorable gentleman has omitted to inform us. But had he proceeded to read the next sentence in the book, he would have found that Sir John Keelyng appeared to the summons, made his defence, and was most honorably acquitted. It was a light, vague, and groundless accusation, which met with the fate that ought ever to attend such accusations, and that I hope will attend the present.

The honorable gentleman has also discovered, that the decisions reported by Sir John Keelyng, which were cited by my learned colleague, were Star Chamber decisions; and he has indulged himself in repeating many of the usual invectives, against Star Chamber proceedings, and Star Chamber decisions. But where did he find that these decisions were made in the Star Chamber? If he had taken the trouble to read the book, which together with its author, he has so much stigmatized, he would have found that these decisions were made. not in the Star Chamber, but in the Court of King's Bench; which was at that time filled by some of the ablest lawyers that England has ever produced. If he will take the trouble to open the learned work of Hale on the criminal law—of Hale whom he and his colleagues have so much and so justly extolled, and whose eulogium is a perpetual theme in every court of criminal jurisdiction—if he will turn to Hawkins, the leading authority and constant manual of criminal law; he will find that Keelyng's reports are constantly cited as authority, by those learned writers; and that the very decisions cited by my learned colleague, which have so strongly excited the indignation of the honorable gentleman himself, are at this moment considered as the established law of England, and consequently for this country, so far as they apply.

The latitude allowed by this honorable Court, would admit of my correcting many other mistakes of minor importance, into which the honorable gentleman has fallen: but the lateness of the hour, and an anxious wish to bring the trial to a close, admonish me to abstain from any further remarks.

Mr. RANDOLPH said he hoped that until tomorrow would be allowed the gentleman to make any further observations he might be desirous to offer. Mr. HARPER having declined saying anything more, the President informed Mr. R. that he was at liberty to reply to Mr. HARPER.

Mr. RANDOLPH. Sir, I did not say that Keelyng was Star Chamber authority; I expressly stated that he was Chief Justice of the King's Bench. At the time of his impeachment the Court of High Commission and Star Chamber had been abolished forty years. But I did aver (and I repeat the assertion) that Star Chamber authorities had been adduced to justify the conduct of the respondent. Keelyng was impeached for innovation in trials of men for their lives, and putting unlawful restraints on juries. It is true, sir, the Commons dropped their prosecution, but what does that prove? Surely not even his own innocence, much less that of the respondent. If we have not made out our case, if we are not fully supported by the law and the evidence, you will acquit the accused, not by a scanty and frigid majority, but by an unanimous vote. If we have not proved the truth of our charge, on us, and on all the people of America, who cry aloud against him, be the shame. Let us be dismissed to infamy, and hosannas be sung to him whom the highest tribunal of the nation delighteth to honor.

On motion of Mr. JACKSON.

Resolved, That the Court will on Friday next, at 12 o'clock, pronounce judgment in the case of Samuel Chase, one of the associate justices of the Supreme Court of the United States.

FRIDAY, March 1.

The Court being opened by proclamation, the Managers, accompanied by the House of Representatives, attended.

The counsel for the respondent also attended.

The consideration of the motion, made yesterday for an alteration of one of the rules in cases of impeachments, was resumed: Whereupon,

Resolved, That in taking the judgment of the Senate upon the articles of impeachment now depending against Samuel Chase, Esq., the President of the Senate shall call on each member by his name, and upon each article, propose the following question, in the manner following: "Mr. —— how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the —— article of impeachment?"

Whereupon, each member shall rise in his place, and answer guilty or not guilty.

The PRESIDENT rose, and addressing himself to the members of the Court, said:

Gentlemen: You have heard the evidence and arguments adduced on the trial of Samuel Chase,

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impeached for high crimes and misdemeanors: you will now proceed to pronounce distinctly your judgment on each article.

The Secretary then read the first article of impeachment, as follows:

ARTICLE 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give:

In consequence of this irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard, by counsel, in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which ultimately rest the liberty and safety of the American people.

When the PRESIDENT took the opinion of the members of the Court respectively, in the form following:

"Mr. ——, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the first article of impeachment?"

Those who pronounced guilty, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Howland, Logan, Maclay, Moore, Stone, Sumter, Worthington, and Wright—16.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Giles, Hillhouse, Jackson, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, White—18.

The second article was read by the Secretary, as follows:

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial because he had made up his mind as to the publication from which the words charged to be libellous in the indictment were extracted; and the said Basset was accordingly sworn and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Breckenridge, Cocke, Condit, Ellery, Giles, Howland, Maclay, Moore, and Sumter—10.

Those who pronounced not guilty, are:

Messrs. Adams, Baldwin, Bayard, Bradley, Brown, Dayton, Franklin, Gaillard, Hillhouse, Jackson, Logan, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Tracy, White, Worthington, and Wright—24.

The third article was read by the Secretary, as follows:

ART. 3. That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Sumter, Worthington, and Wright—18.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith, of Ohio, Smith of Vermont, Stone, Tracy, and White—16.

The fourth article was read by the Secretary, as follows:

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness:

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:

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3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend:

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

5. In an indecent solicitude manifested by the said Samuel Chase for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Stone, Sumter, Worthington, and Wright—18.

Those who pronounced not guilty, are:

Messrs. Adams, Baldwin, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, and White—16.

The fifth article was read by the Secretary, as follows:

Art. 5. And whereas it is provided by the act of Congress, passed on the 24th day of September, 1789, entitled "An act to establish the judicial courts of the United States," that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found: and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to appear and answer such presentment at the next court; yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

All the members pronounced not guilty on this article, viz:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, Tracy, White, Worthington, and Wright—34.

The sixth article was read by the Secretary, as follows:

Art. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled "An act to establish the Judicial Courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

Those who pronounced guilty on this article, are:

Messrs. Breckenridge, Cocke, Howland, and Maclay—4.

Those who pronounced not guilty, are:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Brown, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Jackson, Logan, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, Tracy, White, Worthington, and Wright—30.

The seventh article was read by the Secretary, as follows:

Art. 7. That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided—the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order—that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added, "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter," and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and by a strict examination of them to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

Those who pronounced guilty on this article, are:

Messrs. Breckenridge, Cocke, Franklin, Howland, Jackson, Maclay, Smith of Maryland, Stone, Sumter, and Wright—10.

Those who pronounced not guilty, are:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Brown, Condit, Dayton, Ellery, Gaillard, Giles, Hillhouse, Logan, Mitchill, Moore, Olcott, Pickering,

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Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, White, and Worthington—24.

The eighth article was read by the Secretary, as follows:

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra judicial, and tending to prostrate the high judicial character with which he was invested, to the low purpose of an electioneering partisan.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Stone, Sumter, Worthington, and Wright—19.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, and White—15.

The PRESIDENT rose and said, on the first article, sixteen gentlemen have pronounced guilty, and eighteen not guilty; on the second article, ten have said guilty, and twenty-four not guilty; on the third article, eighteen have said guilty, and sixteen not guilty; on the fourth article, eighteen have said guilty, and sixteen not guilty; on the fifth article, there is an unanimous vote of not guilty; on the sixth article, four have said guilty, and thirty not guilty; on the seventh article, ten have said guilty, and twenty-four not guilty; and on the eighth article, nineteen have said guilty, and fifteen not guilty.

Hence, it appears that there is not a Constitutional majority of votes finding Samuel Chase, Esq., guilty, on any one article. It, therefore, becomes my duty to declare that Samuel Chase, Esq., stands acquitted of all the articles exhibited by the House of Representatives against him.

Whereupon, the Court adjourned without day.

APPENDIX

TO

THE TRIAL OF JUDGE CHASE.

Charge of Judge Chase, being exhibit number three, referred to in his answer.

Gentlemen of the Jury: John Fries, the prisoner at the bar, stands indicted for the crime of treason, of levying war against the United States, contrary to the Constitution.

By the Constitution of the United States, article three, section three, it is declared: "That treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

By the same section, it is further declared: "That no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court;" and that "The Congress shall have power to declare the punishment of treason."

Too much praise cannot be given to this Constitutional definition of treason, and the requiring such full proof for conviction; and declaring that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

This Constitutional definition of treason is a definition of law. Every proposition in any statute (whether more or less distinct, whether easy or difficult to comprehend) is always a question of law. What is the true meaning or true import of any statute, and whether the case stated comes within it, is a question of law and not of fact. The question in an indictment for levying war against (or adhering to the enemies of) the United States, is "whether the facts stated do or do not amount to the levying of war" within the contemplation and construction of the Constitution.

It is the duty of the court in this case, and in all criminal cases, to state to the jury their opinion of the law arising on the facts; but the jury are to decide on the present and in all criminal cases, both the law and the facts, on their consideration of the whole case.

It is the opinion of the court that any insurrection or rising of any body of people, within the United States, to attain or effect, by force or violence, any object of a great public nature or of public and general (or national) concern, is a levying war against the United States, within the contemplation and construction of the Constitution.

On this general position the court are of opinion, that any such insurrection or rising to resist, or to prevent by force or violence, the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute was unjust, burdensome, oppressive, or unconstitutional, is a levying war against

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the United States, within the contemplation and construction of the Constitution.

The reason for this opinion is, that an insurrection to resist or prevent by force the execution of any statute of the United States, has a direct tendency to dissolve all the bonds of society; to destroy all order and all laws; and also all security for the lives, liberties, and property of the citizens of the United States.

The court are of opinion that military weapons (as guns and swords mentioned in the indictment) are not necessary to make such insurrection or rising amount to levying war; because numbers supply the want of military weapons; and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

The court are of opinion that the assembling bodies of men, armed and arrayed in a warlike manner for purposes only of a private nature, is not treason; although the judges or other peace officers should be insulted or resisted, or even great outrages committed to the persons or property of our citizens.

The true criterion to determine whether acts committed are treason, or a less offence (as a riot) is the *quo animo* or the intention with which the people did assemble. When the intention is universal or general, to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots, or other misdemeanors, cannot alter their nature so as to make them amount to treason; and, on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of property, or the like) are done, will show to what class of crimes the case belongs.

The court are of opinion that if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor, but if they proceed to carry such intention into execution by force, that they are guilty of the treason of levying war; and the quantum of the force employed neither lessens nor increases the crime, whether by one hundred or one thousand persons, is wholly immaterial.

The court are of opinion that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war; but that it is altogether immaterial whether the force used is sufficient to effectuate the object; any force connected with the intention will constitute the crime of levying war.

This opinion of the court is founded on the same principles, and is, in substance, the same as the opinion of the circuit court for this district in the trials in April, 1795, of Vigol and Mitchell, who were both found guilty by the jury, and afterward pardoned by the late President.

At the circuit court for the district (April term, 1799,) on the trial of the prisoner at the bar, Judge Iredell delivered the same opinion; and Fries was convicted by the jury.

To support the present indictment against the prisoner at the bar, two facts must be proved to your satisfaction: First. That, some time before the finding of the indictment there was an insurrection (or rising) of a body of people in the county of Northampton, in this State, with intent to oppose and prevent, by means of intimidation and violence, the execution of a law of the United States, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" or of another law of the United States, entitled "An act to lay and collect a direct tax within the United States," and that some acts of violence were committed by some of the people so assembled, with intent to oppose and prevent, by means of intimidation and violence, the execution of both or of one of the said laws of Congress.

In the consideration of this fact, you are to consider and determine with what intent the people assembled at Bethlehem, whether to effect by force a public or a private measure.

The intent with which the people assembled at Bethlehem, in Northampton, is a necessary ingredient to the fact of assembling, and to be proved, like any other fact, by the declaration of those who assembled, or by acts done by them, when the question is, "What is the man's intent?" It may be proved by a number of connected circumstances, or by a single fact.

If, from a careful examination of the evidence, you shall be convinced that the real object and intent of the people assembled at Bethlehem was of a public nature, (which it certainly was if they assembled with intent to prevent the execution of both the above-mentioned laws of Congress, or either of them,) it must then be proved to your satisfaction that the prisoner at the bar incited, encouraged, promoted, or assisted in the insurrection or rising of the people at Bethlehem, and the terror they carried with them, with intent to oppose and prevent, by means of intimidation and violence, the execution of both the above-mentioned laws of Congress, or either of them; and that some force was used by some of the people assembled at Bethlehem.

In the consideration of this fact, the court think proper to assist your inquiry by giving you their opinion.

In treason all the *participes criminis* are principals; there are no accessaries to this crime. Every act which in the case of felony would render a man an accessary, will in the case of treason make him a principal. To render any person an accomplice and principal in felony, he must be aiding and abetting at the fact, or ready to afford assistance, if necessary. If a person be present at a felony aiding or assisting, he is a principal. It is always material to consider, whether the persons charged are of the same party, upon the

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same pursuit, and under the expectation of mutual defence and support. All persons present, aiding, assisting, or abetting any treasonable act, are principals. All persons who are present, and countenancing, and are ready to afford assistance, if necessary, to those who actually commit any treasonable act, are also principals. If a number of persons assemble and set upon a common design, as to resist and prevent by force the execution of any law, and some of them commit acts of violence and force, with intent to oppose the execution of any law, and others are present to aid and assist, if necessary, they are all principals. If any man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law in the case judgeth of the intent by the fact. If a number of persons combine or conspire to effect a certain purpose, as to oppose by force the execution of a law, any act of violence done by any one of them, in pursuance of such combination, and with intent to effect such object, is, in consideration of law, the act of all who are present when such act of violence is committed. If persons collect together to act for one and the same common end, any act done by any one of them, with intent to effectuate such common end, is a fact that may be given in evidence against all of them; the act of each is evidence against all concerned.

I shall not detain you at this late hour to recapitulate the facts; you have taken notes, and they have been stated with accuracy and great candor by Mr. Attorney.

I will only remark, that all the evidence relative to transactions before the assembling of the armed force at Bethlehem, are only to satisfy you of the intent with which the body of the people assembled there. If either of three overt acts (or open deeds) stated in the indictment, are proved to your satisfaction, the court are of opinion that is sufficient to maintain the indictment, for the court are of opinion that every overt act is treasonable.

As to accomplices, they are legal witnesses, and entitled to credit, unless destroyed by testimony in court.

If, upon consideration of the whole matter, (*law* as well as *fact*,) you are *not* fully satisfied without any doubt that the prisoner is guilty of the treason charged in the indictment, you will find him not guilty; but if, upon the consideration of the whole matter, (*law* as well as *fact*,) you are convinced that the prisoner is guilty of the treason charged in the indictment, you will find him guilty.

Exhibit number eight, referred to in Judge Chase's answer.

Copy of the conclusion of a charge delivered and read from the original manuscript, at a circuit court of the United States, holden in the city of Baltimore, on Monday the second day of May, 1803, by Samuel Chase, one of the judges of the Supreme Court of the United States.

Before you retire, gentlemen, to your chamber to consider such matters as may be brought before you, I will take the liberty to make a few observations, which I hope you will receive as flowing only from my regard to the welfare and prosperity of our common country.

It is essentially necessary at all times, but more particularly at the present, that the public mind should be truly informed; and that our citizens should entertain correct principles of government, and fixed ideas of their social rights. It is a very easy task to deceive or mislead the great body of the people by propagating plausible, but false doctrines, for the bulk of mankind are governed by their passions and not by reason.

Falsehood can be more readily disseminated than truth, and the latter is heard with reluctance if repugnant to popular prejudice. From the year 1776, I have been a decided and avowed advocate for a representative or republican form of government, as since established by our State and national Constitutions. It is my sincere wish that freemen should be governed by their representatives, fairly and freely elected by that class of citizens described in our bill of rights, "who have property in, a common interest with, and an attachment to, the community."

The purposes of civil society are best answered by those governments where the public safety, happiness, and prosperity, are best formed, whatever may be the constitution and form of government; but the history of mankind (in ancient and modern times) informs us "that a monarchy may be free, and that a republic may be a tyranny." The true test of liberty is in the practical enjoyment of protection to the person and the property of the citizen, from all injury. Where the same laws govern the whole society without any distinction, and there is no power to dispense with the execution of the laws; where justice is impartially and speedily administered, and the poorest man in the community may obtain redress against the most wealthy and powerful, and riches afford no protection to violence; and where the person and property of every man are secure from insult and injury; in that country the people are free. This is our present situation. Where law is uncertain, partial, or arbitrary; where justice is not impartially administered to all; where property is insecure, and the person is liable to insult and violence without redress by law, the people are *not free*, whatever may be their form of government. To this situation I greatly fear we are fast approaching!

You know, gentlemen, that our State and national institutions were framed to secure to every member of the society equal liberty and equal rights; but the late alteration of the Federal Judiciary by the abolition of the office of the sixteen circuit judges, and the recent change in our State constitution by the establishing of universal suffrage, and the further alteration that is contemplated in our State judiciary (if adopted) will, in my judgment, take away all security for property and personal liberty. The independence of the national Judiciary is already shaken to its foundation, and the virtue of the people alone can restore it. The independence of the judges of this

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State will be entirely destroyed, if the bill for the abolition of the two supreme courts should be ratified by the next General Assembly. The change of the State constitution, by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property, and all security to personal liberty; and our republican constitution will sink into a mobocracy, the worst of all possible governments.

I can only lament that the main pillar of our State constitution has already been thrown down by the establishment of universal suffrage. By this shock alone the whole building totters to its base, and will crumble into ruins before many years elapse, unless it be restored to its original state. If the independency of your State judges which your bill of rights wisely declares "to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people," shall be taken away by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole State constitution, and there will be nothing left in it worthy the care or support of freemen.

I cannot but remember the great and patriotic characters by whom your State constitution was framed. I cannot but recollect that attempts were then made in favor of universal suffrage, and to render the judges dependent upon the Legislature. You may believe that the gentlemen who framed your constitution, possessed the full confidence of the people of Maryland, and that they were esteemed for their talents and patriotism, and for their public and private virtues. You must have heard that many of them held the highest civil and military stations, and that they, at every risk and danger, assisted to obtain and establish your independence. Their names are enrolled on the Journals of the first Congress, and may be seen in the proceedings of the Convention that framed our form of Government. With great concern I observe that the sons of some of these characters have united to pull down the beautiful fabric of wisdom and republicanism that their fathers erected!

The declarations respecting the natural rights of man, which originated from the claim of the British Parliament to make laws to bind America in all cases whatsoever; the publications since that period, of visionary and theoretical writers, asserting that men in a state of society are entitled to exercise rights which they possessed in a state of nature; and the modern doctrines by our late reformers, that all men in a state of society are entitled to enjoy equal liberty and equal rights, have brought this mighty mischief upon us; and I fear that it will rapidly progress, until peace and order, freedom and property, shall be destroyed. Our people are taught as a political creed, that men living under an established Government, are, nevertheless, entitled to exercise certain rights which they possessed in a state of nature; and, also, that every member of this Government is entitled to enjoy an equality of liberty and rights.

I have long since subscribed to the opinion, that there could be no rights of man in a state of nature previous to the institution of society; and that liberty, properly speaking, could not exist in a state of nature. I do not believe that any number of men ever existed together in a state of nature without some head, leader, or chief, whose advice they followed, and whose precepts they obeyed. I really consider a state of nature as a creature of the imagination only, although great names give a sanction to a contrary opinion. The great object for which men establish any form of government, is to obtain security to their persons and property from violence; destroy the security to either, and you tear up society by the roots. It appears to me that the institution of government is really no sacrifice made, as some writers contend, to natural liberty, for I think that previous to the formation of some species of government, a state of liberty could not exist. It seems to me that personal *liberty* and *rights* can only be acquired by becoming a member of a community, which gives the protection of the whole to every individual. Without this protection it would, in my opinion, be impracticable to enjoy personal liberty or rights. From hence I conclude that liberty and rights (and also property) must spring out of civil society, and must be forever subject to the modification of particular governments. I hold the position clear and safe, that all the rights of man can be derived only from the *conventions* of society, and may with propriety be called social rights. I cheerfully subscribe to the doctrine of equal liberty and equal rights, if properly explained. I understand by equality of liberty and rights only this, that every citizen, without respect to property or station, should enjoy an equal share of civil liberty, an equal protection from the laws, and an equal security for his person and property. Any other interpretation of these terms is, in my judgment, destructive of all government and all laws. If I am substantially correct in these sentiments, it is unnecessary to make any application of them, and I will only ask two questions. Will justice be impartially administered by judges dependent on the Legislature for their continuance in office, and also for their support? Will liberty or property be protected or secured, by laws made by representatives chosen by electors, who have no property in, a common interest with, or attachment to the community?

True copy:

THOMAS CHASE.

JANUARY 31, 1805.

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PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE SECOND SESSION OF THE EIGHTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, NOVEMBER 5, 1804.

MONDAY, November 5, 1804.

This being the day appointed by law for the meeting of the present Session, the following members of the House of Representatives appeared and took their seats, to wit:

From New Hampshire—Silas Betton, Clifton Claggett, David Hough, and Samuel Tenney.

From Massachusetts—Jacob Crowninshield, Thomas Dwight, Nahum Mitchell, Ebenezer Seaver, William Stedman, Joseph B. Varnum, and Lemuel Williams.

From Rhode Island—Nehemiah Knight and Joseph Stanton.

From Connecticut—John Davenport and John Cotton Smith.

From Vermont—William Chamberlin, Martin Chittenden, James Elliot, and Gideon Olin.

From New York—Gaylord Griswold, Josiah Hasbrouck, Henry W. Livingston, Andrew McCord, Samuel L. Mitchill, Beriah Palmer, Erastus Root, Thomas Sammons, David Thomas, Philip Van Cortlandt, Killian K. Van Rensselaer, and Daniel C. Verplanck.

From New Jersey—Adam Boyd, Ebenezer Elmer, James Sloan, and Henry Southard.

From Pennsylvania—Isaac Anderson, David Bard, Joseph Clay, Frederick Conrad, William Findley, Joseph Heister, Michael Leib, John Rea, Jacob Richards, John Smilie, John Stewart, and John Whitehill.

From Maryland—John Archer, William McCreery, Nicholas R. Moore, and Thomas Plater.

From Virginia—Thomas Claiborne, John Dawson, John W. Eppes, Thomas Griffin, David Holmes, John G. Jackson, Joseph Lewis, jr., Anthony New, Thomas Newton, jr., John Randolph, Thomas M. Randolph, John Smith, James Stephenson, and Philip R. Thompson.

From Kentucky—George Michael Bedinger, John Boyle, and Thomas Sandford.

From North Carolina—Willis Alston, jr., William Blackledge, James Gillespie, James Holland, William Kennedy, Nathaniel Macon, (Speaker,) Richard Stanford, and Joseph Winston.

From Tennessee—George W. Campbell, William Dickson, and John Rhea.

From South Carolina—John B. Earle.

From Georgia—Peter Early and David Meriwether.

From Ohio—Jeremiah Morrow.

Delegate from the Mississippi Territory—William Lattimore.

Several new members, to wit: from Massachusetts, SIMON LARNED, returned to serve in this House as a member for the said State, in the room of Tompson J. Skinner, who has resigned his seat; from New York, SAMUEL RIKER, returned to serve as a member for the said State, in the room of John Smith, appointed a Senator of the United States; and from Virginia, CHRISTOPHER CLARK, returned to serve as a member for the said State, in the room of John Trigg, deceased; appeared, produced their credentials, and took their seats in the House; the oath to support the Constitution of the United States being first administered to them by Mr. SPEAKER, according to law.

And a quorum, consisting of a majority of the whole number, being present,

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and ready to proceed to business; and that the Clerk of this House do go with the said message.

The following committees were appointed pursuant to the standing rules and orders of the House, viz:

Committee of Elections—Mr. FINDLEY, Mr. VARNUM, Mr. LIVINGSTON, Mr. KENNEDY, Mr. EPPES, Mr. CLAGETT, and Mr. ELMER.

Committee of Ways and Means—Mr. JOHN RANDOLPH, Mr. JOSEPH CLAY, Mr. GAYLORD GRISWOLD, Mr. BOYLE, Mr. DAVENPORT, Mr. NICHOLAS R. MOORE, and Mr. MERIWETHER.

Committee of Commerce and Manufactures—Mr. SAMUEL L. MITCHILL, Mr. CROWNINSHIELD, Mr. MCCREERY, Mr. LEIB, Mr. NEWTON, Mr. EARLY, and Mr. CHITTENDEN.

Committee of Claims—Mr. JOHN COTTON SMITH, Mr. HOLMES, Mr. PLATER, Mr. CHAMBERLIN, Mr. BEDINGER, Mr. STANFORD, and Mr. STANTON.

Committee of Revisal and Unfinished Business—Mr. TENNEY, Mr. DICKSON, and Mr. EARLE.

The SPEAKER laid before the House a letter from the Governor of the State of Maryland, enclosing a certificate of the election of ROGER NELSON, to serve in this House as a member for the said State, in the room of Daniel Heister, deceased; which was referred to the Committee of Elections.

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Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members, respectively, shall choose, to be delivered at their lodgings; and that if any member shall choose to take any newspaper other than a daily paper, he shall be furnished with as many of such newspapers as shall not exceed the price of a daily paper.

Resolved, That, unless otherwise ordered, the daily hour to which the House shall stand adjourned, during the present session, be eleven o'clock in the forenoon.

TUESDAY, November 6.

Several other members, to wit: from Massachusetts, MANASSEH CUTLER; from Connecticut, SAMUEL W. DANA and ROGER GRISWOLD; from New Jersey, JAMES MOTT; from Pennsylvania, JOHN A. HANNA, JOHN B. C. LUCAS, and ISAAC VAN HORNE; from Maryland, JOHN CAMPBELL; from Virginia, JOHN CLOPTON; and from South Carolina, THOMAS LOWNDES; appeared and took their seats in the House.

Another new member, to wit: ROGER NELSON, from Maryland, returned to serve in this House as a member for the said State, in the room of Daniel Heister, deceased, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. J. RANDOLPH moved for the appointment of a committee on the part of the House to join a committee of the Senate to wait on the President and inform him that a quorum of both Houses are formed, and ready to receive his communications.

Mr. DANA inquired if a quorum of the Senate was formed? That circumstance, he thought, ought to be ascertained before the House adopted the gentleman's resolution.

Mr. RANDOLPH did not know whether or no the Senate had formed a quorum, but he saw no objection on that account to proceeding with their own business. He however had understood that the Senate would form a quorum this day.

The resolution was carried, and Messrs. J. RANDOLPH and R. GRISWOLD appointed the committee.

Mr. J. C. SMITH requested the House to excuse him from serving on the Committee of Claims; he had been on that committee for four years past, and he knew that the members of that committee, particularly, ought to remain at the seat of Government during the whole session; he unfortunately would be obliged to ask leave of absence in January, at farthest. He was hereupon excused, and Mr. DANA appointed in his place.

Resolved, That a committee be appointed to inquire whether any, and what amendments are necessary to be made in the acts establishing a post office and post roads within the United States, and that the said committee have leave to report by bill or otherwise.

Ordered, That Mr. NEWTON, Mr. THOMAS, Mr. HANNA, Mr. NAHUM MITCHELL, Mr. LOWNDES, Mr. GEORGE WASHINGTON CAMPBELL, and Mr. SOUTHARD, be appointed a committee pursuant to the said resolution.

Mr. J. RANDOLPH requested information from the Chair as to the situation in which the articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, were left at the last session. The House would recollect that they were then merely reported and ordered to be printed. If that business was to be prosecuted, he conceived it of importance that the party should have all the time to prepare for his defence that political existence would allow him. Was it the opinion of the Speaker that this subject was before the Committee of Revised and Unfinished Business, or should it be referred to a special committee to prepare articles *de novo?*

The SPEAKER judged that it was before the Committee of Revised and Unfinished Business as a matter of course.

Mr. VARNUM moved for the appointment of Chaplains to Congress for the present session, one by each House, to interchange weekly.

Mr. SMILIE thought that a Chaplain, when once appointed by the House, should remain as an officer of the House during its Constitutional existence, in like manner as the Speaker, Clerk, and other officers.

Mr. VARNUM turned the gentleman to the Journal, in which it would be found that Chaplains were expressly appointed for the session.

The SPEAKER declared the practice had always been to appoint them every session.

Mr. GRISWOLD observed, that were the Chaplain an officer of that House only, the gentleman's (Mr. S.) idea would be correct; but he would recollect that the Senate had a concurrent vote on this subject.

The resolution was hereupon adopted.

Ordered, That the report of the committee appointed on the thirteenth of March last, to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, be referred to a select committee, and that Mr. JOHN RANDOLPH, Mr. JOSEPH CLAY, Mr. EARLY, Mr. BOYLE, and Mr. Rhea of Tennessee, be appointed of the said committee.

WEDNESDAY, November 7.

Several other members, to wit: from Maryland, JOSEPH H. NICHOLSON; from Virginia, WALTER JONES; from South Carolina, THOMAS MOORE; and from Georgia, JOSEPH BRYAN, appeared, and took their seats in the House.

Mr. LEIB observed the narrow limits to which the members were confined by the reduced size of the Chamber they now occupied, and the difficulty the members were exposed to in passing and repassing in the lobby by the admission of strangers. He was forced, by these considerations, to move the House to rescind one of their rules, which permitted the members to introduce strangers. But as another required that motions for

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altering the standing rules of the House should only be made by giving one day's previous notice, he contented himself with laying his motion on the table.

On motion of Mr. LEIB, a Committee of Accounts was appointed, whose duty it is to superintend and control the expenditure of the contingent fund of the House, and to audit and settle all accounts charged upon the same.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business. The Senate have appointed a committee on their part, jointly with the committee appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

A message from the Senate informed the House that the Senate have agreed to the resolution of this House for the appointment of Chaplains to Congress for the present session, and have appointed the Rev. Mr. MCCORMICK, on their part.

The House then proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Rev. WILLIAM BENTLEY.

Mr. JOHN RANDOLPH, from the joint committee appointed to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, reported that the committee had performed that service, and that the President signified to them he would make a communication to this House, in writing, to-morrow at twelve o'clock.

THURSDAY, November 8.

Several other members, to wit: from New Hampshire, SAMUEL HUNT; from Massachusetts, SAMUEL TAGGART; from Connecticut, SIMEON BALDWIN and CALVIN GODDARD; and from North Carolina, SAMUEL D. PURVIANCE; appeared, and took their seats in the House.

A memorial of the Board of Trustees of Jefferson College in the Mississippi Territory of the United States, signed by Cato West, their President *pro tempore*, and attested by Felix Huges, their Secretary, was presented to the House and read, praying that the title to certain lots or parcels of land, situate in the city of Natchez; also, to an outlot adjoining the same, may be confirmed by Congress, for the benefit and accommodation of the said College, and thereby to promote the education of youth within the said Territory.

Ordered, That the said memorial, together with the petition of the Mayor, Aldermen, and Assistants, of the city of Natchez, and of William Dunbar, presented the ninth of November, one thousand eight hundred and three, and twenty-sixth of January, one thousand eight hundred and four, and two reports of select committees, made at the last session, thereon, be referred to Mr. LATTIMORE, Mr. THOMAS M. RANDOLPH, Mr. STEDMAN, Mr. ALSTON, and Mr. ELLIOT; that they do examine the matter thereof, and report the same, with their opinion thereon, to the House.

A Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. BURWELL, his Secretary, as follows:

Mr. Speaker: I am directed to hand you a communication, in writing, from the PRESIDENT to the two Houses of Congress.

The communication was read, and, together with the documents accompanying the same, referred to the Committee of the whole House on the state of the Union. [See Senate proceedings of this date, page 11, for the Message.]

The motion made yesterday by Mr. LEIB, was taken into consideration, and an amendment was proposed by adding, "blacks and people of color, other than freemen, shall be excluded from the gallery."

This gave rise to some conversation, after which the amendment, upon a division of the House, appeared to have but one member in its favor.

The question on the resolution to exclude all persons from the lobby except members of the Senate and Stenographers, was taken and lost, only 32 members voting for it.

Mr. J. CLAY moved the following resolution:

Resolved, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword, of the value of —— dollars, and to each of the officers and crew of the United States ketch Intrepid, —— months' pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services, of Captain Decatur, the officers, and crew, of the said ketch, in attacking and destroying a Tripolitan frigate, of forty-four guns, late the United States frigate Philadelphia.

Ordered, That the said motion be referred to a Committee of the Whole to-morrow.

Mr. TENNEY, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journal of the last session, and report therefrom such matters of business as were then depending and undetermined, made a report, in part; which was read, and ordered to lie on the table.

FRIDAY, November 9.

Two other members, to wit: from Massachusetts, WILLIAM EUSTIS; and from Pennsylvania, ROBERT BROWN, appeared, and took their seats in the House.

FRIGATE PHILADELPHIA.

Mr. J. CLAY's motion relative to Captain Decatur and the officers and crew of the ketch Intrepid, was taken up in Committee of the Whole.

On motion of Mr. CLAY, the resolution was altered, by striking out after the word "sword," the words "the value of —— dollars," and filling up the other blank with the word "two," thereby giving the officers and crew two months' pay.

Mr. C., with a view of showing the propriety of the measure, read extracts of letters written by Commodore Preble and Lieut. Decatur, which had been obtained from the Secretary of the Navy; they contained an account of the circum-

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stances attending this honorable exploit, which have heretofore been printed in the public newspapers.

The Committee rose and reported the resolution as amended.

Mr. Griswold presumed the object of this step was to pay a tribute of respect to those brave men who had so gallantly achieved this glorious and dangerous enterprise. He wished to do this in a manner the most honorable and notorious, and perhaps the best course would be to obtain, from the Head of the Navy Department, a list of the names of the officers and the number of the crew, together with a detail of the circumstances attending the event. With this view, he moved to postpone the consideration of the resolution reported by the Committee of the Whole, till tomorrow, in order to introduce a resolution to this effect:

Resolved, That the Secretary of the Navy be directed to communicate to this House the names of the officers and the number of the men employed in the destruction of the frigate Philadelphia in the harbor of Tripoli, together with a statement of the circumstances attending that event.

The postponement was agreed to without opposition, and the resolution of Mr. Griswold was adopted, with a small variation, suggested by Mr. J. Randolph, and acquiesced in by the mover, to wit: "That the President of the United States be requested to cause to be laid before this House," &c.

Mr. J. Clay and Mr. T. M. Randolph were appointed a committee to wait on the President and communicate the request of the House.

Monday, November 12.

Several other members, to wit: from Massachusetts, Peleg Wadsworth; from New Jersey, William Helms; from Delaware, Cæsar A. Rodney; from Virginia, Matthew Clay; from North Carolina, Marmaduke Williams and Thomas Wynns; and from South Carolina, Levi Casey and Richard Winn; appeared, and took their seats in the House.

The House resolved itself into a Committee of the Whole on the state of the Union.

Mr. J. Randolph submitted seven resolutions, which were agreed to, and afterwards adopted by the House, as follows:

1. *Resolved*, That so much of the Message of the President of the United States as relates to the restraining of our merchant vessels arming themselves without authority, and attempting to force a commerce into certain ports and countries, in defiance of the laws of those countries, be referred to a select committee,

2. *Resolved*, That so much of the Message of the President of the United States as relates to an amelioration of the form of government of the Territory of Louisiana, be referred to a select committee.

3. *Resolved*, That so much of the Message of the President of the United States as recommends an enlargement of the capital employed in commerce with the Indian tribes, be referred to a select committee.

4. *Resolved*, That so much of the Message of the President of the United States as relates to the defence and security of our ports and harbors, and supporting within our waters the authority of our laws, be referred to a select committee.

5. *Resolved*, That so much of the Message of the President of the United States as relates to the improvement of the militia system of the United States, be referred to a select committee.

6. *Resolved*, That so much of the Message of the President of the United States as relates to the inconvenience arising from the distance to which, under existing laws, prizes captured from the corsairs of Barbary must be brought for adjudication, be referred to a select committee.

7. *Resolved*, That so much of the Message of the President of the United States as relates to the lead mines of Louisiana, be referred to the Committee of Commerce and Manufactures.

Ordered, That Mr. Eustis, Mr. Dawson, Mr. Goddard, Mr. Wynns, Mr. Root, Mr. Betton, and Mr. Knight, be appointed a committee pursuant to the first resolution.

Ordered, That Mr. John Randolph, Mr. Roger Griswold, Mr. Thomas Moore, Mr. Smilie, Mr. Gillespie, Mr. Dwight, and Mr. Sammons, be appointed a committee pursuant to the second resolution.

Ordered, That Mr. Joseph Clay, Mr. Livingston, and Mr. Sandford, be appointed a committee pursuant to the third resolution.

Ordered, That Mr. Nicholson, Mr. Brown, Mr. Griffin, Mr. Riker, Mr. Hunt, Mr. Seaver, and Mr. Olin, be appointed a committee pursuant to the fourth resolution.

Ordered, That Mr. Varnum, Mr. Van Cortlandt, Mr. Stephenson, Mr. Helms, and Mr. Holland, be appointed a committee pursuant to the fifth resolution.

Ordered, That Mr. Rodney, Mr. Jackson, Mr. Baldwin, Mr. Lucas, Mr. Nelson, Mr. Larned, and Mr. Lowndes, be appointed a committee pursuant to the sixth resolution.

Mr. Griswold stated that some inconvenience had been felt by some of the merchants of the Atlantic ports in making shipments to New Orleans, as they were not authorized to obtain drawbacks on a reshipment from that port to a foreign country; heretofore New Orleans had been a depot from which many foreign articles were shipped to the French, Spanish, and even British colonies and islands, a commerce that had been very productive. He wished, if there was no solid objection to it, that the usual course of trade might be continued. He, therefore, moved the following resolution:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of allowing, under proper regulations, a drawback of duties on goods, wares, and merchandise, imported into the port of New Orleans from any port of the United States, and from thence exported to any foreign port or place, and that the Committee report by bill or otherwise.

The resolution was carried *nem. con.*

The Speaker laid before the House a letter from Mr. Thomas Claxton, Doorkeeper of the House of Representatives of the United States, written in his official capacity, stating that, at the request of one of the inhabitants of the city, the

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Chaplain to the Senate, after he had performed Divine service in the Chamber of the House of Representatives in the forenoon, gave notice that, in the afternoon, a stranger would preach in the same room, which is a thing altogether unusual. This notice was given without consulting the SPEAKER, or being mentioned to any other officer of the House. Believing it to be a precedent which might hereafter lead to many inconveniences, he opposed the measure, &c. In taking this step he unfortunately gave umbrage to some of the gentlemen belonging to the House. This circumstance induced him to hope that the SPEAKER would establish some regulation on this point, or bring the matter before the House for its decision.

Mr. SPEAKER observed, that he had never exercised any authority on this subject. Whenever he had been applied to for leave to preach in that room, he had uniformly answered that he had no objection.

On motion, the letter was referred to a committee of three.

BRITISH TREATY.

Mr. J. RANDOLPH informed the House that the Committee of Ways and Means had received a communication from the Treasury Department, stating that the appropriation of $50,000, for carrying into effect the seventh article of the British Treaty, had not been sufficient to discharge the second instalment upon all the awards made in pursuance thereof, and suggesting the propriety of making, as early as possible, a further appropriation for that object. The Secretary of State estimated the amount unpaid at $60,000, and that, in order to prevent any disappointment, it would be eligible to make the appropriation $70,000. Mr. R. hereupon moved that the Committee of Ways and Means have leave to report a bill on this subject. Leave being granted,

Mr. J. R. reported a bill accordingly, which was read a first and second time, and referred to a Committee of the Whole to-morrow.

TUESDAY, November 13.

Two other members, to wit: from Massachusetts, RICHARD CUTTS; and from South Carolina, WILLIAM BUTLER; appeared, and took their seats in the House.

No quorum being present, the House adjourned.

WEDNESDAY, November 14.

Another member to wit: PHANUEL BISHOP, from Massachusetts, appeared, and took his seat in the House.

A memorial of Duncan McFarland, of the State of North Carolina, was presented to the House and read, stating his claim to a seat in this House, as the Representative from the seventh election district of the said State; and praying that the House will take into farther consideration and ultimately decide on the subject-matter of his memorial presented the eighth of February last—Referred to the Committee of Elections.

A memorial of William Dunbar, of the Mississippi Territory of the United States, was presented to the House and read, praying, for the reasons therein specified, that Congress will be pleased to postpone the consideration of any petition of or claim respecting the title to a certain lot or parcel of land within the limits of the city of Natchez, which has been granted to the memorialists by the Spanish Government, in consideration of services heretofore rendered by him to the said Government.—Referred.

On motion of Mr. VARNUM, it was

Resolved, That the Committee of Claims be instructed to consider at large the subject relative to invalid pensioners, and all persons wounded or disabled in the service of the United States, during the late Revolutionary war with Great Britain; and report to the House what further measures are, in their opinion, necessary to be adopted, in order to render them such ample remuneration for their sufferings as justice may require.

A memorial and petition of sundry inhabitants of the town of Alexandria, in the District of Columbia, was presented to the House and read, submitting to the consideration of Congress certain propositions, by way of modification and amendment of an act passed at the last session, entitled "An act to amend the charter of Alexandria," which they pray may be adopted for the convenience and benefit of the memorialists and other inhabitants of the said town.—Referred to Mr. EPPES, Mr. J. CAMPBELL, and Mr. THOMPSON; to examine and report their opinion thereupon to the House.

Mr. LEIB mentioned to the House the condition in which the public buildings (the arsenal at Philadelphia) the property of the United States were; one of the sections was raised to the first floor, and some other parts were left unfinished; indeed all the uncovered parts of the buildings were more or less suffering dilapidation or going to decay; he thought it would be found prudent to finish them in order to preserve them. He therefore moved that a committee be appointed to inquire into the expediency of making provision by law for the completion of the public buildings belonging to the United States, near Philadelphia.—Referred to a select committee of three members.

On motion, of Mr. G. W. CAMPBELL, it was

Resolved, That the committee appointed the twelfth instant on so much of the Message of the President of the United States as relates to "the enlargement of the capital employed in commerce with the Indian tribes," be instructed to inquire what alterations and amendments are necessary in the "act to regulate trade and intercourse with the Indian tribes;" and to report thereon by bill, or otherwise.

THURSDAY, November 15.

Two other members, to wit: from Massachusetts, SAMUEL THATCHER; and from Pennsylvania, ANDREW GREGG; appeared, and took their seats in the House.

The House resolved itself into a Committee of

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the Whole on the bill making farther appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America. The bill was reported with an amendment, which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time tomorrow.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the House of Representatives of the United States:

Agreeably to your resolution of the ninth instant, I now lay before you a statement of the circumstances attending the destruction of the frigate Philadelphia, with the names of the officers and the number of men employed on the occasion; to which I have to add, that Lieutenant Decatur was, thereupon, advanced to be a Captain in the Navy of the United States.

Nov. 15, 1804. TH. JEFFERSON.

The said Message and the papers referred to therein, were read, and ordered to lie on the table.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, description of claims against the United States are barred by the statutes of limitation, which, in reason and justice, ought to be provided for by law; and that the said committee have leave to report thereon by bill, or otherwise.

Ordered, That Mr. CLAIBORNE, Mr. HOUGH, Mr. WADSWORTH, Mr. KNIGHT, Mr. J. C. SMITH, Mr. CHITTENDEN, Mr. McCORD, Mr. BOYD, Mr. ANDERSON, Mr. RODNEY, Mr. NICHOLSON, Mr. BEDINGER, Mr. MARMADUKE WILLIAMS, Mr. DICKSON, Mr. CASEY, Mr. MERIWETHER, and Mr. MORROW, be appointed a committee, pursuant to the said resolution.

Ordered, That the copy of an act passed by the Legislature of the State of North Carolina, on the twenty-second of December, one thousand eight hundred and three, entitled "An act to authorize the State of Tennessee to perfect titles to lands reserved to this State by the cession act," which was presented to this House on the fourteenth of February last, be referred to Mr. ALSTON, Mr. WINN, Mr. TAGGART, Mr. JOHN RHEA, of Tennessee, and Mr. BARD, with leave to report thereon by way of bill, or bills.

Mr. NEWTON stated a fact relative to a citizen of Georgia, who had been sued in that State; but the creditor, finding the citizen was coming to Washington, dismissed his suit there, and procured his arrest here. The debtor, as a stranger, for want of bail must have gone to prison, but through the humanity of the marshal, who accompanied him to several places in the Territory in search of a friend, the debtor was fortunate enough to procure the requisite security, and thereby avoided the hardships of imprisonment. To prevent in future this species of oppression to which strangers are liable, he moved that a select committee of five be appointed to inquire whether any, and if any, what alterations are necessary to be made in the laws of the District of Columbia relative to holding persons to bail, and that they be authorized to report by *bill* or otherwise.

A committee of five was appointed accordingly.

NEW YORK SLATE COMPANIES.

Mr. MITCHILL made a report from the Committee of Commerce and Manufactures on the petition of the Slate Companies of New York and Dutchess counties, concluding that any additional duty on imported slate at this time will be inexpedient. The general principle upon which this report was bottomed, being of considerable importance, and likely to excite discussion, he moved to refer it to a Committee of the Whole, and that it be made the order for Tuesday next; agreed to, and in the mean time ordered to be printed. The report is as follows:

Two associations of individuals, in the State of New York, were formed, one in the year 1800, and the other in 1803, for the purpose of exploring and opening quarries of slate, within Dutchess county, in the said State. After expending considerable capital, they state that they have been successful in finding slate of an excellent quality. This they have brought to market in great quantity, and offer for sale at a reduced price of fifty per cent. They allege that they are capable of supplying the whole domestic demand for this useful article of building, and could easily furnish slate of various sizes and thickness, for exportation. But they complain of the rivalship and competition of the importers of slate from foreign countries; who, by means of superior numbers and capitals, can, without sensible inconvenience, submit to temporary losses, undersell the petitioners, and interrupt the regular course of their domestic industry. For the sake of preventing these discouraging embarrassments, they solicit an increase of impost on the importation of slate from foreign parts.

In the preamble to the act "making further provision for the payment of debts of the United States," passed August 10, 1790, it is declared that duties were laid on goods, wares, and merchandise, imported, for the discharge of the debts of the United States, and the encouragement and protection of manufactures. By the first section of that act, slate was charged with a duty of ten per cent. ad valorem, Afterwards, by the act "for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," passed May 2, 1792, an additional two and a half per cent. was added; but this ceased at the end of two years, by its own limitation. Then again an additional five per cent. ad valorem was laid upon imported slate, by the first section of the "act for laying additional duties on goods, wares, and merchandise, imported into the United States," passed June 7, 1794.

A further impost of two and a half per cent. was laid by the first section of the "act further to protect the commerce and seamen of the United States against the Barbary Powers," passed March 25, 1804, upon all goods, wares, and merchandise, chargeable with an ad valorem duty. Slate comes within this class of articles. The money collected goes to "the Mediterranean fund;" and this additional two and a half per cent. will not be discontinued until three months after a ratification of a Treaty of Peace with Tripoli.

Hence, it appears that the existing duties on slate, imported from foreign ports, amount to seventeen and a half per cent. if imported in ships or vessels of the

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United States; and computing the ten per cent. additional, amount to nineteen and a half per cent. upon all slate imported in vessels not of the United States. When to these are added freight, commission, insurance, and the other heavy charges on such a bulky article, it would seem that a sufficient *protecting* duty was already imposed to encourage this species of domestic manufacture. The committee are inclined to think it would be impolitic to increase the import to a *prohibitory* amount.

The committee cannot forbear to express a sentiment of pleasure on this discovery of an inexhaustible quantity of an incombustible material for covering buildings. The increasing scarcity of timber, and the prevailing custom of constructing fire-proof houses, added to the more excellent, it may be said unequalled quality and abundance of the slate of New York, may be expected in a short time to accomplish the wishes of the petitioners, and give the home made slate a complete ascendency in the market. While, therefore, they rejoice at the detection of this new resource of their country, and of its proportionally increased independence, they forbear to recommend any augmentation of impost upon its introduction from abroad.

On the whole, it is the opinion of the committee that any additional duty upon imported slate would, at this time, be inexpedient.

FRIDAY, November 16.

On motion, of Mr. R. GRISWOLD, it was

Resolved, That a committee be appointed to inquire whether further provisions ought not to be made by law for the encouragement of the fisheries of the United States; and that the committee report by bill, or otherwise.

Ordered, That Mr. R. GRISWOLD, Mr. GREGG, Mr. VERPLANCK, Mr. CLARK, and Mr. TAGGART, be appointed a committee, pursuant to the said resolution.

Ordered, That the report of a select committee made on the third of January last, on the subject of the whale and cod-fisheries of the United States, be referred to the committee last appointed.

On motion, of Mr. W. JACKSON, it was

Resolved, That a committee be appointed to prepare and bring in a bill making provision for the application of the money heretofore appropriated to laying out and making certain public roads.

Ordered, That Mr. JACKSON, Mr. MORROW, Mr. G. W. CAMPBELL, Mr. BOYLE, and Mr. STEWART, be appointed a committee, pursuant to the said resolution.

Mr. FINDLEY, from the Committee of Elections, to whom it was referred to examine the certificates of election or other credentials of the members returned to serve in this House, made a report, in part, which was ordered to lie on the table.

Mr. BRYAN reported from the committee on the official letter of Mr. THOMAS CLAXTON, Doorkeeper of the House of Representatives, respecting the admission of Chaplains to preach in the Chamber of Congress; that in the case stated by him, he had acted with propriety, and they recommended a resolution to the following effect: That no person shall be authorized to preach in this Chamber unless by consent of the Speaker, or being introduced by one of the Chaplains.

Ordered to lie on the table.

An engrossed bill making a farther appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, was read the third time, and passed.

MONDAY, November 19.

Another member, to wit: SETH HASTINGS, from Massachusetts, appeared, and took his seat in the House.

The SPEAKER laid before the House a letter from Thomas M. Thompson, Secretary of the State of Pennsylvania, accompanying the copy of a letter from William Hoge, addressed to the Governor of Pennsylvania, containing his resignation of a seat in this House, as one of the members for the said State; also, a copy of the Governor's writ of election to supply the vacancy occasioned thereby, and a duplicate return of the election of John Hoge, to serve in this House as a Representative for the said State of Pennsylvania, in the room of the said William Hoge; which were read, and referred to the Committee of Elections.

Mr. S. L. MITCHILL called the attention of the House to a subject he considered of importance to the literary institutions of the United States. Understanding that an application was about to be made to Congress from the College of Princeton for an abatement of the bonded duties due on a recent importation of books and philosophical apparatus, imported for the use of that seminary, he undertook to foretell the fate of the application. The committee would probably report as had been usual—that the prayer of the petition cannot be granted. True, gentlemen felt it a painful task to report negatively, but such had ever been the case. Yet he would advocate a relaxation of that principle. He had himself, when applied to on such occasions, replied that the United States wanted revenue and of course must seek it from the imports as well of literary institutions as of private individuals; but this reason has now less weight than heretofore—laying out of the question all that relates to the importance of education, especially in a Republican Government like that of the United States, he would only remark that the President's Message showed that such was the flourishing state of our affairs generally, particularly of our revenue, that we might now dispense with the collection of duties on these importations. He hereupon moved that the Committee of Ways and Means be instructed to inquire into the expediency of exempting from impost all such books and philosophical apparatus as shall be imported on account of colleges and universities, for the benefit of those learned institutions, and that they report by bill or otherwise.

The motion passed in the affirmative.

The House proceeded to consider the resolution reported, on the ninth instant, from the Committee of the Whole House to whom was referred a

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motion relative "to Captain Stephen Decatur, the officers, and crew, of the United States' ketch Intrepid;" and the said resolution being twice read, and amended at the Clerk's table, was agreed to by the House, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword; and to each of the officers and crew of the United States ketch Intrepid, two months's pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services of Captain Decatur, the officers, and crew, of the said ketch, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

Ordered, That the said resolution be engrossed, and read the third time to-day.

The House proceeded to consider the report of the committee of the sixteenth instant, to whom was referred a letter addressed to the Speaker from the Doorkeeper of the House, which lay on the table; and the resolution submitted by the committee in the said report, being twice read and amended at the Clerk's table, was agreed to by the House, as follows:

"*Resolved*, That in future, no person shall be permitted to perform Divine service in the Chamber occupied by the House of Representatives, unless with the consent of the Speaker."

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a report and estimates of appropriation necessary for the service of the year one thousand eight hundred and five; also, a statement of receipts and expenditures at the Treasury of the United States for one year preceding the first day of October, one thousand eight hundred and four; which were read and ordered to be referred to the Committee of Ways and Means.

An engrossed resolution, in the form of a concurrent resolution of the two Houses, "expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers, and crew, of the United States' ketch Intrepid, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns, was read the third time, and on the question that the same do pass, it was resolved in the affirmative—Yeas 104, nays 2, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George M. Bedinger, Silas Betton, Phanuel Bishop, Wm. Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, Geo. W. Campbell, John Campbell, Levi Casey, Wm. Chamberlin, Martin Chittenden, Clifton Claggett, Thos. Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Sam'l W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, James Gillespie, Calvin Goddard, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, David Holmes, David Hough, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, Henry W. Livingston, John B. C. Lucas, Andrew McCord, David Meriwether, Nahum Mitchell Samuel L. Mitchill, Nicholas R. Moore, Thos. Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas Plater, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Cotton Smith, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS.—William Butler, and Richard Stanford.

TUESDAY, November 20.

Another member, to wit: GEORGE TIBBITS, from New York, appeared, and took his seat in the House.

On a motion made and seconded to add a new rule to the standing rules and orders of the House, in the words following, to wit:

"That each of the Committees of this House be empowered to appoint a chairman, by plurality of votes, in all cases where the first named member of the Committee shall be absent, or excused by the House;"

Ordered, That the said motion be referred to Mr. DAWSON, Mr. ROGER GRISWOLD, and Mr. HEISTER, to examine and report their opinion thereupon to the House.

Mr. ALSTON, from the committee appointed on the fourteenth instant, presented a bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, which was read twice, and committed to a Committee of the Whole House to-morrow.

Mr. MATTHEW CLAY, from the committee appointed, presented a bill giving the power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire; which was read twice, and committed to a Committee of the Whole House to-morrow.

Mr. MITCHILL, from the committee appointed on that part of the President's Message respecting the lead mines in Louisiana, reported a resolution authorizing the President to appoint an agent, who shall be instructed to collect all the material information respecting the actual condition, occupancy, and title of the same, and the agent to make report before the next session of Congress. The resolution was read a second time, and referred to a Committee of the Whole.

Mr. LUCAS suggested the propriety of altering the resolution, so as to make it general to all kinds of ore, and even to embrace salt springs and licks. He knew there were other ores in that Territory, and had seen specimens of a very rich copper ore when he had gone into the country.

Mr. MITCHILL said, that the Executive had anticipated the gentleman's object, and he expected the House would be soon gratified with an ac-

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count of the discoveries now making by Major Lewis, and other agents on the Missouri, Arkansas, Red river, &c., as they respect the mineral, vegetable, and animal kingdoms, on which account he preferred the resolution in its present state.

The resolution was carried without opposition, and adopted by the House after the rising of the committee, and ordered to be engrossed for a third reading.

WEDNESDAY, November 21.

Another member, to wit: JOHN PATTERSON, from New York, appeared and took his seat in the House.

Mr. RHEA, of Tennessee, moved a resolution for the establishment of an office for exhibiting and recording deeds and papers relating to grants of land in Louisiana, whether made by France, Spain, or Great Britain; to be entered in the original language, with an American translation of the same. Ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire; and, after some time spent therein the Committee rose and reported progress.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, who were instructed by a resolution of this House, of the nineteenth instant, "to inquire into the expediency of exempting from impost all such books and philosophical apparatus as shall be imported on account of the colleges and universities existing within the United States, for the proper and exclusive use of the learned institutions;" made a report thereon, which was read, and ordered to be referred to a Committee of the Whole House to-morrow.

LOUISIANA LEAD MINES.

The engrossed resolution authorizing the President to appoint an agent, who shall be instructed to collect all the material information respecting the actual condition, occupancy, and title of the lead mines in Louisiana, was taken up on its third reading.

Mr. LUCAS entertained a doubt as to the propriety of this measure; indeed, the gentleman from New York, (Mr. MITCHILL,) seemed to admit that it was superfluous, for he had said that the President, under proper authority, had already appointed agents to explore generally the Territory of Louisiana; that they have been sometime engaged in that service at the Missouri, Arkansas, Red river, and about Detroit, and indeed Major Lewis had been sometime in St. Louis, a post in the neighborhood of these very lead mines, and from his known enterprise and minute inquiries, there was good reason for believing that the subject which was the object of the proposed resolution, would be narrated in his general report of discoveries. But in addition to this expectation, the document accompanying the President's Message sheds considerable light. The information as to the condition of the lead mines, their number, names, and value, were explained, and as he had heard no gentleman suggest a doubt as to the accuracy of the narrative, he was inclined to give it full credit, from the general character of the gentleman who made the communication, and the particular knowledge he must necessarily have acquired by a long residence in the country. From this view of the subject he was compelled to acknowledge that he had altered his idea of the resolution, and could not now vote in its favor.

Mr. MITCHILL had hoped that the gentleman from Pennsylvania, after the explanation of yesterday, would consent to the resolution; he would now add but a few explanatory words. The object of the resolution was simply to appoint an agent to inquire into the occupancy and titles of the present holders and claimants; this required a civilian versed in the municipal laws of the nations who had heretofore held that territory; not a natural historian, or mineralogist, not one who was acquainted with the art of mining, or smelting and testing ores. Neither did Mr. M. believe it would be necessary to send the agent to the mines themselves, but to the place where the deeds and conveyances constituting the title-papers of the proprietors, or pretended claimants, are recorded or preserved. Whether these were at New Orleans, or what other place, he did not know. As to the expense, it was not likely to exceed $1,000 or $2,000 even if the agent were sent from this city; but he imagined if the business could be as well conducted by the appointment of an agent in Louisiana, the President would instruct the Governor how to act. It might be seen too, from the words of the resolution, that it was a mere temporary employment, not likely to be of longer duration than three or four months, for the report is instructed to be made before the next meeting of Congress. Mr. M. concluded, that if Mr. LUCAS would reconcile himself to vote for the present motion upon this explanation, and should he hereafter desire a more extensive examination into the actual circumstances of the newly acquired Territory, he might rely upon his earnest co-operation.

Mr. LUCAS observed in reply, that Louisiana had been held alternately by three or four nations: each of which in sequence had granted titles to more or less of the lands in question. An examination into those titles would at this time excite a high degree of sensibility among the inhabitants, who, he thought, ought in their youthful state to be treated by Congress with tenderness and delicacy. The titles were various, some derived from the Governors of the country, some from commanders of posts. Many of the latter he believed might be considered by the agent illegal; especially as he had learned that the commander of St. Louis, in North Louisiana, held paramount authority over the subordinate posts, and that without his approbation the lands so granted would not be allowed; yet these persons who held under such title, and by occupancy and improvement consider themselves the *bona fide* proprietors of the lands. He feared that the inquiry intended by the resolution might create great dissatisfac-

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tion, while a postponement for the present could do no possible evil.

Mr. EARLY said, if Mr. L. had made a correct statement of the condition in which the titles in that country really stood, and he had no reason to doubt it, it would operate as the strongest reason on his mind to pass the resolution: though it would be perceived that the agency to be given on the present occasion extended no farther than to the lead mines. The gentleman, Mr. L., had yesterday mistaken his friend, Mr. MITCHILL's object, supposing a general agency was intended to be raised. He had mistaken him again to-day, by thinking the agent was to go into the Territory of Louisiana to decide upon the titles he might have an opportunity of examining. This was not the case. He was merely to inquire into the actual condition of the lead mines, the occupancy and title, for the information of Congress. We are not going to send a Board of Commissioners, or a Judiciary Establishment, for the purpose of hearing and determining upon the claims set up, but to procure for ourselves that information which will enable the Government to decide, without their instrumentality. If the gentleman (Mr. L.) views the subject in this point of light, he will find it freed from his objection.

The question was now put, and the resolution passed, 74 members voting in its favor.

THURSDAY, November 22.

Two other members, to wit: PETERSON GOODWYN and EDWIN GRAY, from Virginia, appeared and took their seats in the House.

A memorial of Samuel H. Smith, and others, on behalf of the Washington Building Company, was presented to the House and read, praying that Congress will reconsider and ultimately decide on their petition, presented of January 3, 1803, praying that a law may pass to incorporate the said company, under certain rules and regulations intended for the improvement and ornament of the Metropolis of the Union; and, also, that they may be enabled to extend the application of the funds of the company to the insurance of buildings from fire.—Referred to Mr. LEWIS, Mr. JOHN RHEA, of Pennsylvania, and Mr. ARCHER, with leave to report thereon by bill, or bills, or otherwise.

Mr. NICHOLSON, from the committee appointed, presented a bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction; which was read twice, and committed to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, on the expediency of exempting from impost all such books and philosophical apparatus as shall be imported on account of the Colleges and Universities existing within the United States, for the proper and exclusive use of the learned institutions; and, after some time spent therein, the Committee rose and reported a resolution thereupon. The House proceeded to consider the said resolution, and the same being read, the further consideration thereof was postponed until Monday next.

Mr. M. CLAY presented a petition from sundry citizens of Georgetown, stating that the channel of the Potomac was considerably obstructed below Mason's island by a mud bank recently formed, which did not allow more than thirteen and fourteen feet water. A few years back vessels of eighteen feet draught passed the same safely. And praying to be allowed to raise a tax not exceeding one per cent. on the real estate of the inhabitants, to be applied in erecting a causeway from the island to the Virginia shore, which they conceive would effectually cure the evil. They intended to obtain the consent of the owner of the island and the proprietors of the Virginia shore, who are the only persons that can possibly be injured by the work contemplated to be erected. Referred to the last mentioned committee.

HEALTH OF SEAMEN.

Mr. MITCHILL called the attention of the House for a few moments, while he explained a circumstance particularly interesting to the sailors of the United States. The eighth section of the act regulating the merchant service, &c., contained a regulation that vessels of one hundred and fifty tons or upwards, whose crews consist of ten men, should be obliged to carry a medicine chest. But the most dangerous part of our commerce to the health of seamen was that to the West Indies, and it is well known that the vessels engaged in that trade are under one hundred and fifty tons of course the care of the health of such seamen was entirely under the discretion of the merchants and captains, and however distressing it might be, yet the fact was so, that we lost one-tenth of our sailors, nay he believed one-eighth in that particular trade.

It was calculated that one-sixth of our seamen are in an incipient state of a disease, liable to break out on the passage, when they enter on board; of course all vessels ought to make a cautionary provision against the probable consequences. The danger of voyages to the West Indies, and other places, was so great as to preclude the youth of the middle States generally from engaging in a maritime life, and the deficiency was generally made up of foreign seamen; two-fifths of the crews from those ports—indeed he believed three-fifths—were composed of English, Irish, and Scotch, some of whom were naturalized, but others of them contrive to obtain protections without this probationary step, and perhaps it is owing in some degree to this circumstance that we are involved in every war they wage in these everlasting disputes with Great Britain. While he would take effectual care of the health of the seamen at sea, he would throw it out for consideration whether the medicine chest ought to be at the expense of the merchant or seamen. It will be recollected that seamen pay twenty cents a month, hospital money, to form a fund for their assistance in sickness on shore. He did not understand why they should

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not contribute to their own safety at sea—the captain generally performing the part of the physician in the latter case, as the hospital physicians did in that first mentioned. He moved the Committee of Commerce and Manufactures to inquire into the propriety of altering the law on this point, which was agreed to, and that they may report by bill or otherwise.

CHAIRMEN OF COMMITTEES.

Mr. DAWSON reported from the committee appointed for forming a rule of the House, respecting the mode of appointing chairmen to the standing and select committees. The principle was, that the member first named by the SPEAKER should be chairman; but in case of absence, or being excused by the House, the majority of the committee should choose one of the members chairman in his stead.

Mr. R. GRISWOLD wished to amend the resolution so that in the case of the excuse or absence of the first named member, the next on the list be the chairman, and in like manner the senior member be the chairman when the others are absent or excused; believing that this mode would provide for every case that could arise.

Mr. DAWSON thought the committee were the best judges of who was the most proper member of their own body to preside as chairman in any event of the absence or excuse of the chairman appointed by the SPEAKER.

Mr. R. GRISWOLD urged the adoption of an uniform system. The SPEAKER appoints the chairman of the Committee of the Whole, of the standing committees, and the select committees. He thought the principle ought to go through.

Mr. DANA did not consider the subject of much importance; but after the excuse by the House of the chairman of the Committee of Claims, another member was appointed in his stead. The second gentleman on the list declined, and the subsequent embarrassment arose. He stated what was, in his opinion, the Parliamentary rule, and wished a consistent rule to be fixed at this time, in hopes the question might be set at rest.

Mr. HOLMES wished to correct a part of the statement made by the gentleman who spoke last. He (Mr. H.) was the second person on the list of the Committee of Claims alluded to, but he did not decline the situation of chairman. The fact is, it had never been offered to him, and as he had doubts himself whether he was entitled to the chair, he called the committee together, and they confirmed his doubts by deciding that he had not. He would have it understood that he did not decline, and further, that he would never shrink from a duty which he was called upon to perform, or aspire to a situation to which he was not regularly called.

Mr. ELMER admitted the Parliamentary rule laid down by Mr. DANA, to be right; but he thought the SPEAKER merely nominated a chairman to the Committee of the Whole, under the pleasure of the House, who generally, by their silence, gave a tacit consent which constituted the appointment.

Mr. HOLLAND intended to vote against the amendment, and then against the resolution, with a view of adopting a different principle, viz: that the standing committees be chosen by ballot, and after being met, they should choose their own chairman.

Mr. ELLIOTT hoped the amendment would obtain, if it were only to prevent the motion threatened by Mr. HOLLAND, but he doubted if the amendment was altogether so definite as might be wished; the words senior member might be applied as well to a gentleman's age as to his standing on the list of the committee.

Mr. LEIB would prefer the amendment to the resolution as it stood, if for no other, yet for this one consideration: The committee, for example, consists of seven members, the chairman being absent, the six remaining members are then to vote for another chairman. Suppose they divide three and three, there is no decision, and they are then placed on the spot we now stand, and the question is left exactly as we found it.

Mr. R. GRISWOLD explained that the words "in like manner," alluded to the seniority or order in which the members' names stood on the list of appointment.

Mr. ELLIOT had not adverted to the words "in like manner," when he was up. He therefore withdrew his opposition.

Mr. SLOAN conceived there would be a consistency in another mode of appointment. The people appointed the House of Representatives, the House appointed the SPEAKER, and the SPEAKER or House may appoint their committees. Why then not let the committees appoint their own chairmen?

Mr. GREGG, after explaining what had heretofore been the practice, noticed the inconvenience of appointing the chairman of a committee chosen by ballot, and, for the sake of regularity, would vote for the amendment.

The question on the amendment being taken, was lost—forty-five only voting for it, and fifty-six against it.

On the question to agree to the resolution, the House divided—fifty in the affirmative, and fifty-six in the negative. Of course it also was lost.

Mr. HOLLAND offered his motion that all committees shall choose their own chairman, and it shall be incumbent on all persons, so chosen, to perform the duties of that function, unless excused by the House. This motion lies one day on the table as a matter of course.

FRIDAY, November 23.

Mr. EUSTIS, from the committee appointed, presented a bill to regulate the clearance of armed merchant vessels; which was read twice and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from SAMUEL L. MITCHILL, one of the members for the State of New York, stating "that the Legislature of the said State having appointed him a Senator of the United States, he had taken a

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seat in the Senate, and of course resigned his seat in this House."

The said letter was read: Whereupon the SPEAKER was requested to inform the Executive of the State of New York of the resignation of SAMUEL L. MITCHILL, one of the Representatives from that State.

Ordered, That Mr. LOWNDES be appointed of the Committee of Commerce and Manufactures in the room of S. L. MITCHILL, who hath resigned his seat in this House.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency of extending the time for claimants to lands under the State of Georgia, lying south of the State of Tennessee, to register the evidences of their title with the Secretary of State; and that the said committee report thereon to the House.

Ordered, That Mr. CLARK, Mr. CUTTS, and Mr. BRYAN, be appointed a committee pursuant to the said resolution.

Mr. HOLLAND's motion of yesterday authorizing committees to appoint their own chairmen, was considered, and on the question, Will the House agree to the same? it passed in the negative, only thirty-three members voting in its favor.

Mr. R. GRISWOLD moved another resolution on the same subject, giving the committees power to elect their own chairmen if a majority was so disposed; if not, that the first named member shall be the chairman; in case of his absence or excuse, then the second; and if neither of these members were present, then the next member named on the list. This motion was laid on the table.

On motion of Mr. EUSTIS to dispense with the standing rule of the House, it met an unanimous acquiescence, and the resolution was afterwards modified and agreed to as follows:

"That the first named member of any committee appointed by the Speaker or the House shall be the chairman, and in case of his absence, or being excused by the House, the next named member, and so on, as often as the case shall happen, unless the committee shall, by a majority of their number, elect a chairman."

Mr. RHEA, of Tennessee, moved the following resolution:

Resolved, That it is expedient to provide, by law, for exhibiting and registering in proper offices, in the original language, and in the language used in the United States, all evidences of title and claim for land within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, which have originated by virtue of any legal grant made by the French Government prior to the Treaty of Paris, of the tenth day of February, in the year one thousand seven hundred and sixty-three; or of any legal grant made by the Government of Spain, subsequent to the convention made by and between the French Government and the Government of Spain, of the third of November, one thousand seven hundred and sixty-two, and prior to the Treaty of St. Ildefonso, of the first of October, one thousand eight hundred; or of any legal grant made by the British Government, subsequent to the said Treaty of Paris, of the tenth day of February, in the year one thousand seven hundred and sixty-three, and prior to the Treaty of Peace of the third of September, one thousand seven hundred and eighty-three.

Ordered, That the said motion be referred to the committee appointed the 12th instant, on so much of the Message from the President of the United States as relates "to an amelioration of the form of government of the Territory of Louisiana."

MONDAY, November 26.

Another member, to wit: BENJAMIN TALLMADGE, from Connecticut, appeared, and took his seat in the House.

The SPEAKER laid before the House a letter from the Clerk, enclosing a letter addressed to him from the Rev. William Bentley, of Salem, in the State of Massachusetts, dated the sixteenth instant, declining to accept the appointment of one of the Chaplains to Congress, for the present session.—Ordered to lie on the table.

The petition of Benjamin Emmons, as agent of sixty associates, in Vermont, praying for a grant of land in Louisiana, for settlement, which was postponed at the last sessoin, was called up.

Mr. ELLIOT moved its reference to a select committee.

Mr. NICHOLSON thought it ought to go to the committee appointed on that part of the President's Message, which relates to the amelioration of the government of Louisiana, and asked if such a motion would be in order?

The SPEAKER said that both committees must be considered as select ones; and Mr. ELLIOT insisting on his motion, it was put and carried by a great majority, and a committee of seven appointed, viz:

Messrs. ELLIOT, CLOPTON, WHITEHILL, HASTINGS, PALMER, WINSTON, and BUTLER.

The House resolved itself into a Committee of the Whole on the bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina. The bill was reported to the House with its amendments, and ordered to be engrossed, and read the third time tomorrow.

PRESERVATION OF PEACE.

The House resolved itself into a Committee of the Whole on the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

The first section authorizes the President and other proper officers to call in the aid of the militia, regular troops, or armed vessels, to execute civil process upon offenders who take refuge on board foreign armed vessels.

On motion of Mr. NICHOLSON, any commanding officer refusing to obey a requisition to this effect was subjected to a fine not exceeding five thousand dollars.

Mr. R. GRISWOLD, observing in the latter part of the first section, the words "and if death en-

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'sues on either side, those who are concerned in 'support of the civil authority shall be justified, 'and those engaged in resisting shall be punished 'as in cases of homicide committed in resisting a 'civil officer," wished to know what the punishment should be, as he did not recollect that Congress had heretofore ever made any law on this point, or perhaps it was intended to be punished under the State laws where the cases should arise; in the latter mode, the punishment would not be equal, for some States punish this offence with more severity, others more mildly. As this was a penal law he thought that great precision was expedient, so as to leave as little latitude as possible for construction.

Mr. NICHOLSON remarked that homicide committed in resisting a civil officer did not stand in their statute book; but the law of 1798, defining crimes and punishments in the exclusive territory of the United States, its forts, and arsenals, made provision for punishing manslaughter: he would agree to strike out the first and insert the last, and then the punishment would be uniform for crimes of the same species, viz: three years' imprisonment and one thousand dollars fine.

Mr. NELSON was sorry to differ from his colleague, (Mr. N.) on this point, but he could not view the trifling punishment of fine and imprisonment anywise adequate to the crime. Shall the murder of your officer in the execution of the duties of his office be commuted for fine and imprisonment? You fine your militia officer five thousand dollars for not going upon this service, and the man who kills him in resisting your process is fined one thousand dollars and imprisoned for three years. I should certainly recommend something more commensurate to the offence.

Mr. NICHOLSON remarked that homicide, happening in resisting a civil officer, was not considered in the bill as murder; of course the punishment of death was not the proper one, whether three years imprisonment and one thousand dollars fine was exactly what the punishment ought to be, he would not undertake to say. That, however, is the punishment to be inflicted on our citizens upon the commission of manslaughter. But gentlemen should remember that fine and imprisonment is not the only punishment to which such criminals would be liable—upon their arrest they are delivered over to be dealt with according to law. He should have no objection to let the punishment remain as it stood under the several States, but that he considered they were in a considerable degree unequal. The punishment of Maryland was different from that in New York, he believed, but he was not certain that it was milder in Pennsylvania. The punishment by death might defeat the object of justice; it being more than the offence deserved, juries would be inclined to mercy and acquit the criminal, in order to avoid taking his life upon their consciences. Liberty being one of the most desirable things on earth tends in some degree to justify, and if not to justify at least to diminish the offence, as flowing from the principle of self-defence.

Mr. NELSON would briefly state the case, and then he trusted his worthy friend would be of his opinion. They seemed to differ more about words than things. Manslaughter was a hasty killing upon a sudden affray; this, it is true, was never punished with death, either here or in England; but murder was a deliberate killing with malice prepense, and in case such killing take place in demanding an offender from on board an armed vessel and murder ensues, surely the party ought to suffer the punishment of a murderer. The crime of murder is not defined in any of the United States statutes; neither in Maryland, nor perhaps in the laws of any State in the Union; how then are we to come at the description of this offence, or distinguish it from manslaughter, but by a reference to the common and statute laws of England, from which we have borrowed all our legal definitions? Look into all the elementary writers on criminal law, and you will find that the crime of murder is aggravated when a civil officer is killed in the execution of his official duties by a person maliciously opposing the course of legal jurisdiction, and as a punishment he is deprived of life, as a person unworthy of being any longer a member of society; and the clause in the bill contemplates the apportioning of the punishment to this description of homicide, manslaughter, or murder; call it which you will, the effect is the same, and you must support your officers in the execution of their duty, or your laws will be without support.

Mr. EARLY.—The observation made by the gentleman from Maryland who has just sat down, (Mr. NELSON,) struck my mind very forcibly as deserving serious consideration; upon turning to the law of 1798, for the government of our forts, arsenals, &c., where the United States enjoy exclusive jurisdiction, I find that there is provision made as well for the case of murder as of manslaughter; now, with a view to make our penal law correspond throughout, I would suggest to the gentlemen engaged in the discussion, whether it would not be as well to strike out all the words from "resisting" in the thirty-eighth line to the end of the period, and insert in their place the following: "And in case such killing amounts to murder, it shall be punished with death—and in case such killing is only manslaughter, then such offender shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars."

Mr. RODNEY observed, that when a death ensues in the case mentioned by the bill, it must be murder. In ordinary cases between man and man, and death ensues by killing, it might be either murder or manslaughter. Where are we to resort for a meaning but as has been said, to the common law, as a known standard, uniform and invariable? The decisions in the courts of the several States, and their laws on this head, may vary; but the common law describes each of these crimes with accuracy. The definition is founded on the fact. If I take a life by beating a man with a weapon that may naturally be expected to produce death, and death ensues, then my using such a weapon proves malice prepense, for it is an illegal weapon. So if I resist an officer in

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the execution of his legal duty, and kill him in the resistance, it is also murder, for my resistance was illegal and implies malice. Then according to the language of this act, if death ensues, it is murder and not manslaughter. If a man strikes another upon a sudden heat, with a stick, upon the scull, and death ensues, it is manslaughter; but if he strikes with an iron crowbar it is murder; the intention being inferred from the weapon. While Mr. R. urged the propriety of classing the present offence with murder, and consequently punishing its commission with death, he would not be understood as an advocate for that kind of punishment. On the contrary, he was desirous of ameliorating these punishments, and introducing a system that should reform the offender, and restore him, after repairing his offence, to his family and his country; but this cannot at present be done; of course we must apply the rule of punishment as we find, it to make it general and uniform.

Mr. Early, while he concurred in the general doctrine laid down by Mr. R. respecting the common law, was not convinced that the manner in which they had been applied to this particular case was correct. It seemed to be Mr. R's. opinion that no other offence than murder could be committed, if death ensued in resisting the officer; without seeking far, he would adduce one case where a resistance to death would amount only to homicide. Suppose the marshal or sheriff does not conform himself in all things to the instructions of the President, or that he demeans himself improperly, and death ensues, will it be held that the resistance and its consequence amounts to murder? No, certainly; but if he behaves properly, the killing is murder; hence this double provision is necessary to provide for the two cases.

Mr. Dana thought the embarrassment might be attributed to an attempt to combine in one section two different species of crimes, but it was exposed to objections which had not yet been made. The clause gives the marshal or sheriff the power to arrest the offender by force of arms, and then, if the persons resisting kill your officer, it is murder, and shall be punished accordingly. If, however, your officer and his armed force kill any of the offenders resisting, your process for it stands; if death ensues on either side, those who are concerned in support of the civil authority shall be justified, but those engaged in resisting shall be shot, or, if not shot, and they are taken alive, then they shall be fined and imprisoned for manslaughter committed upon their party. He did not think the amendments proposed, take which of them they might, likely to remove the difficulty.

Mr. Nicholson said the case they were about to provide for was different from any other that could arise in civil society. I was devising a punishment for persons who are armed with a species of power to resist a legalized force under their command, and, though they are bound to submit to our laws, yet they have others under their command who are bound to submit to them. An offender seeks protection from the effects of our offended laws on board an armed ship; he is sought by our officer, and the commanding officer, regardless of his proper duty, orders his sailors to defend themselves by resisting the process; in the struggle death ensues; now let it be asked, are those seamen guilty of murder or manslaughter? The servant of a person invested with authority equal to that of a British officer, and directed to do an illegal act, to kill a man for example, though it would be murder in the officer, yet it could be no more than manslaughter in the servant. The case is the same as it relates to the officer and crew; though the latter are not justified to do the act, yet they do not feel themselves justified to disobey their commander. When he was up before, he had not clearly expressed himself for want of attending to the bearing of the whole bill. In England every man's house was his castle; no officer was authorized to break a house open except in cases of treason or felony; an officer attempting it might be killed, and it would amount only to manslaughter. The attempt here to take a man from on board an armed ship might be considered as attempting to break open a castle, and if death ensued it would be manslaughter. The bill, however, authorized the force, and cases might exist in which the killing would be murder —other cases where the killing would be manslaughter only.

Mr. Nelson objected to Mr. Early's amendment, because it left the denomination of the crime to the judge or jury, and how could they determine whether it was murder or manslaughter but by the common law, as the United States had never yet defined either. If the case was defined and left to go to the jury, upon the matter of fact, the objection would be in some degree obviated.

Mr. Nicholson was sorry to see such a discussion had taken place. He would, in order to remove the difficulty, strike out all that related to the punishment, and leave them to be dealt with according to law, when delivered over to the civil authority.

Mr. R. Griswold had two objections. First, that mentioned by his colleague. Where you authorize your sheriff or marshal to take an armed force, and as you justify these in case death ensues, and punish the others as murderers, the sheriff has only to order his men to fire and shoot some; then, for these deaths you hang the rest. This is making short work, and giving no quarter. The other objection was on the ground of the Constitution. He did not see that Congress had power to punish crimes committed against a State, or in its ports or harbors. The Constitution expressly gave Congress power to define and punish crimes and piracies committed on the high seas, but not within a State's limits.

Mr. Smilie observed a great deal of embarrassment had taken place on wording the section; that, however, was not to be wondered at, as the bill had only just been distributed; but the last objection, that it was unconstitutional, deserved very serious reflection; he should, therefore, move the Committee to rise, with a view of giving time for consideration.

Mr. Nicholson had no objection to the Com-

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mittee rising; but he would not have it it understood that he had any Constitutional difficulties to struggle with. Congress had powers sufficient to enforce their revenue laws, and this very bill contemplates that as one circumstance that may occur, and to be corrected. But whence did the gentleman (Mr. R. GRISWOLD) acquire this timidity, this care for State rights? It is believed they have not stood in his way on former occasions, any more than they did in the way of those with whom he acted. In the case of the sedition bill, which trenched upon the State Courts' jurisdiction, there was no squeamishness—the end justifying the means.

The Committee rose, reported progress, and obtained leave to sit again.

REMISSION OF DUTIES.

Mr. J. RANDOLPH called for the order of the day on the report of the Committee of Ways and Means respecting the remission of duties on books imported for the use of colleges and seminaries of learning—the resolution declaring it to be inexpedient to allow the same.

The House taking the subject into consideration—

Mr. J. RANDOLPH observed that the Constitution of the United States was a grant of limited powers for general objects, which Congress had no right to exceed, although they might think the powers too limited. This position, he considered as of primary importance. Its leading feature was an abhorrence of exclusive privileges; it might be called the key to that instrument; every thing which rose up in the shape of privilege, was repressed in a peculiar manner, whether it related to orders or classes of men. Whenever they have touched the doctrine of privilege, the framers of that instrument, and the people of the United States adopting it, have been careful that nothing should be got by inference, or construction; the privileges of this House even, have been precisely defined, and nothing is left for its extension, whatever may be the wishes or disposition of its members. The principle that this Constitution is but a limited grant of power occurs, if not directly, yet frequently and effectually, so that it cannot be mistaken. On the privilege asked for, to permit colleges and universities to import their books free of impost, we refer to the eighth section of the first article, where it is declared that Congress shall have power to levy and collect taxes, duties, imposts and excises; but all duties, imposts and excises, shall be uniform throughout the United States. The impost shall be uniform. It is a lamentable fact, but nevertheless it is a fact, and cannot be too much dwelt and insisted upon, nor too well known, that the ambiguity of language gives our Constitution that character which leaves it in the power of civilians to say it means any thing or nothing. Whatever may have been said on other points, I think in this instance the language is so definite that it cannot possibly be mistaken. They shall be uniform, that is to say, there shall be but one quantum, one mode of collecting, and one manner; there shall not be two measures to mete with. If Congress undertake to exempt one class of people from the payment of the impost they may exempt others also. If they begin with colleges and universities for the advancement of learning, surely they may go on to exempt the clergy and congregation for the advancement of religion; they may exempt their own members. Indeed it cannot be seen where they are to stop, having once overleaped the Constitutional barrier and entered on the wide field of privilege. The duties must be uniform! Nobody can be exempted: the President, if he chooses to import books, must pay the duty as well as any private citizen. In this country we have no privileged class, all must fare alike, every man must bend to the law, and the tax must be uniform whether on land or books.

Perhaps it may be said that the practice under the Constitution has decided against my construction; for philosophical apparatus is exempted from duty when imported for the benefit of seminaries of learning. I agree that philosophical apparatus is exempted by law; but I believe that law to be an unconstitutional law, as well as some others passed by former Congresses. But I do not wish to cast an odium upon its framers, more than they deserve; it might have passed through inadvertence or want of reflection, nay, it might have been the result of pure motives, the advancement of science and literature. Yet to show how intent the Constitution is to guard against powers drawn by construction even on this very subject, which it must have been solicitous to have extended, it has limited the efforts of Congress to promote literature and the useful arts by any other means than that of granting to authors and discoverers the exclusive use of their inventions, and publishing their works. And Congress have no power to promote the advancement of science or literature in any other than this particular way. If these observations are not received as reasons for the report of the committee, they will be considered as the justification of one of its members.

Mr. FINDLEY observed, that in addition to the Constitutional objections urged, he had others on the ground of expediency. The country colleges and seminaries whose funds were small, had seldom or never an opportunity of importing books; they were happy to receive them in the country as donations, or by cheap editions; they would therefore receive no corresponding accommodation, and yet they were more useful and their use more universally felt than those called higher institutions, which claim to be exempted from paying impost. There are only a few of the well endowed academies that can afford to procure foreign books, and when they have them, their circulation is extremely confined; to say nothing more, these reasons would engage me to support the resolution.

Mr. R. GRISWOLD.—The gentleman from Virginia (Mr. RANDOLPH) must have misunderstood me when he supposed I objected to the report because the committee had assigned no reason for the resolution: I mentioned the circumstance merely to show that we ought not then to decide

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With respect to the Constitutional objection he has set up, I acknowledge it is new to me. Such an inquiry may be of great weight, but it does not appear so to me. The paragraph quoted from the eighth section of the first article, "that Congress shall have power to levy and collect taxes," has never struck me in the way it has that gentleman. The words are, "levy and collect taxes, duties, imposts, and excises;" but it drops the word *taxes*, it being settled in another part of the Constitution, and declares that duties, imposts, and excises shall be uniform. The one speaks of direct taxes, the other of indirect—meaning that if an indirect tax is laid it shall be uniform. No one State is to have an excise laid upon its inhabitants unless it extends to the citizens of every other: one part is not to be excised and another excused. This has always been the construction of that section of the Constitution till the present moment, and I think it the true one. It is now said that Congress can only promote science and literature in one way. Why, have not Congress made grants of lands to promote those objects in the Western country? They have. I believe the power of Congress adequate to promote literature in the way applied for; and it has been frequently the case that, even after duties have been paid into the Treasury upon the uniform system, yet individuals have had those duties returned. I do not want to detain the House; but I am well persuaded that the Constitution forms no impediment, and the expediency must be apparent.

Mr. J. Randolph believed the gentleman last up had misunderstood him; but it was not very material whether he was misunderstood or not, as Mr. Griswold had not thought proper to answer him on the principal ground—namely, the Constitutional objection. He however said something: duties, imposts, and excises, shall be uniform. Can they be uniform, when a particular class or corporation are exempt from their payment? This is a new kind of uniformity: it is a species of uniformity I do not understand. He asks if you have not granted land and returned duties received into the Treasury? Indubitably you have. And we have the power, and in some instances the right, to give away the money in our Treasury to objects we think deserving. Have not all the dispositions gone upon the question of particular hardship? But tell me, do these individual cases, resting upon their own merits, class with a wholesale disposal of public money? Suppose you want to raise up an exclusive privilege in favor of, let us say shoemakers, and let them import their materials free of duty; will you bring up as precedent or authority the case of Mr. Messonier, or any other person? Can such a case, standing singular and isolated, be held up to promote the doctrine of exclusive privilege for a corps of thousands? Of lands, the United States have given General Lafayette some acres; they have given the like for schools in the Wilderness country; they may give some to the gentleman from Connecticut; but would any of them contend for an exemption from paying half or two-thirds of the price when the sale was made on a uniform system, and would they ask for an exemption from the payment of their tax if it was imposed? Mr. R. concluded by repeating the idea that if you once step over the barrier there is no security, and if you forgive or exempt the payment of the duties in this instance, Congress may forgive everything to their favorites, when they have any.

Mr. Dana made a reply to Mr. Findley, but it is so difficult to hear gentlemen across the floor, that the Reporter dare seldom attempt to follow them. He considered Mr. Findley's objection as being formed upon the idea that the books composing the libraries of colleges and universities were of the same kind as those used in country schools. Few things were more dissimilar. The one was merely to initiate the pupil in the first principles, the other took a more extensive range, embracing the whole circle of science, the classic authors, and the best writers, ancient and modern—books scarcely ever to be found but in collections attached to literary institutions—and the revenue arising from them may be called a tax upon seminaries of learning.

Mr. J. Clay said he was one of the committee, and had agreed to the report. Since reasons had been called for, he would in a few words assign those which influenced him. The gentleman from Connecticut (Mr. Dana) mistakes in thinking that a denial to exempt books from impost is a tax on literary institutions, and therefore not uniform, as the Constitution requires all imposts should be; but he did not make his stand on the ground of the Constitution—he rested the question upon its expediency. Giving literary institutions the privilege of exemption from imposts would open a wide door for fraud: we should soon have them importing books for sale duty free, rivalling the booksellers, who are subjected to the payment of impost, and vending them in every street and avenue of the nation. But why privilege colleges and universities to accommodate the rich; for we may believe that the rich, and the children of the rich, are the only persons who have access to these collections? The poor have little leisure and less opportunity to improve the advantage which even *neighborhood* would give them to peruse works of the kind alluded to; and sure it would be thought unjust to tax their pittance of imported articles, in order to enable gentlemen to read the classic authors, or the sublime and beautiful of the modern writers.

Mr. Findley spoke of colleges, not of universities. We have three in Pennsylvania—one of them, to be sure, has also the title of university—but two of them have not funds to import books on their own account. It is only rich institutions that have this advantage: the poorer class of seminaries buy of booksellers, and pay them the impost as well as their retail profit. Indeed, this remission of duties will rather tend to create disgust than give satisfaction; and those seminaries which have large collections of books would be induced to sell them at their present price in order to procure new ones cheaper, as they have had to pay the duty on the former, but would have none to pay upon those they should hereafter import.

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The question being called for, it was put on agreeing to the report of the Committee of the Whole, that it is inexpedient to remit the duty on books, and carried in the affirmative—seventy-nine members voting in the affirmative.

The House then adjourned.

TUESDAY, November 27.

Another new member, to wit: JOHN HOGE, returned to serve as a member for the State of Pennsylvania, in the room of William Hoge, who hath resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina was read the third time, and passed.

Ordered, That the Committee of the Whole House, to whom was committed on the twenty-second instant, the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, be discharged from the farther consideration thereof; and that the said bill be recommitted to Mr. NICHOLSON, Mr. BROWN, Mr. GRIFFIN, Mr. RIKER, Mr. HUNT, Mr. SEAVER, and Mr. OLIN.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of the House, in the place of the Reverend WILLIAM BENTLY, who hath declined an acceptance of the said appointment; and upon examining the ballots, a majority of the votes of the whole House was found in favor of the Reverend WILLIAM PARKINSON.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means presented a bill making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object, during the year one thousand eight hundred and five; which was twice read and committed to a Committee of the whole House to-day.

Mr. LEWIS, from the committee appointed, presented a bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac; which was read twice and committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for the support of Government, during the present year, and making a partial appropriation for the same object, during the year one thousand eight hundred and five. The Committee reported the bill with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. LEWIS, from the committee appointed, presented a bill to incorporate the Washington Building and Fire Insurance Company; which was twice read and committed to a Committee of the whole House on Friday next.

PORT OF NEW ORLEANS.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, who were instructed by a resolution of the House, of the twelfth instant, "to inquire into the expediency of allowing, under proper regulations, a drawback of duties on goods, wares, and merchandise, imported into the port of New Orleans, from any port of the United States, and from thence exported to any foreign port or place," made a report thereon; which was read, and referred to a Committee of the Whole on Friday next. The report is as follows:

Upon examining the act passed at the last session of Congress, entitled "An act for laying and collecting duties on imports and tonnage, within the territory ceded to the United States by the treaty of the 20th April, 1803, between the United States and the French Republic, and for other purposes," it appears that the sixth section refuses the drawback on all goods, wares, and merchandise, exported from the port of New Orleans, *other*, than on those which shall have been imported directly into the same, from a foreign port or place. Drawbacks have been allowed in all the ports of the United States, since the first acts were passed laying a duty on imports and tonnage. No inconvenience or loss has or can happen in giving back what we have received in cases where the article is really exported out of the limits of the United States, and many advantages have resulted from pursuing this policy. Our ports thus become the places of deposit for the merchandise of all nations. Our commerce with foreign countries is enlarged. Greater shipments of our own productions can be made. New employment can be given to our tonnage, already respectable and on a rapid increase, and as we necessarily import more than we consume, the surplus is again shipped to other countries. But if drawbacks are discontinued even in a single port, commerce must experience great embarrassments, or it will open for itself some new channels, where the streams of wealth may flow unimpeded and free from improper restraints, and other nations will reap advantages, which a different policy would unquestionably have secured to ourselves.

The duties, to their fullest amount, form a part of the value of all goods, and are always estimated in the price demanded from the consumer, or from the purchaser who intends to ship them for a foreign market; and it must be evident to every one, the least acquainted with the operations of commerce, that if any article is denied the drawback, the price will be depreciated to an equal amount with the original duties with which it may be chargeable.

New Orleans, not only as a port of deposit for the produce of the western country, where it can be shipped to all parts of the world, possesses peculiar and important advantages from its proximity to the British, French, and Spanish settlements in the West Indies. Various articles, whether of European, Asiatic, or American growth or manufacture, which we can readily supply at reasonable prices, can be carried to their ports, and be exchanged for such as they can conveniently spare, and which may be necessary for our own consumption. A commerce known to be highly beneficial to all the parties interested in it; supplying the United States too, in some cases with the precious metals, so necessary in our intercourse with Asia, it is presumed was not intended to be discouraged.

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If we place every description of goods, on a similar footing in relation to drawbacks, whether imported coastwise or direct from foreign countries, upon being exported out of the limits of the United States, the committee conceive we shall then have done all which will be necessary on this occasion. The committee therefore report, as their opinion, that so much of the act entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as refuses the drawback on goods, wares and merchandise imported coastwise into New Orleans, and exported to foreign countries, ought to be repealed; and they submit a bill for the purpose.

Mr. CROWNINSHIELD, accordingly, presented a bill repealing so much of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as prohibits drawbacks of duties upon goods in certain cases; which was read twice and committed to the Committee of the whole House last appointed.

WEDNESDAY, November 28.

An engrossed bill making appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five, was read the third time and passed.

POTOMAC RIVER.

The House resolved itself into a Committee of the Whole on the bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac.

Mr. MACON (Speaker) moved to strike out the first section of the bill, with a view of trying its merits.

Mr. J. RANDOLPH seconded the motion of his respectable friend, (the Speaker.) The river Potomac was the joint property of the States of Maryland and Virginia under compact between those States. This property, at least on the part of Virginia, had never been relinquished. Congress, in his conception, had no right to pass the law in question; but if they had, there was another objection. The corporation of Georgetown were empowered to lay a tax which would be unequal and oppressive, since the property on which it was to be levied would not be equally benefitted by deepening the harbor, supposing that effect to be accomplished. He hoped a prompt rejection of the bill would serve as a general notice to the inhabitants of the District to desist from their daily and frivolous applications to Congress, to the great obstruction of the public business.

Mr. SMILIE understood there was a rival interest between the towns of Alexandria and Georgetown, and as this rivalry had been exhibited on many former occasions, he deemed it proper, before they passed any bill for the encouragement of either place, that the parties should be obliged to publish their intentions some weeks before the application, that if there were any objections to the measure contemplated, they might be before the House at the same time. He stated this merely as a ground of postponement, not saying whether he was in favor or against the measure.

Mr. GREGG thought the House bound to legislate for these people, until they relinquished the claim to the jurisdiction, either by authorizing them to legislate for themselves, or retroceding them to the States to which they originally belonged. He approved of the idea of publishing, as expressed by his colleague, (Mr. SMILIE,) which he considered absolutely necessary. If Alexandria were opposed to the bill, it is probable they would have sent in a memorial on the subject before this time; their not having done so inclined him to believe that they were satisfied that the measure should go into operation. He did not think the bill perfect, but nevertheless he should not oppose its progress.

Mr. LEWIS said the landholders of Georgetown had very generally signed the petition to Congress. And no person out of the walls of this House gave it opposition. The people of Alexandria were content, and the owner of the island and the west shore of the river was the person most likely to be affected, yet he had given it his hearty assent. He was well persuaded that no injury would be done to the navigation of the Eastern branch, or to the port of Alexandria; if therefore they could render a benefit to Georgetown, without injuring any other property, he trusted the House would agree to the bill.

Mr. SLOAN felt interested in the result of this measure. The people here have nobody to look to but Congress to make Legislative provision for their well-being; he therefore considered it a duty to attend to their desires; but he wished the applicants to give notice of their intentions, in order that any person conceiving himself likely to be aggrieved should have an opportunity of being heard. This was the usual course pursued in the State where he resided.

Mr. CLAIBORNE was by no means satisfied that the removal of the mud bank would do no injury to the Eastern branch and to Alexandria.

Mr. NELSON said that, on a question so important to the upper parts of Maryland and Virginia, he could not refrain from stating some reasons in favor of the measure, and against the motion of the Speaker, which was intended to destroy the bill. It had been urged that the sediment which now obstructed the navigation to Georgetown, if set afloat, by increasing the current and volume of water across it, would impede the navigation of the Eastern branch or fill up the harbor of Alexandria. Those who would take a view of the Eastern branch would be convinced it could make no deposit there, it being intercepted or turned aside by the point which projected into the

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Potomac; and as the water of the Eastern branch was more rapid than the Potomac, the breadth of the latter being much wider than the former, there certainly was no danger to be apprehended in that quarter. As to Alexandria, it was not to be supposed that the solid mass of sediment was to be taken off the bar at once and lodged in that harbor; the probability was, it would remove gradually and deposit at the eddy on each side the river, while the union of the Eastern branch with the Potomac would increase the celerity of the current and carry it far below Alexandria.

The compact mentioned by the gentleman from Virginia (Mr. RANDOLPH) between the States of Maryland and Virginia he acknowledged to exist; but as the measure contemplated the improvement of the navigation of the Potomac, instead of obstructing it, the right of each State to the free navigation thereof remained unimpaired. He imagined that the inhabitants of Alexandria and the citizens of Virginia wished success to the measure. He knew his constituents had it much at heart, knowing that a choice of markets is a great accommodation to farmers; and if defeated, it would be as much to their advantage to bring their produce to a shipping port at once by land, as to use the canal recently constructed at such prodigious expense, having afterwards to go with their produce to Alexandria by land.

Mr. SMILIE should not be against the bill, if upon full and fair inquiry it was found proper to pass it. But he could not agree to be hurried along without allowing time to acquire information. He therefore moved that the Committee rise and report progress.

Mr. MACON (Speaker) opposed the rising of the Committee, because it was leaving the business exactly where it stood, unless it was meant to recommit it to a select committee for modification. But as he was determined to vote against it in any and every shape, he was prepared to decide now. As to the mode he had taken to come at his object, he should only say it was a fair one, and such as had been the uniform practice of the House since he had a seat in it.

The gentlemen in favor of this dam or causeway, say it will do no harm; but where is the demonstration? On the other side, serious apprehensions are entertained of its injurious effects upon the United States navy yard in the Eastern branch, and its causing obstructions in the harbor of Alexandria. He would assure the committee he was ready to promote the welfare of any of the citizens; but it must in justice be done, without injuring any other portion whatever.

At the last session, an application was made for a permanent bridge across the Potomac, with a draw for the passage of vessels; the petitioner urged the general utility of the measure to all persons travelling North or South, but particularly the vast benefit accruing to the inhabitants of the District, by affording a solid and secure means of intercourse between its several parts. This measure was opposed by the present petitioners, on the ground of the compact between Maryland and Virginia, securing the right of free navigation to the river, and also alleging that their navigation to Georgetown would be impeded. The argument which they applied then, now applies against them, and it ought, in the minds of the same legislators, apply with equal success.

Mr. FINDLEY was rather in favor of the bill, believing the mode proposed would be successful in deepening the channel, which would certainly improve the navigation to and from Georgetown, and in that object the citizens of some of the western counties of Pennsylvania were materially interested; several of their boatable creeks nearly interlocking with those of the Potomac. He would however agree to the Committee rising, with a view to postpone the bill, until gentlemen acquired the information they asked for.

Mr. GODDARD hoped the Committee would rise, and the subject be postponed until sufficient light was obtained to guide their votes to a proper decision. He also hoped that no member might be considered as the friend or the foe of the present bill, until he became such by an examination into its merits or demerits. He narrated the course the business had taken since its introduction into this House, and inferred that the same deliberate mode ought to be pursued to the end. Whether the measure was good or evil could only be determined in that way, and gentlemen ought not to reject doing positive good, unless it was demonstrated that positive evil would result to counterbalance the good that was intended. He conceived the members ought to inquire for themselves on this point, and legislate accordingly. He would on all occasions endeavor to promote the interests of the District; and as it had no immediate representative on the floor, he considered every representative bound to serve them, while the seat of Government remained among them.

Mr. G. W. CAMPBELL would not declare whether he should vote for the final passage of the bill or not. But he was disposed to take notice of the applications made from time to time by the inhabitants of the District; whether to redress grievances, or procure benefits. But he by no means approved of the principles of legislation without representation. He regretted that they were placed in this unfortunate situation; but he should decide on the present question according to its merits; and if it was found to be of great consequence to the petitioners, and not likely to work an injury to others, he presumed the bill would finally pass. But he wished the Committee to rise, in order to give further time to obtain information. It had been alleged that the friends of the measure ought to demonstrate that the erection of a causeway would do no injury to any one. This was not a fair position; it was requiring them to prove a negative. The burden of proof should lie on those who oppose the bill, and it was for them to demonstrate that injury would result. The gentleman from Virginia (Mr. J. RANDOLPH) has stated that the boats from the western country have a choice of passing by the western or eastern channel to the market below Georgetown, and this, it is presumed, he means they should be

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still entitled to under the compact between Maryland and Virginia. Let us hear from those persons also, and then ascertain whether they have any objection to the project on that account. This was also an argument in favor of the rising of the Committee, and perhaps it may be added, that a little delay will enable the House so to modify the bill as to render it less exceptionable than at present.

Mr. Southard had not considered this subject of much consequence in the outset, but he found that its importance increased as it toiled along. He thought this morning it would have occupied but a short portion of their time; in that he found himself deceived; and he believed he was not singular in these opinions. He suspected many other members were in the same predicament. He therefore would vote for the Committee's rising. That navigable waters are considered as highways, is a matter of great notoriety; but he did not know that to deepen a channel, by contracting its surface, was considered as obstructing the free navigation of a river, nor could he conceive that the body of sediment meant to be removed, would descend *en masse* and deposit itself at the confluence of the next stream it met. On the contrary, he imagined it would be separated by the force of the current giving it action into millions of particles, some of which would settle promiscuously on either side, while a part would ultimately be deposited in the ocean.

The Committee hereupon rose and reported progress, and asked leave to sit again. On the question, shall the Committee have leave to sit again?

Mr. J. Randolph requested that the act of cession by Virginia might be read, by which it would clearly appear that she had not ceded, or intended to cede to the United States any right acquired under her compact with Maryland. [The act was read.]

It is plain from the preamble, said Mr. R., that the intention of the State was to make a cession above the tide water; that the expected seat of Government would be fixed in some place contiguous to the limits of Maryland and Pennsylvania. It is not contended that the United States were bound to select any particular spot. This circumstance is mentioned only to show what was contemplated at the time by the Legislature of Virginia. Her act of cession was more broad. It extended to any tract of country not exceeding ten miles square, "to be located within the limits of the State." Over this she had relinquished to Congress her jurisdiction as well of soil as of persons. But her limits did not extend beyond high water mark on the western bank of the Potomac. Her right of highway on the river was a natural right acknowledged and secured by convention with Maryland. Her civil jurisdiction over its waters was a conventional right, entirely derived from compact with that State, was a jurisdiction not within her limits, and which the words of the act just read could not embrace or convey.

Mr. Dawson would vote against the Committee having leave to sit again. He was convinced that the objection made by his colleague (Mr. J. Randolph) was conclusive: the fact was, that neither Maryland nor Virginia had ceded their joint rights to this river, nor could they do so, by their separate acts. The terms of the compact requiring that anything done respecting the navigation of the Potomac, should be done by their joint act. It was worthy of remark, that the petitioners for the causeway were the identical persons who petitioned against the bridge as a violation of the compact between the two States, and denying the authority of Congress to legislate on the subject of the navigation of the Potomac. He thought them right then, and he voted against the bridge. His opinion had not changed with their opinions, and, therefore, he should vote against the causeway now.

Mr. R. Griswold said that from the vote just taken he presumed that the question of expediency had been settled. But it is now objected that Congress have no exclusive jurisdiction over the Potomac. In reply he would submit a few observations. By the Constitution, Congress were empowered to exercise exclusive jurisdiction over any place not exceeding ten miles, which might be ceded by particular States. The States of Maryland and Virginia had ceded this District to Congress, and the cession had been accepted. But the gentleman from Virginia (Mr. Randolph) had said that Virginia did not cede the jurisdiction of the Potomac, because she did not own it separately. To this he would answer that the river Potomac must have been under the jurisdiction of either Maryland or Virginia or both. And as both allowed Congress to accept of any part of their territory not exceeding ten miles square, and Congress had chose to accept of part from one and part from the other, he presumed the jurisdiction of the Potomac, let it have been held by either of the States, or jointly, must have passed to the United States. He was of opinion, that if Congress had no jurisdiction over the Potomac, they had none over the District. The Constitution provides only for the cession of one district of country not exceeding ten miles square. The act of Congress made in pursuance of the Constitution had also provided for the laying out one district. If the arguments of the gentleman from Virginia were correct, and Congress had no jurisdiction over the Potomac, the Commissioners and the then President of the United States, under whose direction the district was laid off, had been mistaken, and had taken two districts of territory instead of one. This being the case, Congress had no jurisdiction in the District, because it not being laid off conformable to the Constitution and the law of Congress, the acceptance by Congress was absolutely void. If this was correct, there was an absolute necessity for giving leave to the Committee to sit again, for the purpose of deliberating whether Congress had jurisdiction or not. If they had not, and were legislating for the people of the District without authority, the sooner they put an end to such an assumption of power the better.

Mr. J. Randolph declared that the opinion which he had just given was the result of his

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most deliberate judgment. To what it might lead he should not at that time undertake to determine; but when that question should come before the House he was not sure that he should deny the corrollary of the gentleman from Connecticut, (Mr. R. GRISWOLD,) at least as far as related to the testimony on the other side of the river. The question, however, then was, whether Congress possessed exclusive jurisdiction over the Potomac. How could they acquire it? From Maryland? It was more than she had to give. At farthest she could only grant her own qualified right. Had they obtained it from Virginia? not at all. She had granted a jurisdiction exclusively her own, over a tract of country within her limits. And could any man pretend to say that this was a grant of her concurrent jurisdiction over the Potomac, confessedly without her limits? She had, to use the expression, issued her warrant to Congress, to be located somewhere within the State, and, under this pretext, her property out of the State was about to be usurped. Suppose the gentleman from Connecticut were to convey by deed his exclusive property, by certain metes and bounds, would his joint interest in other property not contained within those bounds pass by such a deed? Surely not. To a person setting up a claim to such property he would probably say, produce the evidence of your title; and in like manner Mr. R. demanded to be shown the conveyance by which Virginia had relinquished her concurrent jurisdiction over the Potomac? And in answer to this, gentlemen refer to a conveyance relinquishing something else in nowise connected with it, and tell us we always believed that we had a grant for this jurisdiction; we shall be grievously disappointed if we have not; it will be a great inconvenience to us to do without it, and, therefore, we must have it. And Virginia is to be forcibly dispossessed of her right, to suit the convenience of Congress.

Mr. NELSON said, it was with diffidence he again troubled the House after the lengthy discussion which had taken place. But doubts having been originated as to the authority of Congress to pass the bill in question, he felt compelled to remove those doubts, as far as lay in his power. As the House had decided the expediency of the measure by a large majority, if upon an investigation it should be demonstrated that Congress possessed ample power to pass the bill, he trusted the same majority would still be found in favor of it. He would proceed to examine the power which Congress possessed to pass the bill, and he trusted that he should be able to satisfy a majority of the House, that they had sufficient power. Previous to the compact between Virginia and Maryland, which had been so much talked of, Maryland claimed the sole jurisdiction of the Potomac river, and Virginia claimed Cape Henry and Cape Charles, also the jurisdiction of the Pocomoke as her property. In order to prevent any duties from being imposed upon their vessels at either of those places, the two States entered into a compact by which Maryland agreed that the navigation of the Potomac should be free to the people of Virginia, and Virginia contracted not to impose duties on the vessels of Maryland coming by Cape Henry, or navigating the Pocomoke. By this compact, the Potomac became the joint property of Maryland and Virginia as to the free navigation, but all the islands were under the jurisdiction of Maryland. This being the situation, each of these States, by a law, ceded to Congress any part of their territory not exceeding ten miles square, which they might choose to accept. Congress chose to accept of part from one and part from the other; and, among the rest, this joint property the river Potomac. There was no exception made in the act of cession as to the water courses, and it would be needless to inform the members that a grant of land necessarily carried with it a grant of the waters thereon, unless an exception was made.

But, it had been said, that this being joint property, neither of the States had the power to grant it to Congress, and they had not done it jointly. To this, he would answer, that each State had granted to Congress all their right at different times, and Congress having accepted of it, the whole had vested in them. If two persons, to wit, A and B, are possessed of joint property and A grants the whole to C, the moiety passed thereby. After this, if B grants the whole to C also, his part passes by the grant, and C becomes proprietor of the whole. This was exactly similar to the present case. But he would ask gentlemen if the jurisdiction of the Potomac was not in Congress, in the body of what county was it? If not in Alexandria or Washington counties, it could be in no county. Suppose, then, a crime should be committed on the river, in the body of what county should the indictment state the crime to have been committed? It could not be in the county of Fairfax or Montgomery, because the parts of those counties adjacent to the river had been ceded to Congress. Then, if the doctrine contended for by gentlemen was correct, no offence could be committed on the Potomac, as far as the limits of the District extend, and it would become a sanctuary for crimes. He trusted this was not the case, but that the river was, by the cessions, granted to Congress, and was in Washington and Alexandria counties. He considered the argument of his colleague (Mr. NICHOLSON) that Virginia had no property in the river, which she could cede, of no avail; because, if that was the case, Maryland owned the whole, and Maryland had ceded it to Congress. He hoped the Committee would be granted leave to sit again.

Mr. J. RANDOLPH.—The gentleman asks in the body of what county is the river Potomac passing through the District of Columbia? Will he take it for an answer that its jurisdiction is within the bodies of the same counties it was in before the acceptance of the territory on each side?

In addition to the observations made on passing joint property with exclusive property, suppose England and France to hold Malta in joint possession, and that they cede to Germany, for her acquiescence in that measure, some of the exclusive property held by each within the German

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empire, will they say that their joint property in Malta passed by the treaty?

Mr. CLARK was unwilling to trouble the House at that late hour with any remarks, and would have entirely forborne, was not the question on which we were about to decide, and which had become extremely important, susceptible of a position which it had not assumed. It had been stated, and generally agreed to, and he supposed was correct, that the State of Maryland, previous to her compact with Virginia, rightfully claimed the whole river Potomac to the high-water mark on the western bank. Virginia owned the Capes. This collision of interest produced, in the year 1786, an adjustment of their interfering interests, and it was expressly stipulated that the river Potomac should remain a highway, free for the navigation of each State. In the year 1799, the Legislature of Virginia passed a law making a cession to the United States of a territory ten miles square, or any less quantity that should be accepted for the seat of the General Government, to be located and laid off within her limits; thus by the terms of her cession confining it to her territory. Maryland, nearly at the same period, made a similar cession. Out of these two cessions is the present Columbian Territory made. It is contended by the gentleman from Maryland, (Mr. NELSON,) that the two States uniting in the cession makes the grant complete, and the right in the United States predominant and exclusive. He acknowledges, at the same time, this correct principle that they could grant no greater right than they possessed. This doctrine, I hold incontrovertible, that the alienee can have no greater or better title than the alienor, otherwise the derivative would be superior to the original title, a principle not to be admitted.

Let it be distinctly recollected that, prior to the cession, Virginia had purchased a right out of the soil of her sister State, distinct from the land—an incorporeal hereditament, a franchise which she had the right of exercising, unconnected with the use of the soil—so that, while Maryland owned the land, Virginia owned the right of way. She never passed this right by the terms of her cession or by any other act. Maryland could not, having already parted from it. No strength of argument can be derived from the terms of the Constitution; for, if Virginia never parted with her right, the United States could never have acquired it. I trust I have shown that Virginia purchased a right in the navigation of the Potomac, which she never parted from, and, of course, retains to this moment. We, therefore, cannot constitutionally legislate on this subject.

Let it not be said that the object is improvement and not obstruction. Is not building the wall from Mason's island to the Virginia shore an obstruction, and the improvement at best problematical? But, this is begging the question. On a fair admission of my construction, I contend, and have endeavored to prove, that we, possessing no jurisdiction over the river, it cannot be touched by any Legislative act of ours in any point whatever. For, if it be touched in one way, it may be in another, and may finally end in whatever arrangement Congress may think expedient to make.

He had another objection to the bill. This might be but the commencement of a scheme which should compel all boats coming down the Potomac, to unlade their cargoes here. This would be effected by obstructions in the river above, and a canal terminating in a basin in this city; thus diverting to the exclusive benefit of Washington, all the labor and expense which had been jointly incurred by Maryland and Virginia for opening the navigation of the river Potomac. When the Constitution of the United States was under consideration, that section which gave Congress exclusive legislation over a district not exceeding ten miles square, to be afterwards ceded to them, was viewed with a jealous eye. It was regarded by some of the best and greatest men who ever had lived, or who, he believed, ever would live, as the germ of incalculable mischief, as the ambush from which the masked monarchy of the Constitution was to spring upon the people. At one time, this prediction seemed to be verifying itself. Accordingly, we had seen a city laid out on a gigantic scale. Edifices the most stupendous were planned. We seemed determined not only to vie with Paris or London, but to rival Thebes or Babylon of old. Happily these splendid visions had ended in a monstrous abortion. He wished to see the people of the District restored to their rights. So long as they remained in their present condition, he should be averse to promote the growth of a city, which he considered to be as much the nursery of despotism as the Newcastle trade of England was of seamen.

Mr. JACKSON did not stop to inquire whether it was proper for Congress to retain the jurisdiction over this District, but he was willing to remove a grievance which the people complained of and required to be done. He was not one of those who was disposed to guard the people against their worst enemies, themselves, as he did not believe the doctrine to be true. The objection that Virginia and Maryland had only ceded their exclusive property, and not the joint property of the free navigation of the Potomac, might, perhaps, be extended further than gentlemen wished, or were aware of. By the Treaty of Paris, France had ceded Louisiana in full sovereignty to the United States, but expressly reserved the right of free navigation of the Mississippi; if, then, the United States were disposed to shorten the navigation by cutting through the bend of that river, or in any other way improve the same, will it be necessary for the United States to consult and obtain the assent of France to the measure before they ventured to put it in execution?

Mr. NICHOLSON had but few observations to make upon the question before the House. His opinion was the same as at the last session when a petition was presented for the erection of a bridge. He then thought that the erection of a bridge over the Potomac would tend much to the improvement of the place. He thought so still. But he then thought that Congress had no right

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to interfere in the least with the free navigation of the Potomac, and, of course, was opposed to the bridge. The same reason operated, in his mind, against the bill now in question. Neither of the States of Maryland or Virginia could have passed such a law previous to the cession of the District to Congress. The question to be determined, then, was "whether the jurisdiction of the Potomac was ceded to Congress." If this should be answered in the negative by the Committee, all questions as to the expediency of the measure would be at an end. Previous to the compact between Virginia and Maryland, the latter claimed the river Potomac as its exclusive property. By that compact it was declared that the navigation of the said river should be free. Virginia, therefore, acquired a kind of property in the river, inasmuch as she acquired the right to the free navigation thereof. The question, then, to be inquired into, was, Had Virginia parted with this right? He conceived she had not. By the act authorizing the cession of ten miles square or less to the United States, this could not have been done; Virginia had no power to make the cession of the Potomac, because she had not the jurisdiction over it, and could not grant more than she possessed. After this grant by Virginia, the State of Maryland granted to Congress a portion of territory not exceeding ten miles square for the seat of Government. Had Maryland the sole property in the river it could have passed in this grant, provided Congress accepted that part of her territory. But she had not this sole property, because the State of Virginia had a right by compact to the free navigation thereof. How, then, had the United States acquired the jurisdiction over the Potomac? Would it be contended that they had acquired it from Maryland? This did not appear from the act of cession. Had they acquired it from Virginia? That could not be, because Virginia had no power to make such a grant. So long as he had the honor of a seat in the House, he would hold up his hands against any measure like the present, which would go to affect the rights of any of the States. If Congress had a right to interfere in the least with the free navigation of the Potomac, they had a right to stop it altogether. He conceived they had no right to pass any law on the subject; and, believing so, he would certainly vote against the Committee having leave to sit again.

Mr. CROWNINSHIELD was of opinion that due notice ought to have been given by the applicants of their intention to petition Congress on the subject, that private property might not be injured without the knowledge of the owners; he believed the causeway might be of use, but he was not a competent judge; but others very probably would be benefited besides the inhabitants of Georgetown, and he thought it reasonable that such should likewise contribute to the expense. Till these circumstances should be ascertained, he would vote against the Committee having leave to sit again.

On motion the Committee rose and the House adjourned.

THURSDAY, November 29.

A petition of sundry citizens of the United States, and inhabitants of the Territory of New Orleans, was presented to the House and read, stating their approbation of the government prescribed for that Territory, by an act passed at the last session of Congress; and praying that, whenever the said Territory of Orleans shall, consistent with the Constitution of the United States, be admitted as a State into the Union, such conditions may be annexed to the admission as will secure to the petitioners the use of their native language in the Legislative and Judicial authorities of the same.—Referred.

A representation of sundry citizens of the State of Massachusetts was presented to the House and read, stating a claim for the value of certain lands purchased by them under an act of the Legislature of Georgia, passed in the year one thousand seven hundred and ninety-five, which have since been ceded to the United States, and praying that the subject-matter of their said claim may be taken into the immediate consideration of Congress, and a speedy decision had thereon.

Ordered, That the said representation be referred to Mr. VARNUM, Mr. MERIWETHER Mr. TIBBITS, Mr. THOMAS M. RANDOLPH, and Mr. NELSON; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On a motion made and seconded that the House do come to the following resolutions:

Resolved, That it is expedient for Congress to recede to the State of Virginia the jurisdiction of that part of the Territory of Columbia which was ceded to the United States by the said State of Virginia, by an act passed the third day of December, in the year one thousand seven hundred and eighty-nine, entitled "An act for the cession of ten miles square, or any lesser quantity of territory within this State, to the United States in Congress assembled, for the permanent seat of the General Government;" provided the said State of Virginia shall agree thereto.

Resolved, That it is expedient for Congress to recede to the State of Maryland the jurisdiction of that part of the Territory of Columbia within the limits of the City of Washington, which was ceded to the United States by the said State of Maryland, by an act passed on the nineteenth day of December, in the year one thousand seven hundred and ninety-one, entitled "An act concerning the Territory of Columbia and the City of Washington;" provided the said State of Maryland shall consent and agree thereto:

Ordered, That the said motion be referred to a Committee of the whole House on Wednesday next.

ARMED MERCHANT VESSELS.

The House resolved itself into a Committee of the Whole on the bill to regulate the clearance of armed merchant vessels.

The bill was read, as follows:

Be it enacted, &c., That, after due notice of this act at the several custom-houses, no merchant vessel armed, or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the port where she may be armed or provided, without bond,

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with two sufficient sureties being given by the owner or owners, or by the master or commander, to the use of the United States, in a sum equal to double the value of said vessel, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault, or violence, against the vessels, citizens, subjects, or territory of any nation in amity with the United States: *Provided*, That the regulations herein contained shall not be construed to extend to vessels bound to any port or place in the Mediterranean, or beyond the Cape of Good Hope.

SEC. 2. *And be it further enacted*, That, if any armed merchant vessel clearing for any port or place within the Mediterranean, or beyond the Cape of Good Hope, shall make or commit any depredation, outrage, or unlawful assault, or violence, as aforesaid, on her voyage to or from, or at any place to which she may be bound, such vessel, with her arms and cargo, or the value thereof, shall be forfeited to the use of the United States.

SEC. 3. *And be it further enacted*, That, on satisfactory evidence or information being given to the collector of any port that any vessel within the same is armed or arming, or provided with the means of being armed at sea, for the purpose of committing any unlawful act as herein before expressed, or of carrying on by force of arms, any unlawful commerce, it shall be the duty of such collector to detain such vessel until the case be submitted to the President of the United States, who is hereby authorized to cause such vessel to be disarmed, or to order a clearance to be granted, as he shall judge proper.

Mr. CROWNINSHIELD moved to amend the first section of the bill in such manner as to prevent armed merchant vessels from clearing out for one port and sailing for another; it would prevent a deviation from the true voyage.

Mr. J. CLAY thought this alteration would extend beyond what was the true object of the bill; it might interrupt the European trade, while it was only intended to prevent the forced trade to St. Domingo. He suggested an amendment to the amendment, viz: to confine the forfeiture of armed vessels clearing from one port of the West Indies, and which shall proceed to any other port or place than that of her original destination.

Mr. CROWNINSHIELD moved, then, to strike out the whole of the second section. He thought it unreasonable to forfeit the cargo as well as the vessel, her arms, tackle, and furniture.

Mr. RODNEY asked whether the Committee would not be put to greater inconvenience by striking out the section than by amending it?

On the question to strike out, it was lost—only thirty-two voting for the motion.

Mr. J. CLAY then moved to insert the amendment he had suggested, adding thereto, "unless compelled by stress of weather." The sole object being to confine the regulation of the clearance of armed vessels to those destined to the West Indies.

On a division, Mr. J. CLAY's motion was agreed to—yeas 62.

Mr. CROWNINSHIELD then offered another amendment, to extend the regulation of the clearance of armed merchant vessels to the Mediterranean and beyond the Cape of Good Hope.

Mr. J. CLAY did not see the necessity of this amendment, as vessels bound to those places never touched at the West Indies.

On the question, only 24 members were in favor of the motion; of consequence, it was not carried.

Mr. CROWNINSHIELD then moved to strike out that part which related to the forfeiture of the cargo, in which he was supported by

Mr. EUSTIS, who represented it as an enormous hardship upon the owner to put at risk four or five hundred thousand dollars, for which he was to give sureties, and which might be the value of the cargo.

On the question, the word *cargo* was struck out; 71 being in the affirmative.

On motion of Mr. EUSTIS, after the words in the first section that they "should not commit any depredation, outrage, unlawful assault, or violence," these words were added, "nor make any other unlawful use of her arms."

Mr. E. suggested the propriety of adding a new section to the bill, to extend the security against the commander making also an improper use of the arms intrusted to him, or selling them to others in the West Indies.

A question was, however, previously taken on a motion to strike out what respected the forfeiture of the cargo in the fourth section, which the mover observed he would not have made but that the words had been stricken out of the second section; his own private judgment being that the cargo, as well as the vessel, should be forfeited for an improper use of their arms; but he moved it for the sake of consistency.

On the question, there were 51 for striking out, and 40 in the negative.

Mr. EPPES thought the bill founded on erroneous principles. Instead of permitting our merchantmen to arm and afterwards punishing them for the abuse of those arms, he conceived it would be infinitely more prudent and politic to restrain them altogether from arming.

Mr. J. RANDOLPH, fully impressed with the importance of the ideas suggested by Mr. EUSTIS in relation to selling their arms and vessels in the West Indies, or, rather to the people of St. Domingo, thought it would be better for the Committee of the Whole to rise, report the amendments, that the House might incorporate them into the bill, and direct the whole to be printed.

This course was accordingly pursued, and the bill made the order for Wednesday.

FRIDAY, November 30.

A petition of sundry citizens of the county of Washington, in the State of Pennsylvania, was presented to the House and read, complaining of an undue election and return of JOHN HOGE, to serve in this House as one of the Representatives for the said State.—Referred to the Committee of Elections.

The SPEAKER laid before the House a letter addressed to him from the Reverend WILLIAM PARKINSON, dated the twenty-ninth instant, declining to accept the appointment of one of the Chaplains

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to Congress for the present session.—Ordered to lie on the table.

A Message was received from the President of the United States, transmitting copies of the treaties concluded between the Delaware and Piankeshaw Indians for the extinguishment of their title to the lands therein described.

The Message was read, and, together with the papers, referred to the Committee of Ways and Means.

Mr. NICHOLSON, from the committee to whom was committed the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, reported an amendatory bill; which was read twice and referred to a Committee of the whole House on Monday next.

A memorial of Perez Morton and Gideon Granger, in behalf of the holders of the title of the Georgia Mississippi Company to lands lying within the territory ceded by the State of Georgia to the United States, was presented to the House and read, stating that the claimants to the said lands are ready to enter into a negotiation for a compromise of their claims, agreeably to the conditions and limitations of the cession of Georgia, with any Commissioners who may be authorized thereto by the Government of the United States; the claimants reserving all their rights at law, in case the compromise should not be effected; and praying that Congress will come to a final determination on the subject, that the said claimants may no longer be exposed to a fruitless and expensive pursuit of what they conceive to be their rights.

Ordered, That the said memorial be referred to the committee appointed yesterday, on a representation of sundry citizens of the State of Massachusetts; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The House resolved itself into a Committee of the Whole on the bill repealing so much of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as prohibits drawbacks of duties upon goods in certain cases. The Committee reported the bill with several amendments, which were twice read, and agreed to by the House.

The said bill was then further amended at the Clerk's table and, together with the amendments, ordered to be engrossed and read the third time on Monday next.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House, in the place of the Reverend WILLIAM PARKINSON, who hath declined an acceptance of the said appointment; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Reverend JAMES LAURIE.

On motion, it was

Resolved, That a committee be appointed to revise the rules and articles for the government of the Army of the United States; and that they report by bill or otherwise.

Ordered, That Mr. VARNUM, Mr. MATTHEW CLAY, Mr. TALLMADGE, Mr. PATTERSON, and Mr BUTLER, be appointed a committee, pursuant to the said resolution.

IMPEACHMENT OF JUDGE CHASE.

Mr. J. RANDOLPH, from the committee appointed on the 6th inst. reported articles of impeachment against Judge Chase.* They were nearly the same as reported at the last session except the fifth and sixth articles, which are new ones.

Mr. R. moved to refer them to a Committee of the Whole on Monday next.

Mr. ELLIOT rose to move a more distant day, and to assign his reasons for the motion. It had been to him a subject of considerable regret that the present report had been so long delayed, and he had repeatedly examined his own mind to imagine reasons for the delay. Twenty-four days ago the gentleman who now presented the report, announced to the House his conviction that all the time which our political existence would allow should be given to the person accused for the purpose of making his defence; and he moved a recommitment of the report of the last session for the purpose of alteration or amendment. A solution of the difficulties which have occupied my mind upon this subject, said Mr. E., may perhaps be found in the report itself. If I understand it, it embraces accusations, the evidence of which repose in the breasts of the committee alone, as it has never been exhibited to the House. This course of proceeding may be parliamentary and proper, but it strikes my mind as possessing a very different character. At the last session a voluminous body of evidence was reported, upon which the House decided the general question of impeachment. The committee appointed to prepare and report articles of impeachment possess not the powers of a committee of inquiry; the inquiry is already at an end; they are only to reduce to form the decision of the House upon the evidence before them; and if they have proceeded to make a new inquiry, to obtain new evidence, and report new articles thereon, they have wandered beyond the limits of their duty. Nor am I furnished with that intuitive knowledge of right and wrong, in cases of this kind, which would be necessary to enable me to decide almost instantly upon a question of such magnitude. While it is our duty to grant a reasonable time to the person accused to make his defence, it is indispensably necessary to proceed not only with deliberation but with caution. He concluded by moving that the report be made the order for Thursday next.

The question was taken on Thursday, as the most distant day, and lost; 40 voting for and 68 against it. Wednesday was next tried and lost. It was then ordered for Monday, and in the mean time to be printed.

On motion, the House adjourned.

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MONDAY, December 3.

An engrossed bill repealing so much of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as prohibits drawbacks of duties upon goods in certain cases, was read the third time.

Resolved, That the said bill do pass, and that the title be, "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of Orleans."

Mr. RODNEY, from the committee appointed, presented a bill establishing a court for adjudication of prizes in certain cases; which was twice read and committed to a Committee of the Whole House to-morrow.

Mr. J. RANDOLPH, after the minutes of Friday were read. said he perceived that certain persons having claims against the United States, had obtained an order of the House for a reference of their claims to a select committee. He was not then in the House, and not being acquainted with the petitioners, and not knowing who were on the committee, the motion he was about to make could not be attributed to personal motives, but to a respect for regularity in the proceedings of the House; he wished when the House had standing committees the members of which, from frequent investigation, were more minutely acquainted with the detail than others, that all subjects relative thereto should be sent before them rather than to select committees. For these considerations he moved to refer the petition, memorial, or remonstrance, or whatever it was denominated, from certain agents of Yazoo claimants to the Committee of Claims, and that the committee erected for inquiring thereinto be discharged.

Mr. NICHOLSON, informing Mr. J. RANDOLPH that another petition on the same subject had been referred the preceding day to the same Committee, asked if the gentleman had not better include both in his motion.

Mr. J. RANDOLPH incorporated the suggestion of Mr. N., in his motion. And on the question there was 56 yeas, and 27 nays—of course all controversies relating to the Yazoo claims go to that committee.

Mr. NICHOLSON presented a memorial from the inhabitants of Louisiana, said to be signed by 2,000 heads of families, which takes a view of the laws of the United States, for their Territorial government. He observed that the three gentlemen appointed from that country had requested him to state that the copy which appeared in our papers in the course of the last statement was by no means authentic, many expressions as well as ideas in that do not appear in this, and there are expressions and ideas used in this, that are not to be found in that. The translation that accompanies the French original, though correct, may contain expressions that the House will have to pardon, ascribing them to the feelings of the inhabitants so peculiarly situated, and not to any want of respect for the Government of the Union; they labored under an idea that their morals, manners, and customs, had been misunderstood, and consequently complained of, and that the law of last session was passed by Congress under those mistaken impressions. They, therefore, pray an alteration of the law so far as to allow them to be their own legislators, not dividing the Territory into two governments, and not prohibiting the importation of slaves.

Mr. NICHOLSON moved, after the memorial was read, to refer it to the committee appointed on that part of the President's Message which relates to the melioration of the government of Louisiana, and it was referred accordingly.

IMPEACHMENT OF JUDGE CHASE.

The House resolved itself into a Committee of the Whole on the report of the committee of the thirtieth ultimo, to whom was referred the report of a select committee appointed on the thirteenth of March last, "to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States."

The report was read, as follows:

The committee to whom was referred, on the sixth instant, the report of a select committee, appointed on the thirteenth of March last, "to prepare and report articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States," submit to the House the following report:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in maintenance, and support of their impeachment against him, for high crimes and misdemeanors.

ART. 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them, "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable

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right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard by counsel, in his defence, to the disgrace of the character of the American Bench, in manifest violation of law and justice, and in open contempt of the right of juries, on which, ultimately, rest the liberty and safety of the American people.

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, 1800, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the trial, because he had made up his mind as to the publication from which the words, charged to be libellous, in the indictment, were extracted; and the said Basset was accordingly sworn, and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

ART. 3. That with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did at the same time manifestly tend.

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment.

5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

ART. 5. And whereas it is provided by the act of Congress passed on the 24th day of September, 1786, entitled "An act to establish the judicial courts of the United States," that for any crime, or offence, against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to appear and answer such presentment at the next court; yet, the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

ART. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

ART. 7. That, at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect: and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and, by a strict examination of them, to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper: thereby degrading his high judicial functions, and tending to impair the public confidence

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in, and respect for the tribunals of justice, so essential to the general welfare.

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those governments, respectively, are highly conducive to that public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the District of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and moreover that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at the time, and as delivered by him, highly indecent, extra judicial, and tending to prostitude the high judicial character with which he was invested to the low purpose of an electioneering partisan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any farther articles, or other accusation, or impeachment, against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice.

Mr. ELLIOT.—It will be recollected, Mr. Chairman, by every member of the Committee who was present at the close of the last session, that upon the report of the committee of inquiry, recommending the impeachment of Judge Chase, no member but myself thought proper to deliver his sentiments. I feel no inclination to retravel the ground which I then occupied in solitude; especially as the opinions which I then advanced remain unaltered. Nor have I a disposition to embarrass the proceedings. I wish, indeed, to simplify them. But I feel it my duty to suggest that course of proceeding, and that mode of decision, which I believe to be demanded equally by our duty to the person accused, to our own consciences, and to our country; and I shall suggest them with confidence rather than with diffidence, because they are so extremely obvious. I believe it to be our duty deliberately to investigate the principles involved in the report, some of which are certainly novel, and to take distinct questions upon each general head of accusation. Because I think Mr. Chase ought to be impeached for two or three misdemeanors, I cannot give my vote in favor of articles accusing him of eight high crimes and thirty or forty misdemeanors. If I should be so fortunate as to be seconded in the opinions which I entertain upon this subject, I will move to amend the report upon the table by striking out that part which relates to the conduct of Judge Chase on the trial of John Fries, and which is now comprised in the first article

The motion being seconded,

Mr. SMILIE asked if the motion was in order; observing that the report consisted of a number of distinct propositions which he conceived were to be considered in the usual way, article by article, and the question would be, either to concur or non-concur. The gentleman (Mr. E.) might gratify his zeal in this way as well as in the mode he had proposed for striking out, and the result would be the same. It would furnish an opportunity for every member to speak for or against each article, as well as to amend any.

Mr. ELLIOT replied that he was not tenacious of form. His only object was to obtain distinct questions. If the Committee of the Whole were disposed to pursue the course pointed out by the gentleman from Pennsylvania, he would withdraw his motion.

The CHAIRMAN gave it as his opinion that the proper mode of proceeding would be to take the report up by articles.

On the first article being read, Mr. ELLIOT moved to strike it out.

The CHAIRMAN said the motion to strike out the first section was in order, and was usual in the case of a bill, in order to decide upon its merits; but in independent articles like the present it would be preferable to take the question on concurring, so that the opinion of the committee might be ascertained on each article.

Mr. SMILIE expressed an indifference as to the mode of decision, but he believed what he had suggested was conformable to all former rules and practices.

Mr. J. RANDOLPH, after a short pause, said that the question of concurrence with the select committee, in his opinion, ought to be taken on each article, separately; and for his part he had no objection to take it upon each separate member of each article, if any gentleman wished it to be taken in that way.

Mr. NICHOLSON, observing that there was no question before the committee, conceived that one ought to be presented for their decision. He therefore moved that the Committee of the Whole concur with the select committee and agree to the first article. Which being seconded, the question was put by the Chairman; a division was called for, and 78 members rising in the affirmative, it was carried without reverting to the question—78 being more than a majority of the whole House had all the members been present.

The second article being under consideration—

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Mr. DAWSON.—This mode of proceeding incurs some difficulty which might be prevented by the motion to strike out, as in the latter case the principle upon which the article is grounded would be tested, and if the principle was adopted the phraseology might be varied and amended as might be thought proper.

The CHAIRMAN.—The Committee has already determined to proceed in a different manner; it therefore does not rest upon the discretion of the Chair.

Mr. SMILIE suggested the propriety of reading the evidence in support of each article, as there were many gentlemen here who were not present at the last session when the testimony was both read and printed.

Mr. FINDLEY seconded the motion.

Mr. NICHOLSON.—Reading the testimony will occupy the whole day, it constitutes the volume in my hand (a volume of apparently two hundred pages.)

Mr. SMILIE would not call for its reading on his own account; he had already pursued the testimony, but there were several gentlemen now present who were not here at the last session, who perhaps have not had an opportunity of seeing the documents, and he believed gentlemen generally voted with more satisfaction on subjects with which they are well acquainted than on those where doubts or apprehensions are entertained. Besides, he deemed it more safe and dignified to proceed with caution and due deliberation on so serious a question as that of impeaching a person holding one of the most important stations in the Government.

Mr. NICHOLSON.—The manner of proceeding in the business of impeachment at the last session, was, to read such parts of the testimony upon the call of a member as related to the particular article under consideration. He recollected, upon the impeachment of Judge Pickering, that the gentleman on the other side of the House from New Hampshire called for reading the particular part of the testimony most likely to extricate the officer impeached, or produce a conviction in the minds of others such as he felt himself—he hoped the same course of proceeding would be adopted by the Committee, and such portions would from time to time be read as members required.

The CHAIRMAN put the question on reading the testimony generally, which was lost on the division, being only 40 in the affirmative, and 50 in the negative.

The second article being under consideration,

Mr. BOYLE moved to amend the latter part of the article by striking out the words in italics and inserting those in a parenthesis: "John Basset, one 'of the jury, who wished to be excused from serving on the said trial, because he had made up his 'mind *as to* (that) the publication from which the 'words charged to be libellous in the indictment '*were extracted* (was within the statute of the 'United States upon which the said Callender 'was indicted) &c." Making the allegation in this way, you will find it supported by the testimony, for they are the words of the testimony itself. It is said that the eighth juror acknowledged that he had formed an unequivocal opinion that such a book as "The Prospect Before Us" came within the sedition law.

A member supposed that the rule adopted by the Committee against the reading of the general testimony would not prevent particular parts, as they apply to particular points, from being read. He therefore called for the reading so much of the evidence as related to the juror mentioned in the second article.

Mr. NICHOLSON mentioned page 133 of the depositions of the witnesses on the part of the United States, as the place where the Clerk would find what the gentleman wanted.

Which being read as follows:

"Perhaps it is not improper here to observe, that the eighth juror answered, when the previous question was put to him, that though he had never read or heard the charges in the indictment, and knew not what the traverser had published, yet he had formed an unequivocal opinion, that such a book as "The Prospect Before Us" was, came within the sedition law: but no objection was made to him, and he was sworn like the rest."

Mr. J. RANDOLPH referred to page 56, near the top, for other corroborative evidence.

The Clerk read the following:

"One of the jury, John Basset stated that he was unwilling to serve, having made up his mind as to the book called "The Prospect Before Us;" but as he acknowledged that he had not formed and delivered an opinion concerning the charges in the indictment, because, in fact, he knew not what they were, his objection was overruled."

And also from page 61, as follows:

"It is to be observed that Mr. Basset, who had been summoned on the jury, seemed to have considerable scruples at serving, and stated that he had expressed some opinion as to "The Prospect Before Us." Judge Chase, however, declared Mr. Basset a good juror, and he was sworn and acted as a juror."

Mr. J. RANDOLPH thanked his friend from Kentucky for every suggestion tending to improve the report of the committee, confident that his motives were highly commendable. The report has been referred by the House to a Committee of the Whole, for the purpose of obtaining by a full, fair, and free discussion, two objects—first, to determine whether the charges exhibited are such as the House are willing to prefer against the person impeached; and in order, if they be found incorrect, to make them as perfect as possible. On both these points I invite discussion in the name of the select committee, who brought in this report. At the same time I wish to suggest to my friend (Mr. BOYLE) the propriety of re-examining his idea, and ascertaining whether the eighth juror alluded to in the account of Callender's trial is the juror mentioned in the testimony of Mr. Hay and of Mr. Nicholas. These gentlemen mention the juror by name. Mr. Robertson, in his account of the trial, mentioned him by number. Now, if it should appear that the eighth juror was not Mr. Basset, must not the article fall to the ground if the proposed alteration should

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take place? I think it one of the strongest circumstances in this article, that a juror was compelled to serve after stating that he had made up his mind as to the criminal offence on the question he was about being sworn well and truly to try. The committee will perceive a considerable variation between the testimony in pages 133 and 56. In the first the writer introduces with a "perhaps it is not improper here to observe," that the eighth juror answered when the previous question was put to him, though he had never read the indictment, yet he had formed an opinion that such a book as "The Prospect Before Us" came within the sedition law. This I believe is the amount of what is said in that page, and it appears from this to be an incidental circumstance only; whereas if you turn to page 56, it is there stated, with the clearest precision, that he was unwilling to serve, because he had made up his mind on the book called "The Prospect Before Us." It does not appear to be drawn from him by the previous question, but it does appear fully and unequivocally to be of his own mere motion, a conscientious scruple to try what he had already passed judgment upon. In my opinion the report is better as it stands than it would be with the alteration, and I submit to my friend from Kentucky (Mr. BOYLE) whether it would not be better to let the article stand, rather than fail before the Senate, if it should turn out that the eighth juror and Mr. Basset are different persons.

Mr. BOYLE had heard no objection but which might be obviated by another amendment; that was, to strike out the name of John Basset, and then it would apply to the juryman who had used the expression; in that case the House might rely in sustaining their impeachment before the Senate upon the evidence as well of page 133 as on that of 56. He moved to strike out "John Basset."

Mr. NICHOLSON did not think it necessary that the words proposed to be stricken out should be struck out. He thought that under the words contained in this article as it stood it would be perfectly regular and proper, even on a trial proceeding before the Senate, to give in evidence the testimony alluded to in page 133. And he had no doubt but the Senate would admit all evidence of this kind to have its proper weight, because it seems to be universally admitted, and has been long understood, that in proceedings by way of impeachment, that technical precision is not required, which is required by our courts of law on indictment. If, however, gentlemen are embarrassed about having this testimony directly pointed, this may be easily come at. They can add it to the article as another count is added to a bill of indictment. This mode is very well known, and may be adopted by those who think it necessary; for his part he did not think it necessary.

Mr. BOYLE withdrew his motion for the present.

The question was now taken on the second article and carried—eighty members rising in the affirmative.

The third article was then taken up by the Committee.

Mr. JOHN RANDOLPH read the following testimony in support of this article, viz:

"When the trial commenced, Col. John Taylor, of Caroline, was introduced as a witness for the prisoner. I believe he was sworn. The counsel wished to interrogate him. This they were not permitted to do until they had stated the points to which his evidence related. They were then obliged by Mr. Chase to reduce the questions which they wished to propound to Col. Taylor, to writing, and then to submit them to his inspection, that he might determine whether they should be propounded or not.

"Col. Taylor's evidence was rejected.

"The ground of this opinion as stated by Mr. Chase was this, that Col. Taylor could not prove the whole of one charge. The charge was, the judge (Chase) said, 'that the President was a professed aristocrat; that he had proved faithful and serviceable to the British interest.' Proving half, he said, was doing nothing; both facts must be proved. It was contended, on the part of the prisoner, that if it was necessary to prove both facts by the same witness, the charge in both points would be proved by the testimony of Col. Taylor. He would prove that Mr. Adams had professed aristocratical opinions, and that he had proved faithful and serviceable to the British interest, in the way meant by 'The Prospect Before Us,' by voting against the sequestration law, and the law suspending all intercourse with Great Britain. The judge (Chase) repeated that the evidence was inadmissible, that the counsel knew it to be so, and that they only wanted to deceive and to mislead the populace."

And afterwards he added the following, viz:

"*Interrogatory 4th.*—Did Mr. Chase refuse to the prisoner the testimony of a witness, because he, the said witness, could not prove the truth of all the facts set forth, and upon which the indictment was grounded?

"*Answer.* After the jury in Callender's case were sworn, Colonel Taylor, of Caroline, who attended as a witness, in consequence of a subpœna served upon him on behalf of Callender, was called to the book and sworn in the usual form. Judge Chase at this moment asked, with considerable haste and eagerness of manner, what the counsel expected to prove by the witness? He was informed that they meant to ask him whether Mr. Adams had not avowed, in his presence, sentiments inimical to a Republican form of Government, and whether he did not, whilst Vice President, give the casting vote in the Senate against the sequestration of British debts, and against the suspension of intercourse with Great Britain. Judge Chase demanded that the counsel should state in writing the questions meant to be asked. The counsel for the defendant opposed this, because, although a number of witnesses had been examined on the part of the United States, no similar requisition had been made with respect to them, because it was contrary to the practice in the State courts, and because, also, it was unreasonable in itself, and calculated to subject every question of fact to the control of the court. Judge Chase, however, insisted that the questions should be submitted to his previous decision. They were accordingly put in writing, and were as follows, to wit:

"1. Did you ever hear Mr. Adams express any sentiments favorable to monarchy or aristocracy; and what were they?

"2. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

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"3. Do you know whether Mr. Adams did, in the year 1794, vote against the sequestration of British debts, and for stopping all intercourse with Great Britain?

"After having examined the questions, Judge Chase declared that Colonel Taylor's evidence was inadmissible. He declared that no evidence could be received that did not justify the whole charge. The charge, said he, is, that the traverser said of the President, he is a professed aristocrat, and has proved faithful to the British interest; now you must prove both points, or you prove nothing; and as your evidence relates to one only, it cannot be received—you must prove all or none. This was in substance, and it is believed the precise words in which Judge Chase stated his objection to Colonel Taylor's evidence. The counsel asked the judge whether they could not be allowed to prove part of a charge by one witness and part by another? To this Judge Chase replied, that if the counsel could prove the whole of any one charge by Colonel Taylor, they might do it, otherwise they should not examine him. The counsel contended that Colonel Taylor's evidence applied to the whole of the charge which the judge had stated in his opinion. That they meant to prove by him that the President has professed anti-republican sentiments, and had proved faithful and serviceable to the British interest, in the sense in which those expressions were used in the Prospect. The judge, however, adhered to his determination to exclude the evidence; and Colonel Taylor retired from the court with evident marks of astonishment."

The question was taken upon the third article without a division, and carried.

The fourth article being before the Committee, it was considered by paragraphs.

Mr. J. RANDOLPH.—The testimony in support of the first paragraph has been read on the preceding article; in it is that part of Mr. Nicholas's testimony stating the demand of Judge Chase that the counsel should state in writing the questions meant to be asked.

The CHAIRMAN proceeded to read the second paragraph, and

Mr. J. RANDOLPH read in its support the following affidavit:

CITY OF RICHMOND, *to wit:*

This day James Thompson Callender made oath before me, a magistrate for the said city, that William Gardner, Tench Coxe, Judge Bee, Timothy Pickering, William B. Giles, Stevens Thomson Mason, and General Blackburn, he believes to be material witnesses in his defence, against an indictment found against him during the present term of the circuit court of the United States for the middle circuit, Virginia district: that William Gardner, aforesaid, resides, he believes, in *Portsmouth*, in the State of New Hampshire; that Tench Coxe, aforesaid, resides in Philadelphia, in the State of Pennsylvania; that Judge Bee resides, the deponent hath understood, in South Carolina, but in what part of the State he knows not; that Timothy Pickering, aforesaid, resided of late in Philadelphia, in the State of Pennsylvania, but where he resides at this time the deponent doth not know; that William B. Giles, aforesaid, he hath understood, since he hath been furnished with a copy of the indictment, and since the said Giles hath left town, resides in the county of Amelia; and that General Blackburn resides in the county of Bath.

The said James Thompson Callender further declares, that he expects to prove by the said William Gardner, and that he verily believes that he shall prove by the said William Gardner, that the said William Gardner was commissioner of loans for the State of New Hampshire, under the Government of the United States, and that he was turned out of the said office of commissioner of loans, because he, the said Gardner, refused to subscribe an address circulated in the town of Portsmouth in New Hampshire, and presented to the President of the United States, in the year 1798, at the instance of several inhabitants of the said town; in which address unequivocal approbation of the conduct of the said President in the administration of the United States is expressed.

Second. The said James Thompson Callender also declares on oath, that he verily believes that he shall prove by the evidence of Tench Coxe, aforesaid, that he, the said Tench Coxe, in the year 1798, held an important office under the Government of the United States, to wit, commissioner of the revenue, from which office the said Coxe was ejected by the President of the United States; because he did not approve the measures of his, the said President's Administration, or the principles on which it was conducted.

That he verily believes he shall be able to prove by the evidence of Judge Bee, that he did receive from the President of the United States in the year 1779, a letter in which he, the said President, did advise and request the said Judge Bee, then acting in his judicial character, to deliver to the Consul of the British nation in Charleston, Jonathan Robbins, alias Thomas Nash, who had been apprehended and carried before the said judge on a charge of murder committed on the high seas on board the British frigate Hermione.

He farther deposes on oath, that he verily believes that he shall be able to prove, by the evidence of Timothy Pickering, that the President of the United States was in possession of despatches from Mr. Vans Murray, American Minister in Holland, containing assurances on the part of the French Republic, that ambassadors from the United States would be received in a way satisfactory to the people and Government of the United States, many weeks while Congress was in session, before he communicated the same to Congress.

The deponent further saith, that he verily believes that he shall be able to prove, by the evidence of Stevens Thomson Mason and William B. Giles, that John Adams, President of the United States, has unequivocally avowed, in conversation with them, principles utterly incompatible with the principles of the present Constitution of the United States; principles which could not be carried into operation under any political institution without the establishment of a direct, powerful, and dangerous aristocracy: that he declared, in express terms, to the said Stevens Thompson Mason, that he had no more idea that the present federal Constitution could, for any length of time, control the people of the United States, than that it could control the motions of the planets; that he also declared to the said Stevens Thomson Mason, that he had no more idea that political society could exist without a distinction of ranks, than that an army could exist without officers. And also, that he can prove by the said William B. Giles, that the President of the United States has avowed, in conversation with him, a sentiment to this effect: that he thought the Executive Department of the United States ought to be vested with power to direct and control the public will.

That this deponent verily believes that he shall be

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able to prove by General Blackburn that he did, on the —— day of ——, in the year 1798, receive an address from John Adams, President of the United States, in answer to the field officers of Bath county, in which the said President does avow, that there was a party in Virginia which deserved to be humbled into dust and ashes, before the indignant frowns of their injured, insulted, and offended country.

And this deponent further saith, that he is advised and believes that it is material to his defence against the indictment aforesaid, that he should procure authentic copies of sundry answers made by the President of the United States to addresses from the inhabitants of the United States in various parts thereof, which authentic copies he cannot procure, so as to be in readiness for trial, during the present term.

He also saith, that he is advised and doth believe that a certain book entitled "An Essay on Canon and Feudal Law," or entitled in words to that import, ascribed to the President of the United States, and of which he believes the President is the author, is material to his defence, and that he cannot procure a copy of the same, and evidence to prove that the said President is the author thereof, without being allowed several weeks and perhaps months for the purpose.

He farther saith, that he is told by the counsel who mean to appear for him, that they cannot possibly be prepared to investigate the evidence relating to the several charges in the indictment, even if all the persons and documents wanted were upon the spot.

May 28th, 1800. WM. DUVAL.

District of Virginia, 5th Circuit, to wit.

I certify that the foregoing is truly copied from the original in my office.

W. MARSHALL, *Clerk.*

The Committee proceeded to consider the third paragraph of the 4th article.

Mr. J. RANDOLPH.—Under another paragraph, part of the testimony has been read, but the following should be added. Mr. HAY says:

"The counsel, who were associated with me in Callender's defence, attempted to address the jury on the unconstitutionality of the law on which the indictment was founded. They were interrupted, and obliged, by Mr. Chase, if not ordered, to sit down. I then addressed Mr. Chase himself, with a view to satisfy him, that I had a right to discuss this point before the jury. I told him that what I was then about to say, was intended for the court alone. He interrupted me; he asked some question which was answered; in a very short time, after I had resumed my argument, I was interrupted again by Mr. Chase. How often I was interrupted I know not; but I was interrupted, rudely interrupted, several times. Having seen in the course of this trial what I had never seen before, having felt what I never felt before, and what I certainly expect never to feel again, and being impressed with a belief that Mr. Chase was determined to silence me, if he could, my mind was overwhelmed by *conflicting sentiments*, and I quitted the bar, my client, and the court."

When the question was about to be put on agreeing to the whole of the 4th article—

Mr. MOTT rose and remarked that he was not here when the committee on this subject reported at the last session, and of course did not get a copy of the evidence; he had however seen a part thereof in the newspapers and examined so much of the subject as to have satisfied him, that it was proper to vote in favor of two of the articles, to wit, the first and third; but as he had not an opportunity since coming to this place of comparing the articles of impeachment with the testimony on which they were founded, and since he could not make up his mind in hearing the evidence partially read, and as the House have refused to put it off for a short time, and he was not allowed to make the examination for himself, he was obliged to inform the committee, that he was not satisfied to vote in favor of the 4th article, whereas had he been allowed time he might join in a vote with the majority.

Mr. NICHOLSON said all the evidence on the subject of this article had not been read, he would therefor read it himself, as the Clerk was indisposed with a hoarseness.—He read the following:

The additional deposition of Philip Norborne Nicholas, taken before George Wythe, and Joseph Scott, Esquires, under authority of the House of Representatives of the United States.

"The said Nicholas, being asked by the said Commissioners what was the general deportment and manner of Judge Chase during the trial of James Thompson Callender, answered:

"That the general deportment and manner of Mr. Chase, during the said trial, appeared to the said Nicholas to be marked with great violence and precipitation; and that Judge Chase manifested a solicitude for the conviction of the prisoner, which, in the estimation of said Nicholas was improper in a judge sitting in a criminal prosecution. The said Nicholas further states, that the deportment of Judge Chase to the counsel who appeared for Callender was rude and overbearing, and calculated to prevent that full and free defence, without which it was impossible for them to do justice to their client. PHILIP N. NICHOLAS.

"RICHMOND, February 7, 1804."

"*The additional deposition of George Hay, who, being asked what were the manners and deportment of Samuel Chase during the trial of James Thompson Callender? deposeth and saith:*

"That it appeared to him at the time of the trial, and he yet believes, that the manners of Mr. Chase were intentionally rude and insolent. The deponent thought, and still thinks, that Mr. Chase was determined that Callender should, if possible, be convicted, and that to accomplish this purpose, he endeavored to intimidate, to depress, and to silence his counsel. He interrupted them frequently with wanton rudeness. He ordered one, if not more, of them to sit down. He charged them with advancing doctrines which they knew to be illegal, and which they advanced, he said, only to deceive and mislead the populace. The patience of the deponent was at length exhausted, and he quitted the court and the cause, under a belief that further exertions in the defence would only tend to cover himself with still greater shame, to subject him to still greater humiliation.

"The deponent believes that there did not escape from him, during the trial, a word or gesture that could have given offence to the judge. The conduct of his associates was, he believes, equally guarded. He does not, therefore, ascribe the insolence of Mr. Chase to irritation occasioned by the conduct of the bar.

The deponent is under no apprehension that his judgment has been much misled by the circumstances attending his own situation. He knows, and can now

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name men, whose politics then differed from his own, who expressed their abhorrence of Mr. Chase's conduct, in terms as strong as language could afford. In fact, the public mind was very much excited, and apprehensions were entertained by many, that some serious disturbance might take place. Mr. Monroe, then Governor of Virginia, was so completely convinced of the danger, that he not only earnestly recommended moderation and forbearance to those who were daily crowding about him, but kept his eye constantly on the capitol, that he might be ready to command the peace, at the first appearance of commotion. To him Mr. Chase is probably indebted for the safety of his person during his residence in Richmond.

"The solicitude of Mr. Monroe to preserve order, arose from causes totally unconnected with Mr. Chase. The character of the State, he observed, had never been tarnished by any opposition to the laws, or any outrage on persons clothed with its authority. The preservation of this character at that period, (May, 1800,) was, in his estimation, a matter of infinite importance. He therefore urged and entreated those who he supposed might come into collision with the judge, to be patient under every outrage."

"GEORGE HAY.

"RICHMOND, Feb. 7, 1804."

The question was taken on the fourth article, and carried without a division.

The fifth article was then taken into consideration.

Mr. JOHN RANDOLPH, stated the circumstances upon which this article was grounded. By the thirty-third section of the act of Congress establishing the judicial courts of the United States, it is provided that, for any crime or offence against the United States the offender shall be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and it is provided by the laws of Virginia, printed in a volume called "The Revised Code of 1794," that the manner of proceeding against persons charged with crimes shall be in one of these two modes; the first, in capital cases, such as treason or felony; the second, in cases not capital. The Virginia laws authorize expressly the isssuing of a *capias*, on which, the body of an offender may be taken and committed to close custody in the first species of offence. In the other case, that is, of offences not capital, this process is not warranted by our laws, which require a different process, viz: a summons, which the court may order the clerk to issue, returnable to the next ensuing court. In the case of Callender, who was presented and indicted for a crime not capital, the circuit court did issue the process which is only warranted in capital cases. To convince the Committee on these points, he read the fifth section of the law of Virginia, page 110, respecting the trial and punishment of crimes, and also section twenty-eighth, page 112. From these regulations, he said, there could not remain a shadow of doubt that the process which was issued against Callender by order of the circuit court, and which is annexed to the articles of impeachment, and which commands the marshal of the Virginia district to arrest the body of J. T. Callender, and bring him forthwith before the judges of the court, was illegal, being contrary to the laws of Virginia, and of course contrary to the laws of the United States.

The question was taken on adopting the fifth article, and carried—71 voting in the affirmative, and 30 in the negative.

The sixth article being under consideration,

Mr. J. RANDOLPH said, the law of Virginia relative to this point having just been read, he would only point to the words which are repeated from that law by the article of impeachment. They evince that the authority of Congress as well as the laws of the State of Virginia, had been both disregarded and contemned.

On the question to agree to the sixth article, the Committee divided, there being 70 in its favor, and 22 against it—it was carried.

The seventh article being before the Committee,

Mr. J. RANDOLPH said it was extracted, almost word for word, from the deposition of George Read, Attorney for Delaware district. The deposition is as follows:

"*First.* To the first interrogatory this deponent saith, that he was present in the character of District Attorney of the United States of America, in and for Delaware district, at a circuit court of the said United States, holden at Newcastle, on the twenty-seventh and twenty-eighth days of June, one thousand eight hundred, in and for the said district, by and before Samuel Chase, one of the judges of the Supreme Court of the United States, and Gunning Bedford, district judge of the United States aforesaid, for the said district.

"*Second.* To the second interrogatory this deponent saith, that he was present in court on the first day of the said court, mentioned in this deponent's answer to the first interrogatory, when the grand jury then and there attending, after having received a charge from the said Samuel Chase as presiding judge, retired to their room, and also when they returned to the bar of the said court.

"*Third.* To the third interrogatory this deponent saith, that the grand jury, through their foreman, upon being asked by the clerk the question stated in the third interrogatory, did answer that they had found no bills of indictment, nor had any presentments to make.

"*Fourth.* To the fourth interrogatory this deponent saith, that the said Samuel Chase did, on receiving the answer from the grand jury, mentioned in this deponent's answer to the 'third interrogatory,' observe to that body, in his hearing, 'That he had been informed or heard a highly seditious temper or disposition had been manifested in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order. That the name of this printer was' ——. (Here the learned judge paused a moment, and then observed:) 'Perhaps it might be assuming too much to mention the name of this person, but it becomes your special duty, and you must inquire diligently into this matter.' That although this deponent will not undertake to say that every word as here set forth is precisely what the honorable judge expressed, yet he is perfectly convinced that the language is, for the most part, what was used by the said judge, and the ideas conveyed by him at the time, precisely what the context imports.

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"*Fifth.* To the fifth interrogatory the deponent saith, that several members of the grand jury on the behalf of themselves and their brethren, did, as soon as the said judge had closed the observations, detailed in the answer to the fourth interrogatory, then and there earnestly request the court to dismiss them from further attendance on that duty, mentioning to the court, as a reason for the request, that they were generally farmers, and it being the season of harvest, their personal attention was most requisite on their farms. To which the judge replied: 'that the business to which he had called their attention, was of a most urgent and pressing nature and must be attended to, that he could not, therefore, discharge them until the ensuing day, when further information should be communicated to them on the subject he had referred to,' or words to that effect; but this deponent did not at the time hear the judge say that his detaining the grand jury was for the purpose of examining a file of papers, published by the said printer."

On the question to agree to the seventh article, it was carried without a division.

The eighth article being under consideration,

Mr. Mott rose to move an amendment, which was to strike out the words, declaring that the House "saved to itself the liberty of exhibiting 'at any time hereafter any further articles, or 'other accusation or impeachment against the 'said Samuel Chase," and further, that part which saved to the House "the right of replying to any such articles of impeachment or accusation which shall be exhibited to them." It seemed to him unfair that the House should reserve such a right to themselves. If there is anything more with which he ought to be charged, it ought to be now brought forward, and the accused should be informed at once how far we mean to go, in order to enable him the better to make his defence.

Mr. J. Randolph hoped the gentleman (Mr. Mott) would not insist upon his amendment. He believed the article stood very well as it was, but, if it be faulty, it has, however, one thing in its favor, it is fortified by precedent, which is of some importance in cases of this nature. He hoped the gentleman, who was a decided friend of the American people, and of the rights of this House, did not wish to abridge the liberties of the one or the privileges of the other, as they had been granted by the people, and had been received by us from our predecessors. He hoped it was not intended that our powers should be less than those who sat here before us, and yet the amendment would be a tacit avowal that they were wrong in making this reservation in the case of the impeachment of Blount, and that we ourselves were wrong in so doing in the case of Judge Pickering. He trusted the House would not agree to the amendment, if it was persisted in by the gentleman.

Mr. Mott.—If precedents are wrong, they ought not to be our guides, and if we have such precedents the sooner we establish new ones, on other principles, the better. He thought it cruel, as well as unjust, to bring new articles of impeachment against a man when on his trial; a sudden attack, when a man is unprepared, may defeat the best talents and convict an innocent man. He conceived, if they had a design to bring other articles, they ought to do so at the present time; but, if they had not a design, he would ask, why do you reserve a power you do not mean to exercise? He knew it was the practice to make this reservation, and had seen it in New Jersey, but, for all that, he thought it improper and unjust.

The question on adopting the amendment was taken and lost.

The question was next taken on agreeing to the eighth article, and carried in the affirmative.

There were for it seventy-six members, which are more than a majority of the whole House.

Mr. Elliot.—Mr. Chairman, as I have voted in opposition to every one of the articles, and shall of course vote in the negative, when they are considered in the aggregate, it is indispensably necessary that I should make a few observations, in order to rescue myself from the imputation of voting, on this occasion, in a different manner from what I did at the last session, although I am already sufficiently justified to my own conscience.

My cool judgment tells me that were I to vote in favor of the present impeachment, in its present form, I must forfeit, in my own estimation, that political character as a republican, which it has been the study of my life to acquire and preserve, and which has hitherto secured me the confidence of a people as truly republican as ever have existed, in any age or nation. It is upon republican principles that I oppose the report. At the last session, I declared myself in favor of the impeachment, so far only as related to the conduct of Judge Chase upon the trial of James Thompson Callender. I considered the conduct of the judge upon that occasion as amounting to a denial of important Constitutional privileges to Callender—the privileges of compulsory process for witnesses, and trial by an impartial jury of his country—and had the Committee taken that strong ground, I must have given it my support. They have, however, abandoned it; and I am decidedly of opinion, that, if the conduct of the judge did not amount to a violation of the Constitution, it ought to be considered as a mere error in judgment; and for errors of judgment a magistrate is not impeachable.

It is not upon any trifling or minute distinction between form and substance, that I found my objections to the second and third articles, but upon what I consider as strong and solid ground. But to the fourth article there are a variety of objections. After having stated in the second and third articles, everything which it was necessary to state, when the strong ground of the Constitution was abandoned, we are presented with the blackest catalogue of judicial crimes that has ever been invented. This article will forever form a phenomenon in the history of impeachments, and command admiration by its wonderful display of the powers of invention, modification, and embellishment. Never have I been more completely convinced that genius is capable of creating anything whatever—that it possesses even magic

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powers. We are here presented with a stupendous pyramid of judicial guilt, of which *manifest injustice* forms the pedestal, and *indecent solicitude* constitutes the apex. Judge Chase is accused of manifest injustice, partiality, intemperance, rudeness, vexation, solicitude, &c., &c. If this horrid list of the crimes of a judge is to be crowned by solicitude, if solicitude is to swell the list of new transgressions, I must still be permitted to believe that its decency or indecency has very little connexion with the essence of its criminality. Besides, the conduct of the judge was different at different stages of the trial, and were I to consider his supposed solicitude as criminal, I could not consider the report as consistent with truth unless amended so as to read in this manner: "In manifesting, in the early part of 'the trial, an indecent solicitude, and at its later 'stages, a very decent solicitude, for the convic-'tion of the prisoner, &c." Solicitude is a mere mental operation. Had the judge displayed an anxiety to save the prisoner, he might, with equal propriety, have been impeached as guilty of sympathy or pity.

I cannot vote for the last article without a violation of my political principles. I do not believe that the expression of political opinion is a crime in a Republican Government. I have repeatedly declared that I consider it improper in a judge to read political lectures from the bench: and I have also had frequent opportunities, both on former and recent occasions, of expressing my conviction that the judicial officers ought not to be punished for declaring their political opinions. We ought not ourselves to practice what we reprobate in others, and it is always desirable to carry our own theories into practice.

With these powerful considerations, others of a different nature have naturally mingled themselves, in my own mind, while reflecting upon this important subject. Is there no danger that the feelings and views of party have, imperceptibly to ourselves, involved themselves with our reflections, and that they will improperly influence our conduct? For myself I am disposed to look upon a member of our highest judicial tribunal, upon whom, with correct motives, such an irresistible torrent of public opinion is precipitated, with a favorable eye. It is our duty to endeavor to realize the ancient idea of the blindness of justice. Let us be blind as it respects the man, blind to his political opinions, but eagle-eyed as it respects his crimes. The pure fountain of justice ought not to be polluted with a single muddy particle of the spirit of party.

I have said enough to explain my sentiments and views upon this subject, and I will not trouble the Committee with a repetition of any of my arguments at the last session.

Mr. NICHOLSON inquired of the Chairman whether it would be in order to move an amendment to any of the articles, now they have been severally agreed to.

Mr. VARNUM (Chairman) said the amendments might be moved in the House on agreeing to the report of the Committee of the Whole or in the Committee by a vote to reconsider.

Mr. J. RANDOLPH thought it of importance that if amendments were necessary they should be brought forward in Committee of the Whole, to give gentlemen an opportunity of fuller discussion. In the House, members were trammelled by the rule permitting them only to speak twice on the same question, but here we are free to discuss and debate at pleasure. If an amendment is wished, he would move to reconsider the first article—and he did move it.

It was carried without opposition.

Mr. NICHOLSON then observed, that part of the misconduct of Judge Chase which was complained of had taken place previous to the trial. He would therefore move to make it read by the insertion of the words in italic "the said Samuel Chase *antecedent to and* on the trial of John Fries," so as to cover the whole ground.—Carried.

Mr. NICHOLSON proposed a similar amendment to the fourth article:

"That the conduct of the said Samuel Chase was marked during the whole course of the said trial *as well as antecedent thereto*" "with manifest injustice, partiality and intemperance."

The amendment was lost.

After some desultory conversation it was agreed that the amendment to the first article be altered, by inserting the words *in relation thereto*, instead of those in italic; and a similar amendment was agreed to in the fourth article.

The Committee of the Whole rose and reported the articles as amended, and then the House adjourned.

TUESDAY, December 4.

Two other members, to wit: ABRAM TRIGG, from Virginia, and MATTHEW LYON, from Kentucky, appeared, and took their seats in the House.

Another new member, to wit: ALEXANDER WILSON, returned to serve in this House as a Representative for the State of Virginia, in the place of ANDREW MOORE, appointed a Senator of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. CLARK, from the committee appointed, on the twenty-third ultimo, "to inquire into the expediency of extending the time for claimants to lands under the State of Georgia, lying south of the State of Tennessee, to register the evidences of their title with the Secretary of State," made a report thereon; which was read, and referred to a Committee of the Whole House on Thursday next.

Mr. M. CLAY, from the committee to whom was recommitted, on the twenty-second ultimo, the bill giving power to stockholders of the Marine Insurance Company of Alexandria to insure against fire, reported an amendatory bill; which was twice read and committed to a Committee of the Whole House to-morrow.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom were referred the petition of Thomas Parker and others,

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Directors of the Library Company of Philadelphia, and the memorial and petition of the Board of Trustees of the College of New Jersey, made the following report:

"The Directors of the Library Company of Philadelphia state to the House that they have lately received a valuable collection of books and prints, bequeathed to their institution, by the Rev. Samuel Preston, of the county of Kent in Great Britain, on the importation of which, at Philadelphia, the sum of four hundred and ninety eight dollars and twenty cents is demanded for duties, agreeably to the laws of the United States.

"The President of the Board of Trustees of New Jersey College informs Congress, that, after replenishing their library, (which had been destroyed by fire) in part, by donations and purchases of books, they have been obliged to import a large number of books from Europe, on the importation of which duties have been bonded at New York, under the laws of Congress, to the amount of four hundred and fifteen dollars and sixty-two cents. The object of the petitioners, in both instances, is to be exonerated from the payment of the duties, on their respective importations, and they pray that the bonds given at the custom house may be cancelled.

"It is not within the knowledge of the committee that any duties which have accrued upon any importation whatever have been restored to the importers. To grant exemptions from duty to any institution, or to free any class or body of our citizens from the obligations of their bonds, for money due to the United States, would be going beyond what the committee could venture to recommend to the House. 'All duties shall be *uniform* throughout the United States,' is the peremptory language of the Constitution, and the committee are well persuaded that the petitioners themselves would not, after mature reflection, hesitate to acknowledge, that the Constitution is the paramount law, and that, in granting a privilege to them, to import books free of duty, while the right is denied to others, would be a violation of that justice which is so eminently due to the whole people of the United States; and as, from a late decision of the House, involving the same principle, there can be no reasonable expectation that the petitioners could obtain the exemptions prayed for, the committee recommend that they have permission to withdraw their respective petitions.

The report was agreed to by the House.

IMPEACHMENT OF JUDGE CHASE.

The House proceeded to consider the report of the Committee of the Whole, made yesterday, on the articles of impeachment against Samuel Chase.

Mr. RODNEY had not been convinced of the necessity or propriety of the amendments adopted yesterday in the Committee of the Whole. For his part he was inclined to believe the articles, for every material purpose, correct as they first stood. It will be remembered that in cases of impeachment by a Legislative body we are not tied down to those forms and technical decisions, which in courts of law are so essential. The maxim is, that they may express themselves in the common language of the country, in common parlance, or *loquendum ut vulgus* as it is stated in the books. Therefore the words on the trial of a person include everything relative to the trial; it is so laid down by Lord Hale, and he is followed in the opinion by all the able writers who have treated on this subject to the present day. All arrangements previous to the testimony, and argument, are as much a part of the trial as the arguments of counsel. Should there were even technical phraseology required on this occasion, the language of the articles comes up to it in this particular. He hoped the House would refuse its concurrence to the amendments reported from the Committee of the Whole.

On the question for concurring with the Committee, it passed in the negative; so that article the first remains unaltered, and the like fate attended the amendment proposed to article fourth.

Mr. NICHOLSON meant to require that the yeas and nays be taken upon each article separately.

Mr. R. GRISWOLD would cheerfully join in the call, as he wished to record his vote against every part of this very extraordinary proceeding.

The first article being before the House,

Mr. LUCAS wished to ask if it would be at this time in order to propose an amendment to the first article. He was informed by the Speaker that such a motion was in order. He thereupon proceeded to move to strike out what related to the conduct of Judge Chase, in saying "to the disgrace of the character of the American bench." He moved this amendment from an impression that the improper conduct of one judge could not be a reflection upon the proper conduct of another judge. If he was one, he should not consider himself disgraced because his colleague had acted improperly; if then, one cannot be disgraced by another, much less can the whole be disgraced by the improper conduct of one. The word *bench* extends to the whole courts of the United States. He did not like either to use a figurative word for a legal one, such as the word bench for court: he did not rely much upon this, but he thought so serious a matter as that of impeachment ought to be cautiously expressed. Should *Judge Chase* be convicted on this impeachment, *he will be disgraced*, but that disgrace will *entirely rest upon his* own head. He trusted that if his motion succeeded there would still remain enough in the charge to make him highly reprehensible, if found guilty; for it is stated that his conduct was in manifest violation of law and justice, and in open contempt of the rights of juries.

Mr. ELLIOT was pleased with the ingenuity of the gentleman, but he hoped the motion would not prevail, and observed that if they were to have a discussion on every rhetorical flourish, on every trope or figure introduced in the report they would not get through the business in an age. But the objection against the word bench did not apply, for he considered it one of the most chaste in the whole composition.

On the question the amendment was not carried.

On the question that the House do agree to the first of the said articles of impeachment, it was resolved in the affirmative—yeas 82, nays 34, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler,

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George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, N. R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas Mann Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

On the question that the House do agree to the second of the said articles of impeachment, it passed in the affirmative—yeas 83, nays 35, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, S. W. Dana, John Davenport, Thos. Dwight, James Elliot, Calvin Goddard, Thos. Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

On the question that the House do agree to the third of the said articles of impeachment, it was resolved in the affirmative—yeas 83, nays 34, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George M. Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, David Hunt, Sam'l Hunt, Joseph Lewis, jun., Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

The fourth article being under consideration,

Mr. ELMER was not satisfied with that part of the article which charges the judge with criminal conduct in his choice of words in conflicting with the prisoner's counsel; the expressions on both sides might have been unusual and rude, for, from the statement of the trial, it appears that there was some considerable altercation, and he could not see from the evidence how far the conduct of the counsel for the prisoner was correct; perhaps they might have furnished some cause for reprehension, or have excited such a sentiment in the mind of the judge. The other parts of the article he considered of the highest

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moment, and should give them his hearty approbation.

Mr. J. Randolph observed to the gentleman, that he might attain his object by moving to strike out the parts he disliked.

Mr. Elmer believed he could reach his object in that way, and thereupon moved to strike out the third and fourth sections of the article.

Mr. Jackson hoped the gentleman would not persist in his motion, and requested him to cast his eye over the sixth article of the amendment to the Constitution, where he would find that the accused person has a right secured to him on his trial, to be assisted by counsel in his defence. If the counsel are deterred from rendering that assistance by the rude and insolent conduct of a judge, such judge may say peremptorily that counsel shall not be heard. It is the same thing in the end, and whatever way it is brought about, it is a heinous crime on the part of the judge, who may, in this way, become paramount to both the law and the Constitution, if such things are permitted with impunity. In the present case, he deemed the third and fourth sections to be of importance, and trusted that if the mover persisted, he would be defeated.

Mr. Elmer acknowledged that indubitably every man had a right to be heard by counsel in his defence, but a Constitutional declaration on that point did not go to authorize counsel to insult the court; he did not say what was the aggravation or who gave it, but he observed in the testimony that much altercation had taken place between them.

Mr. Jackson called for the reading of Mr. Hay's testimony, already qouted in Committee of the Whole. It was read again.

Mr. J. Randolph hoped the House would not agree to strike out the paragraphs in question. To those gentlemen of the House who have the pleasure of knowing Mr. Hay, it will be deemed sufficient that he had made the statement just read, in order to be fully impressed with its truth. To those gentlemen who are not acquainted with him, an additional reason may be given for its truth. The fact is, that the conduct of the judge on the occasion stated in the article, was such as to excite universal indignation throughout Virginia, and, it is believed, throughout the United States. To allay this irritation and defend the judge's conduct, it has been supposed that the trial of Callender was published; but, be the motives for publication what they may, it is a matter of great notoriety, that the gentleman who reported it was a violent political partisan for the party then in power; and it was generally understood that the printed report of the cause tended to soften the public feelings which had been excited against the judge by the relation of those who had been present at the trial; and on the point of treating the counsel rudely and contemptuously, it ought to be noticed that the reporter acknowledges he was not present on the first days of the trial. That it was not an unfavorable detail of Judge Chase's conduct, might be inferred from this circumstance—that the committee sent for this testimony on the suggestion of a gentleman from Connecticut. But even this report of the trial establishes, beyond a doubt, all the allegations in the part moved to be stricken out; and when you recollect the time it was published, and the appearances at that time, it cannot be supposed it was meant to criminate him. No; it was meant to rescue him from popular odium. Mr. Wirt, one of the counsel, on addressing the court, was interrupted by Judge Chase in these words, "take your seat, sir, if you please." Is this the usual language from the bench to the bar? Let the Clerk read that account of the trial, and you will find it a tissue of damning evidence of every fact set forth in the article.

The question on the amendment was taken and lost.

On the question that the House do agree to the fourth of the said articles of impeachment, it was resolved in the affirmative—yeas 84, nays 34, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwin, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, junior, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

The fifth article being under consideration,

Mr. Jackson declared himself opposed to this article, and asserted that the testimony did not support it. He had read and investigated the act of the Assembly of Virginia, and found that the section relied upon was susceptible of another construction. He quoted the words of the act,

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and added, here we find that the court may order the clerk to issue a summons, or other proper process. These words are suppressed in the article under consideration. It is a known maxim in courts of conscience, that the suppression of a truth, or the suggestion of a falsehood are equally weak and wicked. And it ought to be deemed equally improper for us to suppress a truth, or allege a falsehood, in so solemn a transaction as that of an impeachment. If after the word "summons," in the article, we were to insert the words "or other proper process," it might go a great way toward altering the opinion of members. What other process can issue beside a summons? If you will not trust a summons, you will take the body; this is a capias. If there be no other than these two writs, it was in the discretion of the judge to order a capias. If a person commits a great crime, though not capital, a capias may be the proper process; for a summons will only be a notice to the party to run off. He, therefore, could not agree to the first part of the article, and the latter part was left unsupported if the other failed. If the court had a right to award a capias, it necessarily followed that the party must be arrested if found, and, if arrested, he must be committed to close custody, or give bail for his appearance; there is no other mode of avoiding imprisonment upon arrest. Has there appeared any proof that Callender made an application to be bailed? If he did not, he could not be refused by the judge. Nothing of this kind has been heard in proof, and until then we ought to withhold our assent to the latter part of the article.

Mr. NICHOLSON.—The laws of Virginia relative to this point, if he recollected rightly, were that, in capital cases, a capias is ordered to issue for the apprehension of the offender, but in cases of crimes, less than capital, a summons, or other process shall issue. What is the practice in that State? He had never understood that it was the practice there to issue a capias for the apprehension of small offences, but a summons to answer at the next court after the presentment.

Mr. J. RANDOLPH.—My friend (Mr. NICHOLSON) is not mistaken in the law; and the practice, so far as he knew it, was what every reasonable man would suppose it ought to be, that is consonant with the law itself. There are two distinct species of crimes, one capital, the other not capital. The first species is divided into treasons and felonies. The second contains all other lesser crimes. For the first, it is mentioned in the law itself that a capias is the proper process; but in the second it is to be by summons, or other proper process, to the next court. By confining the writ of capias to capital cases it also infers that a capias is not a process in cases under capital. If the court awarded a capias, then, in Callender's case, they did what the law did not authorize them to do, and which the practice in our State courts did not warrant. Instead of this defence of the judge, he suspected the defence would be exonerating the judge at the expense of the clerk, who issued the writ; that being the act of the clerk, they would not hold the judge responsible therefor. It will be recollected that the capias issued after the indictment was found, and that the prisoner was tried in the same term. Mr. Hay, in his testimony, sets this matter in a very clear point of view. The capias was issued by the clerk on the award of the court, at the instance of the prosecuting officer. If, concluded Mr. R., there is one article I put more reliance on than another, this is the very article.

Mr. BECKLEY, the Clerk, read extracts from the laws of Virginia on these two points.

Mr. JACKSON agreed that the conduct of the judge in ruling the party to trial at the same term, he was presented, was a high-handed, arbitrary proceeding; but that is the charge contained in the sixth article which he much approved of, and should certainly vote for. But he had not been influenced, by anything said, to change his opinion; he should, therefore, vote against the fifth article.

Mr. ALSTON observed that the laws of Virginia spoke only of presentment; "that, upon present-'ment by any grand jury of an offence not capital 'the court shall order the clerk to issue a sum-'mons for the party to appear and answer such 'presentment at the next court." Callender was indicted, and there being a difference between presentment and indictment, it appears that the court had a discretion as to the time of trial; this however seemed to him to be the case.

Mr. J. RANDOLPH replied by reading the warrant, annexed to the articles of impeachment, in which are the words "to answer a certain presentment found against him (Callender) by the grand jury."

On the question that the House do agree to the fifth of the said articles of impeachment, it was resolved in the affirmative—yeas 70, nays 45, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Rich'd Cutts, John Dawson, William Dickson, John B. Earle, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, J Hasbrouck, J. Heister, David Holmes, Walter Jones, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, Joseph Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, junior, Silas Betton, William Blackledge, John Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Tho-

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mas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, James Holland, David Hough, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Cæsar A. Rodney, Erastus Root, John Cotton Smith, John Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, and Marmaduke Williams.

The sixth article being under consideration,

Mr. RODNEY.—As I intend to vote against this article of impeachment, I mean to assign my reasons in as few words as will enable me to be clearly understood. It has been admitted, on all sides, that such interesting proceedings as that in which we are engaged should be conducted with calmness and temper, void of every sensation arising from hostile passions; but particularly when we consider all the circumstances connected with the object of this impeachment—a man of talents, placed in an eminent elevation of office, qualified to ascertain the bearing of your evidence and testimony—too much caution cannot be used, and gentlemen are justified in their minute examination into the relation between the charges and testimony upon which they are erected.

I consider this article objectionable, because there is concealed within it a principle pregnant with mischief to this country; if it be adopted, it will go to establish a principle most dangerous and oppressive. It goes so far as to say that the courts of the United States have criminal jurisdiction at common law. If gentlemen will attend to the article, they will observe that it cites the act of Congress establishing the judicial courts of the United States so far as relates to the regulations of the several States, and they are enacted to be the rules of decision of those courts in trials at common law; and then it goes on to charge Judge Chase with violating this very act. It is the act of Congress which gives life to the act of Virginia in the United States courts, and it says that the statute shall be enforced as on trials at common law. The first inquiry will be, what was the meaning of the Legislature in using the expressions "in trials at common law;" and to ascertain whether Callender was tried by the common law, or under the sedition act? Law writers are not more clear, precise, or correct, on any subject, than they are in their definition of the common law; it is the unwritten law, as contradistinguished from the statute law. A gentleman suggests to me that the common law mentioned in our statute is merely to mark the difference between our admiralty and maritime jurisdiction. We usually refer to English authorities for an explanation of the technical words we borrow from them, and there we find that the common or unwritten law is so called to distinguish it from statute law; and this is the broad line laid down by Virginia herself in a declaration of her Legislature, drawn up by one of the greatest statesmen that ever that or any other country produced. They declare that the United States Government has no common law jurisdiction. All their powers must be exercised in virtue of some statute made under the conditions of the Constitution. In casting our eyes over the Constitution we shall not find a syllable of the words "common law;" the first time it appears, it is in the seventh amendment, relating to debts exceeding twenty dollars.

The judiciary bill refers to the civil jurisdiction of those courts, in cases between foreigners and citizens; but there is no where to be found a word that gives to the United States criminal jurisdiction at common law. Mr. Chase held this opinion himself, as you hear from the affidavit of Mr. Read, who, observing the attack upon Judge Chase in the Wilmington Mirror, reminded him that the sedition act did not protect *the judges* from libel; they had no cognizance thereof, and it could not be punished but through the State courts. Even in England they paid respect to this distinction. The first trial of Rinewick Williams, commonly called the monster, for his abominable wickedness, in cutting women as they passed him in the street; he was indicted under a particular statute, judgment was successfully arrested, though he was afterward indicted at common law for assault and battery, and convicted.

To make the allegation conform to the principles, it should be said that Callender was tried by the common law. Where was the authority at common law? Callender's was not a civil case, between a citizen of another State and *himself.* No; it was a criminal case, under a particular statute, and he was tried by statute law, not by the common law. He was confirmed in this opinion by the report of the case, where it appears that such eminent men as Mr. Hay and Mr. Nicholas preferred to rely upon an affidavit for a postponement rather than bring forward the statute of Virginia, alleged to be decisive; they would hardly leave their client in the discretion of the court, when they had the strong language of the law that they should not try the cause at that term; their talents and vigilance forbid us for a moment to entertain the idea that the matter had escaped their notice or recollection.

These are the principal reasons which induce me to vote against the sixth article now under our consideration.

Mr. J. RANDOLPH said, if he agreed in the construction which his friend from Delaware contended for, he would not be the last man to join him against the article. He would not support any act that would tend to sustain the pretension that Congress have criminal jurisdiction in common law cases. If this construction could in any wise be put on this article, he here entered his protest against it, as well as against the doctrine itself. One of the first acts of the General Government was, to establish judicial courts on the part of the United States; and let it be recollected that, besides the great national power vested in the courts by the Constitution, there were others vested in them of a peculiar nature. Their authority extended to cases between a State and

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citizens of another State—between citizens of different States, and foreign States, citizens or subjects. It was enacted that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require, shall be regarded as the rules of decision in trials at common law. It has always been held as a sound rule of construction that all the words ought to have efficacy, and, when this law of the United States gave life and vital spirit to the law of Virginia, it provided that in all cases at common law the rule of the State should govern, but, in cases under a statute where rules of decision are otherwise provided, the law of the State shall not govern. Congress saw in the outset the necessity of carrying into effect that great Constitutional power of establishing courts and regulating their mode of procedure. Instead, however, of establishing any mode of their own, they adopted the modes already existing in the several States, and there is no other mode except in cases of admiralty and maritime jurisdiction. If the laws of the State where the offence has been committed does not apply, what possible rule of procedure or decision could govern the court? In what manner is a criminal trial to be conducted? The 34th section, under any other construction, becomes absurd and nugatory. He did believe, that, by the 33d and 34th sections of the act establishing the judicial courts, the laws of the several States have been adopted by Congress in criminal as well as in civil cases.

But the gentleman from Delaware asks us how we can believe this to be the just construction, when the able counsel assigned to the defence in this case failed to produce this law to the court, which would have procured them the direct attainment of their end, without applying to the discretion of the court? To this he answered, he could not tell why they omitted to bring forward this objection. This was not his concern. It might, perhaps, have escaped their memory. But will it be an objection, that, because they failed, we also should fail, who think this law has been violated. That the law of Virginia was the rule of conduct adopted in this case, is proved by every preliminary as well as subsequent step. If, then, they did not make this exposition of the law of the United States, why was the trial, in all other parts, conducted consonant with the laws of Virginia. He stated the case in another point of view. Although there is no common law jurisdiction of the United States in criminal cases, yet there is in each State a peculiar common law generally drawn from England, but varied so as to suit their purposes. Suppose Virginia had never modified the common law of England as it relates to the law of descents, and suppose a claim brought in the United States court by a citizen of North Carolina for a tract of land in Virginia, (it will be admitted that Congress can make no law in relation to descents,) how is the court to be governed? —by the law of descents in North Carolina, or by that of Virginia, or by the common law of England? Certainly they must conform their decision to the rule of Virginia, where the land lies. Take this common law doctrine, then, in any other sense than as being in contradistinction to our admiralty and maritime code, and it has no basis for common law jurisdiction; Congress have none in criminal cases, as all such cases must be constituted crimes by a statute of Congress, previous to their perpetration, and a statute or written law is the opposite of common, which is an unwritten law, made up of usages, time immemorial. If it was established that this article tended in any shape to establish the exploded doctrine, that the United States had common law jurisdiction in criminal cases, he would readily vote against the article.

Mr. NICHOLSON entertained no doubt but the term of common law expressed in the statute establishing the courts of the United States, was used as a term of definition, and that it ought not to be construed to give the courts any additional jurisdiction, nor to abridge them of any they possessed. He observed in other parts of the law, that the words common law are used to distinguish that mode of procedure from what was used in our courts of admiralty. In England, they had three district courts governed by three distinct modes of proceeding, under three laws. The common law courts, or the courts at Westminister, and the chancery court, are governed by the common law. The admiralty courts are governed by the civil law, and the ecclesiastical courts by the ecclesiastical law; but all and every one of these are governed by the statute law. But in their mode of proceeding, each has its own peculiar rules, yet they are all bound to conform to a statute, as if a statute had originally given them jurisdiction. In our own courts, he believed, it would be difficult to conduct trials without some provision as to the mode. Bills of exchange and promissory notes were not made current until the time of Queen Anne. The suit on these actions is still at common law, as was the case mentioned in the article. And, with the gentleman from Virginia, he asked in what manner a criminal can be prosecuted but by the rules of the common law, unless you have him to be tried by such arbitrary ones as the court may make at the time, in order to suit their own purpose? If it be true that we have no rules of proceeding established for our courts of justice, it is high time to set about making them. But the fact is, that rules are established, and the reason why they were established in the manner they are, is, that in this way Congress expected, and justly too, that they would give more satisfaction to their constituents to leave them to the rules of proceeding they had long been accustomed to, than they would by introducing a novel set of their own contrivance. And he sat down fully convinced that the circuit court was bound to proceed through the whole case by the rules established in Virginia.

The sixth article was agreed to—yeas 73, nays 42, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, George M. Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay,

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Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Samuel Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Christopher Clark, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Cæsar A. Rodney, Erastus Root, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbitts, Peleg Wadsworth, and Marmaduke Williams.

On the question that the House do agree to the seventh of the said articles of impeachment, it was resolved in the affirmative—yeas 73, nays 38, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George M. Bedinger, Adam Boyd, John Boyle, Robert Brown, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Matthew Clay, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, William Kennedy, Nehemiah Knight, Simeon Larned, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, Wm. Blackledge, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jr., Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbitts, Peleg Wadsworth, and Marmaduke Williams.

The eighth and last of the said articles of impeachment, being again read at the Clerk's table, a division of the question on the same was called for; and on the question to agree to the first member of the said eighth article, in the words following, to wit:

"ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra judicial, and tending to prostrate the high judicial character with which he was invested, to the low purpose of an electioneering partisan:"

It was resolved in the affirmative—yeas 74, nays 39, as follows:

YEAS—Isaac Anderson, John Archer, George M. Bedinger, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Jos. Stanton, John Stew-

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art, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, jr., Simeon Baldwin, Silas Betton, William Blackledge, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W Dana, John Davenport, Thomas Dwight, John B. Earle, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, and Marmaduke Williams.

On the question that the House do agree to the second member of the said eighth article, as contained in the last clause of the report made by the Committee, in the words following, to wit:

"And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any farther articles, or other accusation or impeachment against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and offering proof to all and every the aforesaid articles, and to all and every other article, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice:"

It was resolved in the affirmative—yeas 78, nays 32, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, George Michael Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Nahum Mitchell, James Mott, Thomas Plater, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

And then the main question being taken that the House do concur with the select committee in their agreement to the said articles of impeachment, as originally proposed, and hereinbefore recited, it was resolved in the affirmative.

Mr. NICHOLSON moved the following resolution:

Resolved, That —— Managers be appointed, by ballot, to conduct the said impeachment on the part of this House.

The House proceeded to take the said motion into consideration; when, an adjournment being called for, the House adjourned.

WEDNESDAY, December 5.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be directed to inquire whether any, and, if any, what, further provision is necessary to be made, by law, for carrying into effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain, so far as relates to exemptions from duties, charges, and fees, arising upon the whole or any part of the cargo of such Spanish vessels as may be wrecked, foundered, or otherwise damaged, on the coasts or within the limits of the United States, where, from the insufficiency of the vessel, it becomes necessary to export or relade the same upon our bottoms, and that the committee have power to report by bill or otherwise.

IMPEACHMENT OF JUDGE CHASE.

The House resumed the unfinished business of yesterday, viz: the appointment of Managers to conduct the impeachment of Samuel Chase, one of the Associate Justices of the United States, and having directed that the number should consist of seven, the House proceeded to ballot for the same; and upon examining the ballots the following six members were elected, having a majority of the whole number of votes, viz: Mr. J. RANDOLPH, Mr. RODNEY, Mr. NICHOLSON, Mr. EARLY, Mr. BOYLE, and Mr. NELSON.

The House then proceeded to ballot for the seventh Manager, and it appearing that Mr. G. W. CAMPBELL had the plurality of votes given in, but not a majority,

The SPEAKER, supposing that the rules of the House in the case of committees chosen by ballot was applicable to that of Managers, declared Mr. G. W. CAMPBELL duly chosen.

A conversation arose respecting the precedents on this subject, in which it was apparent that on all former occasions a majority of the votes had been given in favor of each Manager; but this appeared in the instance of the impeachment of Judge Pickering, rather from the recollection of gentlemen who spoke on the subject than from the Journal.

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Mr. SPEAKER had not recollected how the election was conducted, but he should not regret an appeal to the House on his decision.

Mr. J. RANDOLPH, impressed with respectful sentiments of the understanding and integrity of the SPEAKER, would be the last man to appeal from his decision; but for the purpose of preventing what either had heretofore taken place, and what may hereafter take place, in case of such decisions, involving the House or individual members in very unpleasant situations, he would move an appeal to the House from the decision of the Chair.

The question was immediately taken, and 25 voted in favor of the SPEAKER's decision, 50 voted against it; of consequence, the decision was reversed.

And the House proceeded to ballot a third time, but no member had a majority. At a fourth ballot the result was the same. On the fifth ballot Mr. G. W. CAMPBELL had a majority, and was declared to be duly elected.

On motion of Mr. NICHOLSON, it was

Resolved, That the articles agreed to by this House, to be exhibited in the name of themselves and of the people of the United States, against Samuel Chase, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the Managers appointed to conduct the said impeachment.

Ordered, That a message be sent to the Senate to inform them that this House have appointed Managers to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and have directed the said Managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against the said Samuel Chase; and that the Clerk of this House do go with the said message.

THURSDAY, December 6.

The SPEAKER laid before the House a letter from the Governor of the State of Virginia, enclosing a return of the election of ALEXANDER WILSON, to serve in this House, as a Representative for the said State, in the place of ANDREW MOORE, appointed a Senator of the United States; which were referred to the Committee of Elections.

Mr. CLAIBORNE, from the committee appointed on the sixteenth ultimo, presented a bill making farther provision for extinguishing the debts due from the United States; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. NELSON, from the committee to whom was referred, on the nineteenth ultimo, the petition of Samuel Carson, of the town of Alexandria, in the District of Columbia, made a report thereon; which was read, and considered: Whereupon,

Resolved, That a bill be brought in, agreeably to the prayer of the said petition; and that Mr. NELSON, Mr. JONES, and Mr. THATCHER, do prepare and bring in the same.

A Message was received from the President of the United States transmitting a report of the Surveyor of the Public Buildings at Washington. The Message was read, and, together with the papers, ordered to lie on the table.

PRESERVATION OF PEACE.

The House resolved itself into a Committee of the Whole on the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

Mr. R. GRISWOLD had doubts respecting the propriety of several parts of the second section, and he wished the gentleman who reported the bill would explain the intention of them. If he understood it, the section made a provision for the warrant of the State officer to arrest an offender who shall have fled on board an armed foreign vessel, and in order to give aid to the process of the State, provision is made to call in the United States authority, to call out the militia to secure the execution of a State warrant. The Constitution gives to Congress the power of calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. Here is an express authority given to Congress to aid civil officers by the militia in executing the laws of the Union; but it is silent as to the calling in the aid of the militia to execute the laws of a particular State. If there is any part of the Constitution from which gentlemen infer that Congress possess authority, he would be glad they would point it out, as he had never heard of it before.

Another part of which he doubted was this. He had already said that the State officer was to be aided in the execution of a State warrant beyond the jurisdiction of the State; if the officer goes out of his jurisdiction he goes beyond his authority; consequently he acts without any authority. Now the last part of the section declares that if any person shall be killed in resisting the civil authority in a place not within the body of the county, but within the jurisdiction of the United States, it shall be justified. Why introduce this provision? Again, it is declared that if any of those concerned in making the arrest be killed in the place not within the body of a county, but within the United States jurisdiction, those engaged in resisting the civil authority shall be punished as in cases of felonious homicide. The sheriff not being invested with any power to make arrests out of his proper county, if he does so, and commits homicide, why justify him? Why should he not be subjected to the same punishment as others who commit the crime of homicide? If the sheriff, or one of his party, following a person out of his county into some other place within the jurisdiction of the United States or any other place out of the limits of his legal bounds, and is resisted in making his arrest, the arrest being illegal and without the county, the resistance may be legally justified. If these objections are unfounded, the gentleman will be good enough to show in what; and at the same time we shall be glad to hear what are the rea-

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sons for the propositions contained in this part of the bill.

Mr. NICHOLSON admitted there might be some difficulty in the provisions of the section, but he flattered himself they might be got over. He considered this as the most important part of the bill, and he wished to preserve it in order to prevent or punish in future the offences which had last year been committed with impunity. From the information he had received, the greater part of the offences committed last summer were committed in the body of a county; those particularly which universally excited the most indignation of the citizens of the Union, were committed either in the body of a county or within the jurisdiction of a State; some were committed within the jurisdiction of the United States, but the greater part were committed in the places before mentioned. Hence, it becomes necessary that some provision should be made for taking offenders, when the strength of a county or State is insufficient to arrest them. The objections of the gentleman from Connecticut are two-fold; first that we have no Constitutional authority to call out the militia to execute the State laws; next, that a State officer has no authority to go beyond the jurisdiction of the State to execute his State process. On the first point Mr. N. had entertained strong doubts himself, when contemplating the subject; but on looking into the Constitution again, there did not appear to be so much room for doubting as he had first apprehended. The Constitution provides that Congress shall have power to call forth the militia to execute the laws of the Union, &c. The laws of the Union may be exclusively considered the laws passed by Congress. But may not the laws of every State be also considered as laws of the Union? Every State forms a part of the Union. How far a State has the power to call out the militia for the purpose of executing its State laws, he could not determine, but it appears that Congress have the power to call forth the militia, not only to execute the laws passed by Congress for the whole Union, but to execute the laws passed by each State, as each State is a part of the Union; the whole forming one confederacy, the whole are interested in the due execution of the laws of each.

The subsequent part of the Constitution provides for suppressing insurrection; and he asked if insurrections might not be against the authority of the State, as well as against the United States, and he further asked if a resistance to the civil authority about to execute process may not be termed an insurrection, when a process is issued under the authority of a State, as it would be, if the process issued under the authority of the United States. If the Northampton insurrection had arisen from opposing the execution of process from the State of Pennsylvania under its own laws, instead of opposing the process issued from the district of Pennsylvania under the law of the Union, would it not have been as much an insurrection against the authority of the State, as it was against the United States? He thought, upon the fullest consideration he had been able to bestow on the subject, that in passing this section we should not overleap the boundary of the Constitution, believing the laws of every State to be a part of the laws of the Union.

The second objection may perhaps excite some doubts in the minds of some gentlemen; but he begged leave to suggest a case that might happen, and probably will happen, in which he thought a State officer would be justified in going beyond the boundary of a State to execute his process. The body of the county of New York extends upon the water to the northeast end of Staten Island; from there to Sandy Hook, is not in any county, but within the jurisdiction of the State. If the crew of a vessel lying below Staten Island should come up to the city of New York and commit outrages upon the citizens—say, should perpetrate murder, this is an offence against the State; the United States could issue no process in this case. The State officer therefore issues his; the sheriff proceeds to serve it, the crew leap into their boat, push off, row down below Staten Island and get on board their armed vessel; would not the sheriff be authorized to pursue them, even if they went without the Hook? He believed he would be justified in doing so; but he acknowledged it would not be proper to pursue them into Jersey; because the Constitution makes provision for the pursuit of fugitives from justice seeking an asylum in another State; but he might pursue and take the offender within the limits of the United States. He is offending against no jurisdiction, but pursuing an offender against a State law, which is a part of the United States. To illustrate farther, he stated that Congress had the right to authorize a State officer to execute State process within the territory of the United States. Have they not the power to authorize an officer of the State of Maryland or Virginia to execute a State process within the Territory of Columbia? There is nothing in the Constitution, nor in the acts of cession, that prevents us. If then we authorize State process to run into the District of Columbia, shall a murderer or fugitive from justice take refuge here, and escape punishment, because he is beyond the limits of the State in which the offence was committed? He trusted that such a result would not be contended for: but that every gentleman would aid the object of the bill, which was to prevent in future the commanders of foreign armed vessels from insulting American shipping in our ports and harbors, or in the waters under the jurisdiction of Congress.

Mr. R. GRISWOLD.—The remarks of the gentleman have not proved to my mind that I was mistaken. He supposes, in respect to the first idea I suggested, that Congress has a right under the Constitution to call out the militia to execute the laws of a State, because a State being part of the Union, so are its laws a part of the laws of the Union. If this proposition is true, if the laws of a State are the laws of the Union, they must bind the Union, for it is the nature of laws to bind those upon whom they operate. Now will that gentleman tell me that the laws of a particular State are obligatory upon the whole Union? The

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Constitution does not bear along his idea; it only means that the laws passed by Congress are the laws of the Union. Of course no power is given by the Constitution to call forth the militia to execute the laws of a particular State. He conceives that under that part of the Constitution making provision against insurrections, Congress might call forth the militia to suppress an insurrection against the authority of a State. Be that as it may, this bill does not contemplate calling out the militia for that purpose. It merely confines itself to the execution of a magistrate's warrant; therefore that part does not authorize the passing of a law of this kind. Mr. G. was aware that the militia might be drawn out to aid the civil arm, where it could not effect its object with the assistance of the *posse comitatus*. But he had always thought that the Executive of the State authority was the proper organ to call forth the militia to execute their own laws. And are the States to be now deprived of this power? By the Constitution, Congress have the power of organizing, arming, and disciplining the militia, and of governing such part of them as may be employed in the service of the United States; but to the States is reserved the appointment of officers, and training, and he had ever understood that the States had the right of commanding their own militia and calling them forth to execute their own laws. This being the case, where is the necessity for Congress undertaking to legislate on this point? The States having competent authority for the purpose, why not leave it to them? If any States should think it necessary to call out the militia, they could do it with as much despatch and as effectually as the United States; and all of them, he believed, had laws for the purpose. If any of them had not, they would soon pass them if they saw their necessity.

To the second objection the gentleman has replied; but it cannot be conceived that a sheriff having a warrant can ever be justified in going out of his jurisdiction to execute it. He admits that the warrant shall not run into the State of Jersey; not because the Constitution provides for reclaiming the offender, but because the jurisdiction of New York does not extend to the State of New Jersey. If this is a reason in that case, it must be a reason in this, and a sheriff cannot go within the jurisdiction of the United States to execute his warrant any more than he can go into that of a neighboring State. It is, perhaps, competent to Congress to pass a law to return an offender that has fled from justice within their territory; but they cannot extend the State process beyond what the State itself directs. They may, perhaps, be authorized under the authority of exclusive legislation, to pass a law directing offenders who seek an asylum in the District of Columbia, to be delivered up to an offended State. But that is not the object of the present bill, nor is there any provision of the kind contained therein. Entertaining these sentiments he moved to strike out the second section.

Mr. NICHOLSON.—The gentleman does not consider the laws of the particular States as part of the laws of the United States, because they are not obligatory over the whole Union. Mr. N. alleged that a law passed by a State, conformable to its constitution, was as obligatory over all the people of the Union who went into that jurisdiction, as a law passed by Congress was obligatory over the whole people who resided within the United States. The laws passed for the government of the District of Columbia were also binding over the whole Union, though they did not operate upon any person but those who are within the ten miles square. So the laws of every particular State are binding on the Union *pro tanto*, for as much as they extend to. But the gentleman makes no remarks upon my second observation, that the United States have a right to allow the officers of a particular State to execute their warrants within the exclusive territory and jurisdiction of the United States. The Constitution does not prohibit us from exercising this authority any more than the constitution of any State prohibits its Legislature from granting a similar indulgence to its neighbor. If New Jersey was to pass a law authorizing the officers of New York to pursue an offender and arrest him in the State of New Jersey, could it be complained of, or would it be said that the act of a sheriff making such an arrest was illegal, and that resistance would be justifiable? In fact, Virginia and Maryland have actually such a mutual regulation, and a person escaping from justice may be arrested by the officer under process from either State.

Mr. J. RANDOLPH said there undoubtedly were difficulties arising out of this subject, but generally they had been satisfactorily answered by his friend from Maryland, (Mr. NICHOLSON.) The situation of the United States in relation to the individual States, it is well known, differs from that of every other Government under the sun. The waters in our harbors are generally under the jurisdiction of the State Governments, while the mouths of those harbors are under the jurisdiction of the United States. And if the position is true that the United States cannot authorize a State officer to execute his process, when an offender shall have escaped into the waters under the United States jurisdiction, the case is irremediable. And it will be known that the most daring outrages committed within a State are to be passed by with impunity if the criminal escapes beyond the State boundary into that of the Union. This was a doctrine to which he never could accede. He saw no good reason why a State might not as well have the privilege granted of executing its process within the jurisdiction of the United States, as of reclaiming offenders flying from justice into other parts of the Union. He deemed it prudent to fortify the arm of the State with the strength of the United States. There is, however, one part of the clause that had not been satisfactorily supported to his mind. He did *not* understand how the Congress could enjoin it upon a magistrate to call out the militia to execute a State warrant. He was not satisfied either as to the right, the constitutionality, or propriety of the measure. The Constitution, when it speaks of

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calling out the militia, confines the object to three things: to execute the laws of the Union, to suppress insurrections, and repel invasions. Congress may call forth the militia to execute the laws of the United States, but not to execute the laws of a particular State. The States individually have the right to call forth the militia of their own States to execute their own laws, and the United States have also the power to call forth the whole militia of the United States to execute the laws of the Union. He had no doubt of the propriety of giving the States authority to execute their process within the limits of the United States jurisdiction; but he doubted extremely the authority of Congress to call out the militia for the purpose mentioned in the bill; that he conceived to belong to the State authority, and the State alone was competent to its execution.

The doctrine of the gentleman (Mr. R. GRISWOLD) on another point was not so correct. It will be recollected that the individual States could neither raise an army nor create a fleet; yet armed vessels may commit, in our waters and in our ports and harbors, the most violent outrages upon the persons and property of the citizens; and this miserable quibble is to enable them to elude a nation's justice. We cannot, we are told, extend the jurisdiction of a State, nor aid her with the national force; surely the lives and fortunes of our citizens are not thus tamely to be sacrificed.

Suppose murder to be committed in the harbor of New York by a citizen or a foreigner not belonging to an armed vessel. This may be considered as a crime against the State, and which the State authority is competent to punish. But if murder is committed by the crew of an armed vessel, is not such an armed force equivalent to an invading foe? If a man came from Canada into Vermont, and was to commit a similar outrage, would not the civil power of the State apprehend him, and punish him with death, if his crime was of such enormity as to require it? And shall an armed vessel be permitted to outrage the person and property of our citizens on the Atlantic shores because she has the strength? He would be glad to see a remedy more complete than the one mentioned in this bill. He would like to see such a force repelled by force, not by the civil arm. He would like to see the armed vessels employed in disturbing our peaceable commerce blown out of the water. He wished to see our American officers and seamen lying yard arm and yard arm in the attack, and the question of peace or war staked on the issue, if the conduct of such marauders was justified by the Government of the nation to which they belonged. This language may appear different from what he had constantly used; but our situation was also different. Heretofore he was not disposed to engage in hostilities for the protection of our navigation; but we then had no maritime force. We have since created one. If we had no Navy, we could not meet them on the ocean; but having one, he would apply it to the best purpose—that of efficaciously defending our ports and harbors—and would struggle till the whole of our marine was annihilated, if in the contest Britain should not leave us a single ship. Though we lost all, we should not lose our national honor; though we should not beat her on the ocean, we should save our reputation. But to suffer insult to be added to injury, is indeed a degradation of national honor, and ought never to be borne with, let it come from any nation whatever.

Mr. R. GRISWOLD did not say that Congress had not power to authorize the individual States to send their process into the territory under the jurisdiction of the United States. That point could not be a question on this bill, because that power is no where proposed to be given. The objection was, that without having given the State power to send its process within the United States jurisdiction, you say that if the person making the arrest, or the person intended to be arrested, shall be killed within the jurisdiction of the United States, it shall be justified; or if any person aiding the sheriff be killed by those resisting the civil authority, they shall be punished as in cases of felonious homicide. He was desirous that some efficacious mode of resisting or repelling the aggressions upon our commerce should be adopted, and the peace and security of our country effectually secured for the future.

Mr. ELLIOT.—The question has some traits of peculiar importance, and it would be desirable at all times to harmonize the conflicting claims of the State and General Governments. He could have wished that the doubts upon his mind had been dispelled by the ingenious explanation of the gentleman from Maryland, (Mr. NICHOLSON.) But instead of being dispelled they were materially strengthened by his observations. We are told that the laws of the Union embrace the laws of the individual States. That the Constitution gives us power to call forth the militia to execute the laws of the Union; but it no where says that we may call forth the militia to execute the laws of the particular States. Are the State laws then laws of the Union? One gentleman affirms that they are, and another gentleman denies it. Let us inquire for a moment what is the meaning of the phrase, Union. The first paragraph of the Constitution says, We the people of the United States, in order to form a more perfect Union. Again, new States may be admitted by Congress into this Union; and in section 4, article 4, the United States shall guarantee to every State in this Union a republican form of Government. Surely it means the combination of the whole, and those only are the laws of the Union which are made by the representatives of the whole Union. If the laws of the individual States are laws of the Union, because a State is a part of the Union, then every by-law of every city, borough, town, or corporation in the United States are laws of the Union, for these also are parts of a State in the Union. How stands the question now? By the Constitution you have no power to execute a State law; yet you assume that power if you pass this bill. It is said the State laws are binding over the Union. They are only binding

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on those who reside or come within the limits of the State, and not on citizens residing and remaining in other States without their limits. An inhabitant of Jersey is not bound by the laws of New York while he remains on this side of the North river. You might as well say that the State laws were binding upon the universe, for a State is a part of the universe.

Mr. J. CLAY suggested to Mr. R. GRISWOLD to vary his motion, so as to strike out only that part of the section which related to the call of the militia by a State magistrate, and let all that relates to the Army and Navy stand. For although a State had the power of calling out its own militia to enforce the execution of her own laws, yet she could not call upon the regular troops or Navy of the United States, and this force he considered as a necessary aid in the cases alluded to in the bill.

Mr. R. GRISWOLD intended, if the section was struck out, to introduce a new one in its stead, declaring that the State process may be executed within the jurisdiction of the United States on the seaboard, and then adding a permission to the State to call in the aid of the Army and fleet of the Union.

Mr. J. RANDOLPH asked if he understood the gentleman right. Did he mean to authorize the State officer to execute his process within the United States jurisdiction, and make the killing of the officer or his assistant a felonious homicide?

Mr. R. GRISWOLD meant to give the power to the State officer expressly, and in that case, if resistance be made, most indubitably it is felonious homicide.

Mr. NICHOLSON was not convinced by anything which had been said, that Congress have not the authority to call out the militia in order to secure the execution of the State laws; but he was not generally tenacious of his opinions, and he would be the last man in the world to give his assent to the assumption of powers not granted by the Constitution, and if any reasonable doubt existed he would certainly refrain from pressing the question. He had no objection to the alteration proposed by the gentleman from Pennsylvania, (Mr. CLAY,) but he could not consent to strike out the whole section, as he conceived it gave the very authority contended for by the gentleman from Connecticut. He wished the bill to be rendered as efficacious as possible, and in order to remove the objection raised by doubts as to the constitutionality on account of calling forth the militia, he was willing to strike that part from the bill.

Mr. G. W. CAMPBELL.—This section contains a principle of much importance, although not yet touched upon by any of the gentlemen who have engaged in the discussion; and the manner in which the House may now decide thereon will go to fix a precedent upon which the freedom and independence of the individual States may be placed in jeopardy.

The first object in the section is to authorize a State officer, acting under the State authority, to go beyond the limits of such, and of course beyond its jurisdiction, to execute State process upon an offender escaping from justice. He did not believe that the United States were competent to give such authority, or that the United States could extend the laws of the several States beyond the boundaries of the State for which they had been enacted. For this reason he meant to oppose giving this authority to a State officer, but he would be clearly in favor of making such provision as would more effectually preserve peace in the ports and harbors and waters of the United States, and at the same time remove the doubts suggested by gentlemen on both sides. He would be for introducing into the bill, instead of the present section, a provision, that when such a crime shall have been committed, and the party charged had escaped into the United States jurisdiction, the State officer having received the State process might exhibit the same to a proper officer of the United States, who should issue a new warrant, and upon such warrant the offender escaping should be arrested. This he conceived to be the only mode in which Congress had a Constitutional right to reach their object, or to aid the State government in apprehending offenders. He was clearly of opinion that the powers of a sheriff could only correspond with those vested by the writ, which never did more than command the person to be taken, if he be found within your bailiwick or county; if you extend his powers in the manner contemplated in the bill, the State officers of Philadelphia will be despatched with State process to execute in Charleston.

He had always been of opinion that each State had a right to call out its own militia to carry into effect their own laws, and that the United States cannot require it of any State officer to call forth the militia to carry into effect the laws of such State; but he was also of opinion that Congress may authorize a State officer to call upon the United States officers to aid in the apprehension of fugitives from justice; but here we could only authorize them, and not compel them to make such call; if we could, we should annihilate the very existence of the State governments. This provision being made he would go further, though he was not willing to authorize every justice of the peace to call to his aid the military and naval forces of the United States, yet he was inclined to draw out this force whenever it became necessary under the direction of a proper officer to carry into execution a State process, where a State was incompetent to that object.

He would briefly mention another objection. It was to that part of the section which relates to punishment in case of resistance. He conceived this to be altogether unnecessary. When the United States authorize their officer to execute a process, he is armed with all the requisite power for its accomplishment; and as long as he acts within the authority given to him he will be justified in his conduct; and all who oppose him will be guilty of such crime as is known to the laws in the quarter where opposition may be given. This part of the bill appeared to him to

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be unnecessary, and if unnecessary it would be found also inconvenient. Whether the killing of the officer or his assistants was murder or manslaughter would be determined by the facts, and the punishment in either case would be found under the State law, adopted from the English law, to which a court would have to turn for its decision.

Mr. NICHOLSON wished that gentlemen, before they found fault with the bill, would pay a more particular attention to its provisions. The gentleman last up had supposed this bill enjoined upon the State officer, as a duty, that he should call in the aid of a military force to execute the State laws. That was not the case; the bill only says it shall be lawful for him so to do. It was observed some days since that our statutes affixed a punishment to the offence of resisting a civil process, consisting of fine and imprisonment; but this being a different crime when attended with killing, it became necessary, in order to remove doubts as to what punishment should be inflicted, that it be simplified and expressed in the law itself. He held himself ready to agree to the amendments suggested by the gentleman from Pennsylvania, (Mr. CLAY,) which he expected would satisfy every member, except the gentleman last up from Tennessee.

Mr. NELSON took this opportunity of expressing, in the most public and most explicit manner, that he should on all occasions vote against every measure which went to aggrandize the power of the United States at the expense of the individual State governments, or the authority of the people. It is at this day admitted that the General Government have no other powers of jurisdiction than what are granted by the people in the Constitution; that the powers not delegated therein, or prohibited by it to the States, are reserved to the States respectively, or to the people. The section before the committee contains two important regulations—one of which he considered as just and proper; the other not, as warranted by the Constitution. Nay, it would be a direct infringement upon the rights of the individual States. The section contemplates giving authority to the State officers to call out the militia of the State to execute its own laws, and thereby take the command of that force out of the hands of the Executive authority, where the State constitutions generally placed it. He admitted the right of Congress to call forth the militia in cases of invasion or insurrection, and to execute the laws of the Union; but exclusively of these cases authorized by the Constitution, he was bold to say Congress had no right to interfere with calling the militia into service. The command of the militia he considered as a sovereign power, and as such it could not be exercised by two sovereign authorities, as that would destroy the very idea of sovereignty, which was an exclusion of all other authority than one; the State Executive could not call forth the militia, and the Congress exercise the like power at the same time. He should always hold up his hand against such interference with the State sovereignties, or an assumption of power by Congress in this case, as well as other analogous cases.

Some gentlemen have entertained doubts whether Congress have power to authorize a State officer to execute process within the United States jurisdiction; if Congress have exclusive jurisdiction, it is competent for them to point out the manner in which it shall be conducted, and the persons by whom. The States of New York and Connecticut may mutually agree that the process of each State may take effect in the other. This is a principle so plain that it cannot be doubted, and it never ought to have been doubted but what Congress may in like manner permit a State process to be executed within its exclusive jurisdiction.

His colleague (Mr. NICHOLSON) had made a distinction on enjoining it upon a State officer to call out the militia, and said that only gave him the power to do so if he deemed it requisite. It is true that it is not enjoined as a duty, but it is nevertheless equally true that you assume to take away the power of a Governor of a State, and give the authority to a justice of peace, intended by the State constitutions to be exclusively within Executive and Legislative control. He should therefore vote in favor of striking out that part of the section, giving to judges or justices the power of calling out the militia, while he meant to favor that part extending the power to the civil officer of the State to make an arrest within the territory of the United States, or waters under its jurisdiction, in cases of fugitives from justice.

Mr. DANA had no objection to the second part of the clause, so far as it went to preserve peace in our ports and harbors, or maintain the rights of a State against every foreign aggression whatever. The general idea of combining the force of the United States, and the force of an individual State, he thought unobjectionable as to its principle, and gentlemen differed merely as to the detail. True, the manner of conducting this operation was important, and required deliberation in order to avoid the establishment of a precedent, which might hereafter be drawn out to support an unconstitutional authority. In respect to the first point, calling forth the militia to execute the State laws, he did not see that it need be considered as an insuperable impediment; because although the United States could not call them forth to execute a State law, yet the States themselves possessed the power, and would no doubt provide for its efficacious exercise in carrying their respective laws into full effect. But a doctrine that had been broached for the first time in the course of this debate, was a subject of an alarming tendency, and in his opinion was contrary to the whole scope of the Constitutional powers granted to the General Government of the Union. It is said that the laws of particular States are laws of the United States, because the States are a part of the Union. The Constitution declares it to be the duty of the President to take care that the laws be faithfully executed, and he is to commission all officers of the United

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States. Is it meant that the President shall see to the execution of the laws of each particular State? This will give a vast range to Presidential authority. But this is not all; for if you extend your view to the end of this construction, it will be found that the judicial authority is coextensive, and they will pass judgment of right upon the State laws. It is very well known that the laws of the several States are of two kinds—part statute and part common law; and this will extend their jurisdiction to all cases arising at common law. Grant this sweeping clause its whole range, and it will enable the courts of the United States to draw every litigated subject within their own cognizance. This is a step which surely gentlemen are not prepared to take at this time.

With respect to the latter part of the section, he was prepared to go the whole length. He would furnish the whole force of the United States to support the peace and independence of the States, and to vindicate lawful commercial pursuits, against any or every nation that dare attack them. He assented to the position of the gentleman from Virginia, (Mr. J. RANDOLPH,) and was willing to risk the question of peace or war upon the issue. He was not anxious to strike out the section; he did not know but it might be as well to recommit it.

Mr. G. W. CAMPBELL explained in what he conceived he had been mistaken by Mr. NICHOLSON, and declared his willingness to go as far in the protection of our commerce, and preserving peace within our waters, as any gentleman on the floor; the only point in variance was as to the mode. He wished it might be done in conformity to established principles in law and in right reason, keeping altogether clear of Constitutional embarrassment.

The question on striking out the second section of the bill was carried in the affirmative—61 being in favor of, and 41 against it.

A motion was then made by Mr. R. GRISWOLD for the Committee to rise and report the bill, with a view to its recommitment to a select committee. This being negatived—

The Committee continued discussing the details of the bill.

Mr. J. CLAY proposed to amend the bill by declaring that all unlawful search, or other vexation, or impressment of any of the crew of trading vessels coming to or going from the United States, should be punished in the manner defined in the fifth section.

Upon some desultory conversation, and it appearing that the idea embraced by the amendment was provided for by other words in the bill, the amendment was lost.

Mr. J. RANDOLPH observed that it was not surprising so much variation in sentiment had been disclosed. On the contrary he was surprised there had been so little. For he conceived it the most arduous task that had ever devolved upon a committee to report at once a bill perfectly satisfactory in its details on a subject as novel as it was important. The great difficulty was in providing against the clashing of the two jurisdictions in the execution of a State process. He thought it would be best to create the offence, and leave to the State the mode of punishment in ordinary cases; but where offences were committed by foreign armed vessels, he conceived the United States and the States might have a concurrent jurisdiction.

The Committee rose and reported progress.

FRIDAY, December 7.

Mr. JACKSON, from the committee appointed on the sixteenth ultimo, presented a bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio river; which was read twice and committed to a Committee of the Whole on Monday next.

On a motion made and seconded, that the House do come to the following resolution:

Resolved, That a post road ought to be established from Knoxville, in the State of Tennessee, by the most direct and convenient route that the nature of the ground over which it is to pass will admit, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New-Orleans; and that a post road ought also to be established from —— in Georgia, to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee.

Ordered, That the said motion be referred to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate will, at one o'clock this day, be ready to receive articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, to be presented by the managers appointed by this House.

Mr. JOHN RANDOLPH, from the managers appointed on the part of this House to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, reported that the managers did, this day, carry to the Senate the articles of impeachment agreed to by this House, on the fourth instant; and that the said managers were informed by the Senate, that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations ought to be made in the militia laws of the District of Columbia; and that leave be given to report by bill or otherwise.

Ordered, That Mr. LEWIS, Mr. THOMPSON, and Mr. JOHN CAMPBELL, be appointed a committee pursuant to the said resolution.

The House resolved itself into a Committee of the Whole on the report of the committee, appointed on the twenty-third ultimo, "to inquire into the expediency of extending the time for claimants to lands under the State of Georgia,

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lying south of the State of Tennessee, to register the evidences of their titles with the Secretary of State;" and, after some time spent therein, the Committee reported a resolution thereupon, which was twice read, and agreed to by the House, as follows:

Resolved, That the further time of three months ought to be allowed to claimants to lands under the State of Georgia, south of the State of Tennessee, to register the evidences of their titles with the Secretary of State of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. CLARK, Mr. CUTTS, and Mr. BRYAN, do prepare and bring in the same.

DUTY ON SALT.

Mr. THOMAS said, he rose with a view to propose an inquiry relative to the duty on salt. On this article a duty of six cents per bushel was first laid, in the year 1790 it was raised to twelve cents, and in the year 1797 eight cents more were added, making the duty twenty cents per bushel of 56 lbs.; at which rate it now stands. But, as every measured bushel of good strong salt which is imported into this country will weigh 80 or 90 lbs., this is in reality a duty of 30 cents per bushel.

Three years ago, when the repeal of the stamp act, excise, and other internal tax laws, were before Congress, an attempt was made to reduce the duty on salt, and retain a part of that system.

At that time, although he was conscious the duty on this article of real necessary consumption was too high, and fell extremely heavy on the agricultural part of the community, particularly those living back from the sea-board, who were obliged to use large quantities of it, for their black cattle and other beasts of pasture, notwithstanding the increased price at which it came to them, in consequence of the transportation, and the profits charged on the amount of duty as well as original cost by the several merchants or traders through whose hands it passed, yet he did believe it better to allow this duty to remain as it was, a while longer, rather than not be enabled to abolish that expensive, inconvenient and anti-republican system of internal taxation.

And should it now be found, on due inquiry, that a reduction of the duty on this article, at this time, would be incompatible with the great object of paying off the national debt and meeting the other exigencies of Government, for his part he would not urge it; but he was persuaded this was not the case—he believed our finances are amply sufficient to authorize the measure.

On examining the report of the Secretary of the Treasury he found, that besides meeting all the calls of Government, including the sum appropriated annually towards the reduction of the public debt, there is a surplus of $4,882,225 in the Treasury, and although there are several payments to be made out of this sum, there will still be a large balance remaining.

It also appears, from a comparative view of the bonded duties of the present with former years, that there will be an increase of revenue coming into the Treasury the ensuing year, and he believed there was no reasonable probability of any new causes for expenditure.

This being the case, he flattered himself, it would not be deemed unseasonable or improper to propose a reduction of the duty, on this article of necessary consumption, at this time.

With this object, however, said Mr. THOMAS, I wish to couple another which I consider of equal importance, as it respects the reputation of our beef, pork, fish, and butter, put up for exportation, as well as the health of our seaport towns, and seamen employed on foreign voyages.

He said by the Treasury accounts it appears that the aggregate amount of salt imported into the United States during the year, ending the 30th September last, was 3,858,195 bushels of 56 lbs. each, of this about one fourth part or 868,355 were imported in foreign vessels. All this salt was brought from foreign places, and no part of the salt prepared from the briny waters near the Onondaga, in New York, the various springs in the Western States, and the sea water of Cape Cod, Portsmouth, &c. is taken into this calculation.

Of this salt some parts came from the Swedish, Danish, and Dutch West Indies—other parts were imported from the British West Indies, and other British colonies, from the French West Indies, from Spain, from Teneriffe, and the other Canaries, and the Spanish West Indies; parcels of the same salt were likewise brought from Portugal, Maderia, Cape de Verd Islands, and Italy, and about 20,000 bushels of a similar kind has heretofore annually been brought from Louisiana, which is now a part of the United States.

But notwithstanding all this trade in salt, to so many parts of the earth, the commerce in that article between the United States and Great Britain is very extensive and important. During the year he before mentioned, the proportion of imported salt which was furnished by England alone, and of the manufacture of that country, amounted to 1,271,537 bushels of 56 lbs. So that it is evident at least one third of the salt consumed in our country is exported from that part of Great Britain called England, and chiefly from those countries of which Liverpool is the mart.

This salt, as he understood, was prepared by the process of boiling the brine of the rock salt from Cheshire, and the water of the sea; and on account of the great plenty and cheapness of coal in Lancashire, there being also, as he believed, no export duty laid on it, this salt was produced in abundance and sold on very low terms; it is employed as ballast for British ships coming into our ports, and when arrived is sure to sell and pay the freight and frequently afford a profit; our own ships also very commonly take it in for ballast, and often as part of the cargo.

This traffic would be perfectly fair and convenient if English salt was of a strength and quality fit to preserve animal flesh for provisions. But he was clearly of opinion, from his own knowledge, this was not the fact, and he had lately observed a discussion on this subject in the British Parliament which confirmed that opinion.

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The British Government long ago made a distinction between English salt and foreign salt on their importation into Ireland. To encourage the introduction of salt from the Bay of Biscay and the Portuguese dominions, they permitted it to be imported into that kingdom at the rate of 84 lbs. the bushel, while Liverpool salt was charged with the same duty of two shillings on the bushel of 56 lbs. The reason of this distinction was undoubtedly wise and cogent; experience had proved that British salt, as brought to the market, was destitute of that purity and strength which was necessary to preserve animal flesh from taint and corruption, and fit for human food in hot climates and on long voyages.

The trade of Ireland in beef, pork, and butter, was of great importance, not only to that country itself but to the whole navy and army of Britain. To keep up the character and wholesomeness of their provisions was a matter of immense national importance, and this could only be done by attention to have it preserved with salt of purity and strength. Experience had proved that the salt formed by chrystalization in the open sunshine on the western shores and islands of Southern Europe, was vastly better than that produced by artifical concretion, in a boiling heat over a fire in the North. And the Government had with prudent discernment favored the introduction of Bay salt into Ireland, by permitting 84 lbs. to be imported for the same duty that was paid on the introduction of 56 lbs. of Liverpool salt.

The people of Liverpool have lately expressed uneasiness at this partiality, and an attempt has been made in Parliament, so to equalise the duty, as to give to both Bay and English salt a fair competition in the Irish market. This, however, was repelled by the Irish members, with manly discernment and spirit; on the ground, that Bay salt was of a stronger quality, less easy to dissolve, and indispensable to the salters of meats; that English or Liverpool salt would not answer for this extensive and important branch of business; that the discrimination in favor of Bay salt was politic and proper, especially connected with the provision trade and the health of the fleets and armies.

It is my wish, said Mr. T., that such a distinction should be made on the introduction of English salt into the United States, as has been made by the British laws themselves, on its importation into Ireland. There certainly exists the same causes for it. Like Ireland, our country abounds in provisions—beef, pork, fish, and butter, are great and staple articles of export; but their quality is very far inferior to the provisions of Ireland. The putrefaction of beef, pork, and fish, to a very serious extent, has often occurred; the loss of the property thereby was great, and the reputation of our provisions materially affected. But that was not the greatest evil; there is no doubt but that the exhalation from tainted and corrupted meats and fish, in our towns as well as on board our vessels, poison the atmosphere and excite malignant fevers and other diseases.

His object was to retrieve and establish the reputation of our salted provisions in foreign markets—to prevent the loss of property by those put up provisions for exportation, and also to prevent the evils resulting to our citizens and s[illegible] from tainted and spoiling meats and fish. [illegible] this view of the subject he should propose [illegible] first place, an inquiry into the expediency [illegible] ducing the duty on salt generally; and, in [illegible] second, the propriety of making a distinction as to encourage the importation of strong [illegible] pure salt, in preference to the weak and impure [illegible] manufactured in England.

He, therefore, moved the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duty on salt, and also into the propriety of making a distinction in the duty, so as to encourage the importations of salt from the dominions of Denmark, Sweden, the United Netherlands, Spain, France, Portugal, and the British West Indies, in preference to any other place or places; and that they report thereon by bill or otherwise.

Mr. J. Randolph said that the resolution which the gentleman from New York had submitted, and in relation to which he had favored the House with such copious details, embraced two objects: the reduction of the duty on salt, generally, and the encouragement of the importation of a particular description of that article. The last subject belonging to a class which was consigned to the Committee of Commerce and Manufactures, he should confine himself to the first branch of the resolution; nor should he have troubled the House at all were not the motion of the gentleman from New York calculated to excite an expectation which he wished to repress, because he feared it could not be gratified. It was not to oppose inquiry, but to apprize the mover and the public that the result was likely to prove unpropitious to his wishes, that he had risen. *The country* on which the salt duty fell with *peculiar force was* that middle region, near enough *to* the seaboard to be supplied altogether by *importation*, but too remote to have its consumption diminished by vicinage to the sea. Those whose stock had access to salt water felt the duty but partially; those whose situation obliged them to use salt of home manufacture only, not at all. As an inhabitant of that district of country by which the duty was principally paid, and as a friend to agriculture, he had at an early period of the session, in conjunction with his friend the Speaker, turned his attention to the practicability of reducing the duty on salt, and you well know, sir, (said Mr. R.) that the result of our inquiry satisfied us that this desirable object was not at present attainable. He mentioned this to show that other members felt an interest in this subject, as well as the gentleman from New York, although they had not brought it before the House. The Treasury statements on which that gentleman relied for the support of his position, that we can dispense with a portion of our existing revenue, establish the opposite opinion, beyond controversy. The estimated revenue of the ensuing year, after defraying the estimated expense, yielded only a sur-

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us of $210,000, and the specie value in the reasury, which the gentleman had brought to s aid, was large indeed, but charged with near ur millions of dollars on account of Great ritain, Maryland, and American claims upon rance, whose payment we had assumed by conention with that Power. The delay of these aims which were expected to have been paid nd for which we had made provision accordingly uring the present year, had swelled the specie alance in the Treasury, but certainly had not berated that resource. On this subject what ras the inference drawn by the head of that Deartment? precisely the reverse of that of the nover of the resolution. "As the greater part of these demands will be paid in the course of the year 1805, the balance will not, probably, at the end of that year, exceed the sum which it is always expedient to retain in the Treasury." The House would recollect that by our last accounts ur flotilla was bombarding Tripoli. Who could nswer for its fate? Who could undertake to ay that, before the Christmas holidays, intelligence might not be received from that quarter as was the case last year) which would render t necessary to impose new burdens, instead of aking them off? The remarks which he had ffered were not in opposition to the motion of inquiry. He thought it his duty, and was always eady to go into every profitable research, whether t tended to diminish the public burdens, or to romote the agriculture, trade, or manufactures of he country. He had their interests much at heart. He was as much interested in lowering he impost on salt as any member in that House could be, but he felt it to be his duty explicitly to state that the object at which the resolution aimed was illusory. If, however, the prosperous condition of our affairs should experience no reverse, if our Mediterranean warfare should have a speedy and honorable termination, if we should continue to maintain a pacific position between the belligerent nations of Europe, and no unforeseen calamity should befall us, he had a well-founded expectation that we might dispense with the additional duty of eight cents on salt, at the next session of Congress.

Mr. JACKSON, impressed with the importance of the subject, hoped it would be referred to the committee; and he would assure the gentleman from Virginia that the district of country over the mountains was greatly affected by the duty, for they did not procure salt in sufficient abundance in the interior to answer their consumption; salt usually sold there from 3½ dollars to four, and when it is considered what the merchants and traders advance was a per cent. upon the first cost, it would be readily allowed that the citizens in the western country did not pay less than one dollar per bushel. If, however, the public exigencies are absolutely such as the duty cannot be dispensed with, he would be one of the first to vote against the reduction. But the House will not refuse its assent to reduce the duty, because it is possible that dangers may occur, or that it is possible we may go to war with other of the Barbary Powers, or even with all the world; for that too is possible. So desirous was he of getting rid of of this duty, that he would rather postpone the payment of the public debt a little longer, than oppress the people with such an unequal law. Unequal and oppressive as it was to his constituents, yet he was satisfied they would willingly bear it, if it should prove on investigation that its repeal would endanger our finances or create a failure in the payment of the public debt in a reasonable time.

Mr. THOMAS had no objection to adopt the idea of Mr. J. RANDOLPH in referring the second part to the Committee of Commerce and Manufactures.

Mr. CROWNINSHIELD said the effect of reducing the duties on salt would be the loss of $220,000 annual revenue, which was more than its present excess; and as to the four millions in the Treasury, that would speedily be required to pay the bills drawn upon the Secretary on account of the purchase of Louisiana, and the whole of it was appropriated. He called for a division of the question; whereupon the first part respecting the repeal of the duties was referred to the Committee of Ways and Means.

After this question, the second part could neither be debated nor amended, and a question to refer it was lost.

MONDAY, December 10.

Two other members, to wit: MATTHEW WALTON, from Kentucky, and NATHANIEL ALEXANDER, from North Carolina, appeared, and took their seats in the House.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act for the disposal of certain copies of the laws of the United States," to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole on Thursday next.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, presented a bill to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes; which was read twice, and committed to a Committee of the Whole on Thurday next.

Ordered, That the report of a select committee, appointed on the eighteenth of October, one thousand eight hundred and three, "to inquire by what means the mail may be conveyed with greater despatch than at present, between the City of Washington and Natchez and New Orleans," made the thirteenth of December, in the same year; as, also, a supplementary report on that subject, from the same committee, made on the twelfth of January, one thousand eight hundred and four, be referred to the Committee of the Whole, to whom was referred, on the seventh instant, a motion respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to

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New Orleans; also, for the establishment of a post road from ——, in Georgia, to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee."

A memorial and petition of Joseph Peppin, in behalf of the Upper Mississippi Company, was presented to the House and read, stating that the said Mississippi Company are ready to enter into a negotiation for a compromise of their claims to the title of lands within the territory ceded to the United States by the State of Georgia, agreeably to the conditions and limitations of the cession of Georgia, with any commissioners, who may be authorized thereto by the Government of the United States, the said Mississippi Company reserving all their rights at law, in case the compromise should not be effected; and praying that Congress will come to a final determination on the subject-matter of the said claims, during the present session.—Referred.

Mr. Findley, from the Committee of Elections, to whom was referred, on the thirtieth ultimo, a petition of sundry citizens of the county of Washington, in the State of Pennsylvania, complaining of an undue election and return of John Hoge, to serve in this House as one of the Representatives for the said State, made a report thereon; which was read, and referred to a Committee of the Whole on Friday next.

Mr. Eppes, from the committee appointed, presented a bill to amend the charter of the town of Alexandria; which was read twice, and committed to a Committee of the Whole on Wednesday next.

A message from the Senate communicated to the House certain proceedings of the Senate, relative to the impeachment of Samuel Chase, one of the associate justices of the Supreme Court of the United States.

ADJUDICATION OF PRIZES.

The House resolved itself into a Committee of the Whole on the bill establishing a court for the adjudication of prizes, in certain cases.

Mr. R. Griswold said there was some difficulty occurred to his mind in the very outset of the bill. The Constitution of the United States declares that all their judges shall hold their offices during good behaviour. Yet the first section of the bill declares that the judge of this court shall hold his office during the existence of the war between the United States and any of the predatory Powers of the States of Barbary; and the ninth section goes still further in abridging the duration of the office, by giving power to the President to abolish the court when he may think proper. By the Constitution, the President is empowered to nominate, and by and with the advice of the Senate to appoint judges; but nowhere, by that instrument, is he authorized to abolish a court or annihilate the office of a judge of the admiralty, as this section attempted to authorize him to do. He asked the gentleman who reported the bill to justify this arrangement of a judge of admiralty holding his office either during a war, or at the discretion of the President. In order to try the principle, he moved to strike out the first section of the bill.

Mr. Rodney did not know that he had it in his power to satisfy the scruples of the gentleman from Connecticut; but, if he had, he would endeavor to remove them. He considered this case as one *sui generis*, dependent upon its own peculiar circumstances; and he should not bring into view the question, extremely analogous, which had been so much controverted a few years back, but had been then set at rest, namely, that judges, appointed under the law of the United States, when once the courts were abolished, and their jurisdiction taken from them, shall not still continue judges of the land, and receive a salary for being idle, or worse than idle.

The case of last session, in forming a temporary government for the Louisiana Territory, was precisely on the principle of the bill, and the gentleman will find, upon inspecting the law, that the judges in that Territory only hold their offices for four years. The tenure in that case is a term of years, and is surely as strong a case as the one to be provided for by the bill, both courts being erected, or to be erected, out of the original limits of the United States at the time of adopting the Constitution; and he believed the Constitution, when it declared that the Judges of the Supreme Court and inferior courts should hold their offices during good behaviour, confined itself to the then territory of the Union, and not to judges out of the United States. There is another section of the Constitution which gives to Congress the power to make all laws necessary for carrying into execution the other powers granted by that instrument, and under this power it becomes Congress to make provisionary regulations for temporary contingencies, and we are authorized to establish a temporary Judiciary out of the United States, because the exigency occasioned by the exercise of the Constitutional power of declaring war imperiously calls for it. Without such a provision as that contemplated in the bill, our gallant tars would be fighting to little effect, if there was no judicial authority for the condemnation of Tripolitan vessels after capture. The terms of the Constitution do not apply to cases of this kind. This question was talked over in the select committee, and the committee were unanimous that we were as much at liberty to fix the duration of the judge's office in this case as we were to fix the term of four years as the period of the establishment of the courts in Louisiana.

Mr. R. Griswold said the case did not compare. The Judiciary power vested in the judges of the Territory of Louisiana, was not that Judiciary power of the United States mentioned in the Constitution, and therefore the variation of the tenure might be justified; but in the present case they were about to vest a judge with the proper Constitutional power of an United States judge, exercising admiralty jurisdiction, which is a regular Judiciary power of the United States; and although it was to be exercised out of the territory of the United States, it was, nevertheless, the

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power alluded to in the Constitution, and an inferior court to be established by Congress, the judge of which is to hold his office during good behaviour; and no gentleman on that floor could deny that this judge was bound in his decisions by the laws of the United States binding on the district and other judges of the Union. He did not see that the point he had made out on the present question was the same as that alluded to in the repeal of the late Judiciary law. What was then contended for was the repeal of the law, and not whether Congress had the power of removing the judges. The present was not repealing a law in order to abrogate the office, but it was creating a new court and providing for the appointment of a judge thereto, who by the Constitution is to hold his office in that court during good behaviour. Yet this bill declares that the office shall be limited to the war with the Barbary Powers. He did not think that the measure was warranted by the Constitution.

Mr. J. RANDOLPH said that this was an old question in a new shape; it was not in the same words, but it turned upon the same pivot. If Congress possessed the power when a court became useless to abolish it, certainly they had the power when creating a court for a particular purpose to declare that, when that purpose was answered, the court should be discontinued. Where was the difference between creating a judicial court now and at the end of the Tripolitan war (or any definite period of time) annulling it, and specifying in the law creating the court that it should cease and be discontinued at the end of the Tripolitan war, or at any definite time hereafter? So far as related to the judges there was more of speciousness in the claim of him who entered into an office the term of whose existence was not defined in the law creating it, than of him who knew when he accepted an appointment that on a certain contingency, or at a certain time, his office was to cease and be discontinued.

In regard to the ninth section, without seeing it in the very objectionable point of light in which it was viewed by the gentleman from Connecticut, he thought the bill would be as well without it. Whatever might be the relative situation which he might hold on that floor, he should always be averse to an unnecessary accumulation of patronage and power in the hands of the Executive. The salary bill the next session of Congress, supposing peace in the meantime to be made with Tripoli, was no object.

Mr. ELLIOT did not view the subject in the same point of light as the gentleman who had preceded him. He did not consider the first section as limiting the duration of the court, but merely authorizing the President, by and with the advice of the Senate, to appoint a judge of admiralty in the territory of some foreign nation at war with the same nation with which we are now at war. But the ninth section gave the President the power of abrogating this court after it should be established. He would never consent to give the President the power to abrogate any judiciary tribunal whatever. He should therefore vote for retaining the first section and subsequently for striking out the ninth.

Mr. NELSON, as one of the committee who had reported the bill, begged to be permitted to assign some reasons in its defence. He did not pretend to understand the forms of proceeding in this body. The short time he had had the honor of a seat on this floor forbade his aspiring to that knowledge; but in all the legislative bodies with which he was acquainted, it is not deemed parliamentary to argue against the first section of a bill that the last section is imperfect or incorrect. When a bill is to be considered by sections, the merits or demerits of each is to be considered by itself. Now the first section does not fix the time at which the law shall expire or the office shall cease; and although the Constitution says that judges shall hold their offices during good behaviour, who is there here that can say that this office may not last during the life of the judge, nay, may not last to the end of time, for no man can say when the war will end? But admitting it to be in order to refer to the ninth section while discussing the first, he would ask how did that infringe the Constitution? The power to abolish the office is fixed somewhere, and when once abolished, and the officer left with nothing to do, will it be yet contended that he shall still be entitled to receive his salary? Does the Constitution prohibit Congress from making a judge a justice, or a commissioner, call him what you please, on an extraordinary emergency, and insist upon his holding such office during good behaviour? He had always construed differently. The idea of a tenure during good behaviour in the office of a judge was borrowed from England, and there it was considered as a great point gained over the Crown, by which they were appointed, and upon which they had heretofore been wholly dependant. But was it ever contended that the British Parliament, including King, Lords, and Commons, were incompetent to dismiss them from their seats? It never was so contended, nor it never can be so contended with success; and though the President has not the power to remove inferior judges, yet the Legislature may remove them with their offices, and the body of the people may remove them by an expression of their sovereign will; but perhaps these remarks are unnecessary, and need not be dwelt upon. He would vote against striking out the clause.

The question was taken on striking out the first section, and lost without a division.

Mr. LUCAS moved to strike out the ninth section, and assigned for reason that Congress ought not to attempt to do that indirectly which could not be done directly. The fundamental principle of the Constitution was the separation of the Government. The judge, therefore, ought to be independent of the Executive for the tenure of his office; by this section he is rendered altogether dependant upon the will of the President. There is no limitation as to the time or to the power which the Executive may exercise over the judge. He may not hold his office even du-

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ring the present war, for during the present war it is only made lawful for the President to appoint such an officer, and by this section it is also made lawful for him to abolish the same when in his opinion it shall be proper to do so. It may be said that the judge cannot be removed, unless the court is suppressed. This is but an evasion, for the President has not the power of actually removing him, yet he can virtually do so, and the effect upon the judge is exactly the same. This power is unconstitutional in itself, and dangerous as a precedent. He hoped it would not be granted, nor did he see any necessity for it on the ground of expediency, even supposing Congress had a right to vest the power in the President. It is well known that Congress is enjoined by the Constitution to meet annually, and if the usefulness of the judge should cease on the cessation of the war, the inconveniences which may ensue, or the expense which might accrue, would be short and inconsiderable, for Congress will meet in nine months after the close of the present session. It will be therefore better to leave it to Congress to abolish this court when they see cause for it, than transfer the power into other hands.

Mr. Rodney had no great objection to striking out the clause, because he thought the bill adequate to its object without it. The eighth section, he observed, established a principle that had heretofore been considered of considerable importance, viz: that a judge shall not receive a salary beyond the time he continues in the exercise of the duties of his office. The committee had supposed it possible that a speedy end might be put to this war, and thereupon conceived it unnecessary to charge the Treasury with the payment of the judges and others compensations beyond the term of service. He was himself much averse to vesting in the President any unusual or extraordinary power; but he thought a proclamation by the President was an official proceeding proper to attract the attention of the Executive authority of foreign nations to its subject-matter. He was the proper organ to express the will of the law, and to give information to those interested. Although in all human probability, the war will not continue long, he had no objection to the clause being struck out.

Mr. Smilie said, if it had not been in the bill, the bill would have been well enough without it; but as it was in, he was not inclined, through an unfounded jealousy, to strike it out. He would ask gentlemen to point out any probable ground for jealousy of the President in the exercise of this power; for he took it for granted that the Constitution furnished no obstacle. Its injunctions in regard to judges holding their offices during good behaviour, extended to the courts of the United States, within the limits of the several States represented on this floor. Now the law itself cannot affect the person or property of any citizen within the United States, and as its usefulness may suddenly cease after the close of the session, he did not see why we should subject ourselves to a single dollar's expense, which might be prevented by the immediate publication of the President's proclamation.

Mr. Lucas was not governed by jealousy of the Executive in making his motion. The present Executive possessed his entire confidence; but when we are legislating, we do not legislate on the confidence we have in the Executive, but on those circumstances which are most likely to procure happiness to our fellow-citizens, and secure their liberties on the basis they have themselves established them; and my colleague will recollect that the Executive will not always be filled by the same person, and that a change of men may produce a change of measures, if the man is the standard of legislation; but if we legislate upon principles, the principles will remain after the persons who propounded them are forgotten. He did not consider the inference made by his colleague (Mr. Smilie) correct, for he did believe the officers and seamen employed in the marine of the United States were particularly interested, and that they were citizens of the United States. He observed, upon the remark made by Mr. Rodney, that foreign nations would be more likely to take notice of the President's proclamation than of a law. He did not see that the President would be prevented from issuing his proclamation in the event of peace, if the abolition of the court depended upon Congress.

Mr. G. Griswold expressed a jealousy for the preservation of the Constitution, and conceiving the proposed regulation in enmity with one of its most important injunctions, he hoped it would be struck out; and he, for one, would never give his consent that a judge, under the Constitution of the United States should hold the tenure of his office by Presidential will.

Mr. Southard differed with gentlemen who thought the section a violation of the Constitution. The law itself grew out of the exigency of the war with the Barbary Powers, and it so expresses itself. It therefore carries its own remedy with it; during the existence of the war, and so long as any nation at war with the same Power shall consent or permit the United States to establish a judge of admiralty within its territory, so long shall the office remain, but no provision is made for its remaining any longer. Nor can the judge complain of the abolition of his office, or consequent loss of salary, because he consents to receive it upon the terms of the law. He considered the section a proper one, though not absolutely necessary. If peace takes place the President will be the first person to know it, and his proclamation of the cessation of the court will render it of greater notoriety than any law can possibly render it. One more observation, and he had done. It may be suggested in favor of a determinate abolition of the court, that the judge may become arbitrary, and the court prove injurious, in which case the sooner it was abolished the less would be its evil.

Mr. Dana thought the section very objectionable. It is true it does not say that the judge shall hold his office during the pleasure of the President

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and no longer, in those precise terms, but it says what is tantamount, that when, in the opinion of the President, it shall be proper so to do, it shall and may be lawful for him, by proclamation, to abolish the said court. This is not the precise form of expressing the pleasure of the Crown; the President must manifest his pleasure by proclamation; the Crown might manifest its pleasure privately before the act of settlement; but the power of the judges, in both cases, is held by the loose and insecure tenure of will and pleasure. Gentlemen cannot set up a good distinction between judges of courts of admiralty, acting within or without the boundaries of the United States; and, if you once declare that the President shall have power to dismiss one of your judges, nothing can prevent you from giving him power to dismiss them all. The principle, once established, goes through. For his part, he was decidedly against granting such power. The question ought not to be considered for a moment on the light ground of being a good or a bad bargain for the judge; but on the broad and solid ground of preserving what remains of the due administration of justice.

Mr. RODNEY would not have risen again but in consequence of Mr. DANA's remarks and refined distinctions where there was no difference. The bill provides that the judge shall receive his salary as long as he has jurisdiction, and that jurisdiction is limited by the duration of the war. This itself is a limitation of the office. The President has no power over the individual person of the judge; he cannot turn out A and put in B. So the tenure is not precarious; it is fixed, and depends upon the abolition of the jurisdiction; and that principle is strictly conformable to what was formerly decided to the general satisfaction of a great majority of the people.

The observation of the gentleman from Connecticut (Mr. R. GRISWOLD) respecting a distinction between judges within the limits of the United States and within the Territory of Louisiana, concluded nothing; for he will find the judges of that Territory exercising all their functions under the Constitution and the laws of Congress; and he believed there was a time when the gentleman had thought differently on the subject before the Committee. He referred to the yeas and nays called on passing a bill limiting the duration of office in respect to the judges or justices of the Territory of Columbia, by which they are continued in office for the term of five years only, while the Constitution declared, as it does now, that judges of the supreme and inferior courts shall hold their offices during good behaviour. He hoped the gentleman would abandon the idea of the officer continuing to receive a salary after the office was abolished.

Mr. DANA had no idea of an officer totally destitute of office, receiving a salary, but until he was divested of all official authority, he ought to be independent, and salary was but a mere contingency.

Mr. J. RANDOLPH said that the first section established the court during the continuance of the Mediterranean war, and the ninth gave a power to the President to abrogate it at his discretion. He thought the section, to say the best of it, superfluous. So soon as we, or the nation within whose limits this court shall be erected, shall have made peace with Tripoli, its jurisdiction would terminate by the provisions of the bill itself. It might indeed be expedient to prolong the existence of the court beyond the term contemplated by the bill, but no circumstances could arise which would render it necessary to shorten it.

Mr. EUSTIS thought the judge ought to hold the office during good behaviour, and yet this section makes him dependant on the Executive. Congress could not vest the Executive with any power which they had no right to exercise themselves, yet this section proposes to do so; and, on this precedent, occasion may hereafter be taken to frustrate and contravene the Constitution in its most important regulations.

Mr. JACKSON meant only to make a single observation, with a view of rescuing the section from the inconsistency charged upon it by Mr. EUSTIS. The first section was not at variance with the last. The first declared the duration of the office to be during the war; the last, that the President may, by proclamation, abolish the court. There might be something formed as a substitute to designate the precise duration of the court, as, from the mode of expression used in both sections, it seemed not sufficiently definite.

Mr. GREGG would vote for striking out, unless his colleague (Mr. LUCAS) would modify his motion, for he would never vote to vest the President with the power intended to be given by the ninth section; yet he thought that a modification of the clause would cure the defect without striking out. If the time was precisely defined for which the court should continue, the President might notify the expiration of the office by proclamation.

Mr. R. GRISWOLD said, the gentlemen who advocate this measure appear to differ in this construction. Some entertain an opinion that the first section does not limit the tenure of the office of the judge; other gentlemen think the office limited by that section to the duration of the war. He thought the first section explicit, that the President should appoint a judge of the admiralty during the existence of the war, and, in conformity with this idea the second section was penned. The said judge shall exercise the admiralty jurisdiction for trying captures in the said war; these last words show expressly the limitation of the law. The true and fair meaning of which is, that the judge shall hold his office during the war, and no longer. The ninth section gives the power to the President, of shortening this period, and it was this power he believed the Constitution never meant should be exercised by the Executive. As to the observation about the judges or justices of this District, it did not bear on the present question, the Constitution providing only for the tenure of offices held by the judges of the supreme and inferior courts of the United States, and not for justices of peace; besides, in the District of Columbia, the Constitution gave them the power of exclusive legislation.

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Mr. J. Clay would vote for striking out, with a view to add a new section in its stead.

On the question to strike out the ninth section, the House agreed thereto without a division, and

Mr. J. Clay moved a new section declaring that the existence of the court should terminate with the war, and that the President should make proclamation of that event.

This section was agreed to—ayes 51, noes 45.

No other amendments being made, the Committee rose and reported progress.

Tuesday, December 11.

The Speaker laid before the House a letter addressed to him from George Washington Parke Custis, chairman of a meeting of the inhabitants of the county of Alexandria, in the District of Columbia, enclosing sundry resolutions of the said inhabitants, expressive of their disapprobation of so much of a motion now depending before the House, as relates to a recession of jurisdiction to the State of Virginia, of that part of the District of Columbia which is contained in the county of Alexandria, aforesaid.—Referred.

On motion of Mr. Earle, it was

Resolved, That a committee be appointed to inquire into the expediency of granting to persons claiming lands in the Mississippi Territory, by virtue of any British or Spanish grants, farther time for registering their claims agreeably to an act passed the third day of March, in the year one thousand eight hundred and three, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

Ordered, That Mr. Earle, Mr. Alexander, Mr. Tibbits, Mr. Wilson, and Mr. Lyon, be appointed a committee, pursuant to the said resolution.

The proceedings of the Senate communicated yesterday by their Secretary, relative to the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States were read, and are as follow:

"*In Senate of the United States.—High Coutr of Impeachments, Monday, Dec.* 10, 1804.

"THE UNITED STATES *vs.* SAMUEL CHASE.

"*Resolved*, That the Secretary be directed to issue a summons to Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to answer certain articles of impeachment exhibited against him by the House of Representatives, on Friday last. That the said summons be returnable the second day of January next, and be served at least fifteen days before the return day thereof.

"*Ordered*, That the Secretary carry this resolution to the House of Representatives.

"Attest: SAM. A. OTIS, *Secretary*."

Ordered, That the said proceedings of the Senate do lie on the table.

The House resumed the consideration of the bill establishing a court for the adjudication of prizes in certain cases: Whereupon so much of the said bill, as amended, as is contained in the ninth section thereof, was recommitted to Mr. Rodney, Mr. Jackson, Mr. Baldwin, Mr. Lucas, Mr. Nelson, Mr. Larned, and Mr. Lowndes.

Mr. Nelson, from the committee appointed on the sixth instant, presented, according to order, a bill for the relief of Samuel Carson; which was read twice and committed to a Committee of the Whole to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," with several amendments; to which they desire the concurrence of this House.

POTOMAC RIVER.

The House again resolved itself into a Committee of the Whole on the bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Mr. Macon gave it as his opinion that it would be improper at this time to take up the subject, as there was a motion on the table to recede the territory of the District back to the jurisdiction of the States out of which it had been carved. If it is intended to recede the territory, it would certainly be better to recede with as few encumbrances or alterations as possible; indeed, the striking propriety of the business taking the course he had just mentioned, had led him to expect that the present bill would not be again agitated until the question of recession had been investigated and decided. He would therefore move that the Committee rise and report progress.

Mr. Smilie voted against going into a Committee of the Whole, on the ground mentioned by the Speaker. If it be the intention of the Legislature to recede this territory, there was certainly no necessity of discussing the propriety of erecting a causeway; if it be not the intention, when this is manifest it will be time enough to consider the bill before them. From what he had observed on the part of the inhabitants of the District of Columbia, there seemed to be a disposition, if not a determination, to give Congress as much trouble in legislating for them as they had for all the rest of the Union. During the present session, this single ten miles square had occupied as much of the time of the House as the whole of the United States, whose general and important business was daily caused to be suspended for the local concerns of this place. From observing this to be the settled course of proceeding, he was convinced that Congress must do one of two things, either recede them to their respective States, or put them in a situation capable of managing their own affairs, in their own way. The daily pay of the members amounted to a considerable sum, and the length of time consumed on every trifling application for want of some member able to explain the true situation of the District, occasioned by its unrepresented state on this floor, were evils much to be lamented, if they could not be remedied. He thought members could hardly justify the waste of time, intended to be devoted to the public, whatever they might think of the expense it oc-

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casioned. He hoped the Committee would agree to rise.

Mr. LEWIS did not think it fair to anticipate the opinion of the House on the subject of recession, which he considered would be the effect of the Committee's rising. If, however, the Committee shall determine that they would not, at this time, discuss the present bill, he had no objection to enter on the consideration of the other subject.

Mr. NELSON thought this the proper time to discuss this question, even in preference to that of recession. It appears from the petition of the inhabitants of Georgetown, that the channel of the river, on which the salvation of that town depends, is filling up daily; that the mass of mud would soon increase to such a degree as totally to ruin the navigation to that port. If even it should be agreed by Congress to recede the territory to the States of Virginia and Maryland—which he wished and hoped in God would not be the case—it would be late in the session, and in all probability, at a time when neither of those State Legislatures will be in session. Supposing both States were willing to accept the recession, which he believed would not be found to be the case, the petitioners could not apply to the Virginia Legislature until next December, as their session began in that month, nor to Maryland until next November. A twelvemonth's delay might defeat the object altogether, for the petitioners assert that it requires immediate exertions to prevent the channel filling up altogether.

Again, if the question of recession must be first decided, he saw that it would be an everlasting obstacle to the consideration of the propriety of the measure contemplated by the bill. Suppose a number of gentlemen, opposed to the consideration of the question on recession, should join with those opposed to the erection of a causeway, the subject will never be called up, neither at this, or any future session. When a petition is presented from Georgetown to be allowed the object of their present prayer, it is in the power of any gentleman inclined to vote against that measure, to lay on the table a motion for recession, and the two will sleep side by side on your table till the rising of Congress. The same argument for this course of proceeding will have as much weight at any future period as at the present time. Hence he inferred that now was the proper season for investigation, and the sooner a decision was obtained, the better. He did not think the subject of recession ought to have been introduced on the present occasion, as it did not necessarily connect itself with an improvement of the navigation of the Potomac.

Mr. MACON had stated his reasons for making the motion, and the gentleman from Maryland (Mr. NELSON) had replied that the main question would be eternally suspended, if his (Mr. MACON's) arguments were allowed to prevail; this did not appear to follow from the premises. If there is a majority in favor of the causeway, and the minority attempt to defeat the will of the majority by introducing the question of recession, nothing is more easy than to remove that or any other obstruction thrown in their way. The majority may call up the motion made by my colleague (Mr. STANFORD) to recede the jurisdiction to Maryland and Virginia this day if they please; and when they have it before them, it is an easy matter to reject it, and proceed to their favorite measure of damming up the western half of the river.

Mr. NELSON.—Mr. Speaker tells us it is easy for a majority to reject anything they disapprove; true, but when a motion has obtained access to your table, it would be deemed ill-manners for any gentleman but the individual who introduced it, to call it up to the attention of the House with a view to turn it out of doors. Politeness, or common civility, will permit every gentleman to carry on the business he introduces here, in his own way; it was for this reason that he had said it never would be called up, but stand an eternal obstacle in the way of the required improvement.

Mr. SLOAN reminded the Committee of an old saying: "The time present only is in our power, the future we know not of." The time present then, is the time to redress the grievances of the suffering part of this community, and as the citizens of Georgetown were really embarrassed, and their apprehensions excited of greater danger, he hoped the Committee would proceed with the business.

Mr. STANFORD seldom troubled the House with any motion; but the one alluded to by his colleague, (Mr. SPEAKER,) he had brought forward from a sense of duty. The reiterated applications of the inhabitants of this District for Legislative provisions, he had always listened to with attention, and he had no objection to proceeding in the discussion of the present bill, convinced that it would only serve to show the necessity of receding the territory. From all that had hitherto been done, it was apparent that they could not attempt to accommodate one part of the District without drawing forth petitions against the same from another part. Counter-petitions were constantly coming in. He was willing to hear everything, but he did not believe the House could agree to anything, and it was not to be wondered at when the inhabitants could not agree among themselves; or, if the House agreed at this time relative to the objects of the bridge company and the causeway petitioners, it would be, he suspected, to do nothing in either case. All this tended to evince the propriety of adopting the resolution he had laid on the table to recede the territory to the States of Virginia and Maryland, who would then have competent powers to gratify both parties, if they deemed it expedient, of which he was convinced they were better judges than this, or any future Congress was ever likely to be.

The question on the Committee rising was taken, and lost—only forty-three members voting in the affirmative.

Mr. MACON then proposed to amend the bill in such a way as to provide for regulating the ferries that might be established across the eastern part of the stream to the causeway, and applying the

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fund arising from the same for the purpose of keeping the causeway in repair.

Mr. LEWIS did not consider it useful to travel over the ground assumed on a former occasion, but would confine himself to state to the Committee some information he had acquired since, in respect to the damage the Eastern Branch or the port of Alexandria was likely to sustain, as had been alleged. Before the year 1784, the channel on the western side was so shallow that vessels only of very ordinary burden could pass, while on the Maryland side vessels of great draught of water could easily pass up to Georgetown. The uncommon hard Winter of 1783-'4 was followed in the Spring by the greatest torrents ever known in the Potomac. The bodies of ice were of immense magnitude, and many of them lodged upon the island, and under the rocks of its bed, prising with a force beyond all credibility: it tore the rocks asunder and pressed them over into the new channel, occasioning a rise of thirty or forty feet on the Georgetown shore. On the Virginia side the torrent also forced itself and deepened that channel, while it left a vast quantity of mud, rocks, and sand, in the eastern channel, which has been constantly accumulating since that period. The situation of the present bar is at the meeting of the two arms of the river, below the island, and does not permit the passage of vessels over it drawing more than twelve feet water. The consequence of this alteration in the bed of the river below the island has been to narrow the mouth of the Eastern Branch, but it had no effect upon the harbor of Alexandria. This may serve to explain what may be the effect of opening the old channel in the way proposed: it may operate to widen the mouth of the Eastern Branch harbor, but it cannot injure Alexandria.

With regard to the objection stated by his colleague, (Mr. PLATER,) in relation to the power given to the Corporation of Georgetown to tax the additions to that town, he could assure the Committee that almost every person in Georgetown had signed the petition; and as no objection had been made by any portion concerned, (though the bill had been a long time before the Committee,) he considered it a tacit acknowledgment on the part of those who had not signed the petition that they wished the measure might be adopted and carried into execution. He felt particularly solicitous for the erection of this dam, as it regards the interests of the citizens in the western parts of the States of Virginia, Maryland, and Pennsylvania; for if no steps are taken to improve the navigation below Georgetown, the navigation will soon become so shallow as not to permit sea-vessels to come to Georgetown to carry off the produce which may descend by the Potomac and its improved canals. The destruction of Georgetown will follow the loss of the navigation, and the Western farmers will lose a choice of two rival markets.

While he was up, he would add a few words with respect to the right which Congress have to legislate on this subject. He differed entirely from those of his colleagues who held that Congress had no jurisdiction over the river Potomac, because it never was ceded by Virginia. The State of Virginia ceded to her dividing line, and it was immaterial whether that dividing line was high-water mark on her shore or the middle of the channel; for as Maryland has ceded all she had, she cedes up to the Virginia line, wherever that may be; for he held it to be sound law that you could not convey a body of territory without conveying all its appurtenances, unless expressly reserved, and neither State had made a reservation of any right, or a part of any right. Suppose A and B should hold two adjoining tracts of land, and A should sell to C all the tract he held, and B should also sell to C all his adjoining tract, would not the whole of the property of A and B thereon, of what nature soever it might be, vest solely and exclusively in C; and if a road passed along the line of A upon the land of B, or part on each of their lands, would it be contended that C could not keep it in repair, or improve it for his own and his neighbor's accommodation, without obtaining the consent from A and B every time an improvement was required? This statement he considered as a full reply to all that had been urged on this head, and he concluded with repeating his former wish that the bill might be speedily passed into a law.

Mr. CLARK.—When this bill was under consideration, some days past, I endeavored to show (and hope with satisfaction) that Congress had not the power of legislating on this subject. The ground I then assumed, was, that Virginia had, by contract with the State of Maryland, before the cession to the United States, acquired the right of highway on the river Potomac, which she has never granted. It it now unnecessary to inquire into the reasons of this policy; it is sufficient for our present purpose to say it is the fact.

In retracing this subject, I find my arguments very much strengthened by examining the Articles of Agreement between the States of Maryland and Virginia, and this circumstance is the only inducement for my troubling the Committee again. The sixth article of the Agreement declares that "the river Potomac shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and all those in amity with them." The eighth article declares that "all laws and regulations which may be necessary for preserving and keeping open the channel and navigation of the river shall be made with the mutual consent and approbation of both States." If a doubt remained, therefore, it appears to me this must remove it, and time will be spent in vain to illustrate the subject.

My colleague (Mr. LEWIS) supposes, that as the two States have ceded the territory, all that either or both possessed passed by the grant; but let it be recollected this was a several and not a *joint* conveyance, and nothing more passed than is embraced by the terms of the grant; and Virginia has expressly limited it to her territory, and cautiously avoids yielding any right she had acquired from the State of Maryland. Here, Mr. Chair-

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man, they distinguish between what they call an improvement and an obstruction of the navigation—the one they contend they have the right to do, but the other they have no power over. This admission, in my conception, surrenders the question; for, if we have the power of legislating on the subject, we can make any regulations we please, and indiscriminately improve, alter, or construct. It seems a little remarkable that gentlemen wish to improve a property they have no title to; and it does not appear a conspicuous mark of understanding to begin at the wrong end to improve, and then contend about the right.

Mr. NELSON did not expect that this point would have been brought up again, but since it had so happened, he felt a propriety, not to say a duty, in recapitulating also what he had urged before, and adding some further reasons to show that Congress had the right, and exclusive right, of jurisdiction over all that part of the river Potomac within the District of Columbia. The burden of the song appears to be this: that because the States of Maryland and Virginia entered into compact before the formation of the present Constitution, by which it was agreed that the river should be considered a common highway, and as both possessed the right of way, it was a joint right, which, as they did not jointly convey the right, has never been ceded to the United States. Does the gentleman (Mr. CLARK) mean to say that the States of Virginia and Maryland had not the power of granting this joint right? If he does not assert this, or if he admits they had the power, we shall be able to demonstrate that they have granted it to Congress. After two States have made a division of a part of each of their particular property, cannot they mutually give to another the property they have thus acquired? Surely common sense cannot deny them the right so to do: if you cannot grant away a right, it is no right, for a right cannot be complete if it cannot be conveyed to another; the very idea of a right implies the power of disposal. They say that Maryland had the exclusive right of navigating the river Potomac, and that she gave by compact a qualified property in that exclusive right to Virginia. Cannot Virginia convey this qualified right? If one holds a right to an estate for life or a term of years, is it not as competent for the party to convey such right, as it would be to convey an estate in fee simple? Whether the right be a special right, or a limited right, or of whatever nature it be, every man has a right to convey it to another, unless there be exceptions or reservations; but in the compact between Maryland and Virginia there are no reservations or stipulations that abridge or preclude a conveyance. Then he asked them to propound this case: Maryland has a common right with Virginia in the Potomac, and Maryland declares that she gives up all her right to ten miles square of her territory—the Potomac is a part—Virginia also says that, so far as she has a right, she gives it up also. Well, then, both States have given up their respective rights. Does not the relinquishment of their rights by both States produce the same effect as if it had been done by a joint instrument? Maryland, he asserted, had given up her right; no matter whether it was a real right or qualified right, she gave up all but what she had conveyed to Virginia, and Virginia has given up all she possessed.

Mark the reverse—if Virginia has not ceded her right in the Potomac, and Maryland hers, to Congress, then this is not a district of territory within the meaning of the Constitution; and if it be not the Constitutional district, we have no right to exercise any other jurisdiction here than what we exercise in common for every other part of the United States. For, if the District be separated by the Potomac, it is not one district, but two districts, and the Constitution does not give Congress power to assume exclusive jurisdiction over two districts. If, however, the State of Maryland has ceded the Potomac, and it runs up to the Virginia territorial line, then the district is but one district, though it consists of parts taken from two States. He felt a difficulty in defining this idea, because, when a thing is self-evident, it renders it hard to prove what is so palpable, and a multitude of words rather tend to confuse than clear the point. But what he understood was, that when several tracts of land were joined altogether, they are not separated by the water courses or anything else crossing or traversing the same; then the jurisdiction of Congress runs as well upon the bed of the river as its banks, and so over the whole ten miles square; if this idea was correct, Congress had assumed the exclusive jurisdiction over no more territory than they had a Constitutional right to acquire. He might be mistaken in his opinion; he therefore urged his arguments with great diffidence. He was liable to error, and that very often; and it may be the case in the present instance. But he must acknowledge that he had not as yet heard anything that satisfied his mind that he had been wrong. He therefore still hoped that the bill might pass into a law, from conviction that it would be a great benefit to all persons residing upon or near the waters of the Potomac.

Mr. J. RANDOLPH had hoped that the very perspicuous statement of his colleague (Mr. CLARK) when the subject was last under consideration, had satisfied the most incredulous that Congress were not competent to pass the bill before them. Indeed, he had hoped that the bill would have been suffered to sleep through the rest of the session, and the House no more troubled on the subject. The reasoning of the gentleman last up was to his mind utterly fallacious and inconclusive. The district was not necessarily divided into two bodies politic, because of the intervening jurisdiction of Virginia over the Potomac. Did Massachusetts constitute two States, because its parts were completely separated by New Hampshire through which you must necessarily pass to get into Maine from old Massachusetts, as it was called? For the purpose of division the mathematical line which marked the boundary between the two States of Maryland and Virginia was equivalent to the whole breadth of the Potomac. On the ground of natural right, Congress could

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not obstruct the navigation of the river. They could not do it without admitting the right of Virginia and Maryland to raise obstructions above and below. Those States had as good a claim to stop the passage of ships of the United States as Congress had to interrupt their batteaux. But gentlemen say they are not stopping the navigation, they are improving it. How? by damming up the best channel. Did not this justify any species of obstruction? It was only to term it an improvement, and every objection was silenced. Whatever might be the decision of the House, he trusted no member from Virginia would be found to concede her right over the Potomac. He hoped also that the subject would be suffered to remain at rest until the question of recession was decided; but, in whatever shape it should appear, he should always protest against it, as a violation of the rights of the State which he represented.

Mr. NELSON would briefly reply to what had been said in relation to two districts being but one district. The fact was, as had been often stated, that two parts of the District had been separately granted by Maryland and Virginia; that, if these two parts touched each other and left no interval, they became one district; but if there was an interval between them, such as the river Potomac, they were two districts, and over two districts Congress had no authority to assume exclusive jurisdiction. But he thought the gentleman from Virginia had evaded an answer to the position that Congress cannot exercise powers of exclusive legislation over two districts. What had been said of Massachusetts and Maine being one State, although separated from each other by New Hampshire, did not apply; they might be, and in fact were, a body politic, notwithstanding the geographical separation of the parts. A nation and its territory, like the United States and Louisiana, were a body politic, but the decision of the present question does not depend on things like these. The jurisdiction given to Congress by the Constitution over one district of country can never be considered a jurisdiction over two separate districts. True, if both parts join together, they are but one district; yet, if they are separate, they are two districts.

What has been said of Virginia's holding the right of free navigation under the law of nature and of nations was an opinion different from that he held; but it would take such a length of time to discuss that point, and recite his authorities, that he was induced to give it the go-by, with one single remark. It was not the understanding which the States of Virginia and Maryland had at the time of entering into the compact for the free navigation of the Potomac, Pocomoke, and the mouth of the Chesapeake bay. By that instrument, it would appear that their right of navigating these waters was the result of compact, and did not grow out of the law of nature, or the code adopted by the nations of Europe.

But suppose his ideas not to be correct, still he would contend that what was proposed to be done by the inhabitants of Georgetown was within the power of the United States Legislature, inasmuch as it goes to amend and make better the navigation of the Potomac. Indeed, any stranger standing by and hearing the debate which had taken place would suppose that the advocates for the dam were disposed to obstruct the navigation of the river in such a manner that no other vessels than those belonging to Georgetown should be permitted to pass by Mason's island. This, however, was by no means the intention. He concluded with observing, that, to him and his constituents, it was really a matter of great concern; and he believed it to be equally important to all the upper country of Maryland, and part of Virginia and Pennsylvania—all in Pennsylvania within twenty miles of the south line of that State, and all the inhabitants of Virginia between the ridge dividing the head-waters of Rappahannock and James rivers from the Potomac. If, by inaction or refusal, the channel to Georgetown should be suffered to fill up, he would not give a single farthing for all the improvements made upon the canal navigation. The Potomac Company may as well be abolished at once, for there will be an end to all the advantages they have heretofore calculated upon, and which had been the inducement for them to expend so many myriads of dollars on their improvements. He could not restrain himself from expressing his anxiety that the bill should pass, and this he still thought, as he had before declared, to be the proper time.

Mr. LUCAS.—The question is, whether we can authorize the inhabitants of Georgetown to improve the river at their own expense? And it appears, from the statements made in the course of the argument, that the Potomac was within the charter bounds of Maryland, and not within the charter bounds of Virginia; and unless Maryland had ceded the right of navigation thereon to Virginia by compact, Maryland would yet have been as the sole owner of the soil, also the sole owner of the river. What Maryland gave to Virginia was not a title to admit them to the right of ownership; they granted only a qualified right, and reserved the territorial right, and if so, Virginia has never possessed more than a qualified right. Let it be inquired, what right is that? and it will be found to be merely the right of free navigation. That is nothing more than the right of passage over the soil of another, or, as it is termed by the civilians, the right of servitude. It is not a right in the territory, but merely a right of usage across the soil. If, for example, an alluvion was to form an island in the Potomac, would Virginia claim it as joint owner of the soil? She would not, because she has no other claim than what is declared in the compact; that being only a qualified right, she is not joint owner; of course Maryland being the sole owner of the soil might convey her whole territorial right, subject only to the qualified right of Virginia, viz: the right of navigation. If the right of fishery, or any other territorial right, was contended for on her part, it would not be allowed her. For all territorial rights, as they were in Maryland from the beginning, remained in her till her act of cession.

It is evident, therefore, that Maryland, as abso-

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lute proprietor of the soil, could convey the same to Congress without the intervention of Virginia, and if Maryland could do this, she has done it; for, by her act of cession, she has ceded to Congress all her territorial rights over ten miles square, or less, of her State, but still subject to the qualified right of Virginia. It is urged that such a conveyance cannot be complete without the consent of Virginia, and as Virginia has not ceded her qualified right derived from Maryland, Congress do not hold the Potomac in full sovereignty. He granted it, and admitted further that as Virginia had only ceded such of her territory as was within her charter bounds, and as the right she had to the river was not included in her charter, but derived from Maryland by compact, that she still had that right; but that was a right neither more nor less than that of the free navigation to which the gentleman from Virginia (Mr. JOHN RANDOLPH) had said the State of Virginia was entitled by the law of nature and of nations, inasmuch as she held territory above and below. But if Maryland has conveyed to Congress all her right to that part of the Potomac lying within the boundaries of the District, Congress has the same right which Maryland had. Suppose a case: A person conveys his right of soil to another, but, previously, he had agreed with his adjoining neighbor to let him have the service of his road. Shall this qualified right in the use of the road across the other's soil, prevent the new possessor from repairing or improving such road? Such a position cannot be supported, because a general right of improvement in the owner of the soil would be counteracted by the special right of way or passage granted to another. Can it be said that Congress, when they wish to improve a road or a river within their exclusive jurisdiction, cannot exercise this right without the consent of those whom they have allowed to travel along or over the same? Surely this will not be contended for.

The waters of the Potomac are a common highway. We grant it; but will it cease to be a common highway, while the whole body of the waters are carried through one channel instead of two? Does the contraction of the surface and deepening of the channel render it less a highway than it was heretofore? Will the river Potomac cease to be the Potomac, when its waters are comprised within narrower bounds? No. What is lost in surface is gained in depth, not a drop is lost to the river, but there is a clear profit in the gain.

Allusion has been made to the navigation of the Mississippi, in which France has a qualified right of navigation—the United States owning the soil on both sides. If the United States should pass a law to remove its obstructions or cut across from point to point, would France interfere, and say you shall not remove a single stick of driftwood, or any of the masses of trees which almost choke up the navigation at certain seasons? It is preposterous to think so. What! not remove a bar that shall be formed by the course of nature? It is absurd. But there is more ground for this position than the one now advocated for the concurrent jurisdiction of Virginia. It has been contended that the States of Maryland and Virginia were to make the improvements in this river, not only by joint consent, but at joint expense. Now, would Georgetown, at her own expense, offer to lay out such a sum of money as is likely to be required for the erection of the dam in order to obstruct the navigation of the river—a river in which she is most deeply concerned? Would they pay the whole expense if it was to work an injury instead of a benefit? The States of Virginia and Maryland agreed, in the opening of the canal, but here Georgetown bears the whole expense; and let any man say whether they would contrive and pay for their own ruin?

Mr. SLOAN would leave the dispute, as to the right of jurisdiction over the river, to be settled by those who were more competent to investigate law questions than he was himself. But, from what he had heard, he had brought his mind to this conclusion, that, whatever right Maryland possessed to the jurisdiction of the Potomac, Congress was now entitled to exercise. The gentleman from Virginia (Mr. J. RANDOLPH) has said that Congress has no right to obstruct the navigation. True; but it does not follow that Congress has no right to remove obstructions. He says, also, that we might stop both branches. Not so; it is intended to stop one only, in order to deepen the other, so as to render the navigation more useful and safe. The case before us has been occasioned by the act of God, or a great movement in nature; a great quantity of ice has been lodged, and tore up from the shore and the island the materials that form, perhaps, the base of this sand bar, by which the navigation has been obstructed. Now, suppose another case, that this ice had pent up the whole body of the river, and compelled the waters to form themselves a channel for escape through the lower grounds of the Virginia side, and thereby have given a new course to the river; and it would not be the first time that ice had been the cause of changing the bed of a river. He would ask, was there any member of this House but would heartily concur in restoring the inhabitants on this side the river to the use of the river, by erecting proper works to restore the stream to its old bed? He did not believe there would be the slightest objection to such a proposition, especially if it was to be done, like the present measure, at the sole expense of the people of Georgetown. With regard to the doubt which had been entertained whether it would be advantageous or not, he believed that to be perfectly settled, after what had been stated by the gentleman from Virginia, (Mr. LEWIS.) He believed it would no more injure Alexandria, or the mouth of the Eastern branch, than it would the mouth of the Chesapeake.

Mr. R. GRISWOLD.—This question has assumed several important aspects since it has been before the Committee. The first, though not the least, has been the denial of the right of Congress to exercise exclusive jurisdiction over this District of ten miles square. This question, however, must

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be solved by adverting to the Constitution of the United States, and the acts of cession of the States of Maryland and Virginia, which were passed for the purpose of carrying into execution that part of the Constitution relative to a territory over which the United States were to exercise exclusive legislation. The gentleman from Virginia (Mr. J. RANDOLPH) has stated in fact, though not in words, that Congress have the power of assuming the exclusive jurisdiction over more than one district, if granted by any of the States. He says that this District of ten miles square is divided into two districts by the Potomac, or by a mathematical line, therefore, they are still two districts, and it does not deny the right of Congress to assume the exclusive legislation over them, but merely they have no right to exercise jurisdiction on the interval between them; this he has illustrated by a reference to old Massachusetts and her province of Maine. He says they are one body politic, and constitute one State of the Union. Here, that gentleman must surely be mistaken. It is not to be disputed that a State may consist of separated parts, and so might the territory of ten miles square, if the Constitution had not tied it down to one entire and connected district. As well might it be pretended that Congress might assume one hundred districts, each consisting of one mile square, as that they are authorized to hold two districts within their ten miles square. But the truth is, that, by the acts of cession both of Maryland and Virginia, the two parts which Congress have assumed are expressly granted, and Congress now stand on their ground, and have all the rights and jurisdiction which either or both States possessed previous to the act of cession, and that right extends over the river included in the ten miles square. He would admit, for argument sake, that those two States have the privilege of free navigation, or the right of highway; but he would ask, if there was anything contained in the bill that infringed that right? And he knew the answer must be that there was nothing in the bill likely to work an injury to any person.

Mr. ALSTON did not intend to consume much of the time of the Committee in delivering his sentiments, as the discussion had already been protracted to a much greater length than he, at the first view of the subject, supposed it merited. It has been contended by several gentlemen that Congress have no power to legislate at all upon the subject of the navigation of the river Potomac. This really, to him, appeared to be a very extraordinary doctrine indeed. That because Virginia and Maryland had not jointly conveyed a common property, their conveyances separate, although including this very common property, was not obligatory, and did not convey to Congress exclusive legislation and jurisdiction over such part of the river as lay within the District of Columbia. He admitted that the river Potomac was a common highway, and ought ever to remain so, for the benefit not only of the people of Virginia and Maryland, but likewise for all the citizens of the United States choosing to navigate the same; and to do any act whereby the navigation would, in the slightest degree whatever, be obstructed, was more than we had a right or ought to do. But would it follow, in consequence, that we had no right to improve or benefit the navigation of the river? Most indubitably not. It was, in his mind, clear, from the information he had received, that, unless something was done for the benefit of the navigation of the river, that an end would soon be put to Georgetown as a commercial spot. He believed it to be universally the case that the uniting of any two streams of nearly equal size produced a bar or shallow place just below their junction. If, then, the bar complained of, just below Mason's island, has been produced in consequence of the uniting of the two arms of the river, it seemed to him an *inevitable* consequence that, if one of them was dammed up, the channel would return to its former depth. Mr. A. could not see the force of an argument made use of by his colleague, the honorable Speaker, if he understood him correctly, to say that, if the dam contemplated should be *effected*, it would tend to injure the ferries established on the river. In what manner the erecting the dam from Mason's island to the Virginia shore could affect them, he was not able to discover, as the land on the Virginia shore, opposite the ferries, and the island, belong to the same person. He entertained no doubt but that the same privileges would extend to the island as were now enjoyed at the landing on the Virginia shore.

It, therefore, appeared to him that the *propriety* or impropriety of the measure contemplated by the bill upon the table, turned wholly upon the question, whether thereby the navigation of the river Potomac would be obstructed or benefited? For his part, he had no doubt but that it would greatly tend to the improvement of the navigation of the river. He should, therefore, give it his decided support, and hoped the *bill* would pass into a law.

Mr. CLAIBORNE asked if the ten miles square, located and surveyed to the United States, included the river? He rather suspected that they had laid off ten miles square, exclusive of the river. If this were the case, Congress had assumed judiciction over more territory than they were constitutionally entitled to.

Mr. J. RANDOLPH had really hoped that, after this question had been so long before the Committee, it would have been better understood than it appeared to be. He regretted his incompetency to make himself intelligible. He had not meant to convey the idea attributed to him by Mr. R. GRISWOLD. What he had said in relation to the two districts was offered as a solution of the difficulties which the gentleman from Maryland (Mr. NELSON) seemed to labor under. He never did contend that, because Congress had the power of exercising exclusive jurisdiction over a *district* of ten miles square, they had, therefore, the *right* to exercise similar authority over one hundred districts of one mile square. The same gentleman seemed to labor under another error in supposing that he contended that Congress, because they

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had no right to legislate over the river, had no right to legislate here. The right of jurisdiction over the territory is not impugned by a denial of the right over the river. It is a little remarkable that the gentleman from Connecticut (Mr. R. GRISWOLD) and the gentleman from Pennsylvania (Mr. LUCAS) draw the same conclusion from different premises; but it never was contended by him, that Virginia had a territorial right over this river. What she had was a stipulated right, and Maryland had conceded that no obstruction should be made in the river, but by the consent of the two States. It is, however, said, that the dam will not be an obstruction, and the gentleman from Pennsylvania has discovered that all the water will still flow between the banks of the Potomac; but though the water be there, there will be no navigating up or down the west side of the island. The gentleman is also at a loss to conceive how Georgetown, which is so greatly interested in the navigation of the Potomac, should, at its own expense, undertake to throw obstructions in the river. Is he yet to learn that Georgetown might not be greatly concerned, if she hindered the navigation generally, while she derived much benefit to herself? He knows that there is a project afloat for cutting a canal across from the Potomac to the Eastern Branch, and by that means obstruct the passage to Alexandria. If you undertake to exercise this right, what is to prevent your taking the water out at the Little Fall, and bringing the whole to the residence of your favorite child, the City of Washington, and thereby destroy the canal constructed at such vast expense by the joint funds of Maryland and Virginia? He thought the present to be a very important question, or he would not have been so troublesome. He would just review the positions he had taken. The State of Virginia acquired by compact an extension of her natural right to the navigation of the Potomac; she afterwards ceded ten miles square within her limits; but did not cede any qualified right she might have beyond her limits; yet you assume this power, and deprive Virginia of what she alleges she neither did nor ever meant to convey. He hoped, whatever might be the decision, that not a single member from Virginia would vote to yield up her rights without her consent.

Mr. J. LEWIS.—My colleague has expressed a hope that no member from Virginia would be found to sanction a measure so hostile to the rights of that State. I lament extremely that I should, upon any occasion, differ in sentiment with that gentleman, and particularly upon this; but, because I am so unfortunate as not to agree with my colleague upon this question, I hope I shall not, on that account, be charged with an abandonment of the interests of Virginia. I am as tenacious of her rights as my honorable colleague, or any other Representative from that State, and I must, at the same time, be permitted to express my regret that any member from Virginia shall be found to oppose a measure so very interesting to a large portion of the citizens of that State.

Mr. G. W. CAMPBELL, considering an important principle involved, would offer a few remarks on the point in question, namely, whether Virginia did really intend to cede to the United States any right of jurisdiction which she possessed over the Potomac, and if she did mean to cede, whether the law passed by her is couched in such terms as to convey that right?

The principal objection relied upon is, that the right which Virginia had was nothing more than a use springing out of the real property, without any territorial right; yet he understood that both the States of Maryland and Virginia could send their civil officers to execute process upon the Potomac. This being admitted, the inevitable conclusion is that the river was within the jurisdiction of Virginia for such purpose. Now look into the law, and see whether the terms be not broad enough to cover the jurisdiction claimed by Congress; the words are, that she cedes a tract of country not exceeding ten miles square, &c., and that Congress may exercise exclusive jurisdiction over the soil and the persons residing thereon. From these words it is clear, that Virginia meant to convey everything she possessed in relation to the soil. He believed that a person might use expressions in a deed that conveyed more than he possessed. Although the object did not pass, yet it was, *pro tanto*, good for as much as he did possess, which was the case with Virginia. He concluded by observing that it was singular so much danger should be apprehended, and yet no person came before them to complain; there were no petitions either from Alexandria or the Eastern Branch, nor did he apprehend there would be any, as he believed that deepening the channel would be a general good, and not produce even a partial injury.

Mr. MACON.—Although it may be a good rule, yet it is not a general one, that people are well satisfied when they do not complain; yet gentlemen, when they are sent here to legislate, must exercise their own judgment on the probable consequences. If all the people of the District were to say that this was a proper measure, he should still exercise his own opinion. The gentleman from Virginia (Mr. LEWIS) had narrated the history of this river, and informed us there was no impediment prior to 1784. He did not doubt the correctness of the statement; but he should have gone further, and informed us what was the population on the waters of the Potomac at that time, and what it is at present, and likely hereafter to be; because if such a mud bank was raised in the river when its banks had little or no cultivation, what was it likely to be when thickly settled, for every new farm and every additional cultivation, loosened the earth, which was swept away by every fresh, and the mud bank at the head of tide water would proportionably increase in magnitude. Such had been the case with the Rappahannock, and if it should turn out that these two rivers are in a similar situation, their trouble would be thrown away.

Mr. HOLLAND admitted that the quantity of mud would increase by cultivation; but if the channel is deepened by narrowing the river, the

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mud would descend lower, and deposit itself in that part of the bed of the river where the channel was deeper. He had no doubt of the right of Congress to the exclusive legislation over the river, as well as over every other part of the District. He should therefore vote for the bill, believing that they had the right, and that the measure would be greatly beneficial to the commerce of the country.

On the question being about to be put, Mr. EPPES requested the Clerk to read the eighth article of the compact between Maryland and Virginia, which being done,

The question on striking out the first section was put and lost—forty members voting in the affirmative, and seventy-two against it.

Mr. LYON proposed a new section incorporating a company to build a bridge over the Potomac. He thought the two objects ought to go together, and unless they were connected, he should not vote for the bill.

The CHAIRMAN determined the motion not in order, the Committee having had nothing relative to a bridge referred to them. The amendment, however, would be proper in the House.

The Committee then rose and reported, and the House adjourned.

WEDNESDAY, December 12.

Another member, to wit: BENJAMIN HUGER, from South Carolina, appeared and took his seat in the House.

Two memorials of sundry inhabitants of the counties of Randolph and St. Clair, in the Indiana Territory of the United States, in behalf of themselves and other inhabitants of the said Indiana Territory, were presented to the House and read, respectively praying that they may be permitted to purchase public lands, the property of the United States within the said Territory, at a less price than that fixed by an act passed at the last session of Congress for the disposal of the said public lands, and that the right of pre-emption may be granted to the memorialists and other actual settlers thereon.—Referred to Mr. LYON, Mr. MORROW, Mr. GRAY, Mr. HOGE, and Mr. CUTTS, to examine and report their opinion thereupon to the House.

Mr. VARNUM, from the committee appointed, presented a bill for establishing rules and regulations for the government of the Armies of the United States; which was read twice and committed to a Committee of the Whole on Friday next.

On motion of Mr. LEWIS, the unfinished business of yesterday, on the bill relating to the dam or causeway to be erected across the Potomac, from Mason's island to the Virginia shore, was considered by the House, and after some attempts to modify the bill, all of which proved unsuccessful, the bill was ordered to be engrossed and read a third time to-morrow.

Mr. THOMAS called for the order of the day on the report on the petition from the New York and Dutchess counties slate companies, recommending a resolution that it is not expedient at this time to increase the duties on slate.

The House went into a Committee of the Whole on the report.

Mr. THOMAS moved the Committee of the Whole to concur in the report of the select committee, which was agreed to without a division. The Committee then rose and reported its concurrence, and the resolution was thereupon adopted by the House.

Mr. STANFORD would have called up the resolutions for the recession of the Territory of Columbia to the States of Virginia and Maryland, but on account of the absence (as he understood, occasioned by indisposition) of two or three gentlemen who feel interested in the decision; but he gave notice, that he should call it up when he saw them in their places, which he hoped would be to-morrow.

Mr. JACKSON called up the order of the day on the bill making application of the moneys heretofore appropriated by law for making a post road from the navigable waters of the Atlantic to the Ohio river.

Mr. EPPES stated that the Senate had a bill on the same subject at this moment before them, and that too in the same form.

Mr. JACKSON withdrew his call.

ARMED MERCHANT VESSELS.

Mr. JACKSON called for the order of the day on the bill relative to the clearance of armed merchant vessels, if gentlemen were prepared to consider the same. He thought a law on this subject should be enacted as speedily as possible, for a number of merchants in our seaports had embarked extensively in an illicit commerce, which he conceived dangerous to our peace and national honor.

Mr. J. CLAY requested that the bill might be suffered to lie until the memorial from the Chamber of Commerce of Philadelphia was printed, which had been ordered a few days since.

Mr. JACKSON did not know of this memorial, or of an order for printing. If the business could be understood on its being read to the House by the Clerk, he should incline to consider the bill. He wished, however, the House to decide on the postponement.

Mr. EUSTIS wished the bill to lie on the table.

A question was taken for postponing till to-morrow, and carried—seventy-two voting in favor of the motion.

The House adjourned.

THURSDAY, December 13.

The SPEAKER laid before the House a letter from John Gregory, a black man, alleging himself to be a native of Nansemond county, in the State of Virginia, dated on board of the British ship of war, called the Alcmene, the nineteenth of August, in the present year, stating, that having lost his protection, and being shipwrecked in the British Channel, he has been impressed on board the said Alcmene, and detained there against his inclina-

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tion; and praying that Congress will be pleased to take his case into consideration, and obtain his discharge from the British service.

The said letter was read, and, together with a certificate of the Consul and Agent of the United States at London, accompanying the same, ordered to be referred to the Secretary of State for information.

POTOMAC RIVER.

On the third reading of the bill for the erection of a dam or causeway from Mason's island to the western shore of the Potomac, the yeas and nays were called for by Mr. VARNUM.

Mr. DAWSON said: My absence from this House for some days past, occasioned by my bad health, has prevented my hearing the arguments which have been urged in favor of this bill, as well as those in opposition to it; presuming, however, that they had much affinity to those which were urged on its introduction, which, in my judgment, were conclusive in opposition and feeble in support, I must be permitted to express my astonishment that it has progressed so far, and that this House must now decide on its passage or rejection.

In this stage of the business, and under existing circumstances, I should not intrude a single observation, especially as I learn that the subject has been fully discussed, and various votes taken, did I not feel impelled by one consideration superior to all others; but, sir, whenever a proposition is made which goes to affect the interest and wantonly violates the rights of a State, one of whose Representatives I am, I hold it to be my bounden duty to rise in the opposition. Such is the bill in your hands, and under such influence do I now act. In my judgment, that bill usurps a power, and attempts the exercise of a right, which the States of Maryland and Virginia never have, and I trust never will, relinquish to any Government—a right essential to them as sovereign States, and the relinquishment of which will render them dependencies not only on the General Government, but upon any Corporation within the District of Columbia.

In the course of this discussion, reference, no doubt, has been had to the deeds of cession from those two States to the General Government; I mean not again to bring them to their view, and mention them only for one purpose. I presume that in the construction of those articles, the same rules will be observed, the same principles will be adhered to, which are observed in the construction of the original compact, the Constitution. I well know that in the construction of that instrument, two opinions have gone abroad in the United States, and have their zealous advocates: the one is, that the General Government possesses all powers which it shall deem necessary, and which are not expressly reserved to the States; to this doctrine I have never been a friend, and am surprised to find that it has so many advocates on this day who support that bill; the other is, "that 'all rights, powers, and jurisdictions, are reserved 'to the States, which are not expressly delegated 'to the General Government." This is the doctrine which I have always advocated, and which I support on this day by opposing that bill. Admitting, sir, my first position to be true—that the same rules of construction must be used in the two cases which I have mentioned, I call upon gentlemen to show any express surrender of this right of jurisdiction, either by the State of Maryland or that of Virginia. None appears, and gentlemen must either adopt the extensive doctrine of *implication* as one of their political tenets, or relinquish that bill. I will go further, sir, and declare it as my opinion, that the Legislatures of those two States never could have intended the surrender of that jurisdiction. I was a member of the Legislature of Virginia at that time, and the idea was new to me until the last year, when the bridge proposition was brought forward. I appeal to the candor of the gentlemen of this Committee, and call upon them to say whether it is reasonable to suppose that those two States, after taking uncommon pains to fix, and render secure forever, to themselves and their friends, the navigation of this river; after uniting their efforts to open and improve it to a considerable distance above tidewater, would surrender the jurisdiction to any earthly power, thereby putting it in their power to impede it whenever they please? for, be it remembered, that if we have a right to throw up a dam in one place, we have a right to build a bridge in another; if to build a bridge, to draw an artificial line at any place, saying, "thus far you shall go, and no further."

For these reasons, I am convinced that the right has never been surrendered; that it never was intended; and that it never ought to be relinquished. Considering the objections which I have mentioned as sufficient to defeat the bill, I have forborne to examine into its expediency; whether it will prove advantageous to some of the District and injurious to others, I will not pretend to say. One thing, however, appears probable to me, that if, by the erection of this dam, the rapidity of the water opposite to Georgetown is increased, and thereby the sand and mud carried to a lower point and there deposited, that point may be at or near the Eastern Branch, which we have established as our navy yard, to which heavy vessels get with great difficulty, and from which they may be entirely excluded, should the effect which I apprehend take place. I submit this to the consideration of the friends of this establishment, which is not without its enemies already.

One more word and I am done. If we admit the right to erect a dam, we have the same to build a bridge; and if we grant the one for the accommodation of one part of the people of the District, I know not how we can refuse the other to the inhabitants of the other part. Let the friends of the present bill look to this; the division of this House on the last year on that point was very equal, and the admission of the right will certainly give it new friends.

On the passage of the bill the yeas and nays were taken, and are as follows:

YEAS—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, David Bard, Silas Betton, Phanuel Bishop,

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William Blackledge, Joseph Bryan, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Frederick Conrad, John Davenport, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, William Findley, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, John A. Hanna, Joseph Heister, John Hoge, James Holland, Samuel Hunt, William Kennedy, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, William McCreery, David Meriwether, Nahum Mitchell, Thomas Moore, Jeremiah Morrow, James Mott, John Patterson, Thomas Plater, Thomas M. Randolph, John Rhea of Tennessee, Erastus Root, Ebenezer Seaver, James Sloan, John Cotton Smith, Henry Southard, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, George Tibbits, Philip Van Cortlandt, Isaac Van Horne, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Lemuel Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Nathaniel Alexander, George Michael Bedinger, Adam Boyd, John Boyle, Robert Brown, William Butler, Christopher Clark, Joseph Clay, Jacob Crowninshield, John Dawson, William Dickson, Peter Early, John W. Eppes, William Eustis, Peterson Goodwyn, Thomas Griffin, Josiah Hasbrouck, David Holmes, Walter Jones, Nehemiah Knight, Michael Leib, Andrew McCord, Nicholas R. Moore, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, John Smilie, John Smith, Richard Stanford, Philip R. Thompson, and Joseph B. Varnum.

Resolved, That the title be, "An act authorizing the corporation of Georgetown to make a dam or causeway from Mason's Island to the Western shore of the river Potomac."

ARMED MERCHANT VESSELS.

The consideration of the bill to regulate the clearance of armed merchant vessels was resumed. The bill as amended was read, as follows:

A Bill to regulate the clearance of armed merchant vessels.

Be it enacted, &c., That, after due notice of this act at the several custom-houses, no merchant vessel, armed, or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the ports where she may be so armed or provided, without bond, with two sufficient sureties, being given by the owner or owners, or by the master or commander, to the use of the United States, in a sum equal to double the value of said vessel, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault, or violence, nor make any other unlawful use of her arms against the vessels, citizens, subjects, or territory of any nation in amity with the United States; *Provided*, That the regulations herein contained shall not be construed to extend to vessels bound to any port or place in the Mediterranean, or beyond the Cape of Good Hope.

SEC. 2. *And be it further enacted*, That, if any armed merchant vessel, clearing for any port or place within the Mediterranean or beyond the Cape of Good Hope, shall make or commit any depredations, outrage, unlawful assault, or violence as aforesaid, on her voyage to or from any place to which she may be bound or elsewhere, or shall wilfully proceed to any port or place in the West Indies, such vessel with her arms, tackle, and furniture, or the value thereof, shall be forfeited to the use of the United States.

SEC. 3. *And be it further enacted*, That, on satisfactory evidence or information being given to the collector of any port, that any vessel within the same is armed or arming, or provided with the means of being armed at sea, for the purpose of committing any unlawful act, as hereinbefore expressed, or of carrying on by force of arms any unlawful commerce, it shall be the duty of such collector to claim such vessels, until the case be submitted to the President of the United States, who is hereby authorized to cause such vessel to be disarmed, or to order a clearance to be granted, as he shall judge proper.

SEC. 4. *And be it further enacted*, That if any armed vessel as aforesaid, shall proceed to sea without a clearance, or shall leave the port, where her detention or disarming shall be required, contrary to the provision of this act, such vessel, with her arms, furniture, and tackle, or the value thereof, shall be forfeited to the use of the United States.

Mr. CROWNINSHIELD moved to strike out the proviso to the first section, which declared that the regulations contained in the bill should not be construed to extend to vessels bound to the Mediterranean, or beyond the Cape of Good Hope.

Mr. EPPES observed, there were only two cases in which nations usually allowed their merchant vessels to arm; the one, when a nation is at war, when she willingly takes advantage of the aid furnished by her subjects in arming private vessels of war or letters of marque. The other, when the trade is so remote and the seas so dangerous to peaceable navigators, that each vessel must be qualified to defend itself, as the nation can neither furnish convoys nor establish a force for their protection. He considered the latter case to be provided for by the proviso, and it was to him the most unexceptionable part of the bill. He did not approve of allowing merchant vessels to arm at all. He therefore would move to strike out all that part of the section which went to allow a clearance upon giving bond not to commit depredations on the vessels or subjects of nations in amity with the United States; and so on, to the end of the section. As this included the words intended by Mr. CROWNINSHIELD to be struck out, he presumed his motion would therefore supersede that made by that gentleman; and after the words were struck out, he meant to insert after the words, "shall receive" "at any custom-house of the United 'States any clearance, or be permitted to leave the 'port where she shall be so armed and provided, 'unless bound to the Mediterranean, or beyond the 'Cape of Good Hope."

In passing the first section of the bill in the way it now stood, he was convinced that we adopted a principle almost, if not entirely unknown to maritime jurisprudence, and such as would without great caution involve the United States in a foreign war. He did not think that circumstances required the adoption of that principle at this time. The following passage in the President's Message he suspected gave rise to the present measure:

"While noticing the irregularities committed 'on the ocean by others, those on our part should

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'not be omitted, nor left unprovided for. Com-
'plaints have been received that persons, residing
'within the United States, have taken on them-
'selves to arm merchant vessels, and to force a com-
'merce into certain ports and countries, in defiance
'of the laws of those countries. That individuals
'should undertake to wage private war, independ-
'ently of the authority of their country, cannot be
'admitted in a well ordered society. Its tendency
'to produce aggression on the laws and rights of
'other nations, and to endanger the peace of our
'own, is so obvious, that I doubt not you will adopt
'measures for restraining it effectually in future."

These are the evils we are called upon to correct; but let him ask whether the remedy was of a nature to cure the disease? What! Shall it be permitted to every man, who can execute a bond, to wield the arms of the nation? Yet this is the only circumstance required to make a commander of an armed merchant vessel, and this too in time of profound peace. The evil complained of by the President, was that our merchants have taken upon themselves to arm and force a commerce. The obvious remedy is to take away their arms, for then the evil can no longer exist. It is much more easy and more politic to prevent the injury being committed, than to punish the party for the offence.

We are informed that armed vessels sailing to the West Indies are sold, with their arms and ammunition, to a class of people it is the interest of the United States to depress and keep down, rather than put arms in their hands, to do such extensive mischief as is every day practised in that island; to say nothing of the feelings such conduct on the part of our citizens, or people among us assuming that character, might have on the Government of France.

Mr. LOWNDES wished the gentlemen who made the report would give the committee some information of the ground upon which they had bottomed the bill. When the President's Message was received, he had supposed that the French Minister had remonstrated against this commerce, and that something was required to be done to restrain the trade to St. Domingo. If that is the design, it will not be answered by the bill in its present form. You here authorize your merchant vessels to arm, on giving bond and sureties; bond to do what? Why, conditioned that such vessels shall not commit depredation, outrage, or violence, against the vessels or persons of nations in amity with the United States. What is the fair inference from these words, but that you shall be competent to trade to St. Domingo in vessels armed or unarmed? If in an armed vessel, shall they refuse to be searched? Suppose they resist the search, what then? Do gentlemen mean to extend this law to Spanish vessels claiming a right to search? for Spain is likely soon to become a belligerent Power—if they do, how can we preserve a neutral position? He was willing to do as much to preserve the peace of the nation as any man. And should think it the best and fairest mode of proceeding, either to declare the trade to St. Domingo to be a lawful trade, and in that case protect commerce by a public force, or suffer the private shipping to defend themselves. Or say, that the trade to that island is unlawful, and interdict it at once, and altogether. Say, then, they shall not trade to any part of St. Domingo, (and this appears to be what the Message pointed at,) and you will effectually restrain them.

Mr. EUSTIS said, that depriving merchant vessels of the power of arming would be to deprive them of the capacity of trading to St. Domingo—not to St. Domingo alone, but to Cuba, and many other of the West India islands, as well as the Spanish Main; for the number of small picaroons, employed for the express purpose of capturing our neutral and defenceless ships, would render the seas too dangerous for our navigation. He trusted, however, that Congress would not abandon so advantageous and profitable a trade, as that to the West Indies, but on a full conviction that it would ultimately do more injury than benefit to the United States. It is well known, and the circumstances are too recent not to be in the recollection of every member, that during the last European war many millions of dollars were taken from our citizens by almost every one of the belligerent Powers having colonial possessions on this side of the Atlantic. A second time we are exposed to a similar injury, and he did not know how to avoid it without enabling our merchant vessels to arm and make effectual resistance to the small privateers which swarmed in those seas. He hoped that Congress would express their opinion on this point; for if the idea of the gentleman from Virginia (Mr. EUSTIS) is to be acted upon, the business would have to be put into a different train, and would thereby render it unnecessary on the part of the select committee to give the information which had been requested.

He would, however, state the object of the bill. It must be very well known that in carrying on the trade with St. Domingo a great number of irregularities have taken place; that our vessels have supplied the natives with considerable quantities of articles contraband of war; they have taken away people from that island, whether subjects of France or others, contrary to the established rules and legal regulations of the place. These are circumstances it is desirable to avoid in future, and that can be best done by making a law for the regulation of this trade, and thereby secure to our country a very valuable commerce. Every gentleman knows there is great difficulty in restraining a trade where the profits are high, though attended with more risk and danger than ordinary. And he saw but two ways in which the thing could be done on the present occasion; which were, either to interdict the trade altogether, or pass the bill now on the table. The interdiction of the trade would be followed by a loss to this country, which existing circumstances did not call upon us to make. He was persuaded that our merchant vessels must arm in order to get to St. Domingo, or many of the West India islands; it is necessary for the safety of the vessel and the lives of the crew. Will a merchant vessel under

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this bill, being armed and cleared, having given proper security, proceed to sea? What is then required? They are to abstain from committing outrage, unlawful assault, or violence, upon our friends, nor make any other unlawful use of their arms. The clause is expressed generally and not minutely; the committee did not deem it necessary to go into a detail showing the nature and defining the species of every act of violence, assault, or outrage; the difficulty of such a detail would have discouraged the attempt had it even been required. The Government will be equally secure against these armed merchantmen, committing offences, under the general definition, as they would have been in any other mode; the vessels are subject to the general restriction contained in the first section of the bill, and this, he thought, would restrain them sufficiently. As for the rest of the bill, the second, third, and fourth sections, he did not consider them of importance, and he should move to strike them out.

Mr. J. Clay expressed some surprise at Mr. Eppes's amendment, which went to restrain all merchant vessels from being armed, unless such as were bound to the Mediterranean, or beyond the Cape of Good Hope. This was saying nothing more than the laws already enacted declare. He supposes, too, that the peace of our country is to depend upon the honesty or villany of the commander of an armed merchant vessel. If gentlemen would investigate this subject, they would find that the peace of the country never had been, nor was ever likely to be, hazarded by our armed merchantmen, except in the single instance of forcing a trade to St. Domingo; there is no danger to be apprehended from our armed merchant vessels in any other country. The object of the bill is to preserve the peace of the country by laying a penalty to be incurred for every offence. The trade to the West Indies must either be suspended, or if carried on in unarmed vessels, it must be left to the plunder of a ferocious banditti, disguised under the French flag. Nor are these the only ones to be apprehended; the brigands of small force are lying in wait in every quarter; indeed it is not safe for our merchantmen to sail unarmed from our ports on the Atlantic to New Orleans. The depredations already made on our commerce had amounted to an immense sum; the insurance companies in Baltimore alone have lost $100,000; yet the commerce is too valuable to the United States to be abandoned altogether. But were America to suspend her intercourse with St. Domingo, the evil of having the present inhabitants for our neighbors would not be lessened; for, whilst the rich productions of that island are in such universal demand, they will find their way to market, and their want of military stores or contraband of war will be equally supplied to them, not by Americans, but by British vessels, from the Danish or other neutral islands; the trade will continue, and either neutral or belligerent nations will reap the benefit. To make the thing still more secure, he thought it would be as well that the commander should give bond and sureties for his conduct on board an armed vessel, and if the cargo were liable to forfeiture as well as the vessel, he deem it a sufficient security to prevent the application of the power entrusted to the commander. He hoped the committee would the amendment proposed by the gentleman Virginia, (Mr. Eppes,) and afterwards concur the amendment suggested by the gentleman Massachusetts (Mr. Eustis.)

Mr. McCreery.—Mr. Chairman: What may be the fate of the bill now before you, I it my duty to state to this committee some circumstances which induce me to think, that the information given to the Executive concerning the conduct of our merchant vessels has been much exaggerated.

I am aware that the liberty of trade granted as to that island has been much abused by some of our citizens, and it is my wish that such laws may pass as will effectually restrain and punish such proceedings.

It is well known, sir, that we have had a considerable share of the trade of St. Domingo more than ten years past, except for a certain period of the late administration, when it was prohibited by our own Government; that under the late legitimate governments of that island was not only permitted but invited; that in consequence of this and of contracts made by the Generals Le Clerc and Rochambeau, with some of our citizens, for the supply of provisions and other necessaries, there was American property to an immense amount in that island when evacuated by the last mentioned General, and, consequently, a considerable number of our citizens remained there. Under these circumstances it was not to be expected that this property and those men were to be abandoned. The trade was therefore continued in a peaceable manner, and would still have been carried on so, had it not been interrupted by vessels unlawfully armed in the ports of Cuba. Into these ports many of our vessels were carried, their cargoes landed in the night, the vessels sent out of the harbors, scuttled and sunk, to prevent detection, and the crews left without any means of returning to their own country. The question with our merchants then was, whether they were to abandon this trade altogether, and sacrifice their property remaining there, or arm their vessels for defence. The latter plan, and in my opinion the wisest, was adopted; and, I believe, not more than one instance has occurred where our vessels, thus armed, have resisted a legitimate force. To prove to the Committee that the vessels thus opposing our trade were not authorized, I request that the Clerk may be permitted to read the decree not long since issued by General Ferrand, at the port of St. Domingo.

[The decree was here read by the Clerk as follows:]

A Decree for re-establishing order in the Leeward Islands, for the issuing and use of letters of marque.

We, L. Ferrand, General of Brigade, Commander-in-Chief of the Army of St. Domingo, Captain General pro. tem:

Being informed that several owners and captains of

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French corsairs, who have obtained limited letters of marque, whose time is expired, continue or renew their cruising, without having regard to any of the formalities required in such cases.:

That others have obtained, of some pretended French agents, the term of their letters of marque to be prolonged:

That others are bearers of letters of marque, whose transfer has been made by these pretended agents over to other ships than those for which they had been delivered:

That others have purchased letters of marque of these pretended agents, who, abusing the confidence of the Captains-General, of whom they held their power, have permitted a commerce thus culpable, without even examining the morality of the men to whom these letters of marque have been sold:

That some navigate with letters of marque expedited by those Generals who, not being Captains-General, not exercising those functions, have no right to deliver them. Informed likewise that under pretence of being ignorant that the tribunals of St. Domingo are alone competent to decide on neutral prizes, in relation with the rebels of that island, without regard to the authority from which the letters of marque, with which the privateers are provided, issued, several owners and captains of corsairs have neglected to observe the formalities prescribed, the principle of which is to make known the literal contents of those letters which have been given them:

Considering, that to tolerate much longer the irregular conduct of the privateers and captains of corsairs, which are found in the different cases mentioned, there would incontestably result abuses which would cause privateering to degenerate into piracy, and dishonor the French flag:

DECREE.

ARTICLE 1. From the first of Vendemiaire, 13th year, all the letters of marque delivered by General Rochambeau, those delivered by the Generals formerly employed in the army of St. Domingo, likewise those issued by us until the present day, the 8th Thermidor, shall be null and without effect. The only letters of marque delivered by us from the present date, 8th Thermidor, and which shall be declared under our hand, that they shall be valid until such epoch, are not to be comprised in this repeal.

ART. 2. From the same day, the 1st Vendemiaire, 13th year, all the owners and captains carrying letters of marque of the French Captains-General, other than those of St. Domingo, which shall be in the case of having relation to Santo Domingo, whose courts are the only competent tribunals to judge of neutral ships taken in contravention on the coast of St. Domingo, as well as those arrested with clearances for the ports occupied by the rebels, or going out of those ports, shall be held to prove their powers in the original.

ART. 3. Those who should wish to arm for a cruise, or those having armed who should wish to continue cruising, will obtain from us letters of marque when they shall conform to the requisite formalities.

ART. 4. The Captains-General of the French Windward Islands shall be apprized of the abuses committed daily, in consequence of the cupidity of some owners or captains disposed to see every ship in contravention, wheresoever they may meet neutral flags in sight, and even out of sight of the coast of St. Domingo; and they shall be invited to put a stop to those abuses, to have returned the letters of marque confided to those men who have abused them; they shall likewise be desired to recall those charged with their affairs, pretending to be French agents, who have given well-founded cause of complaint.

ART. 5. From the date of the 1st Vendemiaire, 13th year, the prizes that shall be made by owners and captains of French cruisers who have not conformed to the regulations contained in articles 1, 2, 3, of the present decree, shall be confiscated for the use of the invalid fund.

ART. 6. The pretended French agents who shall issue letters of marque, of which they may be in possession, or cause to be assigned those delivered by competent authority, shall be considered as forgers, and denounced as such to the Minister of the Marine and of the Colonies, and prosecuted with all the rigor of the law.

ART. 7. Copies of this decree shall be sent to the Minister of the Marine and the Colonies. They shall likewise be sent to the Governors of the neighboring colonies, to the Captains-General of the French Windward Islands, to the Minister of France near the United States of America, and likewise to the French agents in the Antilles. The present decree shall be printed, published, and posted up in the city of Santo Domingo, and likewise in all parts of the island of St. Domingo occupied by the French. It shall be registered in the Bureau of the Inspection of the Marine, likewise in the Register of the Provisional Commission of Justice, and also in the Special Commission of Prizes.

Headquarters at Santo Domingo, the 8th Thermidor, 13th year. L. FERRAND.

And to give to the committee some idea of the extent of the lawless depredations committed on our commerce in those seas, I beg leave to state the losses sustained by the five insurance offices of Baltimore, not correctly stated by the gentleman from Pennsylvania, (Mr. CLAY:)

The Maryland office - - - -	$128,565
The Baltimore office - - - -	80,140
The Chesapeake office - - -	67,455
The Union office - - - -	90,687
The Marine office - - - -	125,110
	492,555

Making, in all, nearly $500,000, besides considerable property not insured—nearly all of which has been sold without any form of trial, and leaves our merchants without any hope of redress.

If this bill passes into a law, we shall in fact be deprived of the trade to all the leeward islands, and even that to New Orleans will not be safe. One vessel lately bound from Alexandria to Jamaica has been carried into Cuba, where her cargo was landed and sent in small vessels to Jamaica, by these picaroons. Another, from Baltimore to St. Jago de Cuba, was, on her homeward passage, with a cargo worth $40,000, taken by one of them, who had no commission, and was carrying his prize into Barracoa, when it was retaken by a British cruiser and sent to Jamaica; and no later than last month, the vessel of a Baltimore merchant, who never armed a vessel, and who, I verily believe, was never concerned in any illicit trade, was obliged to put into the port of Savannah in distress, on her return from St. Domingo. On going up the river she was met by one of these

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freebooters, that had chased her on her voyage out; the captain of which declared he would make prize of this schooner, and waited off the river for that purpose.

I will not detain the Committee by reading documents to prove these statements, but will leave them on the Clerk's table for the perusal of any gentleman of the Committee who may choose to satisfy himself. I have been also informed, but I have no documents to prove it, that one of our vessels, bound from Liverpool to New Orleans, has been taken by one of these cruisers. On the whole, sir, as I consider our entire trade to the West Indies and to New Orleans implicated in this motion, I shall decidedly vote against it.

Mr. Eppes said that, notwithstanding the objections made to his proposed amendment, he sincerely believed the best interests of the nation required that it should prevail. It appeared to him that neither of the gentlemen who had opposed it had taken a correct view of the question. We are not, said he, passing a law for the protection of American commerce, but we are making provision against the improper use of arms; for it seems to be the intention of those gentlemen to allow our vessels to arm. They tell you that their vessels cannot do without arms; they cannot effect the object of their voyages without being prepared with a sufficient armament. Why, this is precisely the argument of a highwayman for the use of his pistols. But ought the United States to protect their commerce in this way? He thought they ought not. Do these gentlemen possess information that we cannot carry on our commerce without armed vessels? If so, it will bring up the whole principles upon which the right of armament is founded, and he trusted it would be manifested that the provisions of this or any other bill to be enacted for the purpose, would be such as to secure the United States from a collision with foreign Powers. He did not think it comported with the dignity of the Union to arm their merchant vessels and turn them loose upon the ocean, to act as whim, or caprice, or a thirst of lucre should dictate. It would be nothing more or less than covering the ocean with an armed banditti, that would bring down upon the United States the sovereign contempt and just indignation of all the Powers of Europe. He hoped the navigating and commercial character of Americans would be formed upon their superior skill and industry; if in the exercise of these, they were opposed, he was willing to extend the public protection to them; he would not only protect their rights in this way, but he would also avenge their wrongs. The arms of the Union can reach the Caribbean seas as well as the Mediterranean; and this, he presumed, was the course proper to be pursued. He felt extremely averse to the principle of the bill; he could not reconcile himself to do what no other nation had ever done: that is, give arms to every man sailing on the ocean who shall require it. Do you grant even letters of marque in this way? By no means. What! shall A, B, and C, persons we know nothing of, because they can sign a bond, with a security, range the ocean under the sanction of the flag of the Union, to make war upon other nations? exercise a power which the Constitution decl[illegible] shall be exercised exclusively by Congress? did not believe the good sense of the Com[illegible] would permit them to confer the power of [illegible]ing war on any set of men, however virtu[illegible] respectable, much less to commanders of [illegible] merchant vessels, cruising in pursuit of wea[illegible] plunder. No, they would certainly prefer [illegible]tain such an important power in their own [illegible] and he was well persuaded that the public [illegible] would be preserved but a very short time [illegible] the moment that Congress put it in the pow[illegible] others to make war. For whatever may be [illegible] character of a sea captain, if he executes his bo[illegible] he is entitled to his arms; and is any gentleman weak enough to believe that a bond to the amount of the value of the vessel will restrain an intemperate person from using arms when he is [illegible]ed by an anticipated detention or scrutinizing [illegible] haul? It is well known, even in civil [illegible] shore, where every man is equal, how diff[illegible] is to restrain the vindictive passions of hasty [illegible]pers. The difficulty was much greater [illegible] He really thought the risk too great to be [illegible] trusted to this body of men. He was, howe[illegible] willing to protect them in every lawful comm[illegible]cial pursuit, as far as the arm of the Union [illegible] reach. But he would not consent to put the [illegible]tional vengeance in the hands of any man or [illegible] of men, with whose characters he was [illegible]quainted, and who, for all he knew or appeared to be required by the bill, might be total[illegible] regardless of all the ties of virtue, justice, and national honor.

The question on Mr. Eppes's amendment was taken—40 voting in the affirmative and 61 in the negative; the motion was lost.

Mr. Crowninshield moved to *strike out* the proviso and the second section.

Mr. J. C. Smith conceived the motion *out of* order; the proviso belonged to the first section, and that was the section under consideration; the Committee had not as yet reached the second section.

Mr. Crowninshield then proposed to strike out the proviso alone; which was agreed to by the Committee—55 against 32.

Mr. J. Clay said that he did not think the bond of an owner or commander for the value of the vessel was sufficient. He therefore moved to forfeit also her tackle, apparel, furniture, and cargo. It was well known that in many voyages now making, the forfeiture of the vessel would be but a trifling loss, compared with the profits made upon some cargoes, and that merchants would cheerfully incur the penalty rather than decline a voyage whereon such great profits were to arise.

Mr. Eustis admitted in some cases that the penalty might not be too great; but there were others in which it would be out of all proportion. Instance an East Indiaman with a cargo of four or five hundred thousand dollars; he feared requiring sureties to such an amount would greatly interrupt that branch of commerce, if not totally prevent it.

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Mr. CROWNINSHIELD objected to the insertion of the cargo, but had no objection to the tackle, apparel, and furniture being forfeited with the vessel.

Mr. J. CLAY.—The gentleman knows that the bond given in the case of East Indiamen is a mere formality; that trade being, on account of its profit, one in which there is no danger as to the improper conduct of the captain, men of respectability and good character always being employed; but the provision is intended to prevent illegal voyages, under an idea that the profit upon the cargo will more than cover the condition of the bond. He had no objection to exclude the cargoes of East Indiamen from the effect of this bond; but, in the case of West Indiamen, he thought Government would not have an adequate security unless the value of the cargo was made liable as well as the vessel.

Mr. GODDARD asked if it was intended to take two bonds, one of the owner and the other of the commander, and to be for double the value of the vessel and double the value of the cargo? In this event, the security would be quadruple. He would merely submit it to the consideration of gentlemen, whether it would be proper to embarrass commerce in this way.

Mr. J. CLAY.—That may be easily obviated by making it a joint bond.

The question on the amendment was taken and agreed to—66 against 32.

Mr. CLARK thought, while we were imposing penalties on our citizens, it would likewise be proper equally to restrain foreigners; he therefore moved an amendment, to insert after the American owners of the vessel, the words "or any person or persons resident within the United States." This would restrain aliens reaping the profits so frequently mentioned.—Agreed to.

Mr. CROWNINSHIELD moved to add the following: "Provided, that the regulations herein contained 'shall not be construed to extend to vessels bound 'to any country situated to the southward of the 'equator."

Mr. J. CLAY said, that would not restrain vessels from clearing out for the coast of Africa and returning to the West Indies.

Mr. SMILIE asked if the words were not the same as had been stricken out; if so the motion was out of order.

Mr. CROWNINSHIELD said the words were varied; the former proviso extended to the Mediterranean, and beyond the Cape of Good Hope; here not a word is said of the Mediterranean, but the language is confined exclusively to the southward of the equator.

Only fifteen members voting in favor of Mr. CROWNINSHIELD's proviso, of course it was lost.

Mr. EPPES suggested the propriety of amending the second section in such manner, as to make the captain and crew liable to punishment, if they should commit any violence or unlawful assault upon any vessel or territory of a nation in amity with the United States, or should make any other unlawful use of their arms. If the offence amounted to murder or felony they should suffer the punishment of murderers or felons; or if the offence should be of less degree they should be punished accordingly. He said it was well known that the privilege they were now about to bestow was not a right derived from the law of nature or of nations. If then it was no natural right, the Legislature have the right to dictate the conditions upon which they are willing to grant it. The first section provides a security against the improper use of arms, or as it were for their good behaviour. His amendment would go to provide a suitable corporal punishment for any offence they might commit after they had arms in their hands. It appeared to him that they were about to change the whole system of commerce. Instead of resting its success on the skill, enterprise, and industry of our mariners, we are about to give them force by which they may find their way to market. Your vessels are to be light, swift-sailing runners, capable of combat or flight. We shall hear no more of vessels of burden being employed in the West India trade. Upon the whole, he submitted to the House whether the public safety did not absolutely require this additional security. He had not however thrown this idea into form, but if it met the approbation of gentlemen he would endeavor to reduce it to writing.

Mr. J. CLAY would make a motion which would supersede the necessity of the amendment suggested by the gentlemen from Virginia, (Mr. EPPES,) that was, to strike out the whole of the second section.

Mr. EPPES asked if Mr. J. CLAY meant to propose a substitute.

Mr. J. CLAY replied that he did not, as he believed the bill would be effectual for its purpose without anything more than the first section, as it now stood amended.

On the question to strike out, there were fifty-three in favor of the motion, and forty-four against it. The section was struck out accordingly.

Mr. J. CLAY next moved to strike out the third section, which was carried without debate, by fifty-eight against twenty-two.

Mr. EUSTIS moved to amend the fourth section, so as to read, that if any armed vessel as aforesaid shall proceed to sea without a clearance, such vessel, &c. shall be forfeited to the use of the United States.—Agreed to.

Mr. EPPES moved a new section, in conformity to the idea he had expressed when the second section was under consideration. It was nearly as follows:

"That if any armed merchant vessel shall make or commit any depredation, outrage, unlawful assault, or violence, against any vessel or territory of a nation in amity with the United States, or against any of the citizens or subjects of such nation, or make any other unlawful use of the arms on board such vessel; if such depredation, &c. shall be made or committed, as if made or committed in any place under the exclusive jurisdiction of the United States, would be murder, felony, or midemeanor, as the case shall be; and the principals and accessaries concerned therein shall be punished as they would respectively be in other cases of murder, felony or misdemeanor, by the laws of the United States."

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Mr. J. CLAY said he should be glad to hear the reasons on which this amendment was founded.

Mr. EPPES had stated, when he was up before, the reason for which he was induced to make this motion. The right of making war was, in all cases, lodged in the hands of the Government. When men entered into civil society, they abandoned whatever natural right they had to employ force against others, and vested their defence in those who were qualified to exercise the whole strength of the community. In our Government, the Constitution has delegated this power exclusively to Congress. Our merchant vessels have no right to arm, nor does the law of nations warrant it. If, then, Congress extend this privilege to merchantmen, Congress have a right to prescribe the conditions. He had also stated, that he did not consider the bond entered into at the custom-house an adequate security for preserving the peace of the nation, or preventing an improper use of cannon and ball entrusted to the citizens ranging the ocean in pursuit of wealth. Indeed, he thought the power confided to captains of vessels under this bill was too dangerous, and therefore Congress could not be too cautious in guarding against its abuse by every means in their power. It is true, the penalty enjoined by the new section is a severe penalty, but it does not affect any one unless he commits one of those improper acts it is intended to restrain; and if he willingly and wickedly does commit a crime, he incurs the penalty and deserves the punishment, and let him receive it, in order to check a similar licentiousness in others. He confessed some degree of surprise that gentlemen should ask for the reasons of the amendment, when they would not deign to offer any argument against it.

Mr. J. CLAY asked if it was meant to attach these penalties on a commander who shall, in resisting an illegal search, happen to kill or wound some of his adversary's crew? That right, he thought, was secured by the law of nations. If a vessel is attacked by pirates, may she not resist, and beat them off? This is the natural right of self-defence. He believed the provision of the first section was sufficient to prevent all voluntary transgressions; but shall a man who involuntary kills another by firing a cannon at sea, for any of the usual purposes, be hanged? If he is, is not this, then, a new and unusual punishment for such an offence, and such as is forbidden by our Constitution? Will any man say that this is a punishment proportioned to the crime?

Mr. EPPES requested the Clerk to read the amendment again, for the information of the gentleman from Pennsylvania, as it was very evident to him that he had misunderstood the object of the section.

This being done, Mr. E. proceeded. The words "new and unusual," certainly might have been spared by the gentleman, for the punishment is exactly the same as what has been usual in every place under the exclusive jurisdiction of Congress. It subjects them for a similar crime, committed at sea, to the same punishment as if the offence had been committed in this territory of Columbia. The arms, it is said, are only given to them for their defence; well, will you not then take sufficient security that they shall not be used for offence? or shall they be permitted to trespass upon the vessels or territories of those in amity with the United States? He could not distinguish why murder committed on the high seas should be less murder than if perpetrated on shore. In both situations the offence was the same, and the punishment directed by the amendment was precisely the same; unless this was allowable, he did not see how Congress could annex even an old punishment to a new crime. If, however, the offence and the punishment were the same as heretofore, he could see no impropriety in passing the section he had offered.

Mr. LUCAS could not discover how his colleague had inferred that the right of arming merchant vessels was a natural right, or a right under the law of nations. He supposes a neutral may resist illegal search, or defend himself against a pirate. On these points he need not add anything, as they had been fully exemplified by the gentleman who moved the amendment. As to its inflicting new and unusual punishments, he could not make that discovery either; the punishment for the offence was the same when committed at sea as if committed in the body of a county; the only difference was as to the place where. In short, he thought the amendment a very proper one, and hoped it would be agreed to. He thought the object of the bill was not so much to preclude the continuation of the trade to St. Domingo, as to give a kind of half-way satisfaction to France in excuse for the iniquity of that trade, as it had for some time past been carried on. From what had been stated by the gentleman from Maryland, (Mr. McCREERY,) he supposed that the contracts for certain supplies to be furnished by the contractors in Maryland, and particularly in Baltimore, to the agents of the French Government, while at St. Domingo, had not yet been fully completed, but that shipments continued to be made, and the supplies destined for the service of the French actually were delivered at the ports as stipulated, although those ports were in the possession of the brigands. Under the intended regulation armed vessels will defend themselves to get in, which may produce a clashing of power between the contractors and the persons now lawfully commissioned by France to intercept the commerce between neutral nations and the brigands of St. Domingo. He admitted it was difficult to draw a line as to how far an armed vessel should be restrained in the exercise of her force. He knew there would necessarily be some latitude of construction, but he thought the best security which could be obtained was, to punish an abuse of the power conferred upon them, by making all the parties principals or accessaries, and punishing the offences in the same way as they would be punished if committed within the territory over which Congress have the power of exercising exclusive jurisdiction.

Mr. SLOAN hoped he should always be careful how he undertook to speak on matters he did not

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understand. He had therefore remained silent on the bill so far as it had proceeded. He did not fully understand the commercial relations between the United States and other nations; but he had a full feeling and high estimation for the preservation of the peace and happiness of this country, and on this point he meant to express an idea which had occurred to him. He observed that it was but a very few years since merchant vessels were permitted to arm in any other case than that of actual and declared war. He supposed then, and still believed it was a dangerous experiment; he believed now that it was equally dangerous. Whether it was practically wise to pursue the St. Domingo trade, at such an immense risk, he would not say, as he had not as yet learned to calculate profits, when set against the peace and happiness of his country. He should not decide for those who understood this kind of political economy; but to his mind it resulted, from the arguments he had heard, that it would be better to restrain arming altogether. Yet, as a majority of the House had decided the contrary, he should not oppose their will, but he hoped they would endeavor so to secure this power from abuse, as to prevent to the utmost every possible evil which might otherwise arise to the unexampled prosperity of the Union.

Mr. CROWNINSHIELD said he regretted the necessity of again troubling the Committee on this subject. The bill under consideration was highly interesting to the merchants of the United States. He had repeatedly stated his objections to the bill as it was first reported, and as it was subsequently amended, and had moved an amendment which had been finally agreed to. This was to strike out the cargo, so that bonds should be exacted only for double the value of the vessel, without reference to her loading, and he had the satisfaction to find that a majority had been found in favor of the proposal. Without repeating what he had observed formerly, when this subject was before the House, he would call the attention of gentlemen to the great value of some of the cargoes shipped from this country. He was convinced that the East India trade from the United States could not be carried on to advantage, if the merchants were compelled to give bonds in a sum equal to the full amount of vessel and cargo. This commerce was extremely valuable, and he hoped no embarrassments would be thrown in its way. If we wished to restrain the trade to a particular island in armed vessels, for his part he thought it might be done without touching the whole commerce of the United States, but he saw no reason why that trade was to be wholly interdicted. It might be well to oblige those who carried it on to enter into bonds to double the value of the vessel, tackle, and furniture, conditioned that no aggression should be committed on the vessel of a friendly nation, and he should not oppose this regulation; but, in doing this, he could see no necessity of extending these conditions to all other vessels. He said that he was certain, if the bonds were to be exacted for the cargoes of the East India vessels, it would fall extremely hard on the merchants of the Eastern and Middle States, who carried on a great and increasing trade to India. Some cargoes might amount to three, or even four hundred thousand dollars, and in such cases bondsmen could not be procured. In general, the cargoes were not near so valuable; but we employed upwards of one hundred and fifty vessels in the India and China trade, and he hoped no restraints would be imposed on that commerce. The ships engaged in voyages beyond the Cape of Good Hope were generally provided with arms, merely to defend themselves against pirates, who were sometimes found in those distant seas, and he knew of no instance where they had committed an aggression, or where they had made any unlawful use of their arms, and he presumed none would occur in future. Why, then, should we compel the owners of these vessels to give such heavy bonds? Why embarrass commerce unnecessarily? Commerce will be always most flourishing when left most free to individual enterprise. In some cases these bonds would operate to the injury of our European trade. It was well known that a vessel of two hundred and fifty or three hundred tons, loaded with sugar and coffee, would be worth nearly one hundred thousand dollars. Would any gentleman in this House be willing to sign bonds for his neighbor for that amount? They would not, it might be presumed. Is it probable, then, that one merchant will stand surety for another at the custom-house for these enormous sums? If the bill should unfortunately pass with a condition to include the value of the cargo in the estimate of the bonds, he ventured to predict that the revenue would be sensibly diminished for the next year. He would not be much surprised if it fell short nearly a million of dollars. It would be impossible to procure the necessary bondsmen in all cases, and the merchants must give up their voyages to the East Indies in armed vessels, and if they disarmed, they exposed their property to almost certain loss. If the bill was properly amended, Mr. CROWNINSHIELD said he believed he should vote for it, though he did not like all its provisions; but he supposed something must be done, and he would willingly consent to regulate the particular commerce so frequently alluded to, but he could not approve of the bill in its present form.

Mr. CLARK voted for the first section under an impression that it would be proper to permit merchant vessels in some cases to defend themselves. He was therefore willing that they should have arms on board for the purpose of self-defence; but while he was willing to provide for their security, he conceived himself bound to restrain them from the commission of crimes, and this amendment goes no further. It does not deprive them of the right of self-defence, and the privilege of repelling force by force. They are authorized to beat another vessel off when attacked, but they are restrained from becoming the aggressors. The amendment does not go to deprive a sailor of a single privilege at sea which he possesses on shore, and surely it will not be

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contended that because a man is a sailor he is entitled to exclusive privileges. A mariner has no right to attack another man on shore, neither ought he to be privileged to attack another at sea; but his rights, be they what they may, are the same both on land and sea. If this were a proposition to put arms in the hands of a man setting out on his travels, would any one object to punish him for every unjust and criminal abuse of such arms? There is not a member on this floor but whose mind would revolt at the idea of protecting such a man, more than if he had remained at home. Why, then, do gentlemen advocate a distinction between the man travelling by land, and another traversing the ocean? in each case the protecting arm of his country is extended to preserve to him his legal and Constitutional rights; in each case then also should the sword of justice perform its office without distinction or favor. This regulation, he was convinced, would have a beneficial effect upon foreign nations, as at the same time it would show them that we will protect our lawful commerce; that our citizens are not authorized to offend any other people, and that if they do they will be punished by their Government in a manner proportioned to the offence. On these two grounds he was in favor of the motion of amendment: first, it would go to prevent an offence by fear of the punishment; and, second, it would have a good effect upon the belligerent nations of Europe with whom we are at peace, to preserve our commerce from wanton spoliation.

Mr. SMILIE had also agreed to the first section of the bill, because he thought it useful that our merchant vessels trading to the West Indies, during their present unsettled state, should be permitted to arm in their own defence; but at the same time there was another circumstance equally important to be attended to, that was to preserve a peace between the United States and other nations unfortunately engaged in war. He was of opinion that since merchant vessels were permitted to arm, every precaution ought to be taken against the improper use of their arms. The gentleman from Massachusetts (Mr. CROWNINSHIELD) has represented the American merchants as a set of peaceable and harmless men. He did not carry his idea of the virtuous and forbearing disposition of this class of citizens quite so far; but he honestly believed they were as virtuous and honorable as any other set of merchants on the face of the globe. But he believed that they had all the infirmities to which mankind were liable, as well as other persons constituting the other classes of the community, to say nothing of the nature of their calling, which many writers supposed to be bottomed on principles of avarice. Be that, however, as it might, he did not think it impossible that a seaman's conduct at sea might at times be as irregular and as improper as a landsman's on shore. He could not think the crew of a ship at sea would be more orderly than our own citizens residing in our own territory. Yet, we have such crimes as felonies and misdemeanors, for the commission of which the law has furnished correspondent remedies, and why not make a similar provision for similar offences committed at sea? He did not know but the temptation at sea was stronger than on shore; a weaker vessel might easily become the prey of the stronger, and the impunity arising from concealment might induce men to risk something more in one case than in the other. In a moral point of view a murder committed at sea was as heinous an offence as a murder perpetrated on shore, and if committed on the body of a foreigner, the crime was as great in the eye of Heaven as if committed on a fellow-citizen. But he would ask gentlemen of what they were afraid? They must allow that the crews of vessels may commit these crimes. Do they wish to rescue them from condign punishment? Surely not. *But if* a ship's crew make no unlawful use of their arms, they are not obnoxious to any punishment. He hoped the amendment would be agreed to, for the honor of Congress and the security of the peace of the nation. He had good reason to believe that the agents of a certain nation had made loud complaints to our Administration with respect to the conduct of several American vessels trading to the West Indies. If this section is added to the bill, it will evince the disposition of the Government of the United States to preserve peace and do justice to all the nations of the world.

On the question to insert the new section proposed by Mr. EPPES, there were 56 in its favor, and 50 against it.

The Committee then rose, and reported the bill with the amendments agreed to.

The House having agreed to consider the amendments,

On motion of Mr. J. CLAY an amendment was made substituting for the words "citizen or citizens," &c., the words person or persons resident within the United States or territories thereof.

Mr. R. GRISWOLD thought that giving bond for double the value of the vessel, her tackle, apparel, and furniture, was sufficient, without adding the cargo; if other gentlemen agreed with him, he hoped they would refuse their assent to so much of the amendment. The gentleman, (Mr. J. CLAY,) to be sure, had said that the bond taken in the case of East Indiamen was merely formal. He did not think Congress ought to legislate on this principle. When securities are demanded they should be for an efficient purpose, and not merely nominal. Why should a vessel sailing with arms to India be compelled to give security on her cargo, of 500,000 dollars, for a million of dollars? Is there more risk of an improper use of her arms than in the case of a West Indiaman with a cargo of $30,000, which gives security only for $60,000? or is a murder or felony committed by one vessel less a murder or felony if committed by another? and yet from the disparity of the bonds one would be led to suspect that such was the idea. Viewing this additional encumbrance on commerce as a shackle that would subject small traders to real inconvenience, while it would facilitate the enterprise of merchants of large capital and long established credit, he meant

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to call the yeas and nays on the question of agreeing to this part of the report of the Committee of the Whole.

Mr. J. CLAY said it was true that he had said that bonds given at the custom-house for East India ships were merely formal; it is not however because they are unnecessary or improper, but because the commanders of such vessels were men of such consideration and prudence that they would not subject themselves to the forfeiture, and so far he was willing to admit that the amendment would also be a mere formal regulation as to the clearance of armed East Indiamen. But as to vessels bound to the West Indies, it was a notorious fact that the value of the vessel and her equipment formed no proportion to the profits made on the cargo, if they have a fortunate run, and it was against the illicit commerce of such that he wished to be secure. He was unwilling unnecessarily to shackle commerce as any gentleman; but this regulation was not an unnecessary shackle, it was one absolutely required by existing circumstances, and will not work a hardship on any merchant engaged in a lawful commerce. One thing, however, he acknowledged it would effect. It will prevent in future that species of trade which, to say the least of it, approaches very near to illicit trade at the present moment. A merchant, willing to run the risk of such a voyage as he had alluded to, would prefer to make it unarmed rather than armed, because he knows the consequences, and the probability of transgressing some of the provisions of this act. It had been suggested that two bonds would be required; he did not believe they would, as it was not the practice under the law of 1798, which was expressed in the same terms as the amendment before the House. If the House should, however, consider this regulation as bearing hard on the East India trade, they might remedy it by refusing to concur with the Committee of the Whole in striking out the proviso.

Mr. EUSTIS did not consider the capacity of committing a crime as enlarged in proportion to the value of the cargo—perhaps it was the reverse. But he would observe, that if a captain with a very valuable cargo on board was to commit even a trifling misdemeanor against this act, the owner would lose his all—both vessel and cargo. Under such impressions, he imagined it would be extremely difficult to obtain the requisite security. Where is the man that can find security to the amount of a million of dollars that the captain of his ship, his officers, or crew, shall not commit some small degree of violence, even upon friends? for enemies may often assume the garb of friends, and thereby render even friends suspected. The law of 1798 required bonds only to the amount of the value of the vessel, tackle, and apparel, and did not even extend to the number of guns she might carry.

Mr. R. GRISWOLD again declared that commercial enterprise would be greatly diminished if a bond was required for both vessel and cargo. The consequence would be, that those merchants only who possess large capitals and independent fortunes could give bond. And while the young and small traders would be incapable of sending a single ship to sea, the large speculator would be enriching himself with the total profits of a very advantageous commerce.

Mr. J. CLAY said, the observations of the two gentlemen who preceded him applied against striking out the proviso; but he did not see that the position of the gentleman from Connecticut (Mr. R. GRISWOLD) was of such great weight as he seemed to imagine. But, for his part, he did not see the ill consequence of regulations which might prevent rash speculations, on the part of young traders, upon small capitals, in engaging in voyages that overstrain their credit and prove their ruin. As it respected the trade to the West Indies, he hoped the House would agree to the amendment as it stood, and non-concur in the amendment for striking out the proviso. He would agree with them to retain the proviso if the present amendment was adopted.

On the question to agree to that part of the report extending the bond to double the value of the vessel, *her tackle, apparel, furniture, and cargo*, (the amendment being the words in italic,) it was negatived—ayes 53, noes 55, as follows:

YEAS—John Archer, David Bard, George Michael Bedinger, William Blackledge, Robert Brown, Joseph Bryan, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher, Clark, Joseph Clay, Matthew Clay, Frederick Conrad, William Dickson, John B. Earle, Peter Early, John W. Eppes, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Abram Trigg, Isaac Van Horne, John Whitehill, and Alexander Wilson.

NAYS—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, Silas Betton, Adam Boyd, John Boyle, William Butler, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, Calvin Goddard, Edwin Gray, Gaylord Griswold, Roger Griswold, John A. Hanna, Seth Hastings, William Helms, John Hoge, David Hough, Benjamin Huger, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, James Mott, Thomas Plater, Samuel Riker, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Thatcher, George Tibbits, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Marmaduke Williams, Joseph Winston and Thomas Wynns.

The new section being before the House, as reported by the Committee of the Whole,

Mr. ELLIOT hoped the House would not agree to this amendment. The gentleman who had moved it apprehended gentlemen had not well understood it when in the Committee of the Whole;

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he questioned whether the mover had paid that close attention to its effects, as to insure its being proper and beneficial. He said it created a new class of crimes, and if that measure was proper, it was proper also to define the punishment of each crime. The section refers to certain laws of the United States establishing the enumerated offences, and directs that the punishment shall be conformable to the punishment inflicted for similar offences committed on shore. It is true the Constitution provides that Congress shall have power to define and punish piracies and felonies committed on the high seas; that power had been exercised, the crimes defined, and the punishments annexed. [Mr. E. here read an extract from the law on that subject.] A misdemeanor was a crime, but under the terms of the Constitution he did not see how Congress could legislate upon it unless they defined it a felony; and were gentlemen prepared to say that every depredation, every species of outrage or violence was a felony; he was persuaded it was not the intention of the mover. If a misdemeanor, however, be considered a crime, it ought to be defined, and the punishment decreed, for none of the laws of the United States had hitherto done it. On this view of the subject, he considered the new section totally unnecessary, or if necessary, it was so imperfect that it would not reach the case for which it was intended.

Mr. EPPES said the remark he had made in Committee of the Whole had no allusion to the gentleman last up. He should however detain the House but a moment in making one observation in reply. The law quoted by the gentleman was the one defining and punishing piracies committed on the high seas, and was confined to cases arising on board our unarmed vessels. Acts committed by persons legally commissioned to carry arms, are not termed acts of piracy; in order to constitute piracy it is essential that the vessel has no legal sanction to bear arms. That is a case that cannot arise under the present measure, which is to give a legal sanction to our merchantmen to arm, only restraining them by a penalty and corporal punishment, if they abuse their trust. It was necessary, in order to embrace this offence, that the definition and punishment should both be declared in the bill; he had endeavored so to do. As to the perfection or imperfection of the section in its present form, he should say nothing more than it appeared to his mind adequate to the end proposed. If however the gentleman from Vermont thought otherwise, he should be happy to hear him point out the mode of improvement.

Mr. R. GRISWOLD said that whether the effects to be produced by this section, so far as related to murder and felony, were really provided for under the existing laws, he would not assert positively; but he believed that neither the existing laws nor this section made any provision for the punishment of misdemeanors. The offences defined and punished were provided for many years ago, in 1790. By that law murder was punishable with death, the same crime and punishment were revived in this section, and so it is in case of felony. Why then pass a new law on this subject? Or does the gentleman mean to infer that because murder or felony may be committed by armed vessels which are to be punished, that therefore murder or felony committed by unarmed vessels shall pass with impunity? He presumed in both cases they were murder or felony, and in both cases they were to be punished under the existing laws. He saw no occasion to multiply our statutes unnecessarily. With respect to the punishment of misdemeanors, he should remark that the Constitution gave to Congress the power to define and punish piracies and felonies committed on the high seas, and violation of the law of nations. Those who acted on this subject before us, he presumed acted under an impression that they had gone to the extent of their powers in *defining piracies* and felonies, and that a definition of misdemeanors was not in their power. But suppose the Constitution gave this power to Congress, does the section provide for this? It certainly does not. What says the section? that persons guilty of misdemeanors shall be punished as *other misdemeanors* are punishable under the laws of the United States. He could not find any statute in the books defining these misdemeanors, or inflicting a punishment. How then was the offender to be punished, if there was no general law on this point? and from the cursory view he had given the statutes, he had found none: the section would be altogether nugatory so far as it related to misdemeanors.

Mr. EPPES could not refrain from expressing the surprise he felt that gentlemen should contend that misdemeanor was a term unknown in the statutes of Congress. He had just dipped into a volume of the laws, and he found it in almost every one which respected the criminal jurisprudence of the United States. Sometimes an offence is deemed a high misdemeanor; at other times a simple misdemeanor. Under the act of June, 1794, there were several misdemeanors, particularly expressed; accepting the command of an armed foreign vessel was a misdemeanor—increasing the armament of such vessel within the United States was a misdemeanor, and others to which punishments are annexed. He believed the wording of the section to be correct, but as gentlemen doubted it, he should not wish to press the adoption of a correct principle in incorrect language, and to give time for the required alteration, he moved an adjournment.

And the House thereupon adjourned.

FRIDAY, December 14.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, who were directed by a resolution of this House, of the twenty-second ultimo, "to inquire whether any, and what, regulations are needful to be made in the act for the regulation and government of seamen in the merchants' service, so far as respects the furnishing of ships and vessels with medicine chests, on their voyages to foreign ports," presented, a bill to amend the act, entitled "An act for the govern-

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ment and regulation of the seamen in the merchants' service;" which was read twice and committed to a Committee of the Whole on Tuesday next.

The House resolved itself into a Committee of the Whole on the bill for establishing rules and articles for the government of the armies of the United States; and, after some time spent therein, the Committee rose and reported progress.

ARMED MERCHANT VESSELS.

The House resumed the consideration of the amendments reported yesterday from the Committee of the whole House to the bill to regulate the clearance of armed merchant vessels.

The new section being before the House—

Mr. EPPES admitted that the objection taken yesterday, by the gentleman from Connecticut (Mr. R. GRISWOLD) was in part correct. The offence of misdemeanor, contemplated by the proposed section, was not mentioned in the law of 1794; the offence of misdemeanor defined in that law, was that of fitting out or arming any vessel within the United States, for the purpose of cruising against nations in amity with the United States. He moved, therefore, to strike out the words, "or misdemeanor," as often as they occur, in order to separate them from those of "murder and felony," and to form a distinct and subsequent period in the section in relation to that subject, by saying, "and if the offence be of a less degree, it shall be a high misdemeanor, punishable by a fine not exceeding —— dollars, and imprisonment not exceeding —— years."

Mr. R. GRISWOLD agreed that it was proper to strike out the words alluded to, but he had doubts of the propriety of inserting all those which were proposed. It was plain that there was no general law of the United States, declaring the nature of the crime of misdemeanor, or its punishment. It is true that there are several of our statutes which prohibit certain specified things, and the persons guilty of committing them are deemed guilty of a high misdemeanor. But the terms used in the section reported by the Committee of the Whole, have no reference to any of the class of crimes designated in our statutes. It refers merely to the general common law under the head of misdemeanor. The gentlemen bring in a common law definition of misdemeanor, and give it a range over all that class of offences which it reaches in England. He wished the gentlemen, however, to meet the other objection, and answer whether the offences of murder and felony are not already provided for by the laws of the United States? He believed, still, that the law of 1790 embraced the very case now intended to be provided for by the amendment. If the section is adopted, are offenders to suffer death under the law of 1790, and again under the one of 1804? Can they suffer death twice? He thought if they suffered once, it would be sufficient for an atonement of the crime. If a misdemeanor is to be defined and punished by the section, let the gentleman confine his amendment to that crime alone, and so modify it that it does not re-enact an old law still in existence. If the gentleman did this, though he doubted the necessity, he should not object.

Mr. JACKSON said there had been two objections made by the gentleman from Connecticut and the gentleman from Vermont (Messrs. GRISWOLD and ELLIOT.) If they were attentively examined and compared with the Constitution and laws of the United States, they would be found not tenable. One of the objections was, that the Constitution of the United States did not authorize Congress to legislate on any other crimes committed on the high seas, than those of piracy and felony. He would ask them whether all other offences were to go unpunished? But he reminded them that the words of the Constitution extended further than what had been quoted; it declared in the same paragraph that Congress had power to define and punish offences against the law of nations. Is not a misdemeanor committed on board a vessel cognizable by the courts of the Union? For instance, if a gun is discharged at another vessel belonging to a nation in amity with the United States, and does considerable damage, though it may not amount to piracy or felony, is there no remedy? Surely by the Constitution Congress have the power of declaring it a misdemeanor, and of punishing it accordingly. If they have this power, and he believed it would no longer be denied that they had it, then the question would resolve itself into the expediency of exercising it at this time; and inquiry might be proper to ascertain whether the existing laws provided for the case. The act of 1790, upon which the gentleman from Connecticut (Mr. R. GRISWOLD) relied, would be found on examination not to embrace it. Suppose, in firing into a foreign vessel, a mayhem is committed, or a leg or an arm shot off, is this case provided for by the law of 1790? It is not a felony, nor is it piracy, the only two cases provided for by that act. If indeed, the case was provided for by the act of [illegible]0, it could not operate as an objection to inse[illegible]n this bill, because the bill was intended to dra[illegible] into itself all the regulations on this head. That Congress had the power of legislation on this point, he trusted would no longer be disputed; and, having the power, the necessity of the case required its exercise. If nothing further was added to the bill than what was contained in the first section, nine tenths of the offences committed at sea would go unpunished.

Mr. ELLIOT did not mean to give the force to the extract from the Constitution quoted by him all that range which the gentleman just sat down had chosen to extend; he however admitted that, being a Constitutional question, it deserved serious and solemn deliberation. It had been often said that the Constitution of the United States is a limited grant of power and that the powers not therein granted are reserved to the States or to the people. Admitted. By the Constitution, then, Congress are authorized to define and punish piracies or felonies committed on the high seas; they are also authorized to punish offences against the law of nations, as stated by the gentleman from Virginia, (Mr. JACKSON,) but

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where is the power given them by the Constitution to punish misdemeanors? It is, however, contended that a misdemeanor may be an offence against the law of nations. Misdemeanor means literally ill behaviour. He would not however deny that misdemeanor in certain cases might amount to an offence against the law of nations, and in such an event might be punishable as an offence against those laws.

By the law of 1790, in its 8th section, the crimes of murder and piracy are punishable. Does not that law go further, and punish what this law does not provide for? One thing further is contended for, which he did not think tenable; the same crimes that are punishable by the existing laws are again to be punished by this. This was clearly shown by the gentleman from Connecticut, and he would add nothing more.

Mr. Clark thanked the gentleman from Connecticut for the light he had thrown on the subject; but he was not convinced that the crimes attempted to be defined by the amendment of his colleague were punishable by the existing laws of the United States, and he thought if the gentlemen would re-examine his argument he would discover his mistake. The law of 1790 had relation to a different crime. But he would not decide positively what might be the opinion of the Judiciary on that head; they might entertain a construction different from that of the Legislature. Yet his own opinion was that no provision could be found in the law of 1790 to restrain and punish the offence of an armed vessel of the United States on the commission of outrage and violence. Was the provision made in this law which his colleague had moved, he should not object to merchant vessels arming themselves; should it be refused, he never would consent to trust them with arms.

Mr. Eppes after having troubled the House so often on the present question, would have remained silent at this period; but such a variety of objections had been made, and many of them so foreign to the subject, that he could not avoid adding one concluding word. It might perhaps be considered as a reiteration of his first sentiment. He was decidedly opposed to trusting merchant vessels with public arms, the improper use of which might commit the peace of the nation. If, however, the sense of the Committee was against him, in that particular, he would submit; but then it must be under such a provision as had been introduced in the section now before the Committee.

Upon this the Committee rose, and the bill and amendments were postponed until Monday next.

Monday, December 17.

The amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," were read, and, together with the bill, ordered to lie on the table.

The House again resolved itself into a Committee of the Whole on the bill for establishing rules and articles for the government of the armies of the United States. The bill was reported, with several amendments thereto; were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Friday next.

The House resumed the consideration of the amendments reported, on the thirteenth instant, from the Committee of the Whole House, to the bill to regulate the clearance of armed merchant vessels: Whereupon, the fifth and sixth amendments being twice read and amended at the Clerk's table, were agreed to by the House.

The bill was then further amended and, together with the amendments, ordered to be engrossed, and read the third time on Monday next.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, further amendments ought to be made to the law "regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" and that they have leave to report by bill, or otherwise.

Ordered, That Mr. Lattimore, Mr. Gregg, and Mr. Boyle, be appointed a committee, pursuant to the said resolution.

Ordered, That the memorials and petitions of sundry citizens and inhabitants of the District of Columbia, praying "the aid and patronage of Congress in the establishment of a company for the building of a bridge across the Potomac river, from the western and southern extremity of the Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the said river;" and a memorial of sundry inhabitants of Georgetown, in the same District, in opposition to the prayer of said memorials and petitions; as, also, the petition of Anthony Addison, praying "the privilege of building a bridge over the Eastern Branch of the river Potomac, near the ferry owned by him within the District of Columbia, and of abutting the said bridge on the western shore at the termination of Virginia avenue, or some other public street in the City of Washington;" which were presented to this House during the first session of the seventh Congress, and at the last session, be severally referred to Mr. Joseph Clay, Mr. Jones, Mr. John Campbell, Mr. Boyd, and Mr. Lowndes; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Ordered, That the Message from the President of the United States, communicating a report of the Surveyor of the Public Buildings at the City of Washington, on the subject of the said buildings, and the application of the moneys appropriated for them, which were read and ordered to lie on the table, on the sixth instant, be referred to Mr. Thompson, Mr. Nelson, Mr. Huger, Mr. John Cotton Smith, Mr. Goodwyn, Mr. Plater, and Mr. Cutts; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

And the House adjourned.

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TUESDAY, December 18.

Two other members, to wit: JOHN DENNIS, from Maryland; and JOHN FOWLER, from Kentucky; appeared, and took their seats in the House.

Ordered, That the petition of Simeon Philipson, of the city of Philadelphia, merchant, presented on the ninth of February last, be referred to the Committee of Commerce and Manufactures.

Ordered, That the amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported to New Orleans," together with the bill, be committed to the Committee of Commerce and Manufactures.

Ordered, That the bill to regulate the clearance of armed merchant vessels, as amended, be recommitted to Mr. EUSTIS, Mr. GODDARD, Mr. ROOT, Mr. BETTON, and Mr. LEIB, with instructions to consider and report thereon to the House.

Mr. RODNEY, from the committee to whom was recommitted, on the eleventh instant, the ninth section of the bill establishing a court for the adjudication of prizes in certain cases, made a report thereon; which was read, and, together with the bill, committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, to whom was referred the petition of Moses White and Charlotte Hazen, executor and executrix of Moses Hazen, deceased; and, after some time spent therein, the Committee rose and reported their agreement to the same, in which the House concurred.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. BRYAN, from the committee appointed on the seventh instant, presented a bill giving further time to register the evidence of titles to land south of the State of Tennessee; which was read twice, and committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes. The Committee reported the bill with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill giving power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire.

It was amended at the Clerk's table, and, together with the amendments, ordered to be engrossed and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to amend the act, entitled "An act for the government and regulation of the seamen in the merchants' service."

The bill was reported without amendment, and ordered to be engrossed and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Samuel Carson; and, after some time spent therein, the Committee rose and reported progress.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be directed to inquire into the expediency of amending the sixty-second section of the act, entitled "An act to regulate the collection of duties on imports and tonnage," in relation to the terms of payment of duties on goods, wares, and merchandise, imported from the "West Indies," and from any foreign ports in North America; and that the committee have power to report by bill or otherwise.

WEDNESDAY, December 19.

An engrossed bill to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes, was read the third time and passed.

An engrossed bill giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire was read the third time, and passed.

An engrossed bill to amend the act, entitled "An act for the government and regulation of seamen in the merchants' service," was read the third time, and passed.

CONTESTED ELECTION.

The House resolved itself into a Committee of the Whole on the report of the Committee of Elections, of the tenth instant, to whom was referred, on the thirtieth ultimo, a petition of sundry citizens of the county of Washington, in the State of Pennsylvania, "complaining of an undue election and return of JOHN HOGE, to serve in this House as one of the Representatives for the said State;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same.

The House then proceeded to consider the said report of the Committee of Elections at the Clerk's table; and the same being read, in the words following, to wit:

"That William Hoge, member of the House of Representatives for the eighth Congress, having, by letter to the Governor of the State of Pennsylvania, dated the fifteenth of October, resigned his seat in Congress, the Governor, in pursuance of the provisions made in the second section of the first article of the Constitution of the United States, issued a writ of election, to supply the vacancy which had thus taken place; that the said writ was issued on the twenty-second day of October, and the election directed to be held on the second day of November, eleven days after the date of the said writ; that the writ was brought by the mail to the prothonotary's office, in Washington, on the thirtieth of October, but not proclaimed by the sheriff till the thirty-first.

"It appears to the committee that, though by the second section of the first article of the Constitution of the United States, it is made the duty of the Executive authority of the respective States to issue writs of election to fill vacancies, yet, by the fourth section of the afore-

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said article, it is made the duty of the Legislature of each State to prescribe the times, places, and manner for holding such elections. It appears, however, that several elections to supply vacancies in Congress have been heretofore held in Pennsylvania, yet, on examining the laws of that State, it appears that no law exists prescribing the times, places, and manner of holding elections to supply such vacancies as may happen in the representation in Congress; and, consequently, if the election of John Hoge is, on this account, set aside, no election can be held to supply the vacancy, until the Legislature of the State enact a law for that purpose.

"By the law for the general election of Representatives to Congress from Pennsylvania, the sheriff is to give thirty days' notice before the election, and to make the returns within thirty days after it. This election is held near five months before the expiration of the existing Congress. By the law of said State for supplying vacancies in the State Legislature, the Speakers of the respective Houses shall issue writs to supply vacancies that may happen, giving at least ten days' notice. The Governor, in the case now before the committee, has directed the election to be held on the same day, &c., on which the Electors for President and Vice President were to be chosen. There is no proof before the committee of any abuse in the manner of conducting the election, in obedience to the writ issued by the Governor.

"While the committee are of opinion that the Legislature of Pennsylvania ought to have appointed, as near as might be, the times as well as the places and manner of holding elections to supply vacancies in Congress, and that, in ordinary cases, a longer period ought to intervene between the time of public notice and the day of holding the election, yet, considering the special circumstances attending the election of John Hoge, and particularly that the election took place on the day fixed by the Legislature for the appointment of Electors for the State of Pennsylvania, the committee are of opinion that John Hoge is entitled to a seat in this House."

Mr. Leib said, he was opposed to the report of the Committee of Elections; he thought it a duty, therefore, to assign the reasons of his opposition. Were not the report to operate as a precedent for future decisions, he should have contented himself with a silent vote; but on this occasion he could not forbear expressing his dissent to the doctrine advanced by the Committee in support of the seat of the sitting member.

The Committee had made four points in their report; that the Constitution gives to the Executive of the State the power of issuing writs of election to supply vacancies; that if the election of Mr. Hoge be set aside, no election can be held to supply the vacancy until the Legislature of Pennsylvania pass a law regulating special elections; that there exists no law in Pennsylvania for the regulation of special elections for members of Congress; and that the notice of the Governor was sufficient, because it directed the election to be held on the same day on which the Electors for President and Vice President were to be chosen.

He would not deny that the Constitution of the United States gave to the Executive the power of issuing writs of election to supply vacancies, but he denied the power of the Executive to prescribe the manner and to fix the time of holding the elections. In the fourth section of the first article of the Constitution, it is declared, "that the time, place, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." It is evident, therefore, that, although the Executive may have the power of notifying the vacancy, and directing it to be supplied, yet, that he cannot prescribe the time, the place, or the manner of carrying it into effect, this power being specifically delegated to the Legislature. If he can prescribe the time, he certainly can prescribe the place and manner, for the doctrine contended for implies an absolute discretion, and if the place and manner be also placed in Executive hands, he is vested with an absolute control over all special elections. Are the Committee prepared to sanction such a doctrine? Will they admit that elections on which the fate and safety of the nation may sometimes depend, shall rest upon Executive will?

Under the construction given to the Constitution by the Committee of Elections, the Governor may have directed all the citizens of Washington county to hold the election at the town of Washington, or at any other town he pleased, and he may have conveyed the superintendence of it to other officers than those appointed by the people. The power to issue writs to supply vacancies comprehended every incidental power, and the special election was wholly dependent upon Executive discretion.

He agreed with the Committee of Elections in the second point, that if no law exists to regulate special elections, and the election of Mr. Hoge is set aside, no election can be held to supply the vacancy until the Legislature of the State shall enact a law for that purpose; but he contended that a law did exist, and that the general rule governed the special case. The law for the regulation of the general election for members of Congress was the rule on this subject, and this rule ought to have governed the special case in question. By this law thirty days' notice is to be given, but, in this instance, only one day's notice was allowed. If thirty days' notice were deemed not more than sufficient for a general election, surely a special election, not less important to the district, required an equal time for information to be diffused, and consideration to be matured; and if this notice, pointed out by the law, had been given, he would dare affirm that the result would have been extremely different.

The Committee of Elections suppose that, because the election was notified for the day on which the election for Electors of President and Vice President took place, it was a sufficient notice. The testimony upon the table showed that only one day's notice had been given; that the writ had not been received until the thirtieth, and that the advertisement of the sheriff was not even prepared for publication until the thirty-first of October; the notice, therefore, could not have issued until the morning of the first of November, one day before the election was to be held. The county of Washington comprehends not less than

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six election districts, and is extensive, and he would ask how it was possible for the electors to be informed in one day? He averred that, in Philadelphia, where there are so many daily prints, and where information could travel with so much rapidity, that even there one day's notice would not enable the people to be informed; and could this be done in Washington, where the population was diffused over an extensive surface? It certainly could not.

The notice of an election for Electors was no notice for a member of Congress. The electoral election excited little attention, because it was not disputed; and, as there was no opposition, the people remained at home. How, then, did this operate as a notice? Those only who attended could have been informed. And was the notice to them to be taken as a notice to all? Would a notification of an election for charter officers in any of our towns be deemed a notice of an election for a legislator of the United States? And if not, by what process could the notice in the present case be made to apply? Are the rights of the people to be held by such tenure as is implied in this doctrine? He trusted not; and he hoped, therefore, that the Committee of the Whole would not affirm the report of the Committee of Elections.

Mr. FINDLEY said that, being chairman of the Committee of Elections, it was his duty to give notice to the Committee of the Whole House of the principles on which that committee made their report; that, in order to do this, it was necessary to state in what manner the case was submitted to the Committee of Elections. This, he said, was the more necessary, as no election had ever heretofore been contested before Congress on the same principles. No opposing candidate claimed the seat; no unlawful vote was even suggested to have been given; no officer entrusted with conducting the election was charged with error or corruption. There were two points alone, therefore, on which the decision must rest. The one was the Constitutional authority of the Governor to issue a writ to supply the vacancy that had happened; the other was, whether the Governor had exercised that authority in an incorrupt or unjustifiable manner. He said that the Committee of Elections had not been unanimous in approving the report; that two had voted against, and four for it; that, in this case, it not being necessary, he had not given his opinion; but that now, when the report was brought before the Committee of the Whole, and the case having originated in the State which he represented, and with whose laws and practice respecting elections he ought to be acquainted, he claimed indulgence and attention in offering some further explanations on the subject. For this purpose, he would examine the Constitution as far as it related to the case. In the second section of the first article of the Constitution, it is said, "when vacancies happen 'in the representation of any State, the Executive 'authority thereof shall issue writs of election to 'fill such vacancies."

In the fourth section of the same article, it is said, "the times, places, and manner of holding 'elections for Senators and Representatives, shall 'be prescribed in each State by the Legislature 'thereof, but Congress may, at any time, by law, 'make or alter such regulations, except as to the 'places of choosing Senators."

Mr. F. said that on these Constitutional provisions there was a difference of opinion; that, ever since the commencement of the Federal Government, he had understood the general opinion to be, that the fourth section related solely to the general elections of Senators and Representatives, but not to supplying vacancies that might happen; that the State of Pennsylvania, and several other States, had uniformly acted agreeably to this construction of the Constitution; that the State of Pennsylvania had enacted five different Congressional election laws, all differing in several principles from each other, three of which he had assisted in preparing; but on all these occasions, though influenced by different parties, there had been but one opinion on this subject, and but one practice. In all cases the issuing of writs to fill vacancies was left to the discretion of the Executive, and in he believed four, if not five cases, which had happened previous to the present, the practice had been agreeably to this opinion. He said that he did not maintain that his opinion, or the opinion of the State he represented, on which it had so uniformly acted, decided the true sense of the Constitution; but he was still of opinion that it seemed to be the fairest construction, at least in cases where the Legislature had not interfered. The Executive shall issue writs, is the language of command; it renders the issuing of the writs an indispensable duty. The fourth section is equally positive in enjoining on the Legislature to appoint the times, places, and manner of appointing Senators as of Representatives, yet in the third section the Executive is authorized to appoint Senators to supply vacancies in the recess of the Legislature, and this is done probably to every Congress; but he believed the Legislature of no one State had prescribed any rules for supplying vacancies in the Senate, though the Constitutional injunction in that case on the Executive is certainly not so positively expressed, as with respect to issuing writs to supply vacancies which may happen in the Representatives. Taking the fourth section of the first article of the Constitution literally, as it applies to the general elections, it is impossible for the Legislature to mention the day on which a vacancy may happen, or consequently to appoint the day on which an election to supply a vacancy should be held, as it can do with the general election; therefore, it appears evident that the Constitution does not restrain the Legislature from establishing rules respecting it, if they choose to do so.

Mr. F. said that, from a view of the Constitutional provisions respecting elections, and some other objects, it had been the opinion of many that they were designedly calculated to give a latitude to the States to vary their conduct with respect to forms and circumstances, provided the essentials were preserved. On this ground only

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can the great variety of practice, under these rules, and all admitted by Congress, be accounted for. The first section of the second article of the Constitution directs that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors," &c.

From these words, Pennsylvania and several other States have always been of opinion, and practised accordingly, that it was the duty of the State Legislatures to prescribe the manner and rules agreeably to which the citizens should appoint the electors; but the Legislature of New York, and perhaps some other States, have not only always prescribed the rules or manner, but have themselves appointed the electors. This he said was more essential to the rights of the citizens than the case now before the committee; and yet, though universally known, had been, in every instance, admitted by Congress. The rule for the representation in each State has been prescribed by the Constitution; yet, in many States, the Representatives are chosen at a general election; in others, in single districts. In other States, even in Pennsylvania, some districts choose three members, some two, and some but one; but all of them may be chosen from any part of the State. Some other States have been divided, indeed, into single districts, and obliged to vote for candidates residing within their respective districts. He said he would not detain the Committee with further instances of the various, and yet approved practices under the Constitution, but hoped that even the members who might be of opinion that Pennsylvania had not given the Constitution, in the instance in question, the most correct construction, that yet they would duly consider other instances of variety of construction which had hitherto passed, not only without objection, but with approbation.

Mr. F. said that, since this case was returned to the Election Committee, he had heard the opinion of the Constitutional provisions, agreeably to which Pennsylvania had acted, called in question, but never before; that the objections were new to him; but, upon examining the laws of different States, he had discovered that the Legislatures of two or three States, though they had not literally prescribed the times for holding elections to supply vacancies, yet they had prescribed such rules to the Executive, in doing so, as answered the same purpose, and thought they did right; but Pennsylvania, and some other States, had not done so in any instance, and that in no instance, before the present, had an election been questioned, because the Legislature had not appointed these rules. The Legislature of Pennsylvania, not having prescribed any rules to the Executive to regulate his duty in issuing writs to supply vacancies, did not release the Governor from the Constitutional responsibility of performing a duty so positively and conditionally enjoined. Hence, Mr. F. concluded that the election could not be set aside merely on account of the Legislature not having enacted a law to prescribe the time of holding the election. The Governor had acted in obedience to the express words of the Constitution, and violated no law of the State. Setting aside this election on this ground, would virtually annul all the elections to supply vacancies in Congress that had ever taken place in the State of Pennsylvania, and in some other States.

By the fourth section of the first article of the Constitution, Congress is authorized, by law, to prescribe the time, place, and manner, of holding elections; but this must be done by law, not by a vote of the House, after an election was over; therefore, that power cannot apply to this case. Congress has passed no such law.

Mr. F. said, if the report of the committee was rejected, it must be on other grounds than this. It could not be because the Executive exercised his Constitutional discretion, but because he had exercised it in a corrupt, or in such an indiscreet or improper manner, as to vitiate the election. This was a fair subject of inquiry, on which there might, and probably would be, a difference of opinion; and, with respect to which, he admitted the propriety of several of the objections made by his colleague, who had just sat down, (Mr. LEIB.)

The Governor, it appears, issued the writ immediately on the resignation of William Hoge coming to him. He directed the election to be held on the same day, at the general election for the choice of electors for President and Vice President. The writ, it appears, laid one day in the prothonotary's office, before it was proclaimed, the sheriff and prothonotary being from home. The notice, after proclamation before the election, was only a part of three days, and not sufficient time for the citizens to be informed of it at their homes, notwithstanding that it is the smallest district in the State; but those who did attend at their respective districts to vote for electors, were actually informed by persons sent for the purpose. That this was the case was proposed to the committee, and proved by the sitting member; for the fact appearing to be admitted by the petitioners, such proof was thought unnecessary. It appeared probable to the committee that the district at the seat of justice at which the Governor's writ first arrived, had the advantage of earlier information than other districts; but this was incidental, and as the prothonotary, to whose office the writ came, and was opened, and the sheriff, &c., were opposed to the election of the sitting member, they had at least an equal advantage of the earliest notice, and those most zealous for the electoral ticket were not supposed to be his friends. Partial or fraudulent intention is not complained of by the petitioners; they are, indeed, few in number, and appear all to have had the earliest notice. There is no petition from any citizens, complaining that they themselves were deprived of their votes for want of notice. The election for the choice of electors was not so numerous as was reasonably expected; but if the Governor had given the ten days' notice directed by law for filling vacancies in the State Legislature, and claimed by the petitioners, this would have happened in about a week after the other, respecting

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which, the probability, justified by all experience in Pennsylvania, is, that it would have been still less numerous. This appears to have been the Governor's opinion. It was also the opinion of several of his colleagues from the eastern parts of the State, who had seen, and been informed by the Governor that he had issued the writ, and who had first informed himself that it had been issued. They, and all his other colleagues, with whom he had conversed on the subject, he understood, approved of the Governor's conduct, till they heard of the result of the election, and there was no proof before the committee that the shortness of the notice operated in favor of the sitting member more than the other candidate. All the voters for both candidates agreed in voting for the same electors, notwithstanding that there was little time for concert. On the whole, Mr. F. concluded that, as the issue of the election had occasioned exceptions to be taken to the shortness of the notice, he wished that longer notice had been given, though he had approved of issuing the writ. But, as it was conducted under an authority vested by the Constitution, on the same principle which had been always acted on in Pennsylvania, and several other States, and never heretofore objected to by Congress, which was the only competent judge in the case, and as no corrupt intention or abuse was complained of, he thought it his duty to vote in favor of the report of the Committee of Elections. If the election was set aside till a law would be passed to prescribe the time, probably the district would not be represented this session, which he thought an argument of weight, but of little importance compared with deciding the principle; in doing which, if the report of the Committee of Elections was rejected, the decision might virtually vacate the seats of the members, and would condemn all the elections heretofore made in Pennsylvania, and some other States, to supply vacancies to the House of Representatives.

Mr J. CLAY could not agree with the Committee of Elections, in the opinion that there was no law in Pennsylvania regulating the place and manner of holding special elections for members of Congress, to supply any vacancy which might occur in the representation from the State By turning to the law respecting general elections, he found that members of Congress were to be chosen by the inhabitants qualified to vote for the most numerous branch of the State Legislature, and that those elections were to be held at the same places, conducted in the same manner, and by the same officers, as for members of Assembly. In cases of general elections, therefore, there could be no difference of opinion; as these were to be governed in both cases by the same rules, it was fair to infer that special elections for Representatives were to be conducted in the same manner as special elections to fill vacancies in the Legislature of the State. By the laws of Pennsylvania, it appears that, in cases of vacancy in the representation of any county, the Speaker is to issue a writ at least fifteen days before an election can be held, and the sheriff of the county must make proclamation, and give at least ten days' notice to the people. The reason of the law was evident; it was intended to prevent the people from being surprised, and to give them time to look round for suitable persons to represent them. If the reason was good, as applied to the State Representatives, who were all chosen in single counties, it was more so as applied to Representatives in Congress, who are chosen in districts composed in some instances of three or more counties. He, therefore, was of opinion that they should be governed by the same law. The committee, however, had been told, by his colleague, (Mr. FINDLEY,) that the Legislature never intended to make any law on the subject; that they conceived they had no power; that the Constitution of the United States, by saying that, in case of vacancy in the representation of any State, the Executive thereof should issue a writ of election to fill such vacancy, was imperative, and, by making it the duty of the Governor to issue such writ, gave him the sole power of regulating the time, manner, and place, of holding the election, and precluded all Legislative interference. We were not to judge of the law, by the alleged intention of the Legislature; if they had mistaken their own powers or the powers of the Executive, their mistake was not to govern the decisions of Congress. All that we had to do was, to inquire whether there was a law applied to the case, and whether its provisions had been complied with. But he could not suppose that the Assembly had so far misconceived the Constitution. By the fourth section of the first article of that instrument, the State Legislatures were empowered to regulate the time, place, and manner of holding elections for Senators and Representatives to Congress. This power was not confined to *general* elections, but must necessarily extend to elections to fill vacancies. It was true that, in special cases, they could not direct the precise time, but they might prescribe the notice which should be given; and shall we be told, because the very day cannot be named, that the number of days which shall intervene between the proclamation of the sheriff and the election, shall not be fixed by law? The notice is part of the manner, and the Legislature, though they cannot fix the time, may fix, and have fixed, the places and manner. It is true the Executive is compelled, by the second section of the first article of the Constitution, to issue a writ of election to supply a vacancy; but this writ he contended was merely a notification. It gave no power, no discretion. If the Governor had a discretion, it might extend to the place and manner. The northwest district of the State is very extensive; and, under this discretion, the Governor might so direct an election, that, in case of vacancy, the town of Pittsburg alone might be notified, and would alone vote for the member to supply that vacancy. But the case of a choice of a Senator during the recess of the Legislature had been resorted to as analogous to that of Representatives. If the Senator were chosen by the people, the case would be in point. Senators, when vacancies happen during the recess of the Legislature,

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are chosen by the Executive, and, therefore, there was no necessity for the Legislature to prescribe either time, place, or manner, as it would be absurd to suppose that the Governor should notify himself, or change his residence, in order to make an appointment. Would it be argued, therefore, that it was unnecessary to give the people due notice of an election for Representatives? Surely not.

But, said Mr. CLAY, the Governor has himself recognised the law in the very writ. Were not the same officers appointed to conduct this election, as were appointed to conduct the general elections? Were not the ballots given in the same manner, counted by the same persons, and returned by the same judges? Whence did they derive their authority, but from the law? And the law ought to have been complied with in every other respect. It is true, an election was to be held throughout Pennsylvania for electors of President and Vice President. The Governor, actuated by the most laudable motives, in order to save the county of Washington the expense of a special election, directed that a member of Congress should be chosen on the same day to fill the vacancy caused by the resignation of Mr. Hoge. But the committee would recollect that, although the people knew that electors were to be appointed, they did not, they could not, know of the intended choice of a Representative. In Pennsylvania the people do not, as in some of the Southern States, all meet at one place in the county to give their votes. No; each county is divided into a number of districts, in each of which an election is held, so that no person has more than a few miles to go to the poll. The county of Washington is divided into six or eight of these districts. The sheriff's proclamation was issued on the first day of November, and the election was held on the second; although the people of the town of Washington, and its immediate neighborhood, might receive due notice, it was impossible that those who resided and voted in the remote parts of the county, should. Indeed, it was evident that they did not. An election for electors was held on the same day. It was generally known that no opposition was intended, and the people were, therefore, less anxious about the result. The electors were chosen by a general ticket throughout the State; the votes of any one county were, therefore, deemed of comparatively little importance. This was not the case, however, with a Representative in Congress. The county of Washington forms a district for the choice of one member. The people of that county, not having the co-operation of any other part of the State, necessarily depend for success on their own vigilance and exertions. Yet what was the result? The bare *majority* given for electors exceeded the whole number of votes given, both for the sitting member and for the rival candidate. It was, therefore, evident that the people had not notice sufficient of the Congressional election. Mr. C. did not mean to impeach the motives of the Governor; on the contrary, he thought them praiseworthy; but substance ought not to be sacrificed to form. The object of elections was, that the majority of the people might have an opportunity of giving their fair and unbiassed suffrages in the choice of persons to represent them, and not through any mistaken constructions, however pure might be the intentions of the Executive, or of the Legislature. This object was defeated in the election. It was a manifest violation of the rights of the people, and ought not to be confirmed. This opportunity was not given in the present instance, or the sitting member would not have been returned. Conceiving this to be the case, and believing that the people had not that notice which by law they ought to have had, he considered the election void, and should vote against the report of the committee.

Mr. FINDLEY said, if the subject before the Committee of the Whole was an election law, he would cheerfully subscribe to many of his colleague's (Mr. CLAY'S) observations. He admitted that Congress had a Constitutional authority to make laws, which would prescribe rules to regulate the exercise of the Executive discretion in issuing writs to supply vacancies; but neither Congress nor the State Legislatures have made such laws, but left it in the hands of the Executive, who is under an unconditional obligation to issue such writs, and who, in Pennsylvania and other States, always have done so, and the returns of elections on these writs have, in all cases, passed the decision of the Committees of Elections, and received the approbation of Congress. Therefore, as he said before, the question turned more properly on the discreet or proper use of the Executive discretion, than the right of exercising it. In order to prove that the Governor, in the case before us, had acted indiscreetly, Mr. F. said his colleague had observed how unreasonable it would have been for the Governor to have issued a writ with such short notice to a district which he had named, and which consists of three counties, and sends two members. The petitioners themselves argue from the extent of the Alleghany districts, which contain eight counties, thinly settled, and are spread over an extent of territory larger than some whole States. He thought it unfair to argue that, because the Governor gave such short notice to the least extensive and least numerous district in the State, a district consisting of one thickly settled county, and which had a Representative for less than thirty thousand inhabitants, and to correspond with another very important general election, the day on which it was to be held had been so long proclaimed that every man knew it, to charge the Governor with indiscretion, equal to what it would have been had he given but the same notice to the most extensive and dispersedly settled districts, at a time when no general election made it the duty of the citizens to be present on the election ground, was improper. As it was the Governor's conduct, and that only, that was called in question in this case, it was proper to observe that though his colleague was justified in saying that they had but one day's official notice, yet in fact, they had a part of two other

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days, and the writ having laid one day open in the prothonotary's office, as was understood, before it was proclaimed, through the absence of the sheriff, was not the fault of the Governor. If the Governor had done wrong, he did not wish to extenuate his offence, but he thought it improper to magnify the charge by supposed cases so essentially different.

Mr. F. observed that his colleague (Mr. CLAY) had maintained that the general Congressional election law of Pennsylvania applied also to the case of filling vacancies, and that it made it the duty of the Governor to give thirty days' notice before the election. If the gentleman would examine that law, he would find this opinion incorrect; it did not make it the duty of the Governor to give any notice: this duty was enjoined on the sheriff of each county; the sheriffs are enjoined to give thirty days' notice, and were allowed thirty days after the election to make their returns. After the returns were lodged in the Secretary's office, it was made the duty of the Governor, by proclamation, to give public notice to the members elected, and to transmit the returns to the Speaker of the House of Representatives in Congress. The Governor was not authorized, by the constitution or the laws of Pennsylvania, to issue a writ for holding any elections whatever. The authority of issuing a writ in the case in question was solely derived from the Constitution of the United States. This law could not be applied to elections to fill vacancies, without absurdity. The sheriff has sixty days for giving the public notice and making the returns; and adding to this a reasonable time for the Governor to make a proclamation, and the candidate at a distant part of the State, before he could go to Congress, in most cases the session would be over before the vacancy could be filled.

The petitioners themselves argue much more reasonably when they apply the law for filling vacancies in the State Legislature to the case; this law makes it the duty of the sheriff to give ten days' notice after he receives the writ from the Speaker of the respective Houses, in all cases when the Houses are not in session, to direct the vacancy to be filled at a general election. This is a reasonable law for the purpose, but prescribes no duty to the Governor, nor is it binding on him, yet the Executives have always acted as nearly to it in filling vacancies in Congress as circumstances would permit, and in this case it was only varied agreeably to the spirit of that law, in favor of the day on which an important general election was to be held. But, supposing the obligation of the general election law on the Executive in this case, the election officers having done their duty, is urged as a proof either that the general election law applied to this case, or that the election is void, because it was not conducted by officers authorized for the purpose. A brief explanation will remove the force of this argument.

By the laws of Pennsylvania, the election officers appointed annually for the elections held on the second Tuesday of October, are to discharge the duties of their respective trusts at all elections by the citizens for national purposes throughout the year. The constitution of Pennsylvania prescribes the manner that citizens shall vote, by ballot, &c. The laws of Pennsylvania institute the election officers, and prescribe their duty. The Constitution of the State and the United States and the laws of the State, declare the officer that shall be voted for; if the election officers conduct elections for officers not instituted by any of those authorities, it is void; otherwise, it is valid. It will not be said that an election to fill vacancies in Congress is not authorized by the Constitution of the United States, or that the Governor's writ did not sufficiently authorize the election of officers.

Mr. ELLIOT said that the very comprehensive and argumentative examination of this question, which had been made by the gentleman from Pennsylvania, (Mr. FINDLEY,) would probably have been conclusive to his mind had any doubt existed on the subject. Without repeating, however, any of the arguments of that gentleman, a candid consideration of the provisions of the Constitution, relative to this subject, will evince the correctness of the position taken by the Committee of Elections. In the second section of the first article of the Constitution, it is declared that "when vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies." It is an established principle that a Constitutional delegation of a general power includes a grant of all the subordinate and incidental powers requisite to give effect to the principal one, unless restrained, limited, or placed elsewhere by another part of the Constitution. What is the power given to the State Executives by this clause of the Constitution? Not merely, as some gentlemen seem to believe, an authority to issue writs of election, but to give to those writs a certain operation and effect, that of filling a vacancy. They have authority to issue writs of election, to cause elections to be holden in consequence, and the vacancies filled. Is the power here given to the Executives of the States limited or taken away by any other part of the Constitution? If not, I shall not suffer myself to inquire into the discretion or indiscretion with which it has been exercised on the present occasion, as I believe the Constitution has placed it beyond our power of inquisition or censure. By the fourth section of the Constitution, it is declared that "the times, 'places, and manner of holding elections for Sen-'ators and Representatives shall be prescribed in 'each State by the Legislature thereof; but the 'Congress may, at any time, by law, make or 'alter such regulations, except as to the places of 'choosing Senators." The words *by law*, in this section, are peculiarly emphatical. Congress can do dothing on this subject, but *by law;* the State Legislatures may act by resolutions, and in that manner Senators are commonly chosen. This section appears to have been intended to regulate the general election of the whole number of Senators and Representatives to which a State is entitled, and to have no application to the case of

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vacancies. But if this construction be not the correct one, it will be necessary to adopt this construction of the two clauses taken together, that although the State Legislatures have a right to regulate the elections in cases of vacancy, yet the Executive possesses a complete discretion on the subject, under the Legislative interference. Such, we are told, has uniformly been the practical construction in Pennsylvania. Two questions are only to be answered: Was the election in the present instance held in pursuance of a power delegated by the Constitution? Certainly it was. Was it regularly and legally conducted? It appears to have been conducted, except as to time, conformably to the laws of Pennsylvania which govern other elections. Believing that, under the peculiar circumstances of the case, no injustice has been done, and believing that the election was constitutionally conducted, I shall vote in favor of the report of the committee.

Mr. LUCAS.—Believing, as I do, that the report under consideration involves an important question, I cannot forbear to add a few remarks. It appears that members of Congress may be elected under two different circumstances—periodically by general elections, accidentally by special elections. The election of the sitting member (which is the subject of the report,) is a special election—an election to fill the vacancy of William Hoge, resigned. It is not alleged that any illegal votes have been given, or any fraud practised in conducting that election; it is merely contended by those opposed to the report that the election ought to be set aside, because the time, place, and manner of holding the election has not been according to law, or because the power of prescribing the time, manner, and place, has been assumed by an improper authority. Turning to the second section of the Constitution of the United States, we find this provision: "When vacancies happen 'in the representation from any State, the Exec-'utive thereof shall issue writs of election to fill 'such vacancies." From this, it appears the Governor is only vested in part with the powers to cause an election to be holden—that is, the power of issuing a writ of election—which gives him the initiative; but this initiative does not destroy the power placed by the fourth section of the same Constitution in the State Legislature, which is, that "the times, places, and manner of holding 'elections for Senators and Representatives shall 'be prescribed in each State by the Legislature 'thereof." The words *holding elections* indisputably include all kinds of elections. A special election is not less an election than a general one; and unless the Constitution express an exception to that general principle, it follows necessarily that the State Legislature or Congress have the power of prescribing the times, places, and manner of holding elections for Representatives. Thus, from the provision in the Constitution which vests the Executive of each State with the power to issue writs to fill vacancies, and from the provision which vests the State Legislature with the power to prescribe the times, places, and manner of holding elections, it appears that the powers necessary to cause elections to be held to fill vacancies are divided between the Executive and Legislative powers: the first is directed to issue writs of election, the second to prescribe the times, places, and manner for holding the same: both are bound by a Constitutional injunction equally imperative. Thus, that an election to fill a vacancy be legal, the Executive and Legislature must have co-operated to that election by the exercise of their respective Constitutional powers. If the election under consideration hath been holden under the authority of but one of these powers, it is not according to the Constitution, inasmuch as the Constitutional exercise of the power of the one, without the concurrence of the other, is *but a lame* power.

The report states that this election was *held* without the concurrence of the Legislature; that is, that the State Legislature hath omitted to prescribe by law the times, places, and manner of holding elections to fill vacancies. This being the case, the power of causing the election to be holden was incomplete; and if its deficiency was supplied, it was by an authority other than that designated in the Constitution.

But a gentleman from Connecticut (Mr. GRISWOLD) contends that, by the Constitution of the United States, in the second section of the first article, requiring the Executive authority of each State to issue writs of election to fill vacancies, the Executive became vested with the absolute power of causing elections to be holden, and that all other powers necessary to carry that act into effect are implied, and can lawfully be exercised.

To this, it may be answered, that the Constitution of the United States hath been careful in distinguishing between the substance and forms of elections. The substance of elections, which consists in the right of electors, and the result of the exercise of that right, hath been *sufficiently* expressed. The Legislature of each State has been expressly vested by the Constitution with the power of regulating the forms, which consists in prescribing the times, places, and manner of holding elections. If the construction of the gentleman from Connecticut were correct, the consequence would be that two provisions of the Constitution would militate against each other; that is, that the Executive would, from the power he hath to issue writs of election to fill vacancies, derive by implication the power of prescribing the times, places, and manner; that is, would have by implication a power which the Constitution expressly vests in the Legislature of each State, and which appears to be a subject of such importance that Congress is empowered to control the State Legislatures in that very case. The gentleman from Connecticut hath gone further: he hath said that, admitting for a moment that the power vested in each State Legislature to prescribe the times, places, and manner of holding elections, which he believes extends only to general elections, should extend to elections to fill vacancies, yet that, inasmuch as the Legislature of Pennsylvania did omit to legislate on that subject, the Government had a right to supply the omission by assuming that

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power. In this argument, I answer, that as none of the constituted authorities can transfer, by any act whatever, the power lodged by the Constitution in any of them, by a stronger reason no transfer of power can be made by their omission to act. The security of our political system rests principally upon the Constitutional partition of the Constitutional powers. The Constitution doth not only require that none but the powers which it grants should be exercised, it also requires that they should be exercised only by the authorities to which they are confided; and to contend that the omission of the Legislature to legislate entitles the Executive to perform acts of legislation, is a position too preposterous to require refutation.

It has been urged that it would be out of the power of the State Legislature to prescribe the time of holding elections in pursuance of the writ of the Executive to fill vacancies, because the Governor issues his writ under the immediate authority of the Federal Constitution, and this power cannot be impaired, or receive modifications by a legal State Legislative act. It has been added, that this election to fill a vacancy being the result of a contingency, the time cannot be prescribed by law. I grant that the time cannot be absolutely prescribed, but I contend that it can be prescribed relatively, and so it is prescribed, too, by the law of Pennsylvania, regulating the times, places, and manner, of holding elections to fill vacancies in the Legislature. Upon issuing a writ by the Speaker of either House, a time is fixed which bears relation to the time of issuing the writ, or proclaiming the election in pursuance of the writ; and as this relative prescription of time does not limit or abridge the power of the Speaker, so a similar relative prescription of time, with respect to the time of proclaiming an election under the writ of the Governor, would not abridge or impair the exercise of his right.

Independent of the radical deficiency of the election alluded to in the report, on Constitutional grounds, it cannot, in my opinion, bear the test, in point of discretion or inquiry. The shortness of the notice offers to my mind an insuperable objection. From the report before us, it appears that the sheriff of Washington made a proclamation of the election on the 31st of October, and that the election was holden on the 2d of November. It was not only morally impossible, but it was physically so, that one-third of the electors could be informed; but this objection has been anticipated on this floor, and great endeavors have been made to justify this shortness, I might say the want of notice, by alleging that the 2d day of November had been preferred, it being a day already appropriated for the election of electors, and that the notice given for that election would answer the purpose of the election of a Representative in Congress, while it would save the electors the trouble of assembling again. These considerations, more specious than solid, cannot prevent me from discovering the whole extent of danger of holding elections without certain principles and rules with respect to a previous notice. It was generally believed in Washington county, as well as in every other part of Pennsylvania west of the mountains, that the election of electors would, without any risk, be carried according to the wishes of a large majority. Hence, many persons, far distant from their respective election districts, did rely upon those that were nearer to attend the election of electors; hence the result of the election of a member of Congress. Had the electors of the district been informed, as they ought to have been, that a member of Congress was to be elected on that day, although there was no danger of risking their object as to the election of electors, yet there might be some doubt as to the election of a Representative. Have we not every reason to believe, from the repeated instances of public spirit prevailing in that district, that the election would have been attended by probably more than three times the number of persons than did actually attend? and as to myself, I have a strong presumption that the result would have been quite different from what it was. Some of the gentlemen who supported the report have endeavored to justify this election on the ground of precedents. They have said that all former elections in Pennsylvania, to fill vacancies in Congress, have been holden under the same authority and circumstances. It is not improper to take notice that this election is the first of the kind that has been contested in Pennsylvania; that as no exceptions were taken to the former ones, it is an ordinary thing that the Committee of Elections report as legal elections those that appear such from *prima facie* evidence, and they never enter into details but when the elections are disputed. Ought precedents to govern where they militate against an express Constitutional provision? And will gentlemen say that elections to fill vacancies, held after thirty days' notice, such as the first election of William Hoge and others were, can be received as a precedent in point, with an election held after one day's notice?

It has been the pleasure of some honorable members to bring into view the motives that have actuated the Governor of Pennsylvania in directing the election to be holden after so short a notice. The purity of these motives has been insisted upon, as if any member of this Committee were questioning the good intentions of that magistrate; but the intentions of the Governor, pure as I doubt not they were, cannot be the criterion to judge of the legality of this election. The Governor may think one way, and the Committee another, and yet we may all be influenced by good intentions. From the present view of the subject, I am induced to vote against the report. I lean still more to the rejection of the report, as, by setting this election aside, the Legislature of Pennsylvania, which is now in session, will feel more immediately the necessity of exercising Constitutional powers, and of prescribing, by law, the times, places, and manner, of holding elections to fill vacancies in future.

Mr. JACKSON.—Mr. Chairman, two objections have been made by the gentleman to the report of the Committee of Elections: First. That the Constitution of the United States requires that in

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all cases the times, places, and manner, of holding elections shall be prescribed in each State by the Legislature thereof; and as no law has been passed in Pennsylvania providing for the cases of supplying vacancies in case of death or resignation, that the election of Mr. Hoge is invalid. Second. If the Constitution does not conclude the question, we have a right to examine all the circumstances incident to the proclamation of Governor McKean, and to determine whether the discretionary power vested in him by the Constitution, as the Executive of Pennsylvania for the time being, was duly exercised or not; and it is asserted that it was improperly exercised by him.

The fourth section of the first article of the Constitution, upon which the superstructure of the arguments on the first point rests, is in these words: "The times, places, and manner, of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." The language of the section clearly proves it has reference to the general elections, and precludes the idea that it was intended to include the cases of vacancies, as no human prudence could designate the proper time for holding elections to supply vacancies that would thereafter occur. Who can determine when the incumbent will die? When the unrelenting hand of death shall cut the thread of life, or when some occurrence in life shall induce him to resign into the hands of the people the trust reposed in him? And, unless these these things are foreseen, the State Legislature cannot say at what time, at what place, and in what manner, elections to supply vacancies shall be held. If the Legislature were to pass a law regulating the time only, and leaving the place and manner to the direction of the Executive officer conducting the election, on designating the place, and leaving the time and manner to be fixed by him, it certainly would not be a compliance with the requisitions of the Constitution, and a person thus elected would not be constitutionally entitled to a seat in this House. In the construction of a grant it is necessary that the person thereby claiming a privilege shall show that he has complied with all its requisitions, and being imperative, that the States shall prescribe the time, place, and manner, of holding elections. I doubt very much whether a compliance with either requisition alone would be correctly within the meaning and spirit of the Constitution.

I am the more inclined to adopt this construction, when I refer to the paragraph contained in the second section of the first article, which declares that "when vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill vacancies." Either this sentence has some meaning, or it has not. If it has any, it clearly follows that the cases of vacancies are provided for in a different way from that directed by the fourth section, which succeeds it. Mr. Chairman, when I contemplate the great talents and wisdom which the framers of this instrument possessed in an eminent degree, and the perspicuous and emphatic language which characterizes its provisions, that not only every paragraph, but every word of each paragraph, conveys some meaning, I cannot reject the sentence just read as a dead letter, unmeaning and inoperative; and, unless it is rejected, the Executive authority of any State has the power, and is required, to issue writs of election to fill such vacancies as may happen in its representation, independent of any State law or provision, and in conformity with the supreme law of the land.

Some gentlemen, however, contend for a limited construction of this clause, granting to the Executive authority to issue writs of election, by denying the right of designating the time, place, and manner, of holding such elections. But it is not to be presumed that a power so merely nominal would be guarded by the insertion of an independent and express provision. If, however, I err in the opinion I have advanced, I deny the propriety of making a contrary opinion at this late day. The States, the great party to the compact, have, without a single exception that I know of, considered that vacancies are to be supplied by writs of election under Executive proclamations, and have not passed any law upon the subject. A respect for their decisions, for the uniform practice of this House, and a consciousness that if we err, it is on the side of justice, will, I hope, incline us to sustain the report. If we do not, I call upon gentlemen to go through the House, to examine the rights of every individual to a seat, and to decide all cases similar to the one now before us, in the same way.

Sir, we have no law in Virginia providing for similar cases. I speak from present impressions. If I am mistaken, I will thank gentlemen to correct me. Two of my colleagues (Messrs. CLARK and WILSON) now hold their seats in virtue of elections to supply vacancies occasioned by death and resignation. If the gentleman is not entitled to his seat upon Constitutional principles, my colleagues are not. If they are, he is. One gentleman from Pennsylvania (Mr. CONRAD) however, varying the ground of objection, says, the laws of Pennsylvania provide for the case, and require a notice of twenty days previous to holding elections; and, as twenty days' notice was not given, this election is void. The language of the law he read proves that he is mistaken. It provides for issuing writs of election by the Speaker of the Senate, or of the House of Representatives, as the case may be, to supply vacancies; and as neither branch of the State Legislature, as such, has anything to do with the elections of Representatives to Congress, it must clearly apply to members of the State Legislature only.

I will now consider the right of examining the conduct of the Executive of Pennsylvania, and of controlling the discretionary power vested in him; and, first, permit me to declare that I believe it is entitled to the highest approbation, and was well calculated to procure a fair and honest expression of the public will. Congress were in session; the district of Washington unrepresented, and the necessity of providing for the exigency as soon as possible most apparent. An important

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ı, the most important, sir, which occurs ɔur Constitution, about to take place for ointment of Electors to choose a President ce President of the United States; and hat day, by the Governor's proclamation, s election also to be holden. True, sir, a notice was not given, without suffering ction to pass by, and requiring the people nble a second time, under a short interval, would have been highly inconvenient. He son to believe that all the people would tended; it was eminently their duty to do he magnitude of that election was great comparison, when considered with the

ntleman from Pennsylvania (Mr. CONRAD) l us that he wishes the elections to be more ıt, as it is the interest and duty of the peo- ıttend them. Where were they, I ask him, he electors were chosen? Were they, re- s of their interest and duty, asleep at their Sir, the fact proves the unwillingness of ple to attend; and, were the elections more t, their neglect would increase with their 's. I will not dwell longer upon this sub- supporting the conduct of the Governor nsylvania. The gentleman from South ıa (Mr. HUGER) has done ample justice to ow deny the right of this House to super- control the Executive of a free and inde- t State, and call upon gentlemen to show ence the power is derived. It cannot be ɜn repeated that ours is a limited grant of ; no constructive or implicative power is xercised by us. This is the language of nstitution. It is the language of common If we have the power, I ask, how is it to rcised? Shall we erect ourselves into a ɔurt of criminal judicature with censorial ı? Shall we say the Governor of Penn- ia acted from corrupt motives? That he fluenced by a desire to control the district shington in opposition to the people? Un- ɜ do, sir, I see no ground for interposition. hairman, there is no power vested in this more dangerous in its injudicious exercise ıe right of judging of elections, returns, and cations, of its members. By it a party may ıine of what number the minority shall ;, and even whether there shall be any mi- at all. I will never consent to exercise this , even legitimately, except in cases of emer- or urgent necessity.

en Mr. JACKSON had concluded, so much as ained in the last part of the fourth clause of ɔort, was again read, in the words following, :

ıe committee are of opinion that John Hoge is l to a seat in this House."

l on the question that the House do concur he Committee of the whole House in their nent thereto, it was resolved in the affirma- yeas 69, nays 38, as follows:

s—Willis Alston, junior, Nathaniel Alexander, ı Baldwin, Silas Betton, William Blackledge, John Boyle, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Sam'l W. Dana, John Davenport, John Dennis, William Dickson, Thos. Dwight, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, Calvin Goddard, Peterson Goodwyn, Edwin Gray, Thomas Griffin, Gaylord Griswold, Roger Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, James Holland, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, Simon Larned, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, James Mott, Thomas Newton, junior, John Rhea of Tennessee, Erastus Root, Thomas Sammons, John Smilie, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Lemuel Williams, Alexander Wilson, and Thomas Wynns.

NAYS—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Adam Boyd, Robert Brown, Joseph Bryan, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Andrew Gregg, Joseph Heister, William Helms, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Anthony New, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sandford, James Sloan, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Joseph B. Varnum, and Joseph Winston.

THURSDAY, December 20.

The House resolved itself into a Committee of the Whole, on the bill to amend the charter of Alexandria. The principal feature of the bill is the extension of the right of suffrage. A motion to strike out the first section, produced considerable debate; and was lost by a large majority. The bill, after undergoing several subordinate amendments, was reported to the House, who took it into immediate consideration, and ordered it to be engrossed for a third reading on Monday.

FRIDAY, December 21.

Mr. EUSTIS, from the committee to whom was recommitted the bill to regulate the clearance of armed merchant vessels, as amended, reported that the committee had had the said bill under consideration, and made several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

Mr. DANA, from the Committee of Claims, presented a bill for the relief of the legal representatives of the late General Moses Hazen; which was read twice, and committed to a Committee of the Whole on Monday next.

An engrossed bill establishing rules and articles for the government of the Armies of the United States, was read the third time, and amended at

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the Clerk's table, by the unanimous consent of the House: Whereupon,

Resolved, That the said bill do pass, and that the title be, "An act for establishing rules and articles for the government of the armies of the United States."

A petition of sundry British merchants, and others, subjects of his Britannic Majesty within the United States, whose names are thereunto subscribed, was presented to the House and read, praying that the power and authority granted by law to the federal circuit courts may be extended to the trial and determination of "all causes arising under treaties," or to causes where an alien is a party, in which the matter in dispute, exclusive of costs, is under the sum of five hundred dollars; or that such other tribunal may be established for the trial and determination of the said causes, as to the wisdom of Congress shall seem meet.—Referred to Mr. CLOPTON, Mr. GEORGE WASHINGTON CAMPBELL, Mr. GAYLORD GRISWOLD, Mr. BOYLE, and Mr. HUGER; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill declaring Cambridge, in the State of Massachusetts, to be a port of delivery; which was read twice, and ordered to be engrossed and read the third time on Monday next.

Mr. CROWNINSHIELD, from the same committee, who were instructed by a resolution of this House of the seventh instant, to inquire into the expediency of so far amending the act "to regulate the collection of duties on imports and tonnage, as to allow the Collector of the port of Philadelphia an additional deputy," presented a bill to authorize the Collector of the port of Philadelphia to act by an additional deputy; which was read twice, and committed to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act for the disposal of certain copies of the laws of the United States." The bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be read the third time on Monday next.

Mr. PURVIANCE gave notice that, on the third Monday of January, he intended to introduce a resolution giving to the District of Columbia a durable legislature of their own, on which the opinions of the Heads of Departments were to be obtained.

Mr. RHEA, of Tennessee, moved that the Secretary of War be directed to lay before this House a statement of the officers and privates of the several corps in the actual service of the United States during the years 1804 and 1805, and the names of the ports and the numbers of the officers and soldiers occupying the same; also, a detailed statement of the moneys expended on the several fortifications, arsenals, armories, and magazines, of the United States during the aforementioned period.

Mr. VARNUM doubted whether the Secretary of War could give all the information required, particularly as he could not make up returns of 1804 until some time in 1805.

Mr. DANA did not know that there was any military secret in the disposal of the small military force of the United States, but he did not think it prudent to give a written document on this subject, lest any nation of Indians should occasion some trouble to a post but weakly manned.

Mr. RHEA, of Tennessee, in answer to Mr. VARNUM, replied, that if the Secretary of War could not give the information required he should say so. On the observation of Mr. DANA, he replied that in his opinion the representatives of the nation ought to be acquainted with the number of their troops and their respective stations.

Mr. EUSTIS requested the resolution might lay on the table till Monday.

Mr. RHEA, of Tennessee, acquiesced, and the motion lies accordingly.

COLLECTION OF DUTIES.

Mr. LEIB moved that a committee be appointed to inquire into the expediency of making provision by law to authorize the Collectors of the several ports of the United States, to deposit for collection the bonds received by them for the payment of duties, in the Bank of the United States, or any of its branches, or in any of the chartered banks of the several States. In support of the reference, he remarked that the resolution contemplated an inquiry, and an important one. The Bank of the United States and its branches had usually a deposit of the moneys of the Government to the amount of between four and five millions of dollars; that by means of this deposit that bank was enabled not only to hold the mercantile interest tributary to the institution, but all the banks of the States. His object was to equalise the benefits, and not to permit that institution to monopolize an enormous profit from the treasure of the nation. He wished to unfetter the bank institutions generally, and he hoped the inquiry would obtain, and he believed the bonds due to the United States would be as carefully collected in the chartered banks, which are at the same time equally secure, as that of the United States or any of its branches.

Mr. R. GRISWOLD recollected this subject was suggested at a former session, and as it had a relation to the management of our finances he thought it would be more proper to refer it to the Committee of Ways and Means; he made that motion accordingly.

Mr. LEIB did not see that the subject necessarily appertained to the Committee of Ways and Means. It had no relation to the increase or decrease of the duties on imports, but merely to the deposit of the bonds given by the merchants to the Collectors. His true object was to prevent a monopoly, and he trusted gentlemen would not be enabled to defeat it by this mode of reference.

Mr. R. GRISWOLD understood the motion to relate to the deposit of the bonds, but it would be proper to inquire into the safety of such deposit

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before it was authorized by law; and in his opinion the Committee of Ways and Means, from the habits of their business, was as competent to make the inquiry as any select committee.

On the question, it was referred to the Committee of Ways and Means—51 being in favor of such reference, and 41 against it.

MONDAY, December 24.

Mr. LEIB, from the committee appointed, on the fourteenth ultimo, to "inquire into the expediency of making provision, by law, for the completion of the public buildings belonging to the United States, near Philadelphia," made a report thereon; which was read, and referred to a Committee of the Whole on Monday next.

An engrossed bill to amend the charter of the town of Alexandria was read the third time; and the further consideration thereof postponed until Friday next.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to divide the Indiana Territory into two separate governments;" to which they desire the concurrence of this House.

ARMED MERCHANT VESSELS.

An engrossed bill to regulate the clearance of armed merchant vessels was read the third time; a debate of considerable length took place. Messrs. DANA, R. GRISWOLD, and DENNIS, spoke against the bill, and were replied to by Messrs. EPPES, SMILIE, JACKSON, and EUSTIS: Whereupon, a motion was made and seconded that the said bill be recommitted to the consideration of a Committee of the Whole House; and, the question being put thereupon, it passed in the negative.

Another motion was made, and the question being put, to recommit the second section of the bill to a Committee of the Whole House, it passed in the negative. And then the main question being taken that the said bill do pass, it was resolved in the affirmative—yeas 77, nays 33, as follows:

YEAS—Willis Alston, jun. Nathaniel Alexander, Isaac Anderson, David Bard, William Blackledge, Adam Boyle, John Boyle, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, Jeremiah Morrow, James Mott, Anthony New, Thomas Newton, jun., Gideon Olin, John Patterson, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, David Thomas, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—John Archer, Simeon Baldwin, George Michael Bedinger, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Clagget, Manasseh Cutler Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, David Hough, Benjamin, Huger, Joseph Lewis, jun., Nahum Mitchell, Beriah Palmer, Thomas Plater, Thomas Sandford, John Cotton Smith, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, George Tibbits, Abram Trigg, Peleg Wadsworth, and Lemuel Williams.

The House adjourned to Wednesday.

WEDNESDAY, December 26.

An engrossed bill declaring Cambridge, in the State of Massachusetts, to be a port of delivery, was read the third time and passed.

The bill sent from the Senate, entitled "An act for the disposal of certain copies of the laws of the United States," together with the amendments agreed to on Friday last, was read the third time and passed.

The bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate Governments," was read twice and committed to Mr. GREGG, Mr. MORROW, Mr. LIVINGSTON, Mr. ALSTON, and Mr. CLAGETT.

Mr. BOYLE laid on the table a resolution to amend the rules of the House, by adding, that a standing committee should be erected for the consideration of all matters relating to the sale or distribution of the vacant lands belonging to the United States, to be styled the Land Committee.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the thirteenth instant, to whom was referred the petition of John Steele, late Secretary of the Mississippi Territory, presented the twenty-first of December, one thousand eight hundred and three; and, after some time spent therein, the Committee reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the proper accounting officers liquidate and adjust the account of John Steele, for his services as Secretary of the Mississippi Territory, from the seventh of May, one thousand eight hundred and two, to the second of March, one thousand eight hundred and three, inclusively; and that there be paid for his salary and official expenditures, such sums as are allowed by law to persons acting in that capacity.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means presented a bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five; which was read twice and committed to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of the legal representatives of the late General Moses Hazen;

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the bill was reported with an amendment, which was twice read, and agreed to by the House.

The said bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, presented a bill for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain; which was read twice, and committed to a Committee of the Whole on Friday next.

Thursday, December 27.

A petition of Amy Dardin, of the county of Mecklenburg, in the State of Virginia, widow and administratrix of David Dardin, deceased, was presented to the House and read, praying compensation for the value of a stud horse, called Romulus, the property of the deceased, which was impressed into the service of the Southern Army, under the command of Major General Greene, by order of James Gunn, a Captain in a regiment of Continental cavalry, some time in the month of July, one thousand seven hundred and eighty-one.—Referred to the Committee of the Whole House to whom was committed, on the sixth instant, the bill making farther provision for extinguishing the debts due from the United States.

The House resolved itself into a Committee of the Whole on the bill to incorporate the Washington Building and Fire Insurance Company. The bill was reported with several amendments, which were twice read, amended, and agreed to by the House.

The said bill was then amended, and, together with the amendments, ordered to be engrossed, and read the third time on Monday next.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, presented a bill supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was read twice, and committed to a Committee of the Whole to-morrow.

GENERAL HAZEN.

An engrossed bill for the relief of the legal representatives of the late General Moses Hazen was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 60, nays 38, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, David Bard, Silas Betton, Phanuel Bishop, Adam Boyd, William Butler, Levi Casey, Christopher Clark, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, Edwin Gray, Andrew Gregg, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, James Holland, Benj. Huger, Samuel Hunt, John G. Jackson, Michael Leib, Henry W. Livingston, John B. C. Lucas, Matthew Lyon, Thomas Moore, Jeremiah Morrow, Anthony New, Beriah Palmer, John Patterson, Samuel Riker, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, Samuel Taggart, Samuel Tenney, David Thomas, George Tibbits, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Nathaniel Alexander, John Archer, George Michael Bedinger, William Blackledge, John Boyle, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Davenport, John Dennis, Thomas Dwight, John B. Earle, Peter Early, Ebenezer Elmer, Calvin Goddard, David Holmes, David Hough, William Kennedy, Nehemiah Knight, Simon Larned, Andrew McCord, David Meriwether, Nahum Mitchell, Nicholas R. Moore, James Mott, Gideon Olin, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sandford, Henry Southard, William Stedman, Benjamin Tallmadge, Abram Trigg, Peleg Wadsworth, Alexander Wilson, and Thomas Wynns.

Friday, December 28.

Mr. Dana, from the Committee of Claims, presented a bill for the relief of John Steele; which was read twice and engrossed, and ordered to be read the third time on Monday next.

Mr. J. Randolph moved that the Postmaster General be directed to lay before this House a list of the names of persons with whom contracts have been made for carrying the mail of the United States from the 31st of December, 1801, to the 31st of December, 1804, inclusive, specifying the terms on which such contracts were made, and the sums paid, or to be paid to the contractors respectively. On motion it was agreed to consider the resolution, and on the question will the House agree to the same, it was carried *nem. con.*

CHARTER OF ALEXANDRIA.

A memorial of sundry resolutions of a number of the inhabitants of the town of Alexandria, in the District of Columbia, in approbation of the principles contained in a bill now depending before the House, to amend the charter of the town of Alexandria; also, sundry resolutions of a number of other inhabitants of the same town, in opposition to the said bill; were presented to the House and read: Whereupon,

Mr. Lewis called for the third reading of the bill to amend the charter of the town of Alexandria.

A lengthy discussion took place on the passage of the bill, which was opposed by Mr. Lewis, and its postponement contended for by Messrs. Dennis, Gregg, Early, R. Griswold and Goddard. The bill was advocated by Messrs. Lyon, Elmer, Leib, Eppes, Smilie, and G. W. Campbell, who likewise opposed the postponement.

On the question to postpone the bill till the first Monday in December next, it was lost, 44 being in favor of the postponement, and 60 against it. On postponing till the first of February the question was also lost, 42 in favor and 58 against it.

A motion was then made to recommit the bill to a Committee of the Whole in order to withhold from aliens the right of holding real estate within

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unds of the corporation, and to make some alterations, which, though not very material, give satisfaction to the party in Alexandria pposed the passage of the bill.

the question to recommit, there were 36 in firmative, and 61 in the negative; so the n was lost.

J. RANDOLPH then spoke against the passage bill, and was replied to by Messrs. DAWSON, . W. CAMPBELL.

l then the main question being taken that id bill do pass, it was resolved in the affir-e—yeas 55, nays 51, as follows:

s—Willis Alston, jr., Isaac Anderson, John r, David Bard, George Michael Bedinger, John Robert Brown, William Butler, George W. ɔell, Thomas Claiborne, Christopher Clark, Mat-Clay, John Clopton, Frederick Conrad, Jacob ıinshield, John Dawson, Ebenezer Elmer, John ɔpes, William Findley, John Fowler, Josiah Has-:, Joseph Heister, David Holmes, Walter Jones, m Kennedy, Nehemiah Knight, Simon Larned, el Leib, John B. C. Lucas, Matthew Lyon, An-McCord, David Meriwether, Nicholas R. Moore, iah Morrow, James Mott, Anthony New, Thos. ɔn, jr., Gideon Olin, Beriah Palmer, John Pat-, John Rea of Pennsylvania, Jacob Richards, ıs Root, Thomas Sandford, John Smilie, Henry ırd, Richard Stanford, Joseph Stanton, David ıs, Abram Trigg, Matthew Walton, Alexander ı, Richard Winn, Joseph Winston, and Thomas s.

:s—Nathaniel Alexander, Simeon Baldwin, Silas ı, William Blackledge, Adam Boyd, William berlin, Martin Chittenden, Clifton Claggett, Man-Cutler, Samuel W. Dana, John Davenport, John ıs, William Dickson, Thomas Dwight, John B. , Peter Early, James Elliot, William Eustis, Cal-ɔoddard, Edwin Gray, Andrew Gregg, Gaylord old, Roger Griswold, Seth Hastings, John Hoge, ı Holland, David Hough, Benjamin Huger, Sam-lunt, Joseph Lewis, jr., Henry W. Livingston, ım McCreery, Nahum Mitchell, Thomas Plater, Randolph, John Rhea of Tennessee, Samuel Riker, ıas Sammons, James Sloan, William Stedman, el Taggart, Benjamin Tallmadge, Samuel Tenney, ;e Tibbitts, Philip Van Cortlandt, Joseph B. Var-Daniel C. Verplanck, Peleg Wadsworth, John ɔhill, Lemuel Williams, and Marmaduke Williams.

. VARNUM suggested that his colleague from achusetts (Mr. LARNED) had made a mistake ı vote on the Alexandria bill, which he wish-be permitted to rectify. Whether it would the decision of the House he did not know. gentleman voted for the bill, though he was ıst it altogether, under an impression that he voting on the question of recommitment in-of its final passage. If he was permitted to d his vote according to his intention, it would : the result stand 53 to 52; and if the SPEAK-as to add his vote to the minority, the bill d not pass.

ıis gave rise to a great deal of conversation ve to the rules of the House and its uniform ice, which appeared to have been against an ıtion of the vote by yeas and nays, unless the ıtion would produce no effect upon the vote by changing the majority into a minority. This idea was combatted by the reason of the thing. It was deemed extremely improper to confine members to a *lapsus linguæ*, without suffering them to explain. While the argument was going on, Mr. BECKLEY (the Clerk) had been induced to examine his list of yeas and nays with the most careful scrutiny, and had discovered that in the numerical list of votes he had marked the same number twice among the yeas, so that in fact there were 55 yeas and but 51 nays. The alteration requested being now found not to alter the decision, several members hoped the gentleman might be indulged; but this being to be done by the unanimous consent of the House, and Mr. CONRAD refusing his consent, the alteration was not made. Four motions were made to adjourn during the debate, and the last succeeded.

MONDAY, December 31.

An engrossed bill for the relief of John Steele was read the third time and passed.

Mr. J. RANDOLPH, from the Committee of Ways and Means, presented a bill making appropriations for the support of Government for the year one thousand eight hundred and five; which was read twice and committed to a Committee of the Whole on Wednesday next.

On a motion made and seconded that the House do come to the following resolutions:

1. *Resolved*, That a post road ought to be established from the City of Washington, on the most convenient and direct route, to pass through or near the Tuckabachee settlement to the Tombigbee settlement, in the Mississippi Territory, and from thence to the city of New Orleans.

2. *Resolved*, That the President of the United States be requested to cause to be laid before this House any documents, and give such other information as he may think proper, relative to opening a post road from the City of Washington to the City of New Orleans.

The first resolution being twice read, was, on a motion made, ordered to be referred to the Committee of the whole House, to whom was committed, on the seventh instant, a motion respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also, for the establishment of a post road from Georgia to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee."

The second resolution being twice read, was, on the question put thereupon, agreed to by the House.

Ordered, That Mr. HOLLAND and Mr. G. W. CAMPBELL be appointed a committee to present the second resolution to the President of the United States.

A Message was received from the President of the United States, enclosing a letter written from Malta by Richard O'Brien, our late Consul at Algiers, giving some details of transactions before Tripoli. The Message and letter were read, and ordered to lie on the table.

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The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the fourteenth instant, on the petition of Ann Elliott. The Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of Ann Elliott is reasonable, and ought to be granted.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that the Committee of Claims do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Wednesday next.

Mr. LATTIMORE, from the committee appointed on the seventeenth instant, presented a bill further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" which was read twice and committed to a Committee of the Whole.

The House resolved itself into a Committee of the Whole on the bill giving further time to register the evidences of titles to land south of the State of Tennessee. No amendment being made to the bill, it was ordered to be engrossed, and read the third time on Wednesday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom were referred, on the eighteenth instant, the amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods wares, and merchandise, exported from the district of New Orleans," made a report thereon; which was read, and together with the said amendments committed to a Committee of the Whole on Wednesdey.

On motion of Mr. EUSTIS, it was

Resolved, That the Secretary of State be directed to lay before this House a return of the number of American seamen who have been impressed or detained on board the ships of war of any foreign nation; stating the names of the persons impressed; the name of the ship or vessel by which they were impressed; the nation to which she belonged; and the time of the impressment, so far as may be practicable; together with any facts and circumstances, relating to the same, which may have been reported to him.

DISTRICT OF COLUMBIA.

Mr. GREGG called up the resolutions for a recession of the District of Columbia to the States of Maryland and Virginia.

Mr. HUGER moved to postpone the same till this day week.

Mr. JACKSON moved to postpone them till the 31st December next.

Some desultory remarks were made, not touching the merits of the main question; at length the question was taken on postponing till 31st December, and lost, without a division.

On postponing till Monday next, the question was decided in the affirmative—59 for and 31 against it.

An engrossed bill to incorporate the Washington Building and Fire Insurance Company was about being read, when

Mr. GREGG expressed a wish that it might be postponed, and a speedy decision had on the question of recession. He understood this was the day fixed for that subject.

Mr. LEWIS observed that the motion for recession could have had no effect upon this bill, as it did not contemplate the recession of the City of Washington, but only of the other parts of the District.

Mr. STANFORD had intended to have called up the resolutions for recession, but he had just received a letter from a number of the inhabitants of the District, wishing a short delay. There were also absent from the House several members who had taken considerable interest in the subject. For these reasons, he did not intend to call up the resolutions for two or three days.

Mr. EARLY was averse to a postponement. He thought an early decision ought to be made, to quiet the minds and soothe the feelings of the inhabitants, who felt a deep interest in the decision. Indeed, the members themselves had had their feelings excited in no inconsiderable degree. He hoped if the gentleman who brought the resolutions forward should forbear to bring them up, some other gentleman would do it for him.

Mr. STANFORD was induced to let the subject rest a few days longer, on account of those very feelings and interest which pervaded the whole body of the people. He would also prefer a decision by a full House, rather than by such a thin one as now appeared.

Mr. EARLY did not think that a thin attendance by the members was a good argument for postponement. If it was expected that every member should attend, he feared the public business would progress very slowly; but if the subject was entered upon now, and the resolutions adopted, they would have to take the shape of a bill, and it would be many days before the subject was finally decided, by which time no doubt the absent gentlemen alluded to would arrive.

Mr. LYON said the bill that was moved to be postponed had nothing to do with the recession, as it was not proposed to recede the city.

Mr. GREGG knew that the resolutions excepted Washington City, but he hoped that if a part of the District was to be receded, there would be found a majority for receding the whole. He was against the recession altogether, and so he should be till the question was decided against him. The business had been so long before the House, that he could not see any reason for further delay.

On the question to postpone the bill for incorporating the Washington Building and Fire Insurance Company, there were 51 for it and 42 against it; and the bill was postponed accordingly.

The House then adjourned to Wednesday.

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WEDNESDAY, January 2, 1805.

Mr. DANA, from the Committee presented a bill in addition to an "Act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war; which was read twice and committed to a Committee of the Whole on Monday next.

Mr. DANA, from the Committee of Claims, presented, a bill for the relief of the widow and orphan children of Robert Elliot; which was read twice and committed to a Committee of the Whole House on Friday next.

An engrossed bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five, was read the third time, amended at the Clerk's table by the unanimous consent of the House, and passed.

An engrossed bill giving further time to register the evidences of titles to lands south of the State of Tennessee was read the third time and passed.

A petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others, was presented to the House and read, praying relief, in the case of certain negro slaves and other property, which were taken from sundry citizens of the said State of South Carolina, therein named, on their way to the Natchez, by a party of Cherokee Indians, some time in the month of June, one thousand seven hundred and ninety-four.

Ordered, That the said petition, together with the petition of Eliakin Morse, of the State of Massachusetts, presented the twenty-third of January last, be referred to the Committee of Claims.

The House resolved itself into a Committee of the Whole on the bill supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage." The bill was reported without amendment, and it was ordered to be engrossed, and read the third time to-morrow.

Mr. GREGG, from the committee to whom was referred, on the twenty sixth ultimo, the bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate governments," reported that the committee had directed him to report the same to the House, without amendment: Whereupon the bill was committed to a Committee of the Whole to-morrow.

Mr. NEWTON, from the committee appointed, on the fifteenth of November last, presented a bill to prohibit the exaction of bail upon certain suits brought in the District of Columbia; which was read twice and committed to a Committee of the Whole on Wednesday next.

The House resolved itself into a Committee of the Whole on the bill for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

An engrossed bill to incorporate the Washington Building and Fire Insurance Company, was read the third time, and on the question that the same do pass, it was decided in the negative—yeas 23, nays 65, as follows:

YEAS—Willis Alston, jr., John Archer, Silas Betton, William Blackledge, William Chamberlin, Martin Chittenden, Manasseh Cutler, John Dennis, Thomas Dwight, Ebenezer Elmer, William Helms, John G. Jackson, Joseph Lewis, jr., Thomas Plater, Henry Southard, James Stevenson, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, George Tibbits, Peleg Wadsworth, Lemuel Williams, and Thomas Wynns.

NAYS—Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, Phanuel Bishop, Adam Boyd, Robert Brown, William Butler, Levi Casey, Clifton Claggett, Christopher Clark, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, James Elliot, John W. Eppes, John Fowler, Edwin Gray, Josiah Hasbrouck, Joseph Heister, James Holland, David Hough, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, Richard Stanford, Joseph Stanton, Samuel Taggart, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew, Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

And so the bill was rejected.

THURSDAY, January 3.

An engrossed bill supplementary to the act entitled, "An act to regulate the collection of duties on imports and tonnage," was read the third time and passed.

An engrossed bill for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain, was read the third time and passed.

On a motion made and seconded to add a new rule to the standing rules and orders of the House, in the words following, to wit:

"A standing committee to consist of seven members, and to be styled 'the Land Committee,' shall be appointed, whose duty it shall be to take into consideration all such matters and things, touching the lands of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House, and to report from time to time their opinion thereon; and also to report such alterations and amendments to the laws concerning the lands of the United States, as may become necessary:"

The question was taken that the House do agree to the same, and passed in the negative. So the said motion was rejected.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the thirty-first ultimo, to whom were referred the amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans;" and, after some time spent therein, the

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Committee rose and reported their disagreement to the report, and their agreement to all the amendments referred to them.

The House then proceeded to consider the said report and amendments of the Senate: Whereupon, the question was taken that the House do agree to the report of the Committee of the Whole thereon, and resolved in the affirmative.

Friday, January 4.

The House resolved itself into a Committee of the Whole on a bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate governments;" and, after some time spent therein, the bill was reported with an amendment, which was twice read and agreed to by the House.

Ordered, That the said bill, with the amendment, be read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill to authorize the Collector of the port of Philadelphia to act by an additional deputy; and, after some time spent therein, the Committee rose and reported progress.

On a motion made and seconded that the committee appointed, the twelfth of November last, on so much of the Message from the President of the United States as "recommends an enlargement of the capital employed in commerce with the Indian tribes," be discharged from the consideration of the alterations and amendments necessary in the "Act to regulate trade and intercourse with the Indian tribes," referred to them by a resolution of the House of the fourteenth of the same month, the question was taken thereupon, and resolved in the affirmative.

A motion was then made, and the question being put, that the House do come to the following resolution:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations are necessary in the "Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" and that the committee have leave to report thereon by bill or otherwise,

It passed in the negative.

Another motion was then made and seconded to reconsider the vote of the House for discharging the committee appointed the twelfth of November last, from the consideration of the subject referred to them on the fourteenth of the same month; and, on the question for reconsideration, it was resolved in the affirmative.

On the question that the said vote of the House to discharge the committee, be rescinded, it was resolved in the affirmative.

The House resolved itself into a Committee of the Whole on the bill further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" and, after some time spent therein, the Committee rose and reported progress.

A remonstrance and petition of the representatives elected by the freemen of the Territory of Louisiana, was presented to the House and read, stating certain objections to the system of government for the said Territory, as established by an act passed on the twenty-sixth of March last, and submitting thereon various matters and propositions to the consideration of Congress, which, they pray, may be adopted for the convenience and benefit of the petitioners and other inhabitants of the said Territory of Louisiana.—Referred to Mr. Eppes, Mr. Lucas, Mr. Clagett, Mr. Huger, Mr. Eustis, Mr. Fowler, and Mr. Bryan, to consider and report thereon.

A message from the Senate communicated to the House farther proceedings of the Senate relative to the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

The said proceedings of the Senate were *read*, and are as follows:

"*In Senate of the United States.—High Court of Impeachments, January 3d*, 1805.

UNITED STATES *vs.* SAMUEL CHASE.

"*Ordered*, That the fourth day of February next, shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States."

"Attest: SAM. A OTIS, *Secretary*."

Ordered, That the said proceedings of the Senate do lie on the table.

Monday, January 7.

The bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate Governments," together with the amendment agreed to on Friday last, were read the third time, and passed.

Mr. Elliot presented a petition from Barnabas Strong and sundry other inhabitants of Vermont, praying a grant of a tract of land six *miles* square, in the Territory of Indiana.

Mr. Olin opposed this application, as being a speculation upon the public property of the Union, and hoped the petition would be rejected.

Mr. Elliot did not view the application in the samelight with Mr. Olin; but were it the thing suggested, he thought still it might be suffered to go to a committee for inquiry.

On the motion to refer it to a select committee, there was thirty-seven yeas, and thirty-two nays.

The Speaker said the voters did not amount to a quorum, and having called in the members to their seats, the motion was put a second *time*, and there were forty-one in favor of the reference, and thirty-seven against it. It was accordingly referred to a select committee of three.

Mr. Findley laid upon the table a resolution to be added to the rules of the House, directing the Speaker to call upon the chairmen of committees to report the progress they had made in the several items of business referred to them, every Friday morning during the residue of the session.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations

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are necessary to be made in the laws for the disposal of the public lands Northwest of the Ohio, and that the said committee be authorized to report by bill, or otherwise.

Ordered, That Mr. MORROW, Mr. GREGG, Mr. GODDARD, Mr. STEPHENSON, and Mr. VAN CORTLANDT, be appointed a committee pursuant to the said resolution.

Mr. OLIN moved the appointment of a select committee, for the purpose of considering the propriety of increasing the allowance made to the persons employed in bringing to the seat of Government the returns of the election of President and Vice President of the United States. The allowance made by law being two dollars and fifty cents for every twenty miles travel to Washington, and nothing allowed them for their return.

On the question to raise such committee, there were fifty-six members in its favor, and twenty-one against it. A committee of three was appointed.

REMISSION OF DUTIES.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom were referred the petitions of Benjamin Bailey, James Bogart, Jr., and others, citizens of the United States, and resident merchants of the City of New York, made the following report:

The petitioners have been sufferers to a large amount by a late distressing fire in the City of New York. They represent that they imported into the district of New York, various goods and merchandise, of a great value; and while they were still owners of such property, a conflagration took place, which destroyed their stores, with all, or nearly all, their contents, including the merchandise on which the duties were secured to be paid. They pray that Congress will authorize the Collector of New York to deliver up, or cancel, all bonds or other securities given by them for duties upon such part of the said goods and merchandise as were destroyed by the fire.

Repeated decisions on similar applications leave no doubt on the mind of the committee that it would be improper to grant the prayer of the petition. When any article is imported into the United States, and the duties thereon are ascertained at the custom-house, the amount forms a part of the actual value, and is an insurable interest: if it is afterwards destroyed by fire, or lost in the transportation, coastwise, from port to port, or in any manner injured or damaged, it has never been considered that the United States were bound to cancel the bonds entered into by the importers for the duties. The United States can, in no respect, be considered in the light of underwriters. When the duties have at any time accrued, they ought to be paid, and the importing merchant can have no greater right to call upon the Government for a return of the duties than he would to demand of the seller a diminution in the price, or to ask the possessor of his note or bond that he may be exonerated from the payment for any article purchased in the market, merely because the bargain was not advantageous, or because the merchandise was burnt or destroyed, which formed and constituted the evidence of *value "received."* It is with regret the committee make these observations, but they wish it to be generally understood by the merchants, that in no case could they deem it proper to advise the House to refund the duties upon merchandise destroyed by any accident whatever.

It is true the Treasury of the United States ought not to be enriched from the losses of private individuals, and that our revenue is chiefly derived from the duties on articles consumed in the country; but, when it is fairly considered that, to abandon claims upon the importers, would lead to numerous impositions; that if some were relieved from debts contracted in good faith, (although the articles on which those debts originated were actually destroyed) it might induce others to expect similar indulgences, without having equal claims upon the national bounty, and as there exists a strong necessity for preserving uniformity in these decisions, and as it cannot be reasonably expected that Congress should now deviate from a long course of practice, founded as it is on equitable and strict commercial principles, the committee recommend that the petitioners have permission to withdraw their petition.

The report was agreed to by the House.

DISTRICT OF COLUMBIA.

The House resolved itself into a Committee of the Whole, on a motion "to recede to the States of Virginia and Maryland, the jurisdiction of such parts of the Territory of Columbia as are without the limits of the City of Washington."

Mr. STANFORD said it was his wish to make a few observations on the resolution now before the Committee, for the retrocession of that part of the District of Columbia which had been ceded to the United States by the State of Virginia, in support of the vote he should give—expecting that what was said on the first, would be generally applicable to the last resolution also. He begged leave, however, in the first place, to suggest that, in bringing forward the motion, he had not had any the least intention to take any step that should go to a removal of the Government. He trusted no gentleman of the Committee would entertain such an opinion of his views. Had such been his intention he would have preferred a direct motion to that effect.

As then both the resolutions together made but a single object—that of ceding back again to the respective States of Virginia and Maryland all the District of Columbia, except the City of Washington—he should, in the course of the discussion, consider it more incumbent on those adverse to the measure to show the original wisdom and utility of the provision in the Constitution, than on its friends. It would be enough for them to show its present evil tendency, and that it was an encumbrance no way necessary or useful to the General Government.

Upon a former occasion some question had arisen, and might yet lie in the way of some gentlemen, whether Congress, having once accepted the cessions of the States, had now the power of recession. On that head he had not, himself, ever found reason to doubt. By the third section and fourth article of the Constitution, "Congress has power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States;" and besides the eighth section of the first article, which assigns to Congress the exclusive legislation over this district, in all cases whatsoever," does not ap-

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pear to come short of such a power. Like authority is also given, in the same paragraph of the Constitution, over all places purchased by the consent of the State in which the same shall be, "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Congress, thus possessing the right of disposal, had exercised that right by an act passed two sessions ago, authorizing the Secretary of the Navy to convey to the Salem Turnpike and Chelsea Bridge Companies a part of the navy yard at Boston. With it, will any one contend that jurisdiction did not also pass to the State of Massachusetts, whence it had been obtained? It certainly would by every fair and *bona fide* view of the circumstances. If, for instance, murder should be committed on that part of the turnpike which was formerly a part of the navy yard, could it be contended that such murder was not punishable by the laws of Massachusetts; that the General Government was the only competent authority to punish? He hoped otherwise. A like discretionary power of cession was also exercised, when Congress anticipated the ordinance, and transferred the jurisdiction to the people of the Northwestern Territory, which now forms the State of Ohio. It would be remembered that, at the time of the transfer, the United States held the exclusive jurisdiction of that territory.

But, Mr. Chairman, we have a case of recent date still more conclusive, as being more directly in point. The very term itself (*cede*) is used. In the second article of the late "Articles of Agreement and Cession with Georgia," after accepting the cession of Georgia, the United States go on to say, "and they cede to the State of Georgia 'whatever claim, right, or title they may have to 'the jurisdiction or soil of any lands lying within 'the United States, and out of the proper boundaries of any other State, and situated south of the 'southern boundaries of the States of Tennessee, 'North Carolina, and South Carolina, and east of 'the boundary line herein above described as the 'eastern boundary of the territory ceded by Georgia to the United States." It is worthy of remark Congress never even took exception to this act of cession, and interchange of cessions, as it respected the power of doing so—nor did the State of Georgia, though she had both a federal and State interest to serve upon the occasion, and had to pass a solemn act of ratification, and acceptance of such cession from the United States, for it made a part of her compensation for the Mississippi Territory. That State has, moreover, since extended her authority, and erected a county in the very territory thus ceded. Other cases might be cited of a similar exercise of power on the part of the General Government, but he must be allowed to consider the present as sufficiently conclusive and unanswerable.

As to the expediency of a retrocession, he did not know that much need be said. Every debate during the present session, in relation to the affairs of the District, was but an additional argument for the expediency as well as policy of the measure. Whole days had been lately taken up with local and unimportant matters, to the neglect of the greatest concerns of the nation. He did not think there could be found another district of country, of the same variety, not to say contrariety, of interests. There seemed, indeed, a perfect turmoil of contending interests, not possible to reconcile, and as impossible to legislate for in peace. He would ask, did it accord with the genius of the General Government to be thus occupied with this small portion of the country? Could it be supposed we should be able to get along with such an appendage? He thought not. With the exception of territorial jurisdictions, the powers of Congress were, as they ought to be, not of a local, but general nature; and yet with one local concern or another, within this ten miles square, Congress had been harassed with petitions, counter-petitions, and memorials, more than from one-half of the States in the Union besides. This fact would appear by a reference to the journals of the different sessions since the assumption of jurisdiction. But the time consumed in this way was not all; the existing government of the District formed annually no inconsiderable item of expense in an aggregate point of view. To this should be also added the expense of printing. Our journals are much enlarged, voluminous bills and other matters printed, which, no doubt, went far to swell the contingent expenses of the House, of late so justly complained of as enormous.

But, said Mr. S., over and above the consideration that the District of Columbia is no way necessary and every way expensive to the General Government—in fact, a kind of governmental nuisance that ought to be removed—there was another objection, still more serious with him, the people of the District were the merest subjects in their condition. If they held rights, they were not apparent to him in the Constitution. He believed all they held were those of courtesy. In the Constitution no immunity, no privilege, no political right, had been, in so many words, reserved to them. They had been specifically given away, consigned to the ideal convenience of the General Government, without a single specific reservation. This was not the case as to the people of the States. If he were told the people were content, and did not wish a change, that with him was a good reason why the motion should at once prevail. If twenty, or twenty-five thousand people had already become willing subjects, without wishing any share or control in their own affairs, such an example ought no longer to remain under our system of Government, and he trusted would not. He concluded by expressing a hope that the resolutions might be adopted.

Mr. SMILIE rose in reply. He disclaimed any intention hostile to Washington remaining the seat of Government, and denied that the recession would have any influence upon it. Having elucidated the Constitutionality of the measure, he exhibited in strong colors the degraded situation of the people of the District, and the dangers which might hereafter arise from a continuance of it.

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Mr. DENNIS.—Mr. Chairman: As a resolution analogous in all its leading features to those now under consideration, was submitted to the consideration of a former Congress, by a gentleman from Massachusetts, (Mr. BACON,) and as that resolution was put at rest by a very decisive majority, I had not expected that its ghost would have risen up at so early a day to haunt the people of Columbia, or to interrupt the deliberations of this body. That the gentleman who has offered these resolutions has acted from the best lights of his own understanding, and has believed the object intended to be thereby effectuated is both within the pale of our Constitutional authority, and politically expedient, it is not for me to question. To me, however, they appear unconstitutional and politically inexpedient, and I will moreover add, cruel, unjust, and tyrannical, in their operation on the people of this district.

In order to ascertain the extent of our power on the subject, we must resort to the eighth section of the first article of the Constitution. Here we find that, amongst other powers therein enumerated, it is declared as follows: "That Congress shall have the power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the General Government," &c. This clause contemplates, first, a place to be acquired, lying at the time within the jurisdiction of some of the States, but which was to be put out of their control and within the exclusive jurisdiction of the General Government. This was to be done in order that a permanent seat might be established, which should not be liable to be changed by Legislative caprice; and in order that the jurisdiction over the place in which its operations were to be conducted might be, like the Government itself, the property of the whole people of the Union, and free from the influence of any one of its component parts.

This appears to be as much a part of the Constitution, that you should always have this federal district, as that there should be a Legislative, Executive, and Judiciary department.

2d. It points out the manner in which this district shall be acquired, and the agents who are to be instrumental in the acquisition. The convention, on behalf of the people of the United States, who are the principals, appoint Congress the attorney in fact to receive the conveyance, and constitute the Legislatures of the States from whom the cession or conveyance is to be made similar agents to make it. The several agents have performed their respective offices, the district has been acquired in conformity with the authority given, the right to the property vested in the American people, and possession held of it by us, for their benefit, for whose use it was acquired. All the power which was given as to the acquisition of the territory has been exhausted, and no other power remains but that of exercising over it exclusive legislation. To explain and illustrate this subject to the most ordinary capacity, let me compare the transaction to a case in common life. If I give a man a power of attorney to purchase for me a tract of land, in a particular district of country, of a specified quantity of acres, leaving it to him to make the location, and he accordingly make a purchase, and I consent to the act, receive the conveyance, and take possession of it, can my agent afterwards make another choice, divest me of my right, and reconvey the property without my consent? No man will answer this question affirmatively; and yet it is clear there is a perfect similitude between the cases, and that Congress are agents acting in this case under a limited authority and confined in the exercise thereof to a specific object. That Congress are special agents, and not vested with a general power over every possible case is manifest from the whole tenor of the Constitution; and I will lay down in this instance a rule which has been generally recognised as the standard, by which to test the extent of Constitutional authority in any given case. It is, that Congress can exercise no power on any subject but what is expressly delegated and specifically enumerated in the Constitution, or necessary and incidental to the execution of the specified powers. What is their power in the present instance? To accept a cession and exercise over it exclusive legislation. Can you infer from hence a power of retrocession? To do so is at war with the amendment of the Constitution, which declares that all powers not given to the General Government are retained by the States or the people respectively. Was not the power confined to the acceptance of the district directed to be procured for a specific purpose, and when so acquired, to continue an object over which Congress, as a permanent body, might always have it in their power to exercise exclusive jurisdiction? Can you then claim the power of reconveying the district and receiving one as often as your caprice may dictate, or of divesting your successors of the same control over this district which we may exercise ourselves? The power is not expressly delegated, nor is it a necessary power to carry into effect any power given; for it will not be contended, but we may exercise all our powers and perform all our duties, and still retain the jurisdiction over the district.

It has been said that Congress and the Legislatures of Maryland and Virginia, being the parties to the contract, may, like all other parties, by mutual consent, dissolve the obligation. The premises might be admitted, and the conclusion does not follow. For it is not always true, and never so where the rights of third persons are involved, that the original contracting parties can dissolve the contract. If I draw a bill of exchange, and the drawee endorse it to a third person, it is not in the power of the drawer and drawee to cancel the obligation. This case will apply as well to the people of the United States as to those of the District of Columbia, whose vested rights are mutually affected by the proposed resolution. But surely the premises are incorrect, and this is to be regarded as a contract of the American people, and not the contract of Congress, made

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with the people of the ceded territory, that if they would consent to give up their property, and the States in which they lived would make the cession, Congress should accept it, and exercise over them exclusive legislation.

Again, sir, it is said that Congress are not imperatively commanded to exercise this power, but have an option to exercise it or not, at discretion. Be it so. But does this give the power to transfer its exercise to a foreign jurisdiction?

This district has been completely severed from Maryland and Virginia, and has been erected into two counties by the name of Washington and Alexandria, and forms, at this time, no more a part of the territorial limits of Maryland and Virginia, than of New Hampshire or Georgia; and you may by the same authority that you propose to reannex them to those States, unite them to Delaware or Jersey, and put the people, many of whom never were citizens of Maryland or Virginia, under the jurisdiction of the Emperor of Hayti.

"Congress shall have the power to exercise exclusive legislation," &c. What Congress? Is it the Congress of 1804–'5, or 1820–'50? if, indeed, the Union so long endure. Surely, sir, we can exercise no power which our successors may not also exercise on an object declared by the Constitution to be a subject of legislation for Congress; and if you should give up the exercise of the jurisdiction for the present, and repeal the act of assumption, your successors may repeal the repealing act and resume the jurisdiction; otherwise you may deprive your successors of all the powers of legislation. In the section in which the power of exercising exclusive legislation is given, is also contained, amongst other powers therein enumerated, the power "to coin money and regulate the value thereof," &c.—"the power of making a uniform system of bankruptcy," &c. These powers Congress may exercise or not; but can they vest in Maryland and Virginia, or any other State, the power of legislating for the Union on these subjects, and thereby deprive their successors of the exercise of these powers, should they hereafter deem it advisable to resume them? No, sir. Neither can we by any act of ours (nor can it be done in any way but by an amendment of the Constitution) divest our successors of an ultimate control over this territory, and of the right of resuming jurisdiction over it, which you in vain attempt to give way.

Then it may be problematical, at least, whether the States of Maryland and Virginia will consent to exercise powers, in consequence of this kind of Legislative deputation, over a people, not within their territorial limits, and who form no more a portion of the citizens of those States than of any other section of the Union? Why should they expend their time and money, and encounter those difficulties as your viceroys and mere tenants at will, which you are afraid to encounter yourselves? You might as well vest in Maryland and Virginia the exclusive right of legislating for Louisiana.

But, Mr. Chairman, I should be glad if the gentleman who proposed the resolutions, and who by the term recession and some kind of magical operations is to produce a re-annexation of this district to the States from which it has been severed, would inform me precisely what he understands by the term, and what is to be the result of the measure on the rights of the people of the district. I presume however, he expects, by the adoption of these resolutions, to reinstate them in all their former rights. Will this be thereby effected? Having been cut off completely by the Constitution, the acts of cession on the part of the States, and by the acts of acceptance in 1790, from their parent States, they will be in the same situation as a purchased or conquered people, and entitled to no other rights and privileges but such as their new masters may think proper to concede. They were, before you separated them from their parent States, a part of the sovereignty of those States and their rights secured to them by their respective constitutions.

But it will be said, you may annex a condition to the retrocession compelling Maryland and Virginia to reincorporate them into their respective political systems, with all the immunities and privileges they formerly enjoyed. Even then they are dependant for their rights, not on the constitution of those States respectively, but on compact and legislative promises. But you have already made one legislative promise, which you are about to violate, and where is the security that the legislative promises now to be made will not be violated again, especially as the very act which makes the new one, violates a former one, accompanied with greater solemnity? Sir, we have had some experience as to the difference between a people who have their rights secured by a constitution, and one who depends for that security on compact, in the people of Louisiana. By the treaty they were to be incorporated into the Union, with all the rights, immunities, and privileges of American citizens. We know the latitude of discretion and the various constructions which have prevailed, to deprive these people of the rights stipulated by the treaty. Suppose the States to whom you propose the retrocession to be made should assume a similar latitude, to whom are these people to apply for redress? They must invoke the aid of Congress, instead of appealing as before to the constitution of the State as a guarantee of their rights.

But, Mr. Chairman, are the people of the territory unworthy of a moment's consideration, and will their remonstrances against the measure be altogether disregarded? Let us take a retrospective view of the circumstances under which they were seduced from their parent State, and the manner in which they consented to dissever the civil and political bonds by which they were formerly connected. What induced them to alienate their native allegiance, and with a generous confidence to submit themselves to your authority? First, the Constitution held out a pledge and formed the basis of the contract, involving a promise, that if the people living in the district of country, which should be fixed upon for the seat of Government, would give up the rights possessed under

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the government of the States to which they belonged, they should forever remain under the exclusive jurisdiction of Congress. By the act of Congress accepting the cession, the territory received is declared to be the place fixed on for the *permanent seat* of the Government, and the States ceded forever the jurisdiction of the persons and soil within the same to Congress, for the purpose of exercising therein exclusive legislation. Finally, you assume the government, establish your own systems, and annul those of the States. Confiding in the premises, they gave up the control of their persons, and some of them divided with you their property. They came to you with one consent, and hailed your arrival here as the most fortunate epoch in the annals of their country —and now, will you set them adrift without deigning to listen to their prayers?

But all this is to be done to restore them to their lost liberty; to emancipate them from the shackles of despotism with which they are encumbered, and to elevate them from their degraded condition to the rank of freemen. These are very pretty theories, but like many other theories on the subject of the abstract rights of man, when pushed to their extent and everything made to bend to them in order to give them complete effect, are found to be in their practical operation oppressive and unjust. I deny, sir, that the people of this district are in that deplorable state of slavery which some theorists, imagine. They are entitled to, and are in the enjoyment of all the rights secured to the people of this country by the various restrictions on the powers of their governors. No man in this territory can be deprived of life, liberty, or property, but through the medium of the Judiciary department, operating in the same way, and under the same circumstances as in every other part of the Union. The clause relative to the independency of the judicial power, applies itself to the courts here as well as to any other court of the Union. But if it should not be so considered, since the new doctrine has been established, that the tenure of good behaviour in your judges is no bar to the omnipotency of the Legislative power, the people here in this respect have the same security for the independency of their judges and their fellow-citizens as in other parts of the Union. The principal difference between the people of this district and of the different States is, that they have no immediate and actual representation; but notwithstanding the importance of the right of representation to a people, generally speaking, and however correct may be the general principle, that a people cannot enjoy perfect freedom without it, yet, in a place situated as is this district, there is more of theory than of fact in the assertion that the people who are without it are in a state of civil and political despotism.

This being the seat of Government, where all the representatives of the nation are collected, and who, from the responsibility which they owe to their respective constituents and to the whole people of the United States, are under every moral and political tie to do justice, and to protect the rights and interests of the people here. Here every citizen of the district has access to every member, and he may personally communicate his wants, his wishes, and solicit his particular patronage of his interest; and instead of being confined, like a district of country in the remote parts of the Union, to a single member, who may not possess the talents to explain its interests to the Legislative body, the citizens of this place may make a selection out of the whole of the members to whom he may chose to confide his application. Like the seat of Government in all other places, without having any actual representation, this district will have more than its equal share of influence, and its weight will always be felt more sensibly in the Legislative Councils of the nation than the remote parts of the Union. Our theoretical philosophers, however, not only contend that in order to make these people free and happy, we must force liberty upon them, whether they will have it or not, but that even with respect to the conveniency or inconveniency of being governed by this body and the States of Maryland and Virginia, they are incapable of judging for themselves.

But is there no conveniency resulting to them from having all their concerns brought within the narrow limits of ten miles square? Is there no conveniency in having their own courts of justice at their very doors, instead of travelling to Richmond and Annapolis? It is an old-fashioned idea perhaps, but it is one which very generally prevails, even at the present day; that to bring justice home to every man's door, is a great political and civil blessing; and in this respect the people of this place enjoy an advantage which is unknown to any other people in the world.

The great advantages contemplated as likely to result from being represented in the Legislatures of Maryland and Virginia, and the powers of self-government which it is supposed may result from the measure, are merely ideal. What weight will the district on the Virginia side of the Potomac have in the large body of the Legislature of that State, when they will only form a part of the county of Fairfax, and have a share in choosing two members to the Assembly? The same question might be asked in relation to the district of country formerly comprehended in the counties of Prince George and Montgomery, in Maryland. They would be regarded with a jealous eye; a sort of aliens, who were forced, contrary to their remonstrance, to submit to their respective jurisdictions.

But the trouble of governing these people is urged as a serious objection; we certainly have had sundry applications and some legislation has been necessary to accommodate our laws and political systems to this new situation. But this has been, in a great degree, already accomplished; and, I believe, little more is now necessary to be done. And, with respect to the imaginary wants which have sometimes constituted the basis of troublesome applications, it is believed there is now prevailing a very general disposition to suppress them in future. This resolution, however, proposes to retain the city, and the same objection applies, and nearly to the same extent, to its

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government, as to the whole. The laws of this territory have been enacted; its systems established, and the officers appointed with reference to the whole; and it will require nearly as much legislation to accommodate your laws to the city alone, as will probably be requisite if the whole be retained. Lastly. I have another objection to these resolutions; because they go to dismember the plan of the territory, which was the favorite child of that illustrious man who may justly be denominated the political Father of his Country. This great and patriotic statesman, whose energetic and comprehensive mind viewed things on a grand scale, foresaw the necessity of bringing nearer together the Atlantic and Western divisions of his country. He considered this place, from the contiguity of its position to the western waters, destined to occupy, at some future day, that situation which would render it the great market for western supplies, and which would stand at one end of a great national turnpike connecting the Western and Atlantic frontiers. He knew full well the local jealousies which will forever exist, and which we know do exist, between places situated like Georgetown, Washington, and Alexandria. He foresaw that these local jealousies, if properly restrained, would, by the action and reaction which they would produce, operate as a general stimulus to the whole, and thereby become rather an advantage than otherwise to the general prosperity; that, by gradual approximation, these places would be brought together and form one great whole. This could only be effected by making the General Government the common centre around which these rival towns, revolving in their respective orbits, would revolve free from collision. But, put them under three different and hostile jurisdictions, three different centres of attraction would be formed; and in revolving around which these hostile bodies might meet each other, and mutual injury ensue. He knew that, by restricting the inspection of produce descending the Potomac, and coming from the west side of the river to Alexandria, Virginia might force all her produce by the City of Washington; and that, by a similar operation on the part of Maryland, all her exports might be stopped at Georgetown; that the destruction of the city and of all her prospects would be the consequence; and, therefore, the wisdom of the plan, as originally adopted, and to support which, free from dismemberment, under whatever pretext, I shall always contribute my exertions. To discourage local jealousy I have always thought desirable when likely to be carried to a pernicious extent, and have always determined to leave each place to the enjoyment of its own natural advantages. I beg leave to conclude by remarking upon one or two observations of the gentleman from North Carolina on the Constitutional question. He has produced some Legislative precedents respecting the transfer of navy yards, arsenals, &c. If these precedents were in point, having passed, *sub silentio*, they ought to have no obligatory force. But, I am not aware that Congress has ever done anything, in this respect, but to sell the right of soil in places acquired for such purposes, and it still remains a question if they do not retain the jurisdiction, if they choose to exercise it. That gentleman seems to make no distinction between the right of soil and power of legislation over it, though the one may be in one body and the other in another. I do not deny but you may sell the lots in the City of Washington, either to individuals, States, or other bodies politic, but I do deny that you can sell your right of governing it.

The next precedent adduced was the case of the compact with Georgia, and by which we acquired an extensive territory. Perhaps this may be considered as growing out of the treaty-making power, and it is not denied that the Government may acquire territory and jurisdiction *over it*, through the medium of the treaty-making power.

I trust, Mr. Chairman, I have shown, what I intended in the outset of my remarks to establish, that Congress are not competent to effectuate the object of the resolution; that if they could do it, it is not demanded by the general *interest*, and that it would be unjust and tyrannical, as it relates to the people here, to make the contemplated transfer.

Mr. SMILIE supposed the Committee were now considering the resolutions of retrocession generally, previous to giving a separate opinion on the two resolutions before them. Under this impression, he would make one cautionary observation. He knew that it always had been, on *all* occasions, the practice of those opposed to the retrocession, to connect that question with another subject, wholly and totally distinct; that was the removal of the seat of Government from this place. If it was possible to separate these two things in the minds of some of the members of the present House, he was persuaded they would find no difficulty in restoring the *inhabitants* of this District to their natural, *their political*, and civil rights; a thing so desirable in a Government founded as the Government of the Union was founded, and as almost every citizen of the Union contended, for the sovereignty of the people.

For his part he never did, nor ever should, connect these two ideas. Advocate, as he was, for retrocession, he had no idea of removal. He would go further, and declare it as his opinion, that Congress could not remove the seat of Government honorably, nor of right, and he trusted Congress would never hereafter, feeling power, forget right.

Having made this observation, he would briefly inquire, whether the arguments of the gentleman from Maryland (Mr. DENNIS) were well founded? If he is correct in stating that, under the Constitution, the Congress have no right to legislate on the present subject, there was an end of the business. If he thought with that gentleman, he would be the last man to vote for the retrocession; but, as he thought differently, he would assign the reasons upon which his opinion was founded.

The gentleman read a part of that section of the Constitution, which granted certain specified powers to the Congress of the United States. He

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wished he had read the whole, and shown that there was a particular restriction placed on this particular power.

For his part, he conceived this to be a general grant of power under no restriction. In the several grants of power, under the eighth section of the first article, there were three out of the eighteen that were grants with particular restrictions. All the rest were complete and full grants of power, and the eighteenth grant had relation to them without limitation; of course they had complete Legislative control over the seventeenth, respecting the exercise of exclusive legislation over the District of Columbia.

He here read over the whole of the eighth section of the first article, observing upon each, that Congress shall have power:

1. To lay and collect taxes, &c., but all duties, &c., shall be uniform throughout the United States. Here is a restriction. Congress have power to lay duties, but they cannot lay them unless they shall be uniform throughout the United States. So of imposts, and so of excises.

To raise and support armies. But, no appropriation of money for that use shall be longer than for two years. Here, although Congress may raise and support armies, they cannot order any money to be applied to that use for more than two years, however desirable or convenient a longer appropriation might appear to them to be.

Respecting the militia, they may provide for organizing, arming, and disciplining, and governing the militia. But they can neither officer nor train them; that is a restriction, and the latter powers are reserved to the States.

The other powers, such as to borrow money, to regulate commerce, to establish an uniform rule of naturalization, and uniform laws of bankruptcy, to coin money, to fix the standards of weights and measures, to punish counterfeiting the securities and coins of the United States, to establish post offices and post roads—

To promote the progress of science and the useful arts in a prescribed mode; and this also may be considered as a restriction upon their general power, as they cannot give to science and the useful arts any other encouragement than by securing for limited times to authors and inventors the exclusive right to their writings and discoveries.

They have also complete and exclusive powers to constitute tribunals inferior to the Supreme Court; to punish piracies and felonies committed on the high seas, and offences against the law of nations; to declare war, and other consequent powers; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia of the Union for special purposes only; perhaps this also may be considered as a restriction on the general power to call forth the militia.

And then they have the power given by the seventeenth grant, viz: to exercise exclusive legislation, &c., to the end of the paragraph; and to the whole is added, the sweeping clause, as it used to be called, which was formerly urged to give unlimited power to the General Government. The Congress have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof.

What, he asked, was the conclusion to be drawn from this view of the Constitution? Surely and fairly this: that Congress may of right exercise all the powers which are unrestricted, under their sound discretion, to promote the general welfare; then it is declared that Congress may assume the exclusive legislation of this district, or they may not. If, however, they do assume it, they have equal power to recede. Congress, in the exercise of its legitimate and Constitutional power, passed a bankrupt law and a naturalization law; on experience they were dissatisfied with their effects, and they repealed them. Was it ever imputed to Congress as a violation of the Constitution? No: there being no restriction, they felt themselves either free to act or free to refrain, as circumstances rendered the one or the other expedient.

He would, however, agree that gentlemen had thrown some obstructions in the way, which, though it did not touch the right of Congress to act, yet rendered the action a point of extreme delicacy. We are told we have no right to transfer a people satisfied with their destinies in life, to another Government, without their consent. The gentleman has gone upon the idea that we are about to injure these people. Why, if he thought this was the case, he should not any longer incline to vote as he had intended to vote. But if he conceived, as he did conceive, that so far from injuring these people by restoring to them the right of suffrage, and all the consequent rights of freemen, he was about to render them essential service, he should persevere in his object. That gentleman also finds the people here secure from injury under a Government over which they have no control, and in the choice of whose members they have not a vote; by observing that the Government of the Union can have no interest in injuring a people depending upon them for their laws and their protection.

This argument, if such it may be called, goes too far; it would apply to all other Governments, because it can be demonstrated that the best interest of all governments is to promote the best interests of their subjects. It is the interest of even despotic Governments; but does not experience teach us that these Governments often, nay, almost always, sacrifice these interests to their own whim, caprice, self-gratification, or to the villany and avarice of subordinate agents?

He denied the security which the people of this district had for their natural rights. Political rights they had none, and they depend upon Congress from time to time for the civil rights which indulgence might afford them. What advantages then did Congress receive by retaining the jurisdiction proportioned or equivalent to the disadvantages? Was it that half their time was oc-

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cupied in deliberations productive of no one satisfactory measure to the people they meant to befriend? Was it that so much of the money of the several States of the Union was expended uselessly at this place? He was confident no individual would sacrifice his time in this way, nor expend the money of his employers on such objects; and what was wise in private life would be politically right in public. He, therefore, believed it the reverse of good policy in the American nation, to retain the jurisdiction of the district.

On the point of expense he would add one idea; he deemed it enormous. Congress spent near half their time in legislating for ten miles square at the rate of $1,400 per day; at that ratio what would be the expense of legislating for the extensive territory of the United States, or even what would be a proportionate expense of legislating for a small State?

Let gentlemen stop for a moment and contemplate the subject in this point of view, and ask themselves, individually, would their own State agree to such an enormous expenditure under any circumstances than those of absolute and uncontrollable necessity. He was satisfied, not a member on the floor would accede to such a monstrous measure. If, then, no State could be justified by its individual representatives, he would ask for the arguments whereby the Representatives of the United States were to justify themselves to their constituents!

Why then retain this exclusive jurisdiction? We do not know their situation; we are strangers or sojourners here; we have not, therefore, their feelings. But restore them to the parent States, and they will be admitted to the full participation and enjoyment of every principle which elevates the prosperity and happiness of America over every other nation on earth.

It is said that dangers may hereafter happen, that the freedom of debate and deliberation may be overawed by the inhabitants. He admitted it to be possible, but the day was remote indeed. There was more danger to be apprehended on the other side. Congress, possessed of arbitrary power over this district, might grow infatuated with that power, and when the people of the district grew numerous, it was more probable that they would be called upon to assist in pulling down the citizens of other States to their miserable condition. It was the nature of envy to destroy what it could not reach.

He expected that gentlemen opposed to recession would show that superior advantages were likely to accrue from retaining the jurisdiction, or that on conviction they would join with him, and agree to adopt the measure of a total recession, which for himself he was in favor of doing.

Mr. EARLY.—Mr. Chairman, the resolutions which we are now called upon to decide, possess a high degree of importance, not only from their object, and the consequences likely to result, but also from certain principles which have been contended for, as applying themselves to the subject. In the outset of the discussion we are met with objections upon Constitutional principles against our right. We have been told by the people of this district, that we cannot recede the territory of which they are inhabitants, without their consent; and the gentleman from Maryland (Mr. DENNIS) has told us to-day that the proposed recession cannot be made without the consent of the people of the whole United States.

It is certainly desirable that all questions of this nature should receive a solution from the principles and practice of our own governments, without having a resort to foreign sources. But much I fear that the condition of the District of Columbia is one of a nature so peculiar to itself, that no such solution can be found. For it is impossible to conceive that the principles of a government whose essence is right, should be found to apply to the situation of a people stripped of all right.

The proposition that the consent of the people of this District is necessary to give validity to an act of Congress, having for its object a recession of the territory, carries with it the resolution of itself. It proves too much. The same reason by which they maintain this proposition, would go to prove that their consent was necessary to give validity to any act of legislation over them. That Congress possess the power of exclusive legislation over them, cannot be denied. We exercise, and we are authorized so to do, a power over all their rights of life, liberty, and property. And there cannot be presented to my mind a greater absurdity than to say the consent of the people of Columbia is necessary to any act in relation to them, when they are stripped of all rights of self-government.

I know, sir, that a distinction has been made between the right of legislation, and the power of transferring that right to others. And whilst it is admitted that the Congress of the United States possess themselves an exclusive right of legislation over the District of Columbia, it is denied that this right can be transferred to the States of Maryland and Virginia, without the consent of the people who are to be affected by the transfer. Of those who maintain this proposition, I would inquire by what authority was the cession at first made by Virginia and Maryland to the United States? Was the consent of the people who were to be affected by the transfer, then deemed necessary to its validity, and if so, how was such consent obtained? I have heard it argued that the people to be affected, were component parts of counties in the two States, and as such had a representation in the Legislatures of those States through which their consent was given. I ask where is the proof that their consent to the cession was so given. For anything that appears, the representatives of those counties voted against the cession acts, in which event the will of the people of this District was, so far as the same could be in that way expressed, directly opposed to the measure. And for the sake of illustration I will suppose the fact to have been so, and ask gentlemen whether the acts making the cession were on that account invalid? I take upon myself the risk of saying, that no one will answer affirmatively. If so, the doctrine is reduced to this dilem-

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ma, that a cession of the District of Columbia cannot be constitutionally made without the consent of the inhabitants thereof, but that such cession may be made in the face of their express negative.

The position of the gentleman from Maryland (Mr. DENNIS) and his reasoning to support it have not had weight on my mind. I cannot conceive how the people of the United States are parties to the compact, so as to make any consent on their part necessary. The only parties, in my opinion, are the Congress on the one hand, and the States of Maryland and Virginia on the other. These parties negotiated and formed the compact; the said parties can undo it.

But be the reasoning of the people of Columbia and the reasoning of the gentleman from Maryland ever so correct and well founded in the abstract, I still have a conclusive answer, that it cannot apply to the case. No reasoning drawn from the principles of free governments can apply to a case, where the people are disfranchised of all rights. The inhabitants of this District are in every sense the subjects of Congress, and Congress are their masters. This is not only the theory of the Government exercised here, but in my opinion that theory has in a recent instance (the case of the Alexandria charter) been put into rigid practice. It is my wish, Mr. Chairman, to put an end to this disgraceful state of things; a state of things exhibiting the monstrous phenomenon of a country where the principles of freedom extend to the remotest extremity, whilst there is a despotism at the heart.

If precedents were necessary, they could easily be adduced. The gentleman from North Carolina, (Mr. STANFORD,) has already cited several; some before, some since the adoption of the Federal Constitution. The one most recent is directly in point: it is the convention between the United States and Georgia. In this instance it is a fact, that a tract of country inhabited by a considerable population, was transferred by the General Government to Georgia, and is now incorporated with that State. The gentleman from Maryland has endeavored to evade the force of this precedent, by saying that the compact was entered into under the treaty-making power. The gentleman is incorrect as to the fact. The convention was made by Commissioners appointed under the authority of a special law of the United States on the one hand, and a special law of the State of Georgia on the other hand. It remains to examine the expediency of the proposed recession.

If no positive good can be proved to arise from the existing state of things, that of itself would with me be a reason amply sufficient to justify the adoption of the resolutions upon the table. But, sir, in my opinion, it is easy to demonstrate, not only that much positive evil does result, but that much more will probably result from the retention of the district. The gentleman from North Carolina (Mr. STANFORD) has forcibly represented the evils arising from the load of business which is thrown upon us from this fruitful source. He has well stated the total impracticability of our legislating with any correctness for those with whose interests and concerns we are entirely unacquainted. Need I call to the minds of gentlemen the recollection of that which they are in the daily habit of witnessing—the collision of so many rival and contending interests? Need I call to their minds a very recent scene, in which the sensibilities of this House were so strongly excited in the discussion of a question relative to a part of the district? Need I call to their minds, how much the order and tranquillity of the House was invaded by the presence and anxiety of the opposing parties? If these things happen in the present infancy of our territorial government, what evils may not be anticipated when with increase of numbers we shall have an increase of interests, wants, pretensions and antipathies? When disappointment shall increase discontent, and we are engaged in the discussion of a territorial party question? The language of petition may be converted into the language of menace; and where now we have a peaceable people laying their complaints at our feet, we may have a mob brandishing their weapons at our heads.

Of a certain part of the people of this territory who have expressed to us their enmity to the resolutions, it may with propriety be asked why they are desirous of continuing to live under the exclusive Government of the United States; why should they wish to continue subject to a Government whose laws they endeavor to obstruct? Why wish to continue under a system of things, where they not only refuse to execute the laws themselves, but do all in their power to render such an execution by others, disgraceful? These inconsistencies remain for themselves to reconcile.

There is another point of view in which this subject deserves to be considered. It is in its relation to the Executive officer of the General Government. Mr. Chairman, I am not by nature jealous. I believe I am not enough so. When I shall have counted more years and have seen more of human nature it is not improbable I may be more disposed to suspect the correctness of human motives than I do at present. But I have seen enough to convince me that the best prayer which was ever prayed, was that against being led into temptation. The most effectual means of steering clear of temptation is to avoid opportunity. All example teaches that a military force at the command of an active, ambitious, and unprincipled leader, is the most dangerous foe to liberty. I know, sir, that faction and rebellion have also had their share in fettering the human race; but faction and rebellion generally carry with them their own cure. The military of this district are subject to the orders of your President. Sir, you may not always have a President whose principles will be a safeguard for the correctness of his actions. He is to judge of the occasions proper for calling the military of the district into the field, and the plausible pretext of preserving order, or guarding the Government from insult or injury, may array a military force around these walls. Put the case of a contested Presidential election, and the in-

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cumbent in office a man of military genius, insinuating, bold, and unprincipled. The military force of the District is at his command, the officers appointed by him. Gratitude, patronage, emolument, all those principles which operate most strongly with a soldiery, are arrayed on one side and opposed by that weak thing the *amor patriæ* on the other. This House, on whom the Constitution has devolved the right of settling the choice, may, under the same pretext of preserving the public order, be surrounded by the whole military force of the district, and then farewell freedom of decision.

Upon the subject of the city, I wish to be distinctly understood. There is no gentleman in this House who wishes more for its prosperity than myself—none who would more resist any attempt to unsettle any of the existing establishments within it. I feel it to be the duty of this Government to nurse it by every aid within their power. Let us, sir, give permanency to our station within it, and give the inhabitants the right of governing themselves. But I believe for myself, that we shall witness no prosperity or settled confidence here until we strip ourselves of the District. I believe the district is a dead weight about the city, which if not shaken off, will, sooner or later, bury the whole in ruins.

Mr. EPPES, with the gentleman from Pennsylvania, (Mr. SMILIE,) considered the question of receding the Territory of Columbia as entirely separate and distinct from a question to remove the seat of Government. He did not understand the particular connexion between the two questions. He believed that the seat of Government would be as permanently fixed here if the jurisdiction of Congress extended only over the soil covered by its public buildings as if it embraced any given number of square miles. All that the National Legislature wants here is accommodation. Assembled at this place for purposes of general legislation, the exercise of a local sovereignty over a few square miles is neither beneficial to the nation nor interesting to Congress. The right of legislating for persons around us, whose local interests we do not feel or understand, cannot attach to this spot the Representatives of the nation: the exercise of this power by Congress cannot attach to this spot the nation itself. The public convenience and interest fixed our Government within this territory: the public convenience and interest can alone continue it here. The permanent seat of our Government depends, not on the extent of our powers over the country around us, but on the will of the nation. Whatever might be the feelings of other gentlemen on this subject, he had no hesitation in declaring, that, although he was in favor of receding the Territory of Columbia, he should never feel himself authorized, as a Representative of Virginia, to vote for a removal of the seat of Government.

In the observations he should make on this subject, he was willing to pursue the course taken by the gentleman from Maryland, (Mr. DENNIS,) who had set out with declaring that he considered receding the territory as unconstitutional and impolitic. He would examine these two questions; and, first, the Constitutional right of Congress to recede the territory. If the words of the Constitution were, that Congress *shall* exercise exclusive legislation over the territory, there would be no doubt but that, like every other part of the Constitution, they must be obeyed. Whatever inconvenience might attend the exercise of this power by Congress, if, by the words of the Constitution it was positively enjoined as a duty, we could not shrink from its performance. The words of the Constitution are, that "Congress shall have power 'to exercise exclusive legislation, in all cases whatsoever, over such district of country, not exceeding ten miles square, as may by cession of particular States become the seat of Government of the United States." What do we understand by the words "shall have power to exercise?" Not that Congress *shall*, but that Congress *may*, exercise exclusive legislation over this District, precisely as she may exercise any other of her delegated powers. By the first clause of the eighth section of the first article of the Constitution, Congress shall have power to lay and collect taxes, by another clause to borrow money, and by other clauses various other powers, which certainly may or may not be exercised, without a violation of the Constitution; as, for example, if Congress was never to lay a tax—was never to borrow money—was never to lay an excise, or pass a uniform law on the subject of bankruptcy—it could not be contended that the Constitution was violated because she did not exercise these powers; yet, in all these cases, the language of the Constitution is, "Congress shall have power." Nor did he suppose, if Congress were never to exercise exclusive legislation over this territory, it could be contended the Constitution was violated; because this power, like all others given under the different clauses of the eighth section, may or may not be exercised, as the public exigencies shall require. None of the clauses are mandatory. The National Legislature is, in every case, left to determine whether the public good requires the exercise of a particular power. If, then, Congress may never exercise this power, and not violate the Constitution, it follows that the actual exercise of exclusive legislation over this territory is not an essential part of the Constitution, but that this clause, like all others in the eighth section, is a mere grant of power. If, then, this clause, which gives to Congress exclusive legislation over this Territory, is only a grant of power, the use she may constitutionally make of the power depends on the extent of the grant; and we may fairly inquire whether the power over this territory is conferred on Congress, in terms so unlimited as to authorize its transfer to any other person or persons.

In order to decide this question, it will be necessary to ascertain what is the power conferred on Congress over this District by the terms exclusive legislation in all cases whatsoever? Is it the same limited sovereignty which she possesses over other Territories of the United States, which have not become States? Or is it an absolute

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overeignty? In countries where no written compacts or charters exist between the people and those who govern, sovereignty is defined to be the "power of making laws." A right to dictate the rule of action in all cases, subject to no control, is certainly a complete sovereignty. In this country, in the individual States, the sovereignty resides in the people, and the Legislative power extends only to certain specified objects, fixed by their constitutions. Under the General Government, also, the Legislative power of Congress, so far as it respects the confederated States, extends only to certain specified objects, fixed by the Constitution, and all powers, not expressly given, are reserved by the States or the people. In speaking, therefore, of the Legislative power of a State or of Congress, so far as it relates to the United States, we mean nothing more than the power of making such laws as are authorized by the constitutions of the different States, or of the United States. He supposed, however, that the terms "exclusive legislation," contained in the article which gave to Congress jurisdiction over this territory, had a very different meaning from the mere power of making laws. They did, in his opinion, vest in Congress absolute sovereignty over the District. He had no doubt but that the words were selected for that purpose. An absolute sovereignty is the power to pass laws without any limitation as to the exercise of that power. Let any gentleman attend to the clause which gives to Congress jurisdiction over this district of country—Congress shall have power to exercise exclusive legislation in all cases whatsoever. What is the limitation to this power? Is there any but the moral rectitude of Congress? Have the people of this territory any charter of rights? If they have, where is it to be found? Can they claim the Constitution of the United States as their charter of rights? They are not parties to that compact. If they are at all parties to that compact, it must be as citizens of Maryland and Virginia. Whatever rights, as a portion of the States of Maryland and Virginia, they might have acquired, by being citizens of those States, at the time the Constitution of the United States was adopted, were certainly lost by the acts of cession of Maryland and Virginia. By that transfer they lost their chartered rights under the State constitutions of Maryland and Virginia, and also the rights they had acquired under the Constitution of the United States, as portions of the States of Maryland and Virginia, at the time of its adoption. By the acts of cession, their right of property only is secured; their particular rights vested in Congress. And the people of this territory have as good a right to claim as their charter the State constitutions of Maryland and Virginia, as they would have to claim the Constitution of the United States. Their rights, under the Constitution of the United States, were acquired as citizens of Maryland and Virginia, and their rights, as citizens of those States, are lost. It is not, therefore, in the Constitution of the United States we are to look for the limitation of the power of Congress, as it respects this District. Is it in the people of the District we are to look for this limitation? Have they any share in our elections? Are we, in any shape, responsible to them? Are they represented on this floor? Do they pretend to claim or exercise any political rights? If then, an absolute power to legislate without control, is an absolute sovereignty, and there is no control, either by charter or in the people of this territory over the power of Congress, as it respects this District, it follows irresistibly, however galling it may be to the people of the District, that as complete sovereignty over them as human language can give, is vested in Congress. That her will is the law of the District of Columbia, and that the political privileges of these people depend solely on the moral rectitude of the National Legislature. The doctrine is strengthened by the opinion which has always been entertained, that the framers of the Constitution intended to vest Congress with absolute powers within this District. And, indeed, he had often heard that one of the most conspicuous friends to this monster in the Constitution, declared that liberty ought not to exist within the ten miles square; that one great officer and one great prison was the only government which ought to be established within this devoted Territory. If, as he had attempted to show, an absolute sovereignty over the territory was vested in Congress, it followed, as a necessary consequence, that it might be transferred. The United States had sanctioned the principle of transfer where the sovereignty was complete, because they had acquired a valuable territory under such a transfer.

But there was another point of view in which this question might be placed. It was generally admitted that, under the terms "exclusive legislation," Congress had power to exercise, or provide for the exercise, of Legislative, Executive, and Judiciary powers within this District. Some of her powers she must necessarily delegate, because she cannot herself exercise them. If she can transfer a portion of her sovereignty, she might, he presumed, establish a government for the territory, and vest it in the Legislative, Executive, and Judiciary powers. If Congress has a right to establish a government for the territory, in whom does the Constitution require her to vest her powers? She may vest them in one or more persons, or in one or more corporations. There is no limitation on the exercise of this right if Congress possesses it at all. If she can transfer her powers over this territory to a government within the ten miles square, what prevents her transferring these powers to a government without the ten miles square? Has not Congress the same right to transfer her sovereignty over the part of the territory bordering on Maryland, to that State, and her sovereignty over the part of the territory bordering on Virginia, to that State, that she would have to transfer the same powers to a government within the District? The same clause which gives her exclusive legislation, is the only limitation on her power. By establishing a government for the District, Congress would be divested of her exclusive legislation. By a trans-

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fer to Maryland and Virginia, Congress would be divested of her exclusive legislation also. The extent of the power exercised in the two cases is substantially the same.

There was another point of view in which this question might be placed. This ten miles square is a portion of territory within the United States. It is admitted that the people of this territory possess no portion of the sovereign power. The sovereign power over this District, then, is either absolutely in Congress, or Congress possesses a portion of the sovereignty, and the residue is in the people of the individual States or in the States. If Congress possessed the entire sovereignty she might transfer, as he had shown. If Congress possessed only a limited sovereignty within this District, it must be derived from the second clause of the third section of the fourth article of the Constitution, which declares "that Congress shall 'have power to dispose of and make all needful 'rules and regulations respecting the territory and 'other property belonging to the United States." Or, in other words, Congress possesses the same power over this territory which she has over other portions of territory which possess population without being States. In the exercise of her ordinary territorial power, Congress, during the last session, attached the territory of Upper Louisiana to Indiana. If Congress had a right to attach that territory to Indiana, why may she not transfer this territory, divide it as she did the territory of Louisiana, and attach a part to Maryland and a part to Virginia, with the consent of those States?

If the view he had taken of the powers of Congress over this District was a correct one, it would not be necessary to say much on the expediency of a measure interesting to the people of the District, to the people of the United States, and to the National Legislature. The people of the District, in returning to the bosom of the respective sovereignties from which they have been torn, will be again restored to the rights of freemen. Instead of a miserable dependence on the will of Congress, their rights will stand on the firm basis of a written charter; their industry be placed under the fostering care of men elected annually by themselves, possessing their feelings and interests. They will quickly experience the difference between that legislation which flows from a cold sense of duty without responsibility, and the active and zealous exertion excited by a common interest, and kept up by proper responsibility. To doubt the beneficial effects of such a change to the people of this territory, would be to call in question the great principles of representative government. It is true that a gentleman from Maryland has told us that the rights of a people are sufficiently secure, if those who govern them have no interest in injuring them; and that the advantage of a legislative body of their own might be questioned, because too much legislation was worse than none. The people of America have ever deemed the right of electing those who govern them essential to freedom. The time, he hoped, would never arrive in this country when this important privilege shall cease to be valued. He should not attempt to demonstrate a first principle. If the gentleman from Maryland had any doubts as to the blessing of self-government to a people, he would recommend to him a perusal of the history of American Independence, in which he will find the patriot whose shade he had invoked, devoting the best period of his life to toil and danger for the establishment of that principle. But we are told that the people of this District deprecate a change, and prefer political slavery to a full participation of American rights. Do we believe this to be a fact? If it was a fact, it was to his mind a conclusive one in favor of receding the territory. If this people have already so far degenerated as to attach no value to the blessings of self-government, and prefer living destitute of political rights, they are already fit instruments for tyrants. It is time for them to take a new lesson in the rights of man. Let us restore them to a situation in which if they cannot acquire the feelings of American citizens, their detestable principles may not infect the great mass of the community. He did not, however, believe that this was the sentiment of a majority of the people of this District. He did not believe it was the fair sentiment of any portion of people in any part of the United States. He had no doubt if the question was fairly put to the great mass of any community: had you rather have your persons, your property, and rights, protected by men elected by yourselves, or live dependent on men in whose election you have no voice, over whose power you have no control? that the answer would in every instance be in favor of possessing these important privileges. What had been viewed as the sentiment of the District, he considered only as the opinion of a few landlords, who having embraced the erroneous idea that receding this territory would affect the value of their property, had misled and enlisted on their side the people against their substantial interests. By what process of reasoning this people had been induced to believe that enlarging their political rights would lessen the value of their property, he did not know. It was a species of logic he wished not to understand. As one of the Representatives of the United States he should consider himself bound to extend to these people the privileges which every American ought to possess. He had always been taught to believe that the privileges attached to property constituted an important part of its value. That in enlarging human rights in a district of country, you enlarge also the means of happiness, and give additional value to the property of the citizen.

The people of the United States will be freed from the expense of legislating for this District. The time destined for national purposes will be employed for the good of the nation, and not in local legislation for a territory, whose internal regulations must in time require more laws than all the general interests of the Union. They will restore to the rank of American citizens a portion

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of people doomed under momentary error to political degradation. Their system of protection and rights will become uniform throughout the United States, and our people be relieved from an example odious to freemen, and dangerous to liberty, of a political society existing in our country destitute of political rights.

As it respects the National Legislature, he had always thought this exclusive jurisdiction, while it devolved on them great additional labor, was not calculated to afford them any additional security or freedom in their deliberations. The legislative body of a free country must stand on the broad basis of public opinion. In the faithful discharge of their duties, they require not the hand of power to protect their deliberations. An honest and enlightened Legislature, pursuing faithfully the public interest, will find in the attachment of a grateful people that safety which would be in vain sought in powers derived from parchment. Deserving the confidence, and possessing the support of the nation, the National Legislature can command respect in any situation. Let them forfeit that confidence, and if their jurisdiction, absolute and uncontrolled, embraced the whole continent instead of this ten miles square, the frowns of an indignant people would reach them. It is not by surrounding your Capital with men destitute of political rights that you can exclude the voice of freemen. The sanctity of parchment power used as an engine of oppression, is not known in this country. The virtue of the Legislature is its only shield. It is that alone which insures the support of the nation. With the confidence of the nation we possess its sword and its purse, and can command the respect due to the representatives of a free people. Under whatever aspect he viewed the question, whether as it respects the people of the District, the nation, or National Legislature, he had no doubt as to the expediency of receding the territory.

The Committee now rose, reported progress, and had leave to sit again.

TUESDAY, January 8.

THE DISTRICT OF COLUMBIA.

The House again resolved itself into a Committee of the Whole on a motion of the twenty-ninth of November last "to recede to the States of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia as are without the limits of the City of Washington."

Mr. SOUTHARD.—Mr. Chairman, I should have contented myself with giving a silent vote on this question, had it not been for the strong impressions on my mind that more is intended than expressed in the resolutions now on the table. It is not two years since two resolutions were introduced to this House similar to those now under consideration, with this distinction, that *they* went to include the City of Washington with the other parts of the District in the transfer to the States of Virginia and Maryland.

I believe it to be the object of some members not only to recede the branches of the District contained in these resolutions, but likewise the city. If the doctrine so strongly contended for, that Congress has a right to transfer or recede, be once established—take the first step, and you may as easily take the second. I have no desire to call in question the sincerity of the mover of these resolutions, nor of many who support them; yet there are others who wish a recession of the *whole* territory.

This subject involves two questions: First, whether Congress has a Constitutional power to make a retrocession of this District to the States of Virginia and Maryland; and secondly, whether it be good policy. As to the first, Mr. S. said, he had strong doubts on his mind, as to the rightful power of Congress to recede or transfer.

The members of the Convention who framed the Constitution of the United States looked forward to a day when it would become necessary to fix a place which should become the permanent seat of the Government. By reference to the eighth section of the first article of the Constitution, we see it clearly expressed that Congress shall have power "to exercise exclusive legislation in all cases whatsoever, over such district, not exceeding ten miles square, as may by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States."

This article, with all others contained in that instrument, after publication for the consideration of the people of the United States, was adopted, and became a part of the Constitution. In pursuance of this object, Congress, on the 16th of July, 1790, passed an act, entitled "the cession act," in the words following, to wit:

"That a district of territory, not exceeding ten miles square, to be located as hereafter directed, on the river Potomac, at some place between the mouths of the Eastern branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the Government of the United States."

Congress accepted a cession of ten miles square for the express purpose, and on the express condition of exercising exclusive legislation and jurisdiction, and this, too, agreeably to the spirit and meaning of the Constitution and law, thus forming a compact, which Congress has no right to violate. All the States in their Legislative capacity, and the people of the United States, including the inhabitants of this territory, are bound by this compact, which compact is as strong as the Constitution itself.

But, Mr. Chairman, we are told that there can be no Constitutional objection to the retrocession. The gentleman from North Carolina (Mr. STANFORD) contends that this district stands on the same footing as a plot of land purchased by the Government for a navy yard, from the State of North Carolina, for the United States. Sir, there is no analogy in these cases. In the purchase of land for a navy yard, the Government becomes the proprietor of the soil, and in such case jurisdiction and soil are inseparable; so also in the cession by North Carolina the right of soil passed

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with the jurisdiction. The case under consideration is widely different; the right of soil passed not with the jurisdiction; the right of legislation *only* being vested in Congress. Congress cannot, therefore, transfer the right of soil, nor the inhabitants, to the States of Virginia and Maryland, nor to any other State or nation, without their consent.

Gentlemen complain that Congress are too often called to legislate for this District; and why? Is it not owing to the neglect to enact laws really necessary to the internal regulation of the city?

The gentleman from Pennsylvania (Mr. Smilie) laments the degraded situation of the people of this District, in being unrepresented, and in a state of absolute despotism. Mr. S. said, he did not view them in such a degraded situation as stated by that gentleman; he considered them represented as the Convention and as the people of the United States intended they should be, and as they themselves expected to be. Were the inhabitants of the territory in the degraded state so much lamented by gentlemen, or were the people of the United States once persuaded that a portion of their fellow-citizens were really thus oppressed, we should have complaints and memorials from every quarter of the Union. But sir, we have no such complaints—they are satisfied, and I am entirely so.

We are told, and the alarm is given, that there is great danger of despotism springing up in this District; that the seeds of despotism are already sown; that the germ of aristocracy already begins to appear; and they beg us to "reflect upon certain conduct of an ambitious leader."

Sir, I apprehend no evil, dangerous to the liberties of the country, flowing from this source. Suppose, for the sake of argument that an ambitious leader, or a corrupt President, should rise up, could he, with a military force, confined to the militia of the District, give laws to the Union? Can the territory afford sustenance to an army? Hence, the idea of danger, held up by the gentleman, is predicated on the corruption of the Legislature, and a total dereliction from the principles of liberty. While the Legislature shall remain pure and uncorrupt the liberties of the people are safe. Without the aid of the Legislature, the Executive, in this case, is impotent. He can neither raise nor feed one soldier. But if the dangers and difficulties pointed out by the advocates of these resolutions be real, why do they not apply at once an effectual remedy? Carry them into effect, and the *principal* evil will still remain. It is lopping off the branches while the stock remains. You still retain all that, in my opinion, can ever prove dangerous to the liberties of this country. The gentlemen concede that Congress must still legislate for the city; this acknowledgment destroys one half their argument; for it will require nearly as much time to enact laws for five miles as for ten miles square.

The advocates of these resolutions call on us to prove the advantages derived by Congress in exercising exclusive jurisdiction over this territory? If they are dissatisfied, and wish to make innovations on the regulations established by the Constitution and the laws, the burden lies on them to prove that injury is done to the citizens by our exercising this Constitutional power. But, sir, this is a task too hard for them to perform.

Mr. Chairman, I will now make one observation as to the policy of the measure. I consider it bad policy at any time to make unnecessary innovations upon established laws and customs. Why in this case, I ask, set the Government afloat? Or, why destroy the confidence of the citizens in their Government? Our constituents are happy in the enjoyment of their freedom and liberties, the people of the District are also happy and satisfied with their present situation, and I cannot, nor do I wish to agitate the public mind without a just cause. Under the impression that, to adopt these resolutions would produce much evil, without doing any good, I shall vote against them, and hope they will not pass.

Mr. Findley observed that, after what his colleague (Mr. Smilie) and others had said in favor of the resolutions for a retrocession of the territory, exclusive of the city, he had not expected to hear any objection to the resolutions on arguments derived from the Constitution; the resolutions for receding the territory to the States who had made the original cession might, he thought, have been fairly combatted, on the ground of expediency; on this ground only did the resolutions before the Committee rest. He gave the credit, however, to the gentlemen opposed to the resolutions, for their ingenuity in taking the most tenable ground, though not directly involved in the question, but he acknowledged it was indirectly connected with it. If we had not a right to retrocede, the Representatives of the United States undoubtedly might decline to exercise jurisdiction, for, whatever the rights of the people were, the Legislature must be free to act or not to act. If this is not the case it could not be a sovereign Legislature, Congress itself, in this case, would act by compulsion.

As the constitutionality of the question had been discussed by every member that had spoken on the subject, he would endeavor to be very concise in his observations on that ground. The power vested in Congress by the Constitution to exercise exclusive jurisdiction over a territory not exceeding ten miles square, was evidently one of those powers left to the discretion of Congress, such as the power to regulate weights and measures, to make a bankrupt law, &c. Congress had enacted a bankrupt law, and had repealed it again. They had attempted to regulate weights and measures, and had dropt the subject after trial. Congress had accepted of the ten miles square, had found the exercise of the jurisdiction inconvenient, and were now proposing to make a recession thereof to the States from which it had been ceded. Mr. F. said, he knew of no well founded argument that would apply, on Constitutional ground, against doing so, but what would, with equal force, have applied against repealing the bankrupt or the excise law, or any other law enacted under Constitutional authority.

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He said that, though a member of the ratifying convention of Pennsylvania, and of the Legislature of that State, and of Congress since that time, he did not remember ever to have heard it suggested that Congress was not vested with the same discretion in this case as in others, expressed in similar terms. He had, indeed, of late, heard several members say that Congress was obliged to establish a permanent seat, &c., but, in taking a review of the Constitution, he found no such expressions. The word permanent was not in that instrument, nor any other expression that made it the duty of Congress to establish a permanent seat, more than to establish a permanent excise, direct tax, or bankrupt law. The word permanent, however, he found in an act of Congress, but certainly not authorized by the Constitution; and this present Congress had equal power to make a retrocession as that Congress had to accept. He said it was not necessary to prove to the members of this Committee that laws, in their nature, were not permanent, but changeable with circumstances, and that Congress had by the Constitution equal powers with any other Congress. That, from the express words of the Constitution investing this power in Congress, and from its analogy to the investiture of other powers, no argument could be drawn against the resolutions, that every argument of that kind he had heard was not taken from the words of the Constitution, but from constructions given to it, which he conceived the words would not bear, and which would have a ruinous effect applied to other powers expressed in similar words. That he did not consider himself bound by what other gentlemen fancied the Constitution meant or intended, but by what it said.

Mr. F. said the argument had taken a different turn from what he had expected. The resolutions did not propose to remove the seat of Government. Far from it; none of those who advocated the resolutions proposed to remove the seat of Government; they all agreed in declaring they had no such intention; he also declared that whatever its inconveniences were, he had no such intention, nor did he know a member who had. But he wished to be candid; he was of opinion that Congress had authority to remove, when and where they pleased. The Constitution did prescribe restrictions on the exercise of several Legislative powers, but it prescribed no restrictions on the power of exercising exclusive jurisdiction over a territory not exceeding ten miles square, or over forts, arsenals, &c. Of several of these he had no doubt Congress would make a retrocession. He had no doubt but a retrocession would be made of whatever of that kind Congress had received from the State of Pennsylvania, at Pittsburg, Meadville, Presqu'isle, &c., when they ceased to be useful to Congress, and became inconvenient to that State. These subjects are, by the explicit language of the Constitution—a language which cannot by fair exposition be perverted—vested without restriction in the Legislative discretion of Congress, in the same unqualified terms as the power in question. Mr. F. said twelve amendments had already been made to the Constitution, and, if it was found that Congress was imprisoned in a situation they did not approve, or where they could not act freely or safely, and that they were constrained by the Constitution to do so, another amendment could and would as easily be made; therefore, even admitting though not granting, the Constitutional obligations, the property of the residence of Congress is not permanent. Its continuance must depend on the will of the people of the United States. Other considerations are a greater security. In the city many have laid out large sums of money on their confidence in Government, and the Government has laid out very large sums of money to provide accommodations, and must lay out more for that purpose. And, notwithstanding some present inconveniences, he said he believed it was nearly as central and capable of being made as convenient a situation for the seat of Government as could be found. From this it was evident that justice to the city and policy with respect to the United States, combined in preventing a removal of the seat of Government. Justice and policy, he said he thought were a better security for the citizens than even the word permanent, if it had been in the Constitution, which all who would be at the pains to read, would find it did not contain.

Mr. F. said that he had detained the Committee longer in discussing the constitutionality of the resolutions than he had intended, and would endeavor to be short on the question of expediency, though he thought it was on this ground only it ought to have been contested. He said he had heard the members who were in favor of the resolutions called on to prove the injury or inconvenience arising from legislating for a territory of such extent. This was done as an evasion of the question. On the other side, it was required to state the advantages of rejecting the retrocession. Waiving the inquiry, on which side of the question the burden of the proof lay, Mr. F. said he would state some of the disadvantages. Every session Congress, since it came here, he found, had spent a large proportion of their time in making laws for different portions of this territory, and, from his own experience, he knew that, for one important part thereof, (Alexandria,) they had made a law last session. They were told this session they had been imposed on; they had repealed the law of last session and made another, and it was asserted they had been imposed on again. He said he could enumerate more instances, but he would only state that Congress now sat at the expense of above $1,000 per day. He said, if members would recollect how many days had been spent every session legislating for this territory without giving satisfaction, and consider how many more probably may be spent, they would not inquire for the inconveniences arising from governing the territory, but would be prepared to state the advantages; of these he knew nothing, nor had heard anything.

Mr. F. said it had been frequently asked what more difficulty there was in legislating for ten miles square, than for the city alone. In answer

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to this, he asked those members to recollect how many applications had been made, how many laws have been passed, how many days have been occupied in legislating for other parts of the District than the city. He would ask what the people would lose by being receded to the States to which they formerly belonged, and what they gain by the members of Congress, who have no common interest with them, nor even acquaintance with them or their peculiar circumstances, and liable to be imposed on by every one with whom they converse, legislating for them? He said that it had not been made to appear that the people would suffer any loss by agreeing to the resolutions, and that, as it was indubitably evident that the public would gain advantage, he hoped they would be agreed to. He had early observed that there were nearly as many interfering interests in this ten miles square, as in the whole United States; the members of the Committee would recollect that several of the most tedious debates, accompanied with the greatest irritation, that had taken place this session, arose from such subjects.

He said the gentleman from Maryland had alleged that if Congress had a power to agree to the resolutions on the table, they had a power to transfer it to the Emperor of Hayti; he conceived this observation required very little reply, the question was a recession, a restoration of what we had, not about making an original transfer. Mr. F. said he was delighted with the gentleman's (Mr. DENNIS) anticipation of the prosperity of this place, that all the parts would become one city, and have but one interest, that consequently the subjects of legislation would be fewer and less difficult. He asked in such a case what would be the consequence? In anticipating the pleasing progress of population and wealth, he supposed that at some period not far distant, the population would be equal to that of Philadelphia, which with a small district around it at present had three members on this floor, and supposed at a more distant period it would have a population equal to London or Paris, which if they could be represented, would be entitled to from twenty to thirty members. Are we to presume that in such a case the people would be contented to have no voice in their own Government? The people of all the States have constitutions for their own internal government, and are represented in the Government of the Union, these they consider as privileges highly advantageous. He would not say what rights the people of the district in question did enjoy, but he was confident in saying that they did not possess the invaluable rights he had just mentioned. He knew of no good reason why the people are not equally capable of governing themselves as the people of the several States, and he was surprised to observe several members who were but a few days since zealous advocates for extending the right of suffrage to the people of Alexandria, even when the majority of the people of that district were petitioning against that extension. If the population increased agreeably to the expectations of the member from Maryland, a recession, or something to that amount, must take place; it is inconsistent with all our ideas and all principles of Government to have such a mass of people in the centre of the Union without any Constitutional rights, without any voice in their own Government, and without having a common interest in supporting the General Government or in protecting the United States in the possession of those privileges of which themselves enjoy no share.

Without this, they could never be represented in either House of Congress, or vote for a President: let their number be ever so great, they will have no independent Legislature to enact laws for the election of members of Congress or appoint Senators, no Executive to issue writs for supplying vacancies.

Mr. F. added, that those who contemplate so great an increase of population and wealth, *ought* to prepare early for such an event, by making an early retrocession. He did not, however, for himself, believe the population of this district would increase with the rapidity suggested. It probably, with the name of a city, may be but a respectable village like the Hague, the seat of Government in Holland, a country where large commercial cities are numerous. The Hague, though seated near the sea, has never become a commercial city; that this might be the fate of the city wherein we sit he thought probable, not only because commerce had already taken its seat in other situations equally convenient, where every political privilege is enjoyed, but because he could not believe that any great number of citizens of the United States set so little value on the rights of freemen as to exchange those rights for the pecuniary advantages arising from the seat of Government, and in such as set so little value on these privileges he had not great confidence. The United States had given a sufficient pledge for the continuance of the seat of Government in this place; they had laid out large sums of money, and were continuing to do so, and had thereby encouraged others to do so, and no other situation was thought of or could easily be agreed to; therefore, the inhabitants would have equal advantages after the retrocession as they had at present, with the addition of enjoying the privileges of a Republican Government, and the rank of free citizens; therefore, being fully convinced that Congress was not restrained by the Constitution, he thought every argument derived from expediency was in favor of the measure.

Mr. BOYD said, that, although some gentlemen had left the constitutionality of the proposed measure out of the question, he was not satisfied any more on that point than he was of its expediency. The Constitution was to him the polar star by which his course through the sea of politics would be regulated. The Constitution had been formed by a convention composed of delegates from the several States of the Union, and was afterwards adopted by State conventions, on behalf of themselves and the people. He had been a member of his State Legislature, when they passed a law ceding a part of their territory, well knowing that if Congress did accept it, by the Constitution, they must and would exercise exclusive legislation over such district. He was well aware at that

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time of the consequence of accepting a district of territory not exceeding ten miles square, as laid down in the section so often alluded to; and he did believe that that consequence would be, that Congress must exercise exclusive legislation whenever they accepted the ceded district. The idea of recession was not taken up at that time. The States of Pennsylvania, Delaware, New Jersey, Maryland, and Virginia, made offers of cession under the terms of the Constitution. A partial cession was accepted by Congress from Maryland and Virginia. If a new disposition is to be made of this district, he did not see why Congress might not convey it to any of those States which had proffered to comply with the Constitutional suggestion, and receive from the same another territory in lieu thereof. This statement he made merely to show the absurdity of recession, as it had presented itself to his mind.

We are asked to recede this terrritory on account of the difficulty of legislating for its inhabitants. The same arguments would apply for the recession of the ceded territory of Georgia or Louisiana; their interests are also too indistinctly understood; their distance too remote for our legislation. But no gentleman would act on such an argument in those cases. In his opinion, it would be equally improper to act in the case now before the Committee.

It has been said that the City of Washington would be the germ of aristocracy in this country. He did not apprehend such an effect. It would be recollected that Congress had the power of self-defence; they had the power of the militia to suppress insurrections; they had not that power under the old articles of Confederation, yet they resisted every menace, every attempt to introduce aristocracy. Look at New York, at one time the residence of 40,000 British troops, with additional support, to the amount of 80,000. Were these adequate to drive the people of America into the coils of monarchy and aristocracy which beset them! Neither that force nor any other could effect such an end, so long as the Constitution remained, and the people preserved their virtue. But, if he was in favor of a system of aristocracy, he would be in favor of laying hands upon the Constitution, and changing it from day to day, till it had lost all that symmetry and connexion which endeared it to the hearts of Americans. In that event, the people would throw it from them in disdain, and then would be the time to propose another system. For his part, he considered the Constitution a sacred instrument, which ought not to be lightly touched. Considering it thus sacred, he should ever consider it his duty to elevate his voice against its violation, and that, he believed, would be one of the consequences of the present measure.

Mr. NELSON meant to lay his opinion before the Committee, because it appeared to be the habit of members to assign reasons for voting, without expecting to make any impression upon others. He considered the present question of the greatest magnitude to the United States generally; and of peculiar importance to his immediate constituents. He thought he should be able to show, to the satisfaction of every member present, that the removal of the seat of Government, which would be the consequence of recession, was not only inexpedient, but also unconstitutional. If he was successful in making out his point, that it was unconstitutional, he presumed the question of expediency need not be argued; the measure would be set at rest, and not a member would be found to give it his support. But, if he should prove unfortunate in this respect, which however appeared to his mind as true as that two and two make four, he might have reference to the question of expediency.

Previous to an inquiry into the constitutionality of the proposed project, he would just observe that constitutions themselves were things of recent date. Before the American Revolution the word itself was never fully understood. Lexicographers who attempted to define it never could agree. There was no practice whereupon to try its meaning. No power on earth had a Constitution before the American States. True, England has long boasted of possessing a Constitution, and so satisfied were her statesmen and politicians of the reality of this imaginary being, that they have extolled it to the skies. The glorious Constitution of England, her pride, and the envy of the world! Fine words truly; but where is the thing itself to be found? Is it reduced to writing? No. Who has seen it? No man. Is it known to any man? If it be, no two agree as to what the boasted Constitution of Britain is. How different, how honorably different, is the American Constitution! With us it is reduced to writing. It is in every man's hand; it is known to the whole world, and every citizen agrees in its true and legitimate meaning. He would take this opportunity of expressing his voice, and of holding up his hand in resisting the doctrine of construction and inference formerly set up, whereby the tenor and effect of that invaluable instrument was likely to be changed. He knew that artful and ingenious men might twist and turn, and make it, like the word republican, to mean anything or nothing, as best suited their nefarious designs. But this declaration and these attacks upon the body of that sacred work, were introduced by insinuating and artful lawyers, aided by the villany of judges, and accepted by men employed in the administration of our public and most important national affairs.

He saw nothing to justify the present motion. Gentlemen had attempted to show, not only its policy, but also its constitutionality. He, however, could not discover any words on that paper that warranted the project in the most remote degree; perhaps it had escaped his search; but he rather suspected gentlemen relied more upon an inference than on either the letter or spirit of the instrument itself. But he here would repeat, that no man was authorized to infer or construe, from the Constitution, any other thing than what the plain sense of plain words would justify.

He again declared the measure unconstitutional, and would prove it. The eighth section

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of the first article authorized Congress to exercise the power of exclusive legislation in all cases whatsoever over such district as may become the seat of the Government of the United States. Now, he asked, if this section did not mean that the district ceded by particular States, and accepted by Congress, should ever thereafter be considered and deemed to all intents and purposes the permanent seat of Congress, what did it mean? For what other purpose could the words be used? The Constitution, to be sure, does not say that this particular District shall be the permanent seat of the Government; but it says Congress shall have the power of legislation over such district as may, by cession of particular States become the seat of Government, wisely leaving it to Congress, who had more time and leisure to contemplate the place proper for the purpose, to make the selection. Congress have done this, and the people have sanctioned the measure. The Constitution prevents the removal; true, Congress have powers to pass laws for the regulation of the general concerns of the nation; but, in this case, the Constitution has set up a barrier which neither we nor our successors have any right to overleap. The acceptance of this territory by Congress is the final seal to the compact, and no power on earth can annul its binding obligation. We cannot lay our unhallowed hands upon the instrument in order to cancel its injunctions.

Congress could not, under the terms of the Constitution, assume the jurisdiction at several times; it is made but one act, and that being done, cannot be undone. It must, therefore, be considered preposterous to propose to recede a part of the jurisdiction and retain a part; yet, such is the intention of the second resolution on the table.

Will gentlemen contend that the Constitution may be altered on this subject, in virtue of the fifth article? He did not deny the sovereign power of the people to make, alter, or abolish the constitutions of their Government; but until that was done, the Constitution must remain as we find it, and we would look in vain for the power of recession in that instrument.

It had been argued, and well argued too, and the argument is difficult to answer, that the people of this District are placed in a degraded situation. That they have no immediate voice in the choice of Representatives; that their civil and political rights are prostrated at the feet of Congress. He did not, however, acknowledge that the argument, in its utmost extension, was perfectly correct, and the reason was, that the Constitution, which every member is sworn to support, provides a guarantee for a republican form of Government, and under this solemn tie, he was inclined to believe that Congress could never exercise a despotic authority, or tyrannize over the inhabitants of the District, any more than they could over the citizens of the other States. If Congress were to assume a power of passing oppressive laws, for instance, say over Georgia or New Hampshire, the delegation from those States on this floor would give the measure an honorable opposition; but their voice would be no more than a drop in the ocean. What is a representation of three or four, nay of half a dozen members, to compare with the numbers composing the present House? He believed the people of the District might depend upon the rectitude of Congress, and he placed a greater reliance on this ground than on all the abstract reasoning he had heard.

The gentleman from Pennsylvania (Mr. Smith) had said that retrocession was one thing and removal another; that the two things were distinct and not necessarily combined. He trusted that the gentleman was sincere in saying he did not wish for a removal; but Mr. N. could not separate in his mind the two ideas. If Congress violate the Constitution by agreeing to a retrocession, what security have we that the next step may not be a further violation, and followed up by a removal? It is true it would be a breach of contract, and perhaps produce the destruction of a thousand families, now in the possession of a comfortable competency. But he would ask, is this honest? is it right? He could consider the present proposition in no other light than as a stepping stone to the removal altogether.

The gentleman on his left (Mr. Early) had said that the people of this District were ceded to Congress without their consent, and infers that Congress have the right to recede them without consulting their wishes. Mr. N. considered this a fallacious representation. The people of the territory had their Representatives in the Legislatures of Virginia and Maryland at the time that the acts of cession were passed. He did not deem it material whether those individual members voted for or against the cession: because, in republican Governments, the will of the majority is the will of the whole people.

He here recapitulated the several points he had endeavored to maintain, and apologized for the length of time he had detained the Committee, and concluded with a declaration of his wish that the Committee would give to the resolutions a decided and prompt negative, in order that the question might be put to rest forever; that the people of the District might go on with their improvements, in full confidence that the public faith is pledged to them for the support of the privileges they enjoy under the Constitution and laws of the United States.

Mr. Elmer said he agreed with the gentleman from Maryland who had just now been up, that the question before the Committee is an important and weighty one; but it seems that it is not of itself sufficiently weighty for that gentleman's shoulders, for he has loaded it with much extraneous matter. Had the gentleman proved to my satisfaction either of the positions which he promised to demonstrate, I would not have troubled the Committee with any remarks on the subject, but would have joined him in voting against the resolutions on the table. But, unfortunately for me, I have, by everything that has been said, become more convinced of the constitutionality and expediency of carrying the resolutions into effect.

Mr. Chairman, it has not been contended, and

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indeed it cannot be contended but what the power of exercising exclusive jurisdiction over this territory was left discretionary with Congress by the Constitution. That they might or might not assume it optionally. It only remains then for us to inquire whether the act of acceptance was of such a nature as to lay Congress under the necessity of continuing the exercise of that power which they have constitutionally assumed. In order to prove this, gentlemen have blended the act for fixing the permanent seat of Government here, with the assumption and exercise of the right of legislating over the inhabitants of the Territory. The latter results from the former, but it does not necessarily follow therefrom. This is clear to my mind from the words of the Constitution, and from the proceedings of Congress under it. Among the enumerated powers granted to the National Legislature is that of exercising exclusive legislation over an extent of territory not exceeding ten miles, which, by the consent of the States to which the jurisdiction might belong, should be established as the seat of the General Government. But, let it be remarked, that Congress have the power to exercise this exclusive legislation, which, like all all other powers granted, may or may not be exercised. If the seat of Government had not been fixed here, Congress could not have legislated particularly over this territory; but the seat of Government being fixed here, they may exercise that power or not, at their option. And the proceedings had under the Constitution, relative to the subject, confirm the position. In July, 1790, an act was passed fixing the seat of Government on the Potomac, but no act of legislation was passed, until the year 1801. It is therefore clear that this may be considered as the permanent seat of Government, and yet the jurisdiction of the territory reside in the States of Virginia and Maryland, as heretofore. But, a gentleman from Maryland told us that the cession and acceptance of this territory was in the nature of a contract, in which Congress acted only as agents or trustees of the people of the United States, and therefore it could be receded only by their act. The allusion, however, to a contract, is by no means striking, nor applicable in every particular. It is altogether a political transaction, at least so far as relates to the right of exclusive legislation, and bears very little affinity to a contract between individuals in society. Indeed, the people of this territory, if we may trust to the account of their proceedings printed in the public papers, have given up the point, of Congress being obliged to legislate exclusively over them. One of the objects of their association, it appears, is to obtain the right of legislating for themselves; and surely if Congress may delegate that power to a body within the territory, they may transfer their right of jurisdiction over them to the States of which they formed a part, and to which they belong.

Having, therefore, a clear right to legislate exclusively over this territory, or not, it is only necessary to inquire whether it is proper and useful to exercise it. In my opinion it is altogether improper. There might be some reason for delegating that power by the Constitution, but I can perceive none for exercising it; nay, to my mind it is a power that ought not to be exercised but upon the most urgent necessity. It is an excrescence of the body politic—a kind of government very foreign from the leading features of that which forms the basis of our social compact. The general principles of our Government are the wisest and best that the ingenuity of man ever yet devised. They are the boast of every American citizen, and the admiration of the whole world. Under this Government I hope and believe the United States will long continue to be flourishing and happy; and that her example will instruct, and tend to ameliorate the condition of the inhabitants of all the nations of the earth. We have most happily combined the democratic representative with the federal principle in the Union of the States. But the inhabitants of this territory, under the exclusive legislation of Congress, partake of neither the one nor the other. They have not, and they cannot possess a State sovereignty; nor are they in their present situation entitled to the elective franchise. They are as much the vassals of Congress as the troops that garrison your forts, and guard your arsenals. They are subjects, not merely because they are not represented in Congress, but also because they have no rights as freemen secured to them by the Constitution.

They have natural rights as men, and moral agents; they may have some civil rights constructively secured to them by the Constitution; but have not one political right defined and guarantied to them by that instrument, while they continue under the exclusive jurisdiction of Congress. I have not heard any gentleman pretend to point out any sentence of the Constitution that secures them against arbitrary and despotic domination—that says to Congress thus far may you go in your Legislative acts and no farther. As Americans they may, perhaps, petition Congress, and there is no doubt the ears of the members will be open to their complaints; but they refrain from granting their most reasonable requests, and I don't wish to see such an uncontrollable power in operation. But, say gentlemen, the Constitution does not give to Congress the power of receding the jurisdiction of the territory, and they are not disposed to exercise a constructive power. I do not comprehend this language. I know some philosophers speak of negative power, but in my mind this is speaking incorrectly, and means nothing less than a powerless power. This is precisely the case as to the subject under consideration. Ceasing to exercise the power vested by the Constitution is but a negative, and wants no specific grant of power. Congress may now exercise legislation over this territory exclusive of the State Governments to which it formerly belonged; but with the consent of those States they may waive that right, and exercise only concurrent jurisdiction over them, in common with the people of all other States. But some gentlemen say, why annex them to Virginia and Maryland, rather than to any other of the States? The answer is

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plain, because they belonged to those States, because they are contiguous to them, and because by forming a re-union with them, they will be restored to their former rights, privileges, and habits. As integral parts of States they will have rights which are defined and guarantied to them by the Constitution; and then will our federal edifice be composed of homogeneous and proportionate parts, without any excrescence to mar its beauty.

A notion seems to be entertained by many of the inhabitants of this city that, by adopting these resolutions, we shall affect the rights of private property. If I believed this, however much I dislike the principle of exclusive jurisdiction, such is my disposition to foster this city and promote its prosperity, that I could not at present give them my support. But if I should speak from my experience in life, I should say that, by throwing off the jurisdiction of the other parts of the territory, and confining the fostering care of Congress to the city, would increase the value of property therein. This, however, may be theoretical, but it is more probable than the contrary; and by a recession of the whole territory, it cannot be rationally concluded that the value of property would be materially affected so long as the Government should remain at this place, and that I trust will be for ages. On the whole, believing it to be strictly consonant with the principles of the Constitution, and that it will promote the interest of the people of the United States and of this territory, to carry the resolutions on your table into effect, I shall, from a sense of duty, give my voice in favor of them.

Mr. R. Griswold said the object of the present motion was, he supposed, to make a permanent recession of the two parts of this District, one to Virginia, and the other to Maryland, retaining the City of Washington. If this was really the object, there could be no doubt but it went to operate a change of the seat of Government. This he would endeavor, in as few words as possible, to demonstrate. The eighth section of the first article authorizes Congress to assume the exclusive legislation over a district not exceeding ten miles square, &c. The States of Maryland and Virginia ceded a district of ten miles square, or any lesser quantity, and Congress accepted a part from each State, making one district, to become the seat of Government of the United States. From this statement, it is apparent that the territory, or district, of Columbia is the seat of Government, and not the City of Washington. If, then, you recede the territory, you recede the seat of Government, although you reserve the City of Washington. He asked, then, whether this did not substantially go to remove the seat of Government? After you have receded two parts of the district, can a district be said to remain? If it does not remain, your seat of Government is gone, and gentlemen are justified in connecting the idea of removal with that of recession. Indeed, he felt surprised at the declarations made by gentlemen on this floor, that the recession had no connexion with removal, and if they thought it had, they would abandon the measure; yet, nevertheless, they give the resolutions their warmest support.

He was not prepared to say that Congress had no right to exercise the powers of recession and removal; but he did not think they were prepared to act upon those questions at the present day. He, however, acknowledged, that events might arise to make a removal necessary, but nothing of the kind had yet occurred. There were some inconveniences in residing here, but the members knew them, and they are lessening every day. If, however, gentlemen are not satisfied with the accommodation, and think that a justifiable ground for removal, they will vote for the motion, if they can get over the Constitutional objections, which had considerable weight on his mind.

It was very clear to him, that the Convention which framed the Constitution intended and designed to establish a permanent seat of Government; that the Constitution fully and effectually provides for that object. The circumstances which gave rise to the measure are too recent, and must be too fresh in the minds of the members of this Committee, to render it necessary or useful for him to detail them at this time. Now, whether the Convention accomplished the object they had in view, the Constitution would decide; and whether the object had been accomplished by the cession of particular States and the acceptance of Congress, the laws will decide. But whether it is wise or expedient to destroy a work on which so much wisdom, time, and money, had been expended, the gentlemen forming this Committee will decide.

The Constitution declares that Congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district as may, by the cession of particular States and the acceptance of Congress, become the seat of Government of the United States. What is the import of these terms, but that there shall be a permanent seat of Government? not a temporary one—not an estate for years or lives, but forever. These considerations induced the States of Maryland and Virginia to cede a territory, and Congress to accept it, with a view of making it the permanent seat of Government. The Constitution never contemplated more than one seat of Government. If this is a fair construction of the Constitution, how is it possible for gentlemen to advocate a removal? But it is said that the law assuming the jurisdiction might be repealed, as is the case with every law passed by this body. He did not think that this general maxim extended as far as some gentlemen seem to suppose. Among the enumerated powers given to Congress, there were several not liable to repeal; at least the repeal could not affect the acts consequent on them. They have power to borrow money on the credit of the United States. If money is borrowed under your law, can Congress repeal it? They may establish an uniform rule of naturalization, but can they take from a citizen, who has become such under that law, his right of citizenship, and reduce him again to an alien? So they can and may make

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and repeal a bankrupt law—they have done so—but can they repeal the effect it has had on those who have been discharged from their debts under it? They cannot.

Congress might have refused to accept a cession of this District—whether it was right or wrong to accept it is not the question—but having accepted, Congress have given the inhabitants a lien upon their justice, and they cannot, by a repeal, destroy any of the effects produced by the public confidence on the value of property within and near the District. But if this Congress were to adopt the resolutions, what would be the consequences? Is it contended that a future Congress could not hereafter assume the exercise of exclusive legislation, even if the two States should agree to accept the recession? He believed no gentleman would contend this point; and if Congress may hereafter assume the jurisdiction, we do nothing more than merely tie up our own hands. He saw no occasion for this, as he had not seen, felt, or understood the inconveniences complained of.

Much had been said of the disgraceful state in which the inhabitants of this District are placed; they are considered by some gentlemen as vassals or slaves. Now, he was willing that the people should judge on this point themselves. If they are satisfied to remain under Congressional legislation, he should not do anything to diminish that satisfaction. That they were satisfied, he inferred from the increasing population. He heard of no considerable emigration from the District; he heard of none flying to that country of liberty, across the Potomac. On the contrary, they were satisfied with the portion of freedom which they enjoyed in this place; that was fully evinced by the petitions and memorials on the table, praying Congress to continue to exercise legislation over them.

Mr. G. said, he repeated again, that the people were the proper judges of their own situation, and he would leave them to judge for themselves. He was not for forcing upon them his notions of liberty or political happiness. He said it was true Congress did not derive much advantage from sitting here and exercising exclusive legislation; but the people, perhaps, might; and that, perhaps, would console them for such deprivations as gentlemen had conceived in the warmth of a strong imagination. But, although Congress had not as yet derived much advantage from their exclusive legislation, the time may come when it will be all important for Congress to have the sole jurisdiction over the territory in which the public deliberations and conclusions are conducted. The time has been, and it is not impossible but it may be again, that Congress have been driven from the walls within which they were sitting. He knew nothing so likely to prevent a renewal of such an outrage as keeping in their own hands the right of sole and exclusive jurisdiction.

There were doubts entertained of the constitutionality of the measure of retrocession, and if gentlemen doubted, it would be much safer not to act on the subject than to risk the breach of the solemn obligations they had entered into at that table. He thought the weight of the argument on the expediency preponderated on the side he had advocated; and, from the most candid view of the subject, he was inclined to recommend the rejection of the resolutions; at all events, he should give them his decided negative.

Mr. CLARK.—The question before the Committee is truly of considerable importance, not only as it respects the constitutionality but the policy of the measure. He was sorry he had not the talents requisite for a full and complete investigation of so great a subject. Bred to an occupation purely professional, he had been led more to the study of detail and practice, than to abstract theories; hence it was, that, engaged in that laborious pursuit, he had no time and less opportunity of studying the diversified objects of political science. Thus circumstanced, he approached this question with extreme diffidence and cautious circumspection; the infraction of the Constitution was to him a source of alarm, and however great the object or brilliant the achievement, he stood appalled at the prostration of that Constitution he had always held in an estimation that approached to reverence.

But, on reflection, he was convinced that Congress were not about to violate their oaths, as had been insinuated, by the adoption of the present motion. He considered them in the exercise of a legitimate authority, and he would endeavor, in a brief manner, to examine whether they had not complete Constitutional power to make a retrocession. If he was capable of demonstrating this point, he trusted, he need not go further. But, it was necessary he should, in order to ascertain whether the present was the proper time, and the resolutions the correct mode? In doing this he had no prejudice to gratify or caprice to indulge; a stranger to the place, a stranger to the people, he had no motive to action but the unbiassed result of his own opinion.

He should not, however, look into the Constitution for sections wherefrom to draw a constructive power on this head; he was not one of those that collected power from implication, and if the authority is not expressly given, he would not assume it. The eighth section of the first article gives to Congress the power of exercising the sole and exclusive legislation in all cases whatsoever.

What is the appropriate meaning of the word "exclusive" as here used? It implies more than the debarring and shutting out all other possible powers of legislation, and, when taken in connexion with the after, and immediately following words of the paragraph, it vests the absolute and uncontrollable power in Congress, free from any restriction; there is no possible case in which it cannot legislate. The Constitution declares Congress shall legislate in all cases whatsoever. But gentlemen say there is a case in which Congress cannot legislate. Aware of this absurdity, a distinction is attempted to be drawn between legislating for inhabitants of the District and for the District itself. But if it be established, as I think it has been, that Congress is here omnipotent, if

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you will allow me the expression, the conclusion in both cases (admitting the distinction, which can by no means be done,) is the same; in one case, the retrocession will mean nothing more than a cessation from legislation, accompanied with a desire that it may be resumed by the States; in the other, it will be a complete transfer of the District. In this sense it must be considered; the very words go the whole of this length. It is given to Congress, and not to the people; it is a complete investiture, boundless and indefeasible; and this is a full answer to the argument of gentlemen that the power is held in trust and not absolute.

But, if gentlemen are not satisfied with the conclusions from the eighth section of the first article, surely they will not contend against the express terms of the second paragraph of the third section of the fourth article.

There it is declared that Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States. Let gentlemen look at this section, and compare it with that part of the eighth section of the first article, which declares that Congress may exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. The words "like authority," in this part of the paragraph, have a direct reference to the words "exclusive legislation in all cases whatsoever," and mutually throw light on each other.

But the question, so far as it relates to the constitutionality, has been already settled by the practice of Congress, in the cases mentioned by the gentleman from North Carolina, (Mr. Stanford,) and ably commented on by a gentleman from Georgia, (Mr. Early.) Yet gentlemen say, that those laws passed *sub silentio*, and the principles not being discussed, the precedents are not in point. This, however, admits their force, and either shows that every member was satisfied that Congress possessed the power, or it argues a criminal remissness on the part of those who doubted the Constitutional power of Congress to effect that object. He was not inclined to infer the latter, especially as the former part of the statement obviated all the objections he had heard.

He would go a step further, as he thought the acts of cession from Virginia and Maryland would give a solution of the present question; they appeared to him to have themselves the seed of their own destruction sown. We are told that the power of retrocession or of cession, is not expressly delegated to Congress in the Constitution. This objection, he thought, however, had been fully refuted, but if the power is necessarily possessed in the complete and uncontrollable authority of Congress over the District, he would ask gentlemen to point out the clause in the constitution of either Maryland or Virginia, which gave their Legislatures the right of ceding any portion of their territory. But they did not, under the general power of making rules and regulations in relation to their domain. The opposers of this measure are then reduced to this dilemma—that the States had no right to disfranchise its citizens and cede the territory, and in so doing violate the rights unalienable, and that the General Government in its zal to acquire the property, had been guilty of an act of unwarrantable usurpation and tyranny; or they must yield to the correctness of my exposition; the difficulty then vanishes, and both the States and the Federal Government have acted correctly.

The territory belonged to them, and they had the right to pass their cession laws. If it belonged to them of right, it now belongs to us, and is now our domain. It cannot, however, be *our domain*, if there is a restriction upon our power; *and the* denial of the right of disposal is such a restriction. But, why labor this question? The gentleman who had just sat down, (Mr. Griswold,) in the soundness of whose understanding and the perspicuity of whose mind I have the highest confidence, has made a fair surrender: he *candidly* admits that, at some period or other, this measure may not only be expedient, but become absolutely necessary. Is not this an explicit avowal of the power? The gentleman has too much candor to deny it.

As to the expediency of retrocession, he would add a few words. When he took a view of this mighty ten miles square, he saw nothing pleasant—nothing political—to commend. He spoke of the inhabitants, whenever he had occasion to allude to them, with pity and compassion; and he most devoutly wished to see them placed, as Americans, in a condition more congenial to his own feelings, and the feelings of every true lover of civil and political freedom. The question in this point of view will be, Is it proper for Congress at this time to recede the parts of the *District* contemplated by the resolutions?

He should allude to the expense, *in order to give* an answer to that question—an expense enormous, indeed, yet every day increasing, and one which threatened to defeat every calculation made to ascertain its amount. The time of Congress is occupied day after day in trifling Legislative provisions for this or that particular spot, so inconsiderable in size or commercial importance as scarcely to furnish a speck in the map of the United States. But laying this circumstance out of sight, he would ask, Was Congress competent to legislate for the inhabitants of the District? He had hoped when he first came to Washington that they were, but experience had convinced him that they were not equal to the task. One day they received petitions to make certain provisions for the benefit of the people of the District, and Congress, with the best intentions and dispositions, went into the inquiry. After some progress made therein, a counter-petition is presented, and the House is suspended between two or more jarring interests. How much better, then, would it be to let these people have recourse to those Governments which understand their real views, and can adopt measures to ameliorate their con-

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dition! Congress is composed of materials too heterogeneous ever to do this with any tolerable satisfaction.

We are told, that, without the consent of the inhabitants of the District, they cannot be receded; and it is alleged that they are opposed to retrocession, and are willing to remain under the jurisdiction of Congress. If they are content in this situation, be that to themselves; but he was extremely loth to admit that any set of men could voluntarily remain in their degraded situation. It was stated that they might be induced to prefer this alternative to retrocession, because they had vested their all in property in the District. He did not discover how the value of property would be affected by a retrocession. He admitted that it would by a removal, but he had no idea of removal. If that question was before the House, he would be the last man to give it his assent; and he was willing now to go as far as any member to satisfy the inhabitants that a removal shall not be the consequence of retrocession.

We are told the people are happy at present, and why disturb their tranquillity?—that they are better represented than any other part of the Union, for they may choose the member to whom they may think proper to confide their affairs. Let us examine this circumstance. They have no rights; and is there anything so bewitchingly grateful in the sound of ten miles square or Columbian District to compensate for their humiliation of condition? It is true, they may find some alleviation in the boasted privilege of choosing from one hundred and seventy masters, but they ought to recollect that many masters are worse than one. In this state of listlessness and affected tranquillity I discover strong and weighty reasons for the measure now before us—the destruction of the source of so contagious an example. When people around the seat of Government shall be so unaccountably indifferent to their best rights, it may pervade the surrounding country, and give a fashion and currency to this anti-revolutionary doctrine; and though, from the present inhabitants we may have nothing to hope, let us not relinquish in despair the rising generation.

But we must obtain, say gentlemen, the consent of the people of the District, before they can be receded. Were they asked at the cession? And what consent have they to give? They have no rights, and, from the description we have had of them, they are very unfit instructers to the Representatives of a free and independent people. They may be the proper instruments, indeed, to enslave the balance of the nation; and they have already, at their deliberations, taken measures to ascertain more accurately their *numbers*, and adopt more *efficacious* means for carrying their *purposes* into effect. If this language can be used when their numbers are so inconsiderable, what will they not do when their numbers shall increase! Gentlemen say we have no right to impair contracts. What contracts, I ask, do these resolutions tend to impair? They violate no man's engagement; they take away no man's property; they devastate no man's house; they plunder no man's family. On the contrary, they intend the amelioration of those who have here sold ther birthrights for a mess of pottage, by sending them back to their natural parent, who with open arms will receive and nurture them with the fondness of an indulgent and tender mother, and not suffer them any longer to be supplied by the grudging hand of a cruel and hard-hearted step-dame. We are told this measure will lessen the value of property. I very much doubt this fact. Who, I ask, will go into this speculative calculation upon the rise or fall of property? Some may give more to live in the District, under the Government of the United States—others to live under the State Governments, in the enjoyment of their political rights. The people had, however, hailed the approach of Congress with the songs of joy and gladness, and it will be cruel to array them with the mantle of mourning. Did this joy, I ask, arise, from patriotism or (motives less praiseworthy) the increased value of property? I suspect the latter; and this source of their gladness is not to be destroyed. Congress will still remain here, and he had already declared that he would be the last man in the world to advocate its removal.

Mr. SLOAN.—My friend from Maryland (Mr. NELSON) has observed that it is customary for members to express their sentiments on subjects under discussion in the House—not that he expected to make one proselyte by his observations. I perfectly agree with him, that there is no reason to believe that he has, for this plain reason: he has not adduced a single fact in support of his argument; but, after exploding all conclusions drawn from implication or construction, drew his own from nothing else.

But, Mr. Chairman, under sanction of the aforesaid custom, and also from a sense of duty, I beg the attention of this Committee to some brief observations on this important subject. I consider it as altogether improper, unfair, and unjust to blend a subject under discussion with others not even contemplated, and to endeavor to influence the minds of members with predictions of certain events, yet in the womb of futurity, that may or may not come to pass. The end contemplated by the present resolutions is neither the removal of the seat of Government nor to prevent Congress from exercising exclusive jurisdiction over any territory, but to reduce the present quantum. But, say the opposers of these resolutions, the proposed retrocession of a part of the territory is intended as an opening wedge, preparatory to a total retrocession and removal of the seat of Government.

Mr. Chairman, I do not pretend to a foreknowledge of any member's thoughts before they are articulated in words; those who have this foreknowledge have a great advantage over other members who have it not; but I am free to declare that my opinion is quite the reverse—believing that the retrocession of that part of the territory contemplated by the resolutions now under consideration would have a tendency to continue the seat of Government in this place.

But it has been asserted that we have no right to make the proposed retrocession, and from the

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dictatorial style of the resolutions of the town of Alexandria, and the positive assertions that we have heard on this floor that it was unconstitutional, oppressive, and tyrannical, I expected, from the usual accuracy and correctness of the member who made those assertions, (Mr. DENNIS.) that he was in possession of documents to substantiate the fact; but to my surprise, instead of such documents, he has adduced and principally relied on the Constitution, in which there is not a single imperative sentence obligatory on Congress, either to receive a cession, or, when received, to continue exclusive jurisdiction over one foot of territory—the plain and unequivocal language of the Constitution leaving it perfectly optional whether to receive, and, if received, whether to retain jurisdiction or not. Hence, I conceive that no Legislative body can be justly charged with tyranny or oppression for altering or (if from experience it becomes necessary) disannulling their own acts—a contra-opinion I consider as altogether uncongenial to improvement, genuine liberty, and the inherent rights of man, and as such, I hope will ever be exploded in these United States.

Mr. Chairman, the constitutionality and right to recede being settled, it turns solely on the principle of expediency. Here let me ask, what advantage the United States derives from exercising exclusive jurisdiction over that part of the territory proposed to be receded? Is not the city sufficient, even admitting the utility or necessity of exclusive jurisdiction? I conceive that no possible advantage can be drawn from a larger quantum of territory. Here let me me call the attention of the House to the real and obvious disadvantages: These are, at least, the loss of the time of one hundred and seventy-five members of Congress from twenty to thirty days annually spent in legislating for the District, at an expense of from thirty to forty thousand dollars. This enormous expense can only be justified upon the principle contended for during the late Administration, that "A public debt was a public blessing," and consequently that the greater the debt the greater the blessing.

But, Mr. Chairman, I do not consider the expense as the greatest evil; I consider it as incompatible with the principle of taxation and representation being inseparable, and counteracting the just principle of equal rights set forth in our Declaration of Independence, to obtain which the noble patriots of America fought, bled, and died! And shall we, whilst thousands are yet living, who, at the risk of their lives, obtained for us the inestimable blessings of liberty, evince to the world that we despise and reject this heavenly gift, this celestial treasure, by continuing in the centre of the Union, at the seat of Government, thousands of our fellow-citizens, deprived of the elective franchise, exactly in that degraded situation which the noble patriots before-mentioned chose rather to suffer death than continue in? I hope we shall not.

Finally, Mr. Chairman, considering the principle of exclusive jurisdiction over so large a territory dangerous in its tendency, and as contrary in its nature, to the liberty and independence of these United States, as the frigid to the temperate zone; considering it as nursing a germ of aristocracy in our bosom—as an inexplicable paradox, of liberty supporting tyranny, and as a vulture rising in the centre of the Union, to prey upon the vitals of liberty—I conceive it a duty I owe, not only to my constituents and the present generation, but also for the sake of millions yet unborn, to call upon the members of this House, if not in our power at present to destroy this yet unfledged monster in its infancy, at least to clip its wings so close, that if permitted to live to mature age, it will be unable to fly upon its prey.

Mr. JACKSON.—Mr. Chairman: When this subject was first presented to Congress during the present session, I felt a strong predilection in favor of the resolutions, and contemplated to give them my warmest support; after the maturest deliberation I have changed the opinion I had partially formed, and with the permission of the Committee I will proceed to explain the reasons which to my mind have been conclusive in influencing that opinion.

The question depends upon two propositions. 1st, The right to cede; 2ndly, The policy of the cession. Upon the first point, I am free to declare, the clause in the Constitution which has been relied on by the gentlemen who have preceded me, does not prohibit us from adopting the resolutions. The words, "Congress shall have power to exercise exclusive legislation" are not imperative; a grant of power does not imply a coercion to assume its exercise; if it did we should be in a monstrous dilemma. Congress, the Constitution says, shall have power to declare war, to lay and collect taxes, to borrow money, to raise and support armies, &c.; yet no man will contend that we are bound to adopt these measures indiscriminately. We search the Constitution in vain for the authority to repeal a law; it is an inherent right, incident to all Governments; the right to repeal, unless expressly prohibited, or unless violating or impairing contracts growing out of laws, is co-extensive with the power of enacting them, and this power to exercise exclusive legislation, is conceived in the same terms with the other powers given by the eighth section to Congress.

Mr. Chairman: While I admit there is nothing in the Constitution directly prohibitory of the retrocession, I believe the spirit of that instrument would thereby be violated. It is predicated upon the sovereignty and indivisibility of the States, and the impossibility of dividing them, of transferring, or extending their territories, or of ever exercising any act of sovereignty over the people without their consent. By the adoption of the Constitution the people of the United States consented that a partial transfer should be made to Congress of a territory not exceeding ten miles square, with its citizens, for certain specified purposes; but by doing so they did not authorize Congress to dispose of them as they might think fit. An inference has been made by the friends of the resolutions, that the right of transfer is an implied right, because it it is not prohibited. Is this a true

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construction of our charter? If this is, then indeed the great care expended in defining the powers of this Government had been worse than useless; because it held forth an idea to the States who were invited to adopt it, that it was limited in its objects. If the right to cede the jurisdiction over the District of Columbia is inferred, because no Constitutional barrier exists, the right to cede a portion of any State in the Union may be exercised likewise. If the Constitution did not repel this idea, there is a natural and inherent right incident to all governments which rejects it. The right of the people to be consulted as to the propriety of transferring the sovereign power over them is a special and a natural right; and social and natural rights survive the dissolution and wreck of States. By adopting a system of civil policy we give up certain natural rights; but an act of the Government transferring the sovereignty over us to others, without our consent, would be totally subversive of the fundamental principles of the social compact, tyrannical, null, and void. We have been told by gentlemen, that precedents may be found in our statutes, for the transfer of territory without the consent of the people; and have we indeed arrived at that epoch, when precedents once established are so much power? Precedents somewhat analogous, made without opposition when the principles involved in them were not examined! I hope in God we have not; when we do, then adieu to liberty! But the precedents quoted are not in point; the transfer of Upper Louisiana to the government of the Indiana Territory is not a similar case. That country was acquird by treaty; the principles of the Constitution do not apply to it; it was not a part of the United States, and did not comprehend any portion of the people who were parties to the compact: and I do not believe that it can even be admitted into the Union upon an equal footing with the original States without an express amendment to the Constitution for that purpose. It would contravene the object of the Constitution, for Congress to assume the right of admitting Louisiana into the Union, unless authorized by an amendment for that purpose; as much as to admit the Island of Ceylon or any other island or continent, whose population would be sufficiently numerous to destroy the very principles of the Government; therefore the disposition of Upper Louisiana by the act of last session does not afford an analogous case.

Thus much for the constitutionality of the question. I will now examine whether it is politic to make the recession. In approaching this part of the inquiry, gentlemen lament in the most pathetic terms the degradation of human nature, and the prostration of the principles inculcated by "the rights of man," in the unwillingness of the people of this District to accept the proffered blessings of a free government. Sir, I am disposed to think charitably of these people, and if possible to find an apology for their conduct, in preference to pronouncing the terrible denunciation that they are fit engines of political despotism; and I do not believe that their opposition to a recession is conclusive evidence of political depravity. The people of Alexandria know that their influence in the State of Virginia would be as a drop in the ocean. The privileges extended to them would be merely nominal; they would be an integral part of the county of Fairfax, which is authorized to send two representatives to the State Legislature, and whose representation could not be controlled by them. Representation governed by population are the fundamental principles of freedom. In contemplating these, they would recollect the county of Warwick with a white population of (I think) 635 white inhabitants, which has an equal representation in the popular branch of the Legislature with Frederick, containing 24 or 25,000. Warwick, charged with a land tax of $349 13, which has an equal representation with Harrison, whose land tax is $5,515 85 per annum! What would be said to a proposition giving the State of Delaware an equal representation on this floor with New York, Pennsylvania, or any other of the great States in the Union? Yet a much greater inequality exists in the representation in Virginia. By the Virginia laws the poor man is compelled to labor as many days in repairing and improving the highway as his rich neighbor, not owning slaves, possessed of a princely fortune; and he is also compelled to pay an equal sum annually to defray the county charges, and for the maintenance of the poor. These monsters, in what we call a Republican system, exist in the constitution and government of Virginia; and with these facts, which have been more sensibly felt by the people included in the territory west of the Potomac than the darkness which pervaded the land of Egypt in the days of Moses, we are told that their refusal to join their destinies with Virginia is conclusive evidence of a penchant for political despotism. But, Mr. Chairman, notwithstanding what I have stated, I should be disposed to join those who have depicted their miserable and abject condition in such glowing colors, if the question propounded to them were: Will you consent to remain forever without a representation, and the inestimable right of suffrage, in preference to annexation to Virginia? Sir, this is not the prospect before them. They expect a local Legislature—a free representation—a government given by the generous feelings and liberality of the States and of Congress; and if it be necessary, I have no doubt they will, by an amendment to the Constitution, permit them to realize these expectations. This disposition may induce them to remain even longer in their present state, encountering all its temporary evils. Gentlemen say it is politic to recede, to avoid the great trouble and expense of legislating for the District. I acknowledge they are great, but they can be better avoided by giving a local Legislature than by the adoption of the resolutions. They contemplate retaining the jurisdiction over the City of Washington. For what purpose? Certainly for the purpose of relieving their wants by legislating for them. And where, I will ask you, sir, is the mighty difference between the *trouble* of legislating for a district of ten miles

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square, and a district of four miles square, the size of the City of Washington? Their general laws must be the same, and the only difference consists in the passage of a few more laws for local purposes. An additional, and to my mind, important consideration is, that by the measure we shall have to continue these people included in the city, much longer in the state they now are, as they alone are incapable of supporting the expenses of a subordinate government. Mr. Chairman, *stability*, of all things, is most desirable. The enemies of the republican system have predicted that the want of it will produce convulsions in the body politic—the certain precursors of its dissolution. By giving into *instability*, national faith and national convenience become convertible terms; all confidence in the Government will be lost—its credit at home and respect abroad will be destroyed, and it will be the reproach of all nations. By instability we shall become the prey of despotism, and then republican America will give the awful example to the world, that in the very age she achieved her liberty she also bore testimony of its incompatibility with the degenerate state of man. It is always impolitic to do injustice. The value of property will be diminished by the recession. Admit this year that the argument of the propriety of receding on account of the great trouble of legislation be a good one. Next year an argument more substantially correct, and verified by the feelings of every member, may likewise be urged, and Congress called upon to remove to Baltimore, Philadelphia, or New York. The establishment of the Government here is a part of the same system with the location of the ten miles square; they depend on the same principles—the Constitution is not more explicit in the one case than the other. Admit the right to recede, the right to remove is also admitted. The propriety of the measure has indeed already been contended for. The people associate the two ideas, and if they believe that Congress ever will remove, whether they do or not, its effect will be the same. Congress, in the act of acceptance of jurisdiction, declared that this ten miles square should be the permanent seat of Government. The people considered the faith of the nation pledged that the Government should conduct its operations here; and under it, in many instances, they vested all their fortunes in city property. Now to remove, or by any other act to injure the value of property, would be an act of injustice. There is no difference in principle between an injury done to one, and that inflicted on a whole nation. The smallest animalculæ feel as much pain in expiring as the Brobdingnagian giants. I will never give my consent wantonly to sport with the rights and feelings of this people, and therefore shall vote against these resolutions.

The Committee now rose and the House adjourned.

Wednesday, January 9.

Mr. Thompson, from the committee appointed, presented a bill making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes; which was read twice, and committed to a Committee of the Whole on Friday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to amend the act entitled 'An act for the government and regulation of seamen in the merchants' service,'" with an amendment; to which they desire the concurrence of this House.

DISTRICT OF COLUMBIA.

The House again resolved itself into a Committee of the Whole on a motion "to recede to the State of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia as are without the limits of the City of Washington."

Mr. Lucas.—After having heard the question under consideration so extensively and ably discussed, I rise with the greatest diffidence; indeed, I do rise, not so much in hope to throw light as to justify the vote which I intend to give.

That I may preserve perspicuity, I shall investigate the following points in their proper order. Has Congress the Constitutional power to cede to the States of Maryland and Virginia part of the District of Columbia? Has Congress the power to cede it without the consent of the inhabitants of the parts intended to be ceded? Is it expedient to make that cession, both with respect to the United States and with respect to the inhabitants of the parts intended to be ceded?

The power vested in Congress by the Constitution to accept a district not exceeding ten miles square, to become the seat of Government, is a power which appears to stand on a perfect level with all the other powers enumerated in the eighth section of the first article; it is as optional to Congress to accept or not accept a district not exceeding ten miles, as to lay or not lay duties, imposts, or excises. There was a seat of Government before the District of Columbia was in existence, and there may be a seat of Government after the District of Columbia may have ceased to exist. If it be urged that, inasmuch as there is not in the Constitution an express delegation of powers to cede the district, Congress cannot cede it. I shall be told that, as there is no express power delegated by the Constitution, to repeal laws laying impost or excise, Congress cannot repeal such laws. This argument proves too much, to prove anything. My apprehension of the power of Congress is, that whatever it has the power to do, it hath the virtual power to undo; indeed, without that power Congress could not change its operations with circumstances, nor improve the system of legislation.

The next question is this: Has Congress the power to cede a part of the District of Columbia without the consent of the inhabitants of that part? This point leads to a previous one. Could the Legislatures of Virginia and Maryland originally cede to Congress a part of their States not exceeding ten miles square, without the consent of the inhabitants of the parts ceded? I believe

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that those Legislatures had not that power. It ought to be remembered that the inhabitants of the District of Columbia, although they have been represented, in the course of the debates, as men in a state of degradation, were a part of the people who, in the preamble of the Constitution of the United States, did express themselves in the following manner: "We, the people of the 'United States, in order to form a more perfect 'union, establish justice, insure domestic tranquil-'lity, provide for the common defence, promote the 'general welfare, and secure the blessings of lib-'erty to ourselves and our posterity," &c. The right of being represented in the Legislatures of their respective States and in Congress, was the right of the inhabitants of the District of Columbia, at the time they were component parts of the States of Virginia and Maryland. Those blessings of liberty were secured to them and their posterity by their respective State constitutions, and by the Federal compact. How, then, can it be conceived that the Legislatures of Virginia and Maryland had the power to give them away, to become subject to the "Executive legislation of Congress in all cases whatsoever;" that is, to be deprived of their elective franchise and right of representation? How can it be conceived that the Legislatures of these States, that are the creatures of the Constitution, had the power to bereave Americans of the most valuable rights that the Constitution of their country guaranty to them? It is the comfort and pride of an American, that no power on earth but his own can deprive him of his Constitutional rights; this is a principle self-evident. But it is urged, that the inhabitants of the District of Columbia, notwithstanding this, are actually subject to Congress, without elective franchise. This I grant. But if they are so, it is by their consent, without which the cession could not have been legitimate. Thus it has been their pleasure to barter their elective franchise for pecuniary advantages, or other considerations arising from being within the bounds of the seat of Government. It is evidently a matter of choice on their part, and they have been put in that situation neither by violence nor conquest. To those who contend that the Legislature of Maryland and Virginia were of themselves as competent to make the cession to Congress as Congress was competent to accept, I beg leave to observe that, yet, as by those acts, the right of elective franchise of the inhabitants of the parts ceded would have been virtually defeated; this brings me back to my former position, that the cession made by Maryland and Virginia could not be legitimate without the consent of the inhabitants of the parts ceded, otherwise the Constitution would give power to invade liberties which, at the same time, the Constitution intended to secure. This consent was given by acclamation; even the women and children of the district rejoiced on that occasion. Hence, the consent of the inhabitants of the district having been necessary to render the cession legitimate, and that consent having been given, a contract exists between them and Congress; a contract may exist, and does generally exist, between the governors and the governed; the protection and subjection are reciprocal obligations even in monarchies. The whigs of England contended, in 1688, that James Second, had violated the original contract between him and his people, a contract which nobody pretended to be reduced to forms and written, but which, nevertheless, was binding, and derived its force from the relations necessarily existing between the monarch and the subject.

Certainly, Mr. Chairman, the inhabitants of this district are not in a worse situation than subjects are under a monarchy; yet a worse treatment is offered to them; by the present resolutions they are to be receded against their consent to Maryland and Virginia. The word *recession* heretofore unknown in a contract, is introduced in the resolutions, I suppose, to soften or put the affront offered to the people of this district under disguise; by this intended *recession*, they are to be transferred as a bale of goods; and if they can be transferred to Maryland and Virginia, they may be transferred to Vermont and Georgia; for the acts by which they have been severed from Maryland and Virginia are perfect and complete; and what is termed a recession in those resolutions is as completely a transfer as if the district had never been a part of Maryland and Virginia. But a gentleman from Virginia has told us that, by the cession and acceptance, Congress is omnipotent over the district; for my part I am at a loss to find the reasons that can justify such an assertion; the Constitution gives Congress the power "to exercise exclusive legislation in all cases whatsoever over such district." How can it be said that exclusive legislation and omnipotence are convertible terms?

Under the monarchy of France, before the revolution, the King did exercise exclusive legislation; yet he could not make a transfer of the monarchy. By fundamental laws, it was descendible in a lineal succession, and not otherwise. Had the dynasty been extinguished, the three estates of France would have been the sole authority competent to make the choice of a new dynasty. Thus, the people of France, although under the exclusive legislation of their King, were vested by the fundamental laws of the monarchy with an eventual political right. The exercise of a power, and the power itself, are then obviously two distinct things.

Believing that I have proved that the consent of the inhabitants of the district was necessary to legitimate the cession made by the States of Virginia and Maryland; it being also notorious that such a consent has been given, and that an implied contract exists between the inhabitants of the district and the people of the United States, they have a right to the protection of Congress, as Congress has a right to their obedience. These mutual obligations cannot, in my opinion, be defeated, but by mutual consent, or at least, if Congress should find it inconvenient to exercise the power of legislation over the district, the terms of submission, on the part of the inhabitants of

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the district, and also reason and justice, require that they should be restored to themselves, and not be an object of transfer. The right of a guardian over an orphan is a species of jurisdiction and government; yet a guardian cannot transfer his right to another. If he finds it inconvenient to discharge his duties he may resign. It is the right of an orphan, if he has attained the age of discretion, to choose his own guardian. The feudalists themselves acknowledge that the rights of patronage, of church jurisdiction, and other feudal honors, are not transferable, unless as a dependence of a glebe or manor. The transfer of jurisdiction intended by the resolutions before the Committee is less justifiable than if it had originated in feudal principles; it is neither a dependence nor appurtenance of any glebe or other object susceptible of transfer.

Among others, two gentlemen from Virginia have told us that the inhabitants of the District of Columbia are in a state of political *annihilation;* that they possess no right; that they are unconstitutionally at the discretion of Congress. I am one of those that cannot give my assent to these positions. I believe that they possess political and civil rights, which Congress has no power to abridge or impair. I believe that Congress and they are mutually bound by moral obligations. The exercise of exclusive legislation over the district by Congress, not having been introduced by violence or conquest, cannot be, consequently, of a despotic kind. It necessarily partakes of the qualities of the power of legislation commonly exercised by a political and civil authority. The power which the Constitution authorizes Congress to exercise is defined; it is to exercise exclusive legislation. This exercise is no more, as I have already said, than the use of a power, and by no means the ownership of that power. If the right of ownership is not vested in Congress, it remains in the inhabitants of the district; thus far the people of the district possess a political right; this consequence arises fairly from the premises, and is perfectly congenial with the elements of American polity.

The inhabitants of the district possess also civil rights; for the exercise of the power of legislation vested in Congress is generally qualified by the declaration of rights, introduced in the amendment to the Constitution: "Congress shall pass no law respecting an establishment of religion," &c. This restriction applies to all laws whatever: a law passed by Congress for the government of this district is not less a law of Congress than a law passed by Congress for the government of the United States—hence, the people possess civil rights. As to moral rights, no society can exist without them, unless in a momentary struggle of revolution. These rights are reciprocal and obligatory upon moral agents, either in a single or corporate capacity.

Mr. Chairman, I must confess, however, that the situation of the inhabitants of this district is not such as I should like to be in. No pecuniary advantages could ever induce me to part with my elective franchise; but it has been the pleasure of those people to part with theirs, and the Constitution of the United States has authorized them to do so. Taste has no criterions: "*San quemque trahit voluptas.* The people of this district are in such a situation as had been foreseen and intended by the good and great men who framed the Constitution of the United States. To find fault with the situation of the people of this district, in point of principle, is to find fault with the Constitution. Were I so tender for their rights as some gentlemen appear to be; were I conscious that the manner in which they are governed is of a pernicious example to the people of the United States, I should endeavor to apply a radical remedy. I should move an amendment to the resolutions, by including also the city; for, in principle, the evil remains the same, if the district be continued within the bounds of the city.

I cannot, for my part, carry my philanthropy so far as to enforce upon persons privileges which they do not wish to have. A man who lives in Turkey would not thank us for dragging him into our free country. I do not think I should have relished the liberties of America, if I had been taken from France by force, and brought here against my own will. Our choice is a necessary ingredient in our enjoyment; but if the two gentlemen from Virginia feel such tenderness for the rights of others, and are so fond of extending the elective franchise, let their charity begin at home; there they will find a full opportunity to extend and improve the system of representation.

Mr. Chairman, were I an inhabitant of the District of Columbia, having but a small property, I think that I should be very little anxious to better my condition by going to live in Virginia. I know that my political influence would be there merely nominal; I know that whatever my moral worth might be, I could not stand in competition with those who possess that kind of property which is entitled to representation. I know that my occupation and habits would keep me a stranger among my neighbors, and render my situation uncomfortable, perhaps disgusting.

Had Congress the power to refuse to legislate over the District of Columbia; nay, had it the power to cede that district to Maryland and Virginia, would it be expedient to do it? For my part, I avow that I do not see a great utility in the Constitutional provision, which authorizes Congress to accept a district. I am one of those who believe that the safety and independence of Congress must rest upon their regard to the true interests of the people of the United States, and the virtue and spirit of that people. I believe that when these things shall be wanting, it is idle to think that the District of Columbia can make up the deficiency. However, the sages who framed the Constitution thought that a district might be useful. The Congress that did accept the district, and the several Congresses that did let it exist, are authorities of great weight and respectability. I feel averse to undo what a future Congress cannot do again. If we cede to Maryland and Virginia any part of the District of Columbia, is it

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to be expected, in case another Congress should wish to have those parts restored, that Maryland and Virginia, after having experienced the versatility of the present Congress, would consent to make another cession? It plainly appears to me that, if the resolutions now before the Committee be adopted, any future Congress will become virtually disabled from restoring the district to its present extent. This unavoidable consequence adds, in my mind, importance to the question. Those that will sit within these walls next year will have a more recent evidence of the people's confidence than that which we now possess.—Would it not be more prudent to leave them the opportunity of exercising their opinions upon these resolutions?

As to the expediency of the contemplated cession, so far as it relates to the inhabitants of the district, I shall not undertake to say anything. They know much better than I do what suits them; and if it was their interest to be ceded again, we would have seen them offering here their consent, or petitioning for the cession.

Mr. THATCHER was opposed to the motion for a recession, and he had heard only two reasons urged in favor of the measure; that the exercise of exclusive legislation by Congress over the District of Columbia was attended with an undue expense of the public money, and occupied so much of their time, that the business of the Union was interrupted and put to a stand by the interference of the local concerns of this place. This statement he did not believe to be perfectly correct; no doubt some of their time was taken up, but he would leave it to every gentleman to say, whether, if they had even more business before them than they had, there was not time enough to transact it. The House usually sat from eleven o'clock until three; but it must have been frequently observed, that the adjournment took place much earlier for want of business to employ them. But he was not an advocate for the present mode of conducting the business of the district; it would perhaps be a better way to give them a subordinate government, controllable by Congress; or a committee of Congress might be appointed for the purpose. He did not see that the complaint of too much legislation was well founded, in anything that had taken place during the present session. If the little labor they had to perform was too great for them, what must the labor of their predecessors have been, who had passed all the laws in existence for the government of the district, and yet he had never heard any complaint made by them on the ground now taken; they knew that the Constitution enjoined upon them the duty of exercising exclusive legislation over the ten miles square, and they performed it with patient attention.

His mind revolted at the idea of recession. Gentlemen had contended that the powers exercised over the people of Columbia, were derogatory of, and inconsistent with, the principles of free government. Yet, what does this motion for recession propose? Why, to transfer them and the territory away, in the manner practised in Russia, in the transfer of provinces or manors transferring the vassals with the soil. This may be truly called derogatory to the principles of freedom. Nor is this all; for you do not transfer them merely without their consent, but in the face of their serious remonstrances against the transfer.

When he considered the doubts which had been suggested, as to its being Constitutional or not, he declared that such a circumstance would decide him to vote against the measure, and he supposed it would decide the vote of every member who was not fully and clearly satisfied that Congress possessed, under the grants of the Constitution, the power of recession. But, if we have a Constitutional right to recede the jurisdiction, we may transfer it to whom we please; but such a measure being merely an act of Congress, could not bind up the hands of a future Congress to assume the power over it at some future day; and if the parts of the District were severally given to the States of Maryland and Virginia, what is to prevent them from giving the whole back whenever Congress might require it? From this view of the case, he did not see that the members in favor of recession were likely to fix it on any durable foundation.

A gentleman from Pennsylvania (Mr. FINDLEY) had contended that, unless Congress was restricted by the Constitution from receding this territory, Congress possessed the right, as essential to their exclusive legislation. He, for his part, considered the converse of this proposition to be the truth; and gentlemen were bound to show that part of the Constitution which gave the power now contended for. If they cannot show this, their right may be doubted, and under such circumstances the safer mode of proceeding would be to reject the resolutions.

He was further of opinion that the inexpediency of the measure was of itself sufficient to induce the Committee to lay it aside. It had been stated, and he knew the facts to be true, that at one time the old Congress had been pent up in the house in which they were sitting by a party of soldiers, and at another time insulted by an assemblage of the people. Such circumstances as induced those outrages upon the National Government may occur again; but if Congress retain the power of exclusive jurisdiction they may, by a prudent caution, prevent these effects. The circumstances which he had mentioned, laid the foundation for granting, in the Constitution, the power alluded to; and while the nature of man continued the same as heretofore, he believed it would continue to be a regulation wise and expedient. He could enumerate several cases, such, for instance, as a contested Presidential election, in which the danger of sitting in a large city made independent of the control of Congress would be imminent; but he would forbear, as it would be as well understood as if expressed. He concluded with expressing his disapprobation of the present resolutions.

Mr. TAGGART.—Mr. Chairman: As considerable time has been already spent on the question

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under consideration, it is not my intention to detain the Committee long; but as it is one of very considerable magnitude, and one upon which there seems to be a disposition among members to express their sentiments, and not content themselves with barely giving a silent vote, I crave the indulgence of a few minutes, while I state some difficulties which are still in the way of my voting in favor of the resolutions for a recession, unremoved by the discussions which have taken place. Gentlemen who advocate the resolutions now before the Committee, disavow an intention to do anything which may pave the way for the removal of the seat of Government from this place, or weaken the confidence of either the citizens of the District, or of the United States at large, in their belief that it will continue to be permanent. I am disposed to give full faith and credit to the sincerity of gentlemen making this declaration; but permit me to observe that the belief that the permanent continuance of our National Government at the City of Washington will not be affected by the recession, can be founded on nothing but conjecture. That it would materially affect the probability of such a permanency, and even prove an important inchoate step towards a removal, is also a matter of conjecture, which appears to me to be founded on quite as great a degree of probable evidence as the other, and so long as I retain this apprehension I cannot vote for the resolutions. So long as human nature continues what it is, and has always been, we may naturally expect that three rival places in the situation of Alexandria, Washington, and Georgetown, when owing allegiance to, and protected by, the immediate jurisdiction of three distinct, independent sovereignties, would be much more likely to enter into and prosecute measures mutually to cramp and injure the prosperity of each other, than when under the immediate control of the same sovereign authority, disposed to do justice, and render protection equally and impartially to them all.

Should such a disposition prevail, while they are under distinct sovereignties, the probable consequence would be, either that one would obtain such an ascendancy as to cause the others to sink, or that they would mutually weaken and injure each other. Should Alexandria, for instance, gain such an ascendancy as to cause this city to dwindle and come to nothing, a removal of the seat of Government, though not contemplated at present, might soon become a matter of necessity, and not of choice. Should such a necessity arise, and, notwithstanding all the plausible arguments I have heard urged to the contrary, should the proposed recession take place, I cannot view it as an unimportant step towards that event; so many and different, and even clashing, are the local interests, and such the variety of manners and habits in the United States, which are constantly increasing with our extended and still extending population, that the fixing of another seat of Government might, and probably would, materially affect the Union itself. As I hope not only to see the union of the States to continue during my time, but that it may descend unbroken to ages yet unborn. I cannot vote for a measure which has, in my view, a remote, or even a conjectural, tendency to affect it.

I find also a Constitutional difficulty in the way of the recession, which has not been, to my apprehension, satisfactorily removed, by all the variety and ingenuity of argument, and all the labored discussions I have heard on the subject. I shall not again repeat that clause of the Constitution which has been already so often recited and commented upon by gentlemen on both sides of the present question. I only observe that, although the members composing a particular Congress are constantly changing, and Congresses, as distinguished into first, second, third, &c., follow each other in succession, yet the Constitution contemplates the Congress of the United States as being permanent, or immortal, if the expression may be permitted. When the Constitution says that Congress shall have jurisdiction, or the exclusive right of legislation, over a district of territory not exceeding ten miles square, it is not the particular Congress for the time being, but Congress generally, the permanent Congress of the United States, which is meant. I see not, therefore, that the present Congress possess the right to recede the territory so as, in any manner of way, to affect the right of their successors, or to hinder a future Congress, the next if you please, from reassuming the jurisdiction the first day of their session. Without granting the correctness of the position, yet admitting, for the sake of the argument, the first proceedings of Congress, in accepting the cession of the territory from the Legislatures of Virginia and Maryland, and assuming the jurisdiction over the same, to stand on the footing of mere Legislative acts, repealable at any time, at the pleasure of the Legislature, and that they did not partake of the nature of a Constitutional provision, or an irrepealable contract, even this would not, in the present instance, remove the difficulty from my mind. The Constitution vests Congress with the power of establishing a uniform system of bankruptcy throughout the United States. I single out this instance in particular, because I have already heard frequent allusions made to it, in the course of the debate, and because certain recent transactions must render that subject familiar to the minds of almost every member of the Committee. Agreeably to this provision, some years ago, a bankrupt law was enacted. Congress, at their last session, saw fit to repeal that law, and I believe it was done with great propriety. But will any person assert that Congress possessed a Constitutional power to pass a law, affecting the proceedings and decisions which had already taken place, and been carried into effect under the law which they had seen fit to repeal, or to restrict a future Congress from either re-enacting, at pleasure, the same law, or framing another statute to the same effect? I believe this will not be asserted. But, by the resolutions on the table, it is contemplated to alienate from every succeeding Congress, that right of jurisdiction now vested in Congress by

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the Constitution of the United States; an act which cannot but materially affect the proceedings which have taken place during the continuance of the session. It appears to me, therefore, difficult for the warmest advocates for the resolutions to prove that Congress possess any Constitutional power to make such a permanent recession of this territory as can, in any way, affect or impair the right of the next, or of any future, Congress to reassume the jurisdiction, whenever it shall be thought proper. I believe there are several powers vested in Congress by the Constitution of the United States, which have never yet been carried into effect, and probably may not for many years to come, if ever. But will any member of this Committee assert that the present, or any particular, Congress has a right to pass a law declaring that these provisions of the Constitution shall not be carried into effect in future? I believe it will not be presumed that Congress possesses any such power.

Much has also been said about the expediency and necessity of the proposed recession, and a variety of arguments have been urged which, if they prove anything, it is only that the resolutions are inadequate to the contemplated object. This expediency or necessity, is grounded principally on two points, viz: In order to restore them to their natural and political rights, and to save Congress the trouble, and the nation the expense, of legislating for the territory. We have heard much ingenious declamation about the restoration of the citizens of Columbia to certain political rights of which they have been injuriously deprived by the act of cession, and such an affecting picture has been drawn of the present state of their degradation and vassalage, as would lead us to believe that their situation more nearly resembled that of the slaves of a Turkish Bashaw than that of citizens of the United States. Should a stranger be suddenly transported within these walls, and know nothing of the situation of the inhabitants of the surrounding district, only what he learnt from the picture drawn in certain discussions on this subject, what a scene of wretchedness would be pictured before his imagination! Would he not almost expect to have his ears assailed with the harsh grating sound of fetters and the clanking of chains, on going out into the streets; or, if there was so much liberty left as to permit their departure, to see the wretched inhabitants flying in every direction from this land of tyranny and oppression, this worse than Egyptian bondage, to the surrounding Edens of freedom and happiness? But, on making a tour through the District, how great would be his surprise to see the citizens of Columbia contented, free, and happy; to see the various classes of civilized society, the man of fortune, the merchant, the tradesman, the husbandman, and the laborer, each one quietly pursuing his respective occupation, and each enjoying the fruit of his labor, under the protection of mild and equitable laws. Attached as I am to the rights of man, and the principles of civil and political liberty, and wishing that those rights may be extended to every nation on the globe, capable of appreciating and enjoying them, I am not fully possessed of the propriety of doing an act, doubtful, at least, by the Constitution of the United States, for the purpose of restoring people to certain abstract rights, contrary to their wishes, and against their warmest remonstrances. Even the servant under the Jewish law, who had such an attachment to his master as to wish to remain in his present situation, was not compelled to go out free. Congress has been represented as standing in the relation of a master to this District. If this is correct, it is some consolation that, by evidence so irresistible, it appears to have hitherto proved a good master at least.

Being, I trust, as real a friend to the rights of man as any member on this floor, and wishing to extend, rather than abridge, those rights, I think it needless at present to enter into any dissertation on that subject. But if we confine political rights to the right of suffrage only, although I duly appreciate that right, and wish it extended as far as is consistent with the greatest political good of society, yet I hope I shall not be accused of nourishing a germ of aristocracy, or of harboring a vulture, either fledged or unfledged, in my bosom, when I express my belief that there are other rights of equal, if not of greater, importance; I mean that life, liberty, and property, be protected by mild and equitable laws, faithfully and impartially executed. No man who enjoys these privileges in their full extent, can be considered as enslaved or degraded. These rights are universal; they are the property of free citizens of all classes; but the right of suffrage can only be exercised by a part, and the extension of it in the several States is unequal. The modification of this right is different in the adjoining States of Virginia and Maryland. But I have no satisfactory evidence that the essential privileges of freemen are better secured to the citizens of Maryland than they are to those of Virginia. There is a small variation in the modification of this right, between the States of Massachusetts and New Hampshire, but I believe it will hardly be asserted that the citizens of New Hampshire are more free, and have their liberties more secure and better protected, than the citizens of Massachusetts. But in every State certain modifications of that right have been deemed necessary. In all the States, that sex which is formed by nature to be the ornament of society, and which, in every kingdom, state, or nation, forms half, or nearly so, of the whole population, is excluded. Of the male population, those under twenty-one years generally form more than one half; these are also excluded. If to these classes we add various other individuals of several descriptions, who are excluded, it will, I presume, appear that considerably less than one-fifth of the whole population enjoy the right of suffrage in those States wherein that right is farthest extended. But will it be said that the remaining four-fifths or upwards, are in a degraded situation, stript of all privileges and destitute of the invaluable blessings of a free government, or that they have not equal security

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for life, liberty, and property? I trust it will not. I farther observe that, so far as the actual proceedings of Congress in certain cases express their sentiments correctly, it does not appear to be their opinion that the right of suffrage, and of framing and organizing a Government by their own immediate representatives, is, in every case, necessary for the security of life, liberty, and property. In the Territories of the United States, for example, i. e., those parts which are not so far advanced in population as to obtain a State constitution, their government is organized immediately under the direction of the President of the United States. Their rulers can feel but a small degree of individual responsibility to the people over whom they are placed, and the immediate responsibility of the President himself is still less, and, from local distance, or other causes, even his control over the agents of his own appointment, is somewhat remote. If a President of the United States is not, in these circumstances, deterred from acting tyrannically, by his regard to the maxims of sound policy, by his attachment to the Constitution of the United States, the spirit and genius of our Government, and by his sacred oath, and his responsibility to the nation at large, he will feel but very little check arising from his responsibility immediately to the citizens of the Territories. It will not, I believe, be admitted that they are in a state of political non-existence, that their rights are sported with, that either their lives, liberties, or property, are insecure, or themselves slaves. In passing the act last session of Congress for the government of the ceded territory of Louisiana, it did not seem to be the sense of the House that this particular description of political rights was, in all cases, necessary. But will it be admitted that the inhabitants are hereby deprived of everything essential to freedom, and that all that is worthy of preserving is rendered insecure? No, Mr. Chairman, this will not be admitted. Though sincerely wishing that, as soon as it can be done consistent with a Constitutional provision and the plighted faith of Government, the right of suffrage, as it respects the several branches of Government, may be as liberally extended to the citizens of Columbia as to other parts of the United States, yet, permit me to observe, that if any people can be secure under the temporary suspension of this description of political rights, we would naturally expect it to be the case of those who are immediately under the fostering care of the Legislature of the United States. I see not what motive those who are, by their station, guardians of the Constitution of the United States, and the liberties of the Union, can have to oppress the citizens of the District of Columbia. Congress, it is true, possess a physical power to violate the Constitution, and to enact an oppressive statute which may operate injuriously against this District. So they possess the same kind of power to pass a law which may be oppressive to either of the States of Georgia or Vermont. In this case, should the Representatives of Vermont, for instance, not be deterred from voting for a law to oppress the State of Georgia, by their fidelity to the Constitution of the United States, and by their solemn oaths and general responsibility to the nation at large, they would feel but little check arising from their immediate responsibility to the citizens of Georgia; and so, *vice versa*, of the Representatives of Georgia, in case the statute should have reference to Vermont. Certainly but few members of this House can feel a less degree of responsibility to the citizens of this District than would be felt in either of these cases. But is there any more danger that a statute, intentionally oppressive, would be sanctioned in the one case more than the other? Besides, although the District of Columbia has no immediate representative on this floor, yet it has now, and as long as it continues to be the seat of Government, will, from its contiguous situation, probably retain virtually as efficient a representation as any portion of territory of equal extent and population within the United States; nay, it probably has now, and will maintain, a greater influence over the deliberations of this House, especially when the peculiar local concerns of the territory are under consideration, than some whole States. An honorable gentleman who has given considerable scope to his imagination in painting the danger of oppression and tyranny to which the District is exposed by the continuance of the present system, admits that there is no immediate present danger, that he presumes the present Congress harbor no designs of that nature; but he entertains frightful apprehensions of danger arising from the uncontrolled, tyrannical dispositions of future Congresses. I grant it to be somewhat of a natural disposition in mankind to entertain the suspicion that every body of men to whom power is delegated, will be prone to abuse it, unless an exception is to be made in favor of our noble selves. There, at least, we can probably view it safe. But though it may be admitted that such an event is barely possible, yet I wish not to harbor the supposition for a single moment. I will not admit it to be probable that the citizens of the United States will be less careful in time to come, than they are now, or than they have been in times past, in selecting men of probity and virtue to represent them on this floor. Let us rather cherish the pleasing anticipation that our successors will make progress in wisdom, in patriotism, and in every public virtue. Probably no member of this House will say that such an event is undeniable, or that there is not room. Should an extension of the elective franchise, and a local legislation be deemed expedient, this may, I believe, be effected without any of those Constitutional difficulties involved in a recession.

But were we even to admit that this horrible system of degradation and oppression did actually exist, and that both in point of principle and expediency, a retrocession was necessary, the resolutions before the Committee are wholly inadequate to the contemplated object. If it is necessary to recede certain portions of the District, in order to restore the citizens to their political rights, the argument must be equally forcible for retrocession of the whole. If it is contrary to the

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pirit of our Government, and to every description of civil and political rights, that a District f ten miles square should be deprived of the elective franchise, it is certainly an equal infringement upon natural right that the City of Washington should be left in that situation. If it is wrong to exercise a tyrannical Government over he whole District, and if the present system is a yrannical one, it is equally wrong to exercise it over the city. One, two, three, or four miles quare ought no more to be tyrannized over than en. So far, therefore, as these and similar arguments have any weight, they operate equally in avor of a retrocession of the whole as of a part. Should such a degree of confidence in the idea of his continuing to be the permanent seat of Government prevail, as to exclude all apprehensions of a future removal, it is highly probable that, before a very great lapse of years, the city would become, by far, the most populous of any part of he territory. Surely the political rights of the citizens ought to be as sacred as those of any part f the territory. With respect to the expediency f the retrocession, on account of the time necessarily spent in legislating for the territory, this, instead of being a growing evil, as seems to be apprehended by gentlemen, might, I think, probably be lessened. But whether this should be the ase or not, the resolutions offer no adequate remedy for the evil; for if Congress has still to legislate for the city, there will be very little difference n respect to time between that and legislating for he whole territory, and it is even problematical whether there is really any expense of time; it is difficult to say, that the sessions of Congress would be shortened, or a cent saved to the public in that way, if the territory was receded. But should it be found necessary to spend a few days every session in legislating for this territory, it cannot be thought altogether unreasonable. For, with the exception of a very few of our largest commercial cities, I believe no portion of territory of the United States, of equal extent, contributes so argely to the revenue as the District of Columbia. Upon the whole, I hope the Committee will not agree to the resolutions.

Mr. ROOT said that he should not have troubled the Committee during the discussion of this question, had it not been for the very extraordinary promise made yesterday by the gentleman from Maryland (Mr. NELSON.) That gentleman, in the exordium of a lengthy harangue, had promised that, before he sat down, he would convince every member of this Committee, that the passage of the resolutions on your table, was both unconstitutional and inexpedient. As he has not performed this promise in full, my mind remaining yet unconvinced, notwithstanding the supposed force of his arguments, I owe it to that gentleman to state some of the reasons which induce me to believe that the passage of the resolutions are both Constitutional and expedient.

The gentleman from Maryland has indulged himself in declaiming against forced constructions of the Constitution, the chicanery of lawyers, and the villany of judges, and descanting upon the unwritten Constitution of England. And how, Mr. Chairman, has he attempted to prove that the passage of these resolutions is unconstitutional? If I understood him correctly, he attempted it by resorting to that construction which he affects to condemn. Because the Constitution has delegated to Congress the power of exercising "exclusive legislation in all cases whatsoever 'over such district, not exceeding ten miles square, 'as may, by cession of particular States and the 'acceptance of Congress, become the seat of the 'Government of the United States," and because Congress have accepted the cession of the District of Columbia, the gentleman seems to infer that Congress must, at all events, continue forever to exercise the exclusive jurisdiction over this District, and that no part of it can at any time, or under any circumstances, be transferred or receded. Whence, Mr. Chairman, is this inference drawn? Surely not from the Constitution itself, nor from the practice under that Constitution, unless by a very forced construction, indeed, and such an one as I would cordially join that gentleman in deprecating.

I should suppose, Mr. Chairman, if Congress, by the acceptance of the jurisdiction over this District, are inhibited by the Constitution from transferring the entire and exclusive legislation and sovereignty over that part thereof embraced by the resolutions now under discussion; that we cannot rightly delegate or transfer any part of the Legislative powers derived under the Constitution. The same principles which apply to the whole, are applicable to a part, and yet we see that certain Legislative powers have been delegated to the City of Washington. In one of the papers of this city we frequently see acts published with all the forms and solemnity of statute laws. Here we discover an exercise of Legislative powers upon subjects over which you have a concurrent jurisdiction. You have continued, and were but the other day engaged in passing a bill for extending certain Legislative powers to the Common Council of Alexandria, and yet I never heard the constitutionality of the measure called in question. But, sir, we have no occasion to have recourse to former practice, or opinions formerly entertained upon this subject. We need only to refer to the Constitution itself, and from that instrument, in my opinion, we can plainly and clearly discover the powers contended for by the mover of these resolutions. In the eighth section of the first article, it is ordained that "the 'Congress shall have power to exercise exclusive 'legislation in all cases whatsoever over such dis-'trict, not exceeding ten miles square, as may by 'cession of particular States become the seat of 'the Government of the United States." Many powers are delegated to Congress by this article, and will gentlemen contend that, because the Constitution has declared that "the Congress shall have power" to do certain acts, that they must and shall at all events exercise those powers? Congress have power to establish uniform laws on the subject of bankruptcies; they have exercised this power, but the bankrupt law is re-

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pealed. Congress have power to fix the standard of weights and measures; they have never thought proper to exercise this power, and will gentlemen say that our predecessors, as well as ourselves, have by this omission violated the Constitution of their country? The Congress have power to declare war, and must this power be also put in exercise, whether occasion shall require it or not? Or are gentlemen ready to say that when a war shall once be declared, that a peace cannot be concluded? Although there is no express power delegated in the Constitution for the conclusion of a peace, yet I am induced to believe that the President and Senate, by virtue of their treaty-making power, might put a stop to the ravages of war whenever such a calamity should happen to this nation.

We are told, Mr. Chairman, that Congress cannot constitutionally recede any part of this District without the consent of the people; that citizens cannot be passed away and alienated as an article of property; that they cannot be bartered like "cattle" or like the "vassals of Russia," and the gentleman from Maryland has referred us to certain modest resolutions of a meeting in Alexandria, which have been communicated for the information of Congress. Such expressions are well enough calculated to amuse the ear, but whether these citizens are to be considered as vassals appendant to the soil, or otherwise, I have no doubt but the Constitution authorizes in express terms the transfer contemplated by the resolutions on the table. I perfectly agree with gentlemen in the position, that Congress possess no powers except those delegated in the Constitution; but I contend that the power claimed by the advocates of these resolutions is clearly and expressly delegated. I can point out, in the language of the gentleman from Massachusetts (Mr. THATCHER) the chapter and verse where such power may be found. By the eighth section of the first article, "the Congress shall have the power to exercise 'exclusive legislation in all cases whatsoever over 'such District, not exceeding the ten miles 'square," &c. Here we find the power of legislating without limitation or control on all subjects which may properly come before any Legislature. If the Legislature of a State can make a cession like the present, surely we possess the same power. The Legislatures of Virginia and Maryland, acting in their ordinary Legislative capacities, have ceded this District to the United States, and by the same principle we may recede. The Congress possess all power of legislation over this District, which is not forbidden by the Constitution. The power now claimed not being forbidden, nor denied to belong to the ordinary Legislature of a State, is already delegated to Congress, by the article to which I have just referred. I know, sir, that gentlemen have said that the consent of the people to the original cession was virtually expressed through their Representatives in the Legislatures of Virginia and Maryland. But I would ask if there is any article or clause in the constitutions of those States which expressly authorize their Legislatures to make that cession? And, if not, whether the people themselves, by any public act of theirs, specially authorized and instructed their Representatives to make the cession? I presume that neither can be shown; of course, it was but an ordinary act of legislation growing out of a general delegation of powers. The same powers are possessed by Congress, and may be put in exercise even without the consent of these people; we can tax them without their consent; we can pass laws to bind them in all cases whatsoever, and I presume gentlemen will not think it necessary to ask their consent. By an ordinary act of legislation these people have been once assigned, like cattle, if gentlemen please, and I am ready to reaffirm them to the States where they originally belonged.

If, Mr. Chairman, the cessions of Virginia and Maryland were extraordinary acts of legislation not flowing from the ordinary Legislative powers, and as no special and express consent of the people has been pretended, I should suppose that those acts are void. These resolutions, then, amount to nothing more than a relinquishment of claim. If we have a bad rule, let us abandon it. But, I am inclined to believe that a State Legislature, acting in its ordinary Legislative capacity, may cede and transfer the jurisdiction over a part of her citizens and territory. Connecticut and New York have exercised this power; South Carolina and Georgia have done the same. The conclusion, in my mind, is, that Congress, in exercise of the ordinary Legislative powers over this District, as delegated in the Constitution, may rightfully adopt the resolutions on your table.

The gentleman from Maryland has endeavored to perform the second part of his extraordinary promise by calling those resolutions the "stepping stone" to a retrocession of the City of Washington; and another gentleman (Mr. THATCHER) considers them "but an entering wedge" to the retrocession of the city and the removal of the seat of Government. I confess, sir, that I do not feel much alarm at the observations. The retrocession of the city would not be to me a deplorable event. If any gentlemen will make a motion to that effect, I will cherfully second him; and, indeed, I should not much deplore the event of a removal of the seat of Government. But I am willing to adopt the resolutions, as they are offered; we shall gain a great point by getting rid of those rival towns and their conflicting interests. If I cannot be gratified in full, I shall content myself by shaking off a part of this cumbrous load.

Mr. DAWSON.—The resolutions, which are now on the table, I had the honor to offer at the last session. I then thought that we ought to adopt them, and some reflection and observation, added to some occurrences which have taken place during the last and the present session, have confirmed me in that opinion, and that we ought to do it without delay. Could I, however, be taught to believe that, thereby we should, in the most distant manner, violate the Constitution, which I have sworn to support, or the contract which we

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have made with the proprietors of land within the City of Washington; that we should impede its growth or prosperity, or do an injury to any part of the District of Columbia, I would immediately withdraw my support and give to them my opposition. The contrary are my firm convictions, formed after some experience and much reflection; and with a disposition most friendly to the City of Washington; a disposition which I have evinced on several occasions, and on none more than on the vote I shall give on this day. I do believe that, by the adoption of these resolutions, we shall give life and enterprise to the City of Washington; that we shall more truly establish it as the seat of our Government; that we shall free our national treasury from a heavy annual expense; and, above all, that we shall raise a number of respectable men from the humble and degraded state in which they now stand, to the more dignified one of citizens; these being the honest and disinterested convictions of my own mind, and these the advantages, it will not be a matter of surprise that I am an advocate of these resolutions. What are the objections, and what are the disadvantages, I know not, and as I have not ingenuity to anticipate, I must wait until gentlemen will furnish us with them, when they shall be acknowledged, or receive such answers as they appear to merit.

Without entering into the merits of this question, I must beg leave to mention one fact, which may meet an argument which I expect will be used here, as it has been elsewhere, and which has excited some alarm and some doubt with persons friendly to this city, as to the retrocession. It has been believed that there is connexion between the law fixing this as the permanent seat of Government, and that assuming the jurisdiction, and that a partial repeal of the latter will endanger the other; than this, in my judgment, no opinion can be more incorrect; the laws themselves are separate and independent, and the objects of them different and distinct, the one passed in 1790, the other in 1801; and here, sir, permit me to observe that the last law passed subsequent to the death of that person whose spirit a gentleman from Maryland has thought proper to introduce, and in my judgment, very improperly on the present occasion. I will not, however, believe that that person, if alive, would give his support to a law which goes to the destruction of those principles, in the attainment of which his whole life had been spent, or that he would have countenanced the doctrines advanced by that gentleman on this day.

Mr. DENNIS rose and explained.

Mr. DAWSON replied, that he had supposed that gentleman meant to apply his observations to the subject under consideration, which was a repeal of the law divesting the inhabitants of the District of the right of representation—and then proceeded: By the first, this is established as the permanent seat of Government, and a solemn contract entered into between the proprietors of land within the city, whereby they relinquished one-half to the General Government. This, sir, forms the obligation of the contract, from which we cannot depart without a violation of the public faith, and to do which I shall ever be found among the last.

The other was an act left to the discretion of Congress, which they might pass or not, according to their pleasure, and which could not, by any possible construction, affect the original contract, which would have been equally secure without it, and, in my judgment, more so. It was passed, and strange to tell, it was passed to gratify the wishes of a majority of this District, without any consideration on their part—for, be it remembered, that they have not made relinquishments to the Government, or contributions to the establishment of the city. I hope it will not long remain a stain in our code. I voted against it, and I have ever felt anxious to confirm that vote by advocating its repeal.

Mr. Chairman, to posterity and to the present age, it must appear a matter of astonishment, that at the seat of our representative Government, where it is presumed that its principles are understood, and within a few years after its adoption, a number of our most respectable citizens, some of whom had fought, and many of whom had contended for eight years for the rights of representation—on which all our other political rights are founded—come forward and pray you to divest them of it. Sir, when I cast my eyes on the table, and examine its contents, I am almost induced to doubt the reason of my senses; at the same moment, I behold a memorial from the inhabitants of Louisiana, just freed from the shackles of an arbitrary Government, written in the enthusiastic spirit of freedom, imploring you to grant to them the right of representation, as the first gift of God to man, and I espy the petition of the inhabitants of Columbia, the seat of our representative Government, begging you to divest them of that right, and to reduce or rather continue them in a state which the Louisianians esteem a degraded one. Whence, sir, does this arise? Where is the spirit which animated those persons—many of whom I know and respect—when, in 1776, they demanded *representation* or *death!* Has it expired in a few short years, or is it to be bartered "for as much trash as may be granted them?"—for a supposed increased value in their property? I hope, sir, we shall not be instruments to the contract, or the trustees for its performance.

These observations, Mr. Chairman, may answer to one which has been frequently made—"that a majority of the inhabitants of the District are opposed to the retrocession." Be that as it may, it has no weight on my mind. I am not disposed to adopt as my political guardians, or to appoint as the trustees of the rights of others, men who have voluntarily relinquished their own, and that right on which all others depend, the right of representation. However highly I may personally esteem, as I do, many of the characters, politically speaking, I view them as non-entities. I wish they were not.

Mr. D. then argued in favor of the Constitu-

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tional right of Congress to repeal the law, and contended that there was not any connexion between the law establishing the City of Washington as the permanent seat of the Government, and the one assuming the jurisdiction over the District of Columbia; the first of them formed the obligation of the contract, for a valuable consideration, and for the performance of which the public faith was pledged; the passage of the second was left to the discretion of Congress, and might be repealed at their pleasure. To the several precedents which had been adduced to show the Constitutional right, he begged leave to add one which had not been mentioned, and which, in his judgment, was conclusive. The same section in the Constitution which gave Congress the right to assume the jurisdiction over the territory, gave them the right to "constitute tribunals inferior to the Supreme Court." The latter right has been exercised; inferior courts have been established, and completely organized. Judges were appointed, and the system went into operation; and yet, sir, two years ago, a large majority of this Congress thought that they had a right to repeal that law and put down the system. I now call on gentlemen, and I particularly invite those who favored that repeal, to show me a difference in the exercise of the two rights—except, indeed, that by that repeal you virtually discontinued officers who had received commissions, and which was relied on by the opponents to the repeal as their strong ground.

He concluded by saying, that, as there was no Constitutional bar, in his judgment, the interests of the city would be advanced by freeing it of useless encumbrances, which impeded its growth; that the parts of the District without the city would be benefitted by returning to their parent States; that the national treasury would be freed from a heavy annual unnecessary payment, which might go to the redemption of our public debt, or of our fellow-citizens in captivity; and above all, as it would raise a number of respectable persons from the unequal situation in which they now stand to the more dignified one of American citizens, he should vote in favor of the resolutions, and hoped for their adoption.

Mr. GODDARD said he should not have risen on this occasion to discuss a subject already exhausted, but for the remarks of the gentleman from Virginia last up (Mr. DAWSON.) If, said Mr. G., I understand that gentleman right, he stated that two acts had been passed by Congress over it—the one in the year 1790, the other in 1801—that the first act authorized the acceptance of a cession of a district of country, not exceeded ten miles square; the second, passed in 1801, assumed the jurisdiction over this territory—and that we have nothing to do but repeal this last act, and the jurisdiction reverts back to the States of Virginia and Maryland, from which it was derived. If this position be well founded, I should agree with that gentleman in one part of his argument, viz: that we have a Constitutional right to recede this territory, or in other words, repeal the act of 1801; but I think that position not well founded. In 1790, Congress passed an act authorizing the President to accept a cession of territory, to become the permanent seat of Government of the United States. The States of Virginia and Maryland made the cession accordingly. This done, the territory, as well as the jurisdiction over it, so far as they belonged to those States, was completely acquired by the United States. The States of Virginia and Maryland parted with all their right. The moment they made the several cessions the jurisdiction resided in the United States. Congress might not immediately begin the exercise of jurisdiction, but the right to do it was complete. By a recurrence to the act of 1790, I find a proviso annexed to the first section, in these words: "Provided nevertheless, that the 'operation of the laws of the State within such 'district, shall not be affected by such acceptance, 'until the time fixed for the removal of the Gov-'ernment thereto, and until Congress shall other-'wise by law provide." Congress, aware that it might not be convenient immediately to organize a government for this district, made provision for the operation of the laws of Virginia and Maryland, until such organization should take place. It hence results that as the laws of Virginia and Maryland were in operation here prior to the act of 1801, yet they were so under the sole authority of Congress; unless indeed, those States in the acts of cession made a reservation of jurisdiction until Congress should organize a government. Of this I am not certain; but if it be so, it makes no difference, because all the pretension on the part of these States to exercise jurisdiction, ceased when the event happened to which the reservation had reference, and, until that time, its exercise was sanctioned by the act of 1790. No jurisdiction therefore was acquired by the act of 1801. That act organized a government, provided for the erection of courts, the appointment of public officers, &c. Suppose we should repeal that act, what would be the consequence? Would the jurisdiction be thereby restored to Virginia and Maryland? Not at all. Congress might the same day pass another act, organizing the government in the same or in a different manner. The jurisdiction would still reside in the United States, and all the legislative power which could be in exercise here, must be exercised by Congress until we pass an affirmative act receding the jurisdiction to those States. And here permit me to inquire whether this does not furnish an answer to all the arguments which have been drawn from the analogy between the power which is given by the eighth section of the first article of the Constitution, authorizing Congress to exercise exclusive jurisdiction over this territory, and the clauses in the same section giving to Congress other powers? And whether the true difference does not consist in this, that in all the other cases we may pass laws and repeal them at pleasure, and the power will continue the same? In this case we are called upon to do more than repeal a law—doing that would not effect the object.

By other clauses in the same section of the first article of the Constitution, power is given to Con-

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gress to establish an uniform system of naturalization, uniform laws on the subject of bankruptcies, establish post offices and post roads, &c. Gentlemen say, and very corrrectly, that in these cases Congress may, or may not, exercise the powers given by the Constitution—may pass laws this Congress and repeal them the next. This is doubtless true; and if by repealing the act of 1801 a recession would take place, and a future Congress could enact another law, the argument would hold. But we must pass a law ceding the jurisdiction. This once done Congress can never resume it, or again exercise the power given by the Constitution to legislate exclusively for this district while it remains the seat of the Government of the United States. Do we not, therefore, instead of repealing a law, in effect repeal one of the provisions of the Constitution and render it a dead letter? Can we fairly get along in any other manner than by considering the acquisition of this territory and the jurisdiction over it as one thing, and the constant exercise of legislative power here as another? As it respects the first, may we not consider the Constitution as *functus officio*—as having produced the effect which was intended? As it respects the last, we may repeal all the laws in operation here for the government of the territory, and still the right to govern may belong to Congress. And can we part with this right?

I am sensible, however, that difficulties attend this construction of the Constitution. I say construction, because I believe it cannot safely be affirmed, that there are any plain, positive words which decide the question in debate. We must resort to construction to ascertain the meaning of language. One objection to this construction, as forcible perhaps, as any which has been urged, arises from the succeeding clauses of the same paragraph of the same section: "And to exercise like 'authority over all places purchased by the consent of the Legislature of the State, in which the 'same shall be, for the erection of forts, magazines, dock-yards, and other needful buildings." Whatever may be our authority here, it is the same with respect to places purchased for forts, arsenals, &c. It will doubtless be found to be very inconvenient in practice, to adopt such a construction of the Constitution as would compel Congress to exercise this exclusive legislation forever over those places. Forts may be erected this year upon our frontiers. Hereafter when the country becomes settled, those places are no longer frontiers, and forts are no longer necessary. Exclusive legislation ought no longer to be exercised there by Congress. I can answer this objection only by resorting to known rules of construction, one of which is, that regard is always to be had to the subject-matter about which the instrument is conversant. Give it such a construction as that the object intended to be effected shall rather prevail than be destroyed.

In the one case, the object unquestionably was to obtain a permanent seat of Government for the United States; in the other, a temporary place for the exercise of military power so long as the condition of the country about it rendered it necessary. The United States must always have a place for the seat of the Government, somewhere; forts may not always be necessary anywhere.

The argument of the gentleman from Virginia (Mr. CLARK) I cannot think is so conclusive as that gentleman seems to consider it. According to his argument, we are to find positive authority for parting with the jurisdiction of this territory, in the words of the Constitution, which have been so often read, "Congress shall have power to exercise exclusive legislation in all cases whatever." He says that the act which we shall pass to recede, is a legislative act, and we, in possession of all legislative power here, in all cases, have a right to exercise it in this, as well as any other case." The power then, which must be a subsisting one, to govern this territory exclusively, contains in it a power to deprive ourselves, and every future Congress, of the right of governing it at all, or of exercising any legislation here! But I am ready to admit that the question, whether we may constitutionally recede this territory, is a doubtful one, about which gentlemen may very well differ. But not perceiving the necessity or expediency of doing it, in that strong light in which it presents itself to some gentlemen, and entertaining doubts about the Constitutional right to do so, I shall vote against it. Before I sit down, I cannot but notice one remark, which fell from the mover of this resolution, Mr. STANFORD. In representing the degraded situation of the people of this territory, he told us that they were wholly destitute of rights, and even the privilege of petitioning Congress was a matter of courtesy, not of right. Will that gentleman read the Constitution of the United States, and make this declaration in his place? Among the amendments which have been adopted to that instrument, the first article is in these words: "Congress shall make no law respecting an 'establishment of religion, or prohibiting the free 'exercise thereof, or abridging the freedom of 'speech, or of the press, or the right of the people 'peaceably to assemble, and to petition the Gov'ernment for a redress of grievances." All laws which are or can be made for the government of this territory must be made by Congress. And we can no more pass an act, to operate here, which is repugnant to the principles and provisions of the Constitution, than we can, to operate in any other part of the Union. I cannot therefore but express my surprise at the declaration made by the gentleman from North Carolina, as well as others of a similar import. Gentlemen claim the exercise of power here, which is not only dangerous, but expressly denied us by the Constitution, which we are bound to support.

Mr. G. W. CAMPBELL rose with great reluctance, at this late hour, to detain the Committee that had so long been engaged in the investigation of this subject; but he could not consent to give a silent vote on the question now under discussion, while arguments were used which he considered untenable, and which, if unanswered, might be considered abroad as governing the de-

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cision that should be made. He would therefore claim the indulgence of the Committee, while he submitted, very briefly, some of the reasons that would influence the vote he was about to give. In examining the subject he would consider the question with regard to the Constitutional power Congress may have to remove the seat of Government as separate and distinct from the question whether, in the present state of things, they have a Constitutional right to recede the territory, or a part of it, while the seat of Government remained within it. He proposed, therefore, to consider, first, whether Congress have power constitutionally to carry into complete effect the proposed measure without first removing the seat of Government; and, secondly, if they have such power, whether there exists at present such a state of things as requires the exercise of that power. In order to comprehend the first view of the subject that he had proposed laying before the Committee, it would be necessary to recur to the Constitutional provision on the subject, and to the acts that have taken place in pursuance thereof. By a clause of the eighth section of the first article of the Constitution of the United States, often alluded to in this discussion, it is provided that "the 'Congress shall have power to exercise exclusive 'legislation in all cases whatsoever over such dis-'trict (not exceeding ten miles square) as may 'by cession of particular States, and the accept-'ance of Congress, become the seat of Govern-'ment of the United States," &c. This was a Constitutional provision by which the power to exercise exclusive legislation, &c., might become vested in Congress upon certain events taking place. Let us now inquire what were these events? and we shall find by the terms of the provision, that, in order to vest this power completely in Congress, two things only were necessary; first, a cession by particular States of a district, (not exceeding ten miles square;) secondly, the acceptance of such district by Congress as the seat of the Government of the United States. These things have taken place. A cession has been made of a district not exceeding ten miles square, by Legislative acts of the States of Virginia and Maryland, (which need not now be recurred to, not being in dispute,) and the said district was accepted as the seat of the Government of the United States by an act of Congress passed in July, 1790, and the territory of Columbia located pursuant thereto. The moment, therefore, that these previous requisites were complied with, the power to exercise exclusive legislation over such territory became vested in Congress by a Constitutional provision, and they could exercise it at any time afterwards at pleasure. They have accordingly assumed, and for some years exercised, the power of exclusive legislation within the said territory. This power being once fully and completely vested in Congress, by virtue of a Constitutional provision, (not as an individual that could alienate or abridge such powers, but as a body politic that cannot by their acts bind up the hands of their successors, or abridge their powers,) it cannot be divested from them, while the seat of Government remains in such territory, by any authority inferior to that from which it was derived. They may omit to exercise it, and for the present relinquish the jurisdiction, but they cannot by any act prevent a future Congress from resuming it, if they should be disposed to do so. Nothing can effectually annul the authority of Congress to exercise exclusive legislation within this district, while the seat of Government remains therein, but an amendment to the Constitution, a revocation equally as strong as the grant that vested the power. He called upon gentlemen to show in what way a Constitutional power once vested in Congress could be transferred, or how the right to exercise it could be so discontinued as to prevent a future Congress from resuming it by a repeal of the law, if the present Congress should pass one on the subject. He himself did not conceive it proper, or consistent with the fundamental principles of legislation, to give his assent to an act, the effect of which would be an attempt to abridge the powers of a future Congress. He would now notice an argument used by a gentleman from Virginia last up on this subject, (Mr. DAWSON,) which he believed when fairly examined would be consistent with, and support the position he (Mr. C.) had taken. That gentleman stated, that by the Constitution Congress had power to constitute tribunals inferior to the Supreme Court, that they had exercised that power and established circuit courts, and that Congress by a subsequent law abolished those courts, repealing the law by which they had been established, and hence he infers that Congress may recede the territory as they may repeal the act by which the exclusive jurisdiction of the same was assumed. He supposed the gentleman would admit, that this or any future Congress could re-enact the Judiciary system that had been abolished, or constitute other tribunals inferior to the Supreme Court, if they deemed it expedient so to do. This would not be denied. So far, therefore, as this case applied, he conceived it proved beyond a reasonable doubt, that should the present Congress relinquish the exclusive jurisdiction of this district, any future Congress could resume it at pleasure so long as it remained the seat of Government of the United States. For, as repealing the Judiciary law, and abolishing the circuit courts, did not deprive Congress of the power to re-enact the same system, or establish other inferior tribunals, neither would, by a parity of reasoning, a recession of the territory, or a relinquishment of the exclusive jurisdiction, deprive a future Congress of the power of resuming the same. In what situation will you put the people of this district by a recession? If the position he had stated was correct, which he firmly believed to be the case, the States of Maryland and Virginia would refuse to receive them as citizens, knowing that a future Congress may wrest them away from their control whenever they shall be disposed to resume the exclusive jurisdiction over them. It is admitted the States are not bound to receive them, and this power to resume the jurisdiction, which would still remain

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in Congress, would be a substantial reason why they should not. The inhabitants would then be left without protectors or legislators, exposed to all the ruinous effects of anarchy and confusion. He considered it the duty of Congress to exercise exclusive legislation, either directly or indirectly, over the District of Columbia while it continued to be the seat of Government. Whether this was the most eligible place for a permanent seat of Government was a distinct question, on which he gave no opinion; at present he was not disposed to disturb it. But that Congress should have the power of exercising exclusive legislation over such district as might be made the seat of Government, was, in his opinion, proper, and a wise regulation, and much superior to leaving the protection of the National Government to the State authorities, and subjecting the Legislature of the Union to the inconveniences that might arise from the State regulations, or from the regulations that might be adopted by corporations not subject to the control of Congress.

An argument had been advanced by a gentleman from Virginia, (Mr. CLARK,) to prove that Congress had a right to recede, which, though it might appear ingenious, he conceived was not tenable, and could not be supported upon a fair investigation. It is insisted that the very article of the Constitution that vests in Congress the power of exercising exclusive legislation over such district as should become the seat of Government, does thereby, necessarily, vest in Congress the power to recede such territory; and the gentleman said, "we have the power to exercise exclusive legislation within such district in all cases whatsoever, we must therefore have the power to recede." This was a conclusion not warranted by, or deducible from the premises. For the power to exercise exclusive legislation within a certain district, precludes the power of transferring that right or power, or vesting the same in another. While the power remains in Congress a transfer of it is impossible, and the very act by which you would transfer this power (which would be the consequence of a recession, if it could be completely effected) would destroy its existence in Congress. That is, a power would be vested in Congress, by a Constitutional provision, which would be exerted to destroy or extinguish itself, and in so doing vest the right of exercising their power in another, which he conceived next to an absurdity. In fact the two propositions, of the power to exercise exclusive legislation, being vested in Congress, by a Constitutional provision, and the right to destroy or transfer that power being vested by, or necessarily included in the same provision, are in direct opposition, the one to the other, and like negative and positive quantities in algebra would destroy each other. He called upon gentlemen to show how the doctrine contended for could be supported, according to any known system of reasoning. If they could prove that the power of exercising exclusive legislation necessarily embraced the right to destroy that power, or to deprive themselves and their successors of it, they would discover a mode of reasoning with which he was not acquainted, and establish a kind of logical deduction, he believed, hitherto altogether unknown.

He would now consider the subject in the second point of view, which he proposed, to wit, whether if Congress possessed the power to recede the territory, there existed at present such a state of things as required the exercise of that power. He would ask was it good policy to recede at this time? Is there anything imperious that demands the measure at our hands? Would it not argue a restlessness and a disposition to change, to which mankind are in general so prone, but which he conceived ought to be checked and kept within proper bounds, that sufficient time at least might be given for fair and mature deliberation. Two reasons he had heard advanced and principally relied upon to prove the expediency of this measure—one, that the people of the District are in a state of slavery, and Congress their masters, and that having voluntarily relinquished their civil and political rights, and appearing willing to remain in this state of vassalage, they would be fit engines to enslave the rest of the Union. The other, that they are continually troubling the House and wasting our time, with their petitions and counter-petitions, their memorials and remonstrances. If the people of Columbia are now slaves, he would ask what was their condition when under the States to which they originally belonged before they were ceded to Congress? By an express provision in the act of Congress assuming the jurisdiction, the laws of the States of Virginia and Maryland, as they then existed, were declared to be continued in force in the said territory. The rights of the people were, therefore, secured to them, as far as was in the power of Congress, by this measure; and they enjoy, substantially, the same portion of civil liberty which they formerly possessed. He was also inclined to believe that some respect ought to be paid to the opinion which the people themselves form of their present condition; he could not suppose them so ignorant as not to know the difference between a state of slavery, in which they had been represented to be, and that of civil liberty; and yet we hear no complaints from them on this subject. He was, however, in principle, opposed to the doctrine of governing a people who did not enjoy the representative franchise; his political maxim on this subject was, that, in general, those who contribute to the support of Government ought to partake in the administration of it; but he conceived there might exist such a state of things as would render it more politic, and better for the people, to deviate in some degree from this maxim, than to risk the inconveniences that might arise from a too strict adherence thereto. He would promote any Constitutional measure that would give the inhabitants of Columbia the benefits of the representative principle. This he conceived might be substantially effected, by giving them a legislature, whose acts should be subject to the control of Congress. This would obviate in a great degree the objections that are made to the present condition of these people, on account of the trouble they

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gave Congress and the time that is spent in legislating for them—and would leave little room to charge Congress with keeping them in a state of slavery, in the bosom of a country enjoying the most perfect liberty of any upon earth. But the people of Columbia by being degraded are to become fit engines to enslave the rest of the nation. He was sorry such an alarm was sounded at this time, when, he presumed, there was little cause for it. Did gentlemen judge from the present state of those people, or did they look forward to a time when this place was to become a second Rome, prostituted and corrupted by luxury and vice, the grave of liberty, and the scourge of the rest of mankind? He trusted those days that produced such events were long since passed, and, in the present enlightened age, not likely to return. But whence, he asked, can proceed the danger from the inhabitants of Columbia? Are they more corrupt than the rest of the Union? Are they more ignorant, or less alive to their rights and liberties? He had no reason to believe that this was the case. Is there any reason to suppose they will become enslaved under the government of Congress? Will those to whom are confided the rights and liberties of the whole Union, sacrifice the people of Columbia, by degrading them to a state of vassalage? Will not the members of the National Legislature bring with them the feelings of the people in the different parts of the Union from which they come? He presumed they would, and legislate for this district, in the same manner, as far as circumstances would permit, that they would for their constituents. If therefore the people at large enjoyed liberty and equal rights, so would the inhabitants of Columbia; they had their rights and liberty guarantied to them by the Representatives of the whole nation.

Mr. C. concluded by observing that the framers of the Constitution, and the State conventions that adopted it, who spoke the sentiments of the great body of the people of the Union, must have intended that there should be established a permanent seat for the National Government; and being convinced of this, from such high authorities, he would, by no act of his, countenance a measure, that would be likely to shake the confidence of the people in the public faith, give the appearance of instability to our national act, and finally tend to loosen the bonds by which the seat of Government was bound to this district. Believing the proposed resolution calculated to produce such effects, he had determined to vote against it, and he trusted that a large and decided majority of the House would coincide with him in opinion, and by rejecting the measure quiet the alarms it had occasioned, and evince to the public that some reliance, at least, may be placed in the stability of Government.

Mr. RHEA (of Tennessee.)—Having attended with pleasure to the discussion of the question now under consideration, I had designed as on every question heretofore, so also on this, to have given a silent vote, but I have felt myself constrained to state the reasons which govern this vote.

As this discussion may lead me to examine certain principles, I will take this opportunity to express my veneration for the superior wisdom which dictated them.

At the time the Constitution of the United States became obligatory on the particular States they were bounded by ascertained limits; the sovereignty, jurisdiction, and right of each particular State, within its territorial limits, were secured, and the rights, privileges, immunities and franchises of the citizens were safe under the respective State constitutions.

The constitution of Virginia, after stating a relinquishment of claim to the territories contained within the charters erecting Pennsylvania, Maryland, North Carolina and South Carolina, proceeds to declare that, "the western and northern limits of Virginia shall in all other respects stand as fixed by the charter of King James the First, in the year one thousand six hundred and nine; and by the public treaty of peace between the Courts of Britain and France, in the year 1763; unless by act of this Legislature one or more governments be established westward of the Alleghany mountains."

The words used in this clause of the constitution of Virginia are, "shall stand as fixed," to evince that the limits of that State were unalterable, except as in the same clause is provided.

The constitution of Virginia, also declares expressly that "the right of suffrage shall remain as exercised at present;" the word "shall" is here again used, to evince that the right of suffrage was secured to every citizen, as an inalienable right, a right which, by the force of the terms, could not be surrendered.

The third article of the declaration of rights and constitution of the State of Maryland declares that "the inhabitants of Maryland are entitled to all property derived to them from or under the charter granted by His Majesty Charles the First, to Cecilius Calvert, Baron of Baltimore." And the fifth article secures the right of suffrage to the citizens.

It would appear, by these express, unqualified declarations in the constitutions of the States of Virginia and Maryland, that the territorial limits of those States were made fixed and unalterable, except as to the making one or more governments westward of the Alleghany mountains, provided for in that of Virginia; and it does not appear, that any power is delegated in either of the same constitutions, to alter or change the territorial limits of either State, (excepting that, by the constitution of Virginia, one or more governments might be established westward of the Alleghany mountains,) or to cede any part of the territory of either to any other Power. There does not appear in either of the same constitutions, any expression of the public will, delegating power to cede away any of the citizens of either State or, by a cession, to place them in a condition deprived of the rights of suffrage.

But it may be objected that the cessions of territory and citizen inhabitants which are stated to be made, were made after the ceding States had

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adopted the Constitution of the United States, and that the Constitution being the supreme law of the land, anything in the constitution of any State to the contrary notwithstanding, therefore the clauses and articles in the constitutions of the States of Virginia and Maryland, before alluded to, so far as they would have reference to a portion of territory and citizen inhabitants to be ceded, were made null and void.

It is acknowledged that this objection may appear to have some claim to examination; but, if examined, it will appear to have no force.

It will be observed that there is no clause, section, or article in the Constitution of the United States imperiously commanding any particular State in this Union to cede territory to the United States for any purpose. An imperious command to cede territory could not be made. The second article of the Confederation and perpetual Union of the United States declares that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled."

This article operates as a guarantee by the United States to every particular State; and the second clause of the third section of the fourth article of the Constitution of the United States declares that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State." Hence it may be inferred that this objection is without force.

This objection will appear more untenable by an examination of the seventeenth clause of the eighth section of the first article of the Constitution, (the clause on which the claim "to exercise exclusive jurisdiction in all cases whatsoever," &c., in the District of Columbia is bottomed,) the words used in this clause are not imperious—they do not command any particular State or States to cede territory to the United States; neither do they impose an imperious necessity to accept such cession from any particular State.

This clause indirectly presents a proposition to the particular States; the words used are, "over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States;" by this mode of expression, it is evident that it was understood that every particular State had the right, under its own particular constitution, to reject this proposition.

Hence it may be concluded that the articles and clauses in the constitutions of the States of Virginia and Maryland, before alluded to, are not impaired by the Constitution of the United States.

In the fourth section of the fourth article of the Constitution, it is expressly declared that "the United States shall guarantee to every State in this Union a republican form of government." This is a strong expression; when it is recollected by whom it is made, it will appear stronger. It is the voice of the sovereign people of this Union, before whose presence, at whose command, every fabric that they have not ordained to be erected must fall and moulder into ruin.

The words of the Constitution are, "WE," emphatically. "WE, the people of the United States, shall guarantee to every State in this Union a republican form of government." No book of political institute, ancient or modern, can produce an expression of the public will equal to this.

By the word "State," in this section, is not intended or signified mere soil or territory. No: by it is intended and signified a citizen-people, inhabiting a territory bounded by limits ascertained in their constitution. To these citizen-people comprising every State in this Union, we the people of the United States have guarantied a republican from of government.

At the time the Constitution of the United States became the supreme law of the land, the people inhabiting what is now the District of Columbia are presumed to have been, some of them citizens of the State of Virginia, the residue citizens of the State of Maryland, therefore, were respectively component part of those States, and were embraced by the emphatical word "WE," which stands first in the preamble of the Constitution. They, therefore, being component parts of the States of Virginia and Maryland, guarantied to all the people composing every State in this Union a republican form of government; and all the people composing every State in this Union guarantied a republican form of government to them. This guarantee was and is mutual and reciprocal. No citizen was excepted or excluded, and it cannot be made to appear that any citizen is or can be excepted or excluded from the operation of this principle declared in this fourth section of the fourth article of our Constitution.

This principle is capable of further illustration, evincing its power in aid of the State constitutions.

The citizens composing every State in this Union who have made and ordained a constitution, have, by that constitution, mutually guarantied to each other a republican form of government. At this point, the Constitution of the United States and the constitution of each particular State meet and continue to protect every citizen of every State in this Union in the possession and exercise of his liberties, privileges, and franchises, under a republican form of government.

If, then, these things be so, no good reason can be urged why any section of citizens shall be retained and confined under the dominion of a principle hostile to the grand principles which form the basis of the American Republic. As has already been observed, there does not appear to have been any imperious necessity compelling any particular State to cede territory and the citizen-inhabitants. There does not appear to have been any imperious necessity compelling the acceptance of any such cession; but it is understood that the States of Virginia and Maryland have made cessions of territory composing the District of Co-

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lumbia and the citizen-inhabitants thereof to the United States, and they have been accepted, and by that acceptance many thousands of citizens have been deprived of rights and privileges, the possession and exercise of which, under a republican form of government, were solemnly guarantied to them.

If there has been a splendid departure from principle to obtain an object not yet known, more than is the benefit from the cession resulting to the United States, to any particular State, or to any citizen in this Union, it may be most advisable to return, and to remove any impediment that may prevent the free operation of a republican form of government.

With this view of the subject, I shall vote in favor of the resolutions, impressed with an assured, solemn belief that it is my duty so to do. What remains is, to offer my grateful acknowledgments for the attention with which I have been honored.

Mr. LEWIS.—Mr. Chairman: Hitherto I, having been silent upon the question under consideration, have been too much indisposed to do justice either to myself or the importance of the subject. After the very lengthy and able investigation of the resolution upon your table, it is with great unwillingness that I intrude upon the Committee at this late hour, when their patience must be exhausted, and when it is not probable that much new light can be thrown upon the subject. But upon a question so very interesting, and in its consequences so important, I am desirous of assigning some of the reasons which have determined me to give to these resolutions my decided negative. I am opposed to the resolutions for a retrocession of the District of Columbia, or any part of it, for two reasons: first, because, in my opinion, Congress do not possess the Constitutional power to pass them; and, secondly, because (even admitting they possessed the power) it would be inexpedient. I consider that, if the retrocession should take place, that a removal of the seat of Government would certainly follow, and the fundamental principles of the Government would be shaken to the centre. Such a measure I will never consent to sanction, and while I have the honor of a seat in this House, my voice shall be raised against it. I will never vote for a measure that shall in the most distant manner have a tendency to impair the principles upon which this District is based. Before Congress can retrocede the District, or any part thereof, not only the States of Virginia and Maryland, but the people of the District, must give their consent. The latter certainly had a right to the benefits of the Constitution, and cannot be transferred, without their consent, to any State whatever. But the gentleman from Georgia (Mr. EARLY) has said that the people of the Territory of Columbia had not been consulted when they were ceded to Congress, and that therefore their consent was not necessary on this occasion. Is this correct, sir? No; it is not a fact that they had no voice in the cession. They were represented in the Convention which ratified it, and they were represented in the State Legislatures who gave their assent to the cession. Their assent was necessary—it was obtained. The territory was ceded for those purposes expressed in the Constitution, and for those purposes only did the people consent to relinquish their sovereign rights. What were those purposes? That the ceded territory should be the permanent seat of the Government of the United States, and that Congress should exercise exclusive legislation over it. These were the express terms upon which the cession was made and accepted by Congress, and will it now be said that we can transfer or barter away these people like cattle? No, sir; they still have rights which they cannot be deprived of, without a shameful violation of justice and public faith. How have these resolutions been introduced? Has the State of Virginia or the State of Maryland expressed a desire that a retrocession should take place? I believe not. Have the people of the District who are to be affected by it petitioned in its favor? No; but the reverse is the fact. Resolutions have been received from the town and county of Alexandria denying the right of Congress to transfer them without their consent; petitions have been received from Georgetown and the City of Washton against it, and not one person in the District has come forward and complained of not being restored to his "long lost liberty." And I would ask whether the wishes of the people ought not to be regarded; and whether Congress will retrocede them in defiance of their will? I trust not. If Congress possess the power to transfer them to the States of Virginia and Maryland, they can transfer them to any other State in the Union, or (as the gentleman from Maryland, Mr. DENNIS, has said) to the Emperor of Hayti. I trust that no gentleman of the Committee would be willing to do the latter. But gentlemen have said that the people of the District were troublesome to Congress. I never expected, sir, to have heard such a declaration upon this floor. The people have a right, by the Constitution, to petition for a redress of their grievances, and Congress is bound to listen to them; for, although deprived of an immediate representation, yet they are still the people of the United States, and, as such, are entitled to all the privileges of the Constitution, except that of being represented. If because the people are troublesome we are to transfer the District, the same reason might be assigned in favor of ceding any State to a foreign Power. But why, let me ask, sir, do not gentlemen propose a retrocession of Louisiana? Surely that province has been more troublesome than the District of Columbia, and the prospect is that it will be twenty times more so. But it is urged, as an argument in favor of the retrocession, that the District is small. And are we, Mr. Chairman, arrived at that period when justice shall be measured and limited by miles and bounds? If this be the case, then the little State of Delaware will, when compared with the State of Virginia, only be entitled to a proportion of justice as one is to twenty-two. This, I hope, is not the case yet.

The expense of legislating for the District has also been urged; but, in my opinion, it is neither

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troublesome nor expensive. If Congress have devoted some time to the affairs of the District, it must be recollected that they have devoted more to a number of individual cases. Will gentlemen look at the case of Amy Darden's horse, about which more time has been spent than about all the business of the District. I lament that the claim of this poor woman (which I have always considered just) should still be a subject of legislation and remain unpaid; but it has never been contended that the expense of legislating should prevent persons from having justice. Gentlemen have deplored the degraded situation of the people of this District. I acknowledge, sir, they are in a degraded situation; not because Congress exercised exclusive legislation over them, but because they contended for the right to transfer them without their consent, like so many cattle, (or slaves and nonentities, as they have been termed by gentlemen.) But how will the people in the county of Alexandria be restored to their "long lost liberty" by a retrocession to Virginia? Do not gentlemen know that in Virginia none but freeholders have the privilege of voting, and but a small proportion of the people would be restored to that inestimable right, and would be precisely in the situation in which they are at present in that respect?

After the able arguments which have been adduced against the resolutions, I will not detain the Committee with any further observations, but will content myself with giving to them my decided negative, and hope a majority of the Committee will not be found to sanction a measure fraught with such pernicious consequences.

THURSDAY, January 10.

The House proceeded to consider the amendment proposed by the Senate to the bill entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service:" Whereupon, the amendment, together with the bill, was committed to the Committee of Commerce and Manufactures.

Ordered, That the committee to whom was referred, on the fourth instant, a remonstrance and petition of the representatives elected by the freemen of the Territory of Louisiana be discharged from the consideration thereof; and that the said remonstrance and petition be referred to the committee appointed on the twelfth of November last, on "so much of the Message of the President of the United States, as relates to an amelioration of the form of government of the Territory of Louisiana;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

DISTRICT OF COLUMBIA.

The House again resolved itself into a Committee of the Whole on a motion of the twenty-ninth of November last, "to recede to the States of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia, as are without the limits of the City of Washington."

Mr. WILLIAMS, of North Carolina: Mr. Chairman, the length of time which has already been occupied in discussing the resolutions now under consideration, would have prevented me from saying anything at this late hour, but from some expressions which gentlemen have made use of by saying, that those who were opposed to the resolutions had in a measure given up the Constitutional objection, therefore they could see no solid reason why they ought not to be adopted. But I did not understand that objection was abandoned, and for my own part I consider that if the resolutions do pass they are contrary to the true meaning of the Constitution. Under these considerations I hope I shall be indulged whilst I offer to the Committee some remarks, and state my ideas on that clause of the Constitution which has so often been read and commented on.

The first article and eighth section of the Constitution, declaring the powers of Congress, in the last clause, says that Congress shall exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States. And we are now told by those who wish to recede this district, that, although the States of Virginia and Maryland have ceded to the Congress of the United States this district, and it has been accepted, that Congress can now recede whatever they think proper; this position I deny, and will endeavor to state what I think to be the true construction of that section of the Constitution. The powers which are delegated to Congress in the eighth section may be exercised or not, but the power still exists in Congress, and I take it that Congress cannot by an act of their own destroy the powers delegated to them by the Constitution; if they can it would be a useless instrument. But gentlemen have said that it would be very absurd if Congress could not repeal any law which they have passed; they certainly can, but does it follow from that, that the power ceases which was given by the Constitution? No, sir, it still remains discretionary in Congress to exercise whenever necessary. I shall therefore contend that the clause of the Constitution under which this district was formed depends on the same principle; that is, it cannot be receded and changed at the will and pleasure of Congress. I believe the convention by inserting that section intended there should be a permanent seat of Government, although they did not fix on the particular place where it should be, but left it in the power of Congress to carry that clause into operation. This has been done by a cession from the State of Virginia and Maryland, and accepted by Congress; that clause, therefore, being now made complete as any of the preceding clauses in that section, it is equally binding on us, as much so as if the district had been laid off by the convention.

But we are told that this district has been formed by an act of Congress, and of course they can dispose of it at pleasure. I admit it required Legislative aid for its completion; and all the

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powers which were contemplated under that clause being completely vested in Congress, they are bound by it as much as any other part of the Constitution. Will not, then, a recession of this district destroy the object intended by that section, because, without this district, Congress have no power to exercise exclusive legislation, and that clause will be a mere nullity? There is another reason why I think Congress have no power to recede this district. When the Constitution of the United States was adopted, it was well understood that such a district, not exceeding ten miles square, would be laid off for the seat of Government. I therefore think that Congress have no more power to recede or dispose of it than any one of the States which have been formed and admitted into the Union, by an act of Congress, agreeable to the fourth article and third section of the Constitution. If, then, this district stands upon the same principle as the new States, gentlemen will not contend that they can dispose of those States at pleasure, for having been admitted into the Confederation, they stand upon the same footing with respect to being transferred as any of the States, which were in existence at the adoption of the Constitution. If, therefore, Congress have no power to dispose of one of the States belonging to the Union, except in cases of extreme necessity, for the safety of the nation, they cannot this district, both being formed agreeably to the express provision in the Constitution. To prove this, they have referred to the fourth article and third section, which says, that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. But, Mr. Chairman, if gentlemen will strictly examine that clause of the Constitution they will see it does not apply to the question now before us, it only relates to the territory belonging to the United States; for the boundary was laid down before the adoption of the Federal Constitution, and it was well known there was a vast extensive territory which Congress would have to dispose of, which they are continually selling, and extending our territory, by extinguishing the Indian claims, and that is the true reason why we see that clause inserted in our Constitution.

Gentlemen have contended that the receding the jurisdiction of this District has no connexion with the removal of the seat of Government, and they have no such intention. I have no reason to doubt the declarations of gentlemen, but if the resolutions which they are in favor of should be adopted, it will have the same effect; because, if Congress can dispose of the District at pleasure, our seat of Government will be afloat; and although there may not be a majority of the members now in Congress who wish to remove the seat of Government, a few years hence there may be; and if the Constitution has no control over us, that clause is useless, and our seat of Government will be removed at the will and pleasure of Congress. We are further told that the jurisdiction of this District was not assumed until after Congress removed in the year 1801; but gentlemen certainly have not examined the laws by which Congress were invested with the jurisdiction of this District and I am confident they cannot show any act of Congress assuming the jurisdiction, except the act of Congress in 1790. It appears that after the States of Virginia and Maryland had made provision agreeably to the Constitution for the cession of the District, by an act of Congress passed in the year 1790, a district not exceeding ten miles, to be located as hereafter directed, shall be, and the same is hereby, accepted for the permanent seat of Government of the United States; and, sir, the moment Congress passed that law, their jurisdiction was complete. For, although they did not exercise the jurisdiction, the power was vested in them, and provision was made for the government and regulation of the District by enforcing the laws of Virginia and Maryland until Congress should otherwise provide.

The reasons which the friends of the resolutions have advanced why we ought to recede the jurisdiction, are, that these people in this District have no rights secured to them under the Constitution, and that it is too troublesome and expensive to legislate for them. Let us examine and see whether these are sufficient reasons for Congress to recede the District. Gentlemen have asserted that Congress are the absolute masters over these people, possessing powers more despotic than any of the monarchs of Europe, and in order to relieve them from their degraded situation, which is so repugnant to the principles of our free Government, they wish to restore them to their former state of liberty and independence. If gentlemen had examined the Constitution, they would not have made these assertions; for, to my mind, there cannot be a doubt but there are certain rights and privileges secured to the people in this District, under our Constitution, which Congress have no more power to violate than they have the rights which are secured to the several States.

In the first article and ninth section of the Constitution it is declared that the privilege of the writ of *habeas corpus* shall not be suspended unless the public safety may require it; no bill of attainder or *ex post facto* law shall be passed; and can gentlemen deny that those rights are extended to the people in this District? Certainly not; because the limitation of the powers of Congress is general, and not confined to any particular State or district in the Union. Further, in the articles in addition to and amendment of the Constitution, there are a number of rights secured to these people. Congress can make no law respecting the establishment of religion, or abridge the freedom of speech or of the press. In fact, these people are equally secure in their persons and property, by a fair and impartial trial by jury, under the Judiciary Establishment in this District. But great stress has been laid on the clause giving exclusive legislation to Congress; and I cannot for my part see, that because Congress have a right to exclusive legislation over a district, they can exceed the express limitation of their powers. I think not. And the mighty cry we have heard about the degraded situation of these people is merely ideal;

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they are secure under our Constitution, and perfectly content with their present situation. And I consider, that, because these people are troublesome, and it costs the United States something to legislate for them, is no reason for us to recede this District; for the same might apply to any other part of the Union. And if this District is such a monstrous evil which exists in our Government, and a nuisance, we ought to get rid of it in a different manner than is now proposed—by amending our Constitution; because it was formed under that instrument. And believing as I do, that our seat of Government is permanently fixed by our Constitution, and although these resolutions do not go immediately to the removal of the seat of Government, they settle the general principle whether the Constitution does bind us or not, I therefore hope they will be rejected.

Mr. STANTON.—Mr. Chairman, I ask the indulgence of the Committee, while I take a view of the resolution on your table, which contemplates a retrocession of all the federal district, except the City of Washington. The advocates for the resolution in vain attempt to prove the constitutionality and expediency of the measure. I shall waive any observations on the ground of constitutionality, and will endeavor to confine myself to the question merely of expediency. Mr. Chairman, I confess I do not perceive the utility of this resolution; but, on the contrary, plainly foresee the serious evils that will inevitably result from its adoption. An honorable gentleman from the State of New York made an attempt to show the propriety of the resolution on your table; he frankly told the Committee he was not only willing to make the recession of Alexandria and Georgetown, but the City of Washington also, and that he had no objection to the removal of the permanent seat of Government. I thank the gentleman for his candor. I have believed, from the moment the resolution was offered to the House, that it meant something more than merely the retrocession—that it was introduced as an opening wedge, for the removal of the seat of Government; although I am free to declare, that I verily believe the mover of the resolutions was actuated by pure motives, and does not wish a removal of the present seat of Government, yet it is very probable that other gentlemen are aiding the measure with that view. The gentleman from Virginia, who I now see in his seat, supported the resolutions with such ingenuity and talents, that he almost persuaded me to become a convert and sign his Koran; though he was unfortunate in having a bad cause, yet he managed it admirably, and merits much praise. The honorable gentleman from Georgia, who spoke early in this debate, took occasion to quote part of an excellent prayer, one of the best in the world. He said "Lead us not into temptation;" I beg leave to repeat the following part of this inimitable prayer, "But deliver us from the evil of adopting this resolution," which is pregnant with many evils. Mr. Chairman, as the subject and patience of the committee is already exhausted, I will not trouble them longer, but conclude by observing that the District of Columbia is a legitimate child of the Constitution; although a refractory and expensive one, yet it is, in my opinion, premature and unwise for a parent to neglect, or refuse to foster his legitimate offspring. At the same time I deplore as much as any gentleman on this floor, the unpleasant situation of the citizens of this district, with regard to their deprivation of the elective franchise. It is one of those evils that grows out of our Constitution, and we must yield to it, as it is a less evil than to make frequent innovations on the Constitution and laws of our country, which never fail to weaken the reins of Government. Mr. Chairman, these are the principal motives that will induce me to give my vote against the resolution.

Mr. STANFORD.—The gentleman behind me, from Rhode Island, does me honor, to be sure. He acquits me of any intention of a removal of the seat of Government. But says, however, he cannot help thinking a little about the beauties of Edenton—the beautiful spots about that town. Mr. S. was at a loss to understand well the application of the gentleman's inuendo. He did not know for his part anything about the beauties of Edenton. He had never been in that town in his life. The allusion, therefore, could have no reference to him. Having disavowed, early in the debate, the least intention of that kind, he thought it might have sufficed, but if it would do, he would again declare as the mover of the resolutions, that to remove the seat of Government would be one of the last votes he would give. As a pledge that such was not his intention he had consented that the city itself should be excepted from the intended cession, and not from any idea that its jurisdiction was necessary or could be retained to the General Government with advantage, for, indeed, he believed the contrary.

Being up, he said he would just observe in answer to the gentleman from Connecticut, (Mr. GODDARD,) who had expressed some surprise at the opinion that the people of this district held no rights but those of courtesy, and, to evince the contrary, had read the third amendment of the Constitution, intended to protect religion, the press, and the right of petition. He would acknowledge he had advanced such an opinion, and still believed he was right. Congress had the exclusive right of legislation over this district in all cases whatever, and consequently could, if they thought proper, pass an alien or sedition law to operate within the district. The eighth section of the first article gave Congress sole and exclusive power in so many words, and these formed an exception to the general system, a kind of political death-warrant to the people of this territory. The amendment read, therefore, can only apply generally to the people of the States, but not to any within these devoted bounds. The saving clauses of the Constitution were intended for others, not for them. They were in his opinion excluded from all the boasted privileges of citizens of the United States.

The gentleman from Pennsylvania, (Mr. LUCAS,) who had been esteemed for ingenuity on most

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occasions, certainly was not as happy as usual upon the present. He had dwelt much upon the preamble to the Constitution, to show that some rights still remained to the inhabitants of the district, and had read with some emphasis the beginning words, "We, the people." Now these words were certainly the most unhappily selected of any in all the Constitution. No person in the district can read those words with application to himself. They can never read only as the sad "memento" of what these people once were. "We, the people of the United States," are words implying the free agency and sovereign sway which they, the people of the United States, have reserved to themselves in their own Government. Their voice when heard must be obeyed, but what voice have the inhabitants of this district? What were they intended to have? None, in his opinion. And yet we hear much about their rights, a people disfranchised, entirely divested of all agency in their own affairs, have rights! Subjects at the will and pleasure of Congress; and yet rights to claim and assert! He believed they were without any, or the shadow of any. The different speakers upon that occasion had attempted to show rights of an implied or constructive kind; but, for his part, he thought the Constitution would not bear any such construction, at any rate none had been given satisfactory to him; nor indeed could he be persuaded that the framers of that otherwise happy instrument intended that they should have any.

He had nothing more to say than to express his consolation, that a much stronger vote was like to be given in favor of the resolutions on the present, than had been on the former occasion, and that it was his earnest hope and wish that the subject would not be suffered to sleep.

Mr. SMILIE advocated, and Messrs HUGER and CLAIBORNE opposed the resolutions; when the question was taken on agreeing to the first resolution, for receding that part of the District formerly attached to Virginia, and passed in the negative—yeas 42, nays 62.

The question was then taken on the second resolution, for receding that part of the District, excepting the City of Washington, formerly attached to Maryland, and passed in the negative—yeas 42, nays 65.

The Committee then rose, and reported their disagreement to the resolutions.

The House immediately took the report into consideration.

Mr. ALSTON said, he did not rise for the purpose of entering into a lengthy discussion of a subject, which has already occupied so much time; in his opinion much more time had been consumed, than the importance of the subject merited.

Although, in Committee of the whole House, there had appeared to be a considerable majority against the resolutions for receding the District of Columbia, to the States of Virginia and Maryland, yet he had a hope that the House would not concur in the report of the Committee of the Whole, on the first resolution, which only went to the recession of that part of the district which lay on the other side of the Potomac, to the State of Virginia. Most of the reasons which gentlemen had urged against the recession, had been bottomed upon an idea that this measure was only a stepping stone to the removal of the seat of Government from this place altogether.

Those objections could not have any weight, provided that part which formerly was a part of the State of Maryland was retained. He believed some gentlemen had voted against the resolution under an impression, that the friends to the recession had it in contemplation to remove the seat of Government. Mr. A. said, he would only answer for himself, that no such idea had entered his head; he had no desire ever to see it removed from this place, and was he now called upon to give a vote for a permanent seat of the Government of the United States, it would be for this place, in preference of any other; to remove it from this place would be one of the last votes he should think of giving.

He felt at this time indifferent as to the second resolution, which was, to recede to the State of Maryland that part of the district which was taken from that State; he hoped that gentlemen before they decided finally upon this question, would take into view the real situation of the people and the district. The district was composed of a people, who had been heretofore governed by laws passed by two different States; they were separated by the river Potomac; their manners, habits, intercourse, and trade, were very different; their separate interests and wants were as different as those of almost any two States in the Union; that no one uniform system of laws would satisfy them; that so long as they were under the immediate control and government of Congress, strife and discontent would be the inevitable consequence. A great deal had been said about the sentiments of the people of the district, and that they were very much opposed to being receded; whether this was a fact or not, he did not pretend to say, but he verily did believe, if the recession of that part of the district which lay on the other side of the river was made, and the people restored to Virginia, that in a very little time they would become much better satisfied, than they now were.

Mr. BEDINGER.—This question has been so fully discussed, that I have not the vanity to think that I shall be able to change the vote or opinion of a single member of this House. But as it is an important question, and as I believe attempts will be made, and have already been made to mislead the public mind, by pretending to explain the motives of those who are in favor of the resolutions, therefore, to prevent as far as I can a mischief of this kind, I am induced now to come forward briefly to declare my opinion. I deny having any intention to remove the seat of Government from this place, and my vote on former occasions will justify the assertion. I am unwilling to sacrifice the vast sums of money which have been expended here on the public buildings; I am also unwilling to sacrifice private property and national confidence, and all this without obtaining any advantage to the Union. I am, and have uni-

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formly been, a friend to this place as the seat of Government, and being so, I will do all I can to support the Constitutional rights of the citizens of the territory; and in voting for the resolution, I hope I am acting in conformity to the declared intention and spirit of the Constitution, which requires us "to secure the blessings of liberty to ourselves and our posterity."

Much has been said on the constitutionality of this question. The Constitution has on this question been examined with the utmost attention; but I believe not one single sentence has been found, which (without a forced construction) is in opposition to this resolution, but, on the contrary, I think the spirit as well as the letter of the Constitution grants this power. The third section of the fourth article reads thus, "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States;" and if we attempt to secure the blessing of liberty to ourselves and our posterity, I believe this resolution will afford us an opportunity; and although I am certain my vote will be recorded with the minority, I still feel a conscious satisfaction in the propriety of my vote. I will not refuse to the inhabitants of eighty-four square miles out of one hundred, the territory of Columbia, (computing the city at four miles square, or sixteen square miles,) I will not by my act deny them the right of suffrage or representation, so long as I think the spirit of the Constitution and the principles contained in the declaration of rights may be violated thereby. To the many objections which have already been made against continuing this territory in this degraded situation, I will add one more, which is, I think it is a bar to its population; and whether the granter or the refuser of equal rights, is its greatest friend, is a question (I think) not hard to determine by a republican; for my own part I would not wish to live in a territory, to raise a son in it, who should thereby imbibe the servile principles of slavery from his infancy, and I have no doubt but there are many who will on this account remove from it, or, being out, will be willing to stay there. When we consider this place as a permanent seat of Government for the United States, (for the happiest people in the world,) and this House the school of politics, to teach our youth the art of virtuous legislation, and where the true spirit of liberty ought to dwell, shall we here refuse to cherish the principles which made us an independent nation, and doom this place (of all others on the continent) the first to perpetual slavery? I hope not. Would such a condition help to form a more perfect union, establish justice, or insure domestic tranquillity? I think the contrary will be the result, and so far as the experiment has already been made, this truth cannot be doubted; this territory not being secured in any State rights by the pale of any constitution, in the case of a bad administration might become a bone of contention, the seat of usurpation, and an asylum for all those villains who might flee from justice, as they might here meet with protection; as the rights granted to States by the Constitution to demand from States criminals who flee from justice, does not apply to this territory; add to this the power of a disaffected party, and it will be difficult to calculate the extent of the evils which may arise from one, which at first view, to many may appear at present but small. For these and many other reasons, I am opposed to the report of the Committee of the Whole, and in favor of the resolution.

Mr. DENNIS.—The discussion of the principles involved in the resolution has taken a wide and extensive range in the Committee of the Whole, and the subject has generally been considered as exhausted. In the outset of that discussion, in a reply to the author of the resolution, I hastily suggested to the Committee what appeared to me the prominent points involved in the proposition; and without going much into illustration of my own propositions, contented myself with the expectation that they would be enforced by other gentlemen of more ability than myself. In this expectation, I have not been disappointed, and it was therefore that I have sat as a silent and attentive observer of the several speakers, who have done me the honor of noticing my remarks, and have heard some of them perverting arguments which were used and others ascribing to me such as were never expressed, without an intention to reply. But, I have perceived, that as the discussion in Committee embraced at the same time both resolutions, some gentlemen voted then under the idea of voting on the two resolutions together, and are inclined to vote differently in the House on the first resolution from their vote in Committee. I must therefore be pardoned, for reminding them, that every objection on the ground of constitutionality, expediency, and of violation of private right, applies as forcibly to a recession of part, as to the whole, and will claim the indulgence of the House whilst I make some remarks in reply to the observations of some of the speakers, in support of the resolution.

To attempt a reply to them all, and to recapitulate all the leading arguments against the resolutions, would not be admissible at this late hour of the day. I shall confine myself to replying to some prominent observations, and to the statement and illustration of such propositions as result from and go to refute them. In all discussions of this nature, those who hold with the weaker side of the question, choose to misconceive the strong points of their adversaries, or cautiously to avoid them. It is necessary, therefore, that I should distinctly state the primary objections to the resolution, on the Constitutional question; and when this is done, it will be seen, that after all the fine and metaphorical speeches of our opponents, few of them have touched at all the real point in controversy: that they have confounded together, the cession and acceptance of the district, or the object on which the exclusive legislation of Congress is to be exercised, with the power to exercise, at any given time, their exclusive legislation. And because they see that Congress may omit to exercise any given legislative power at any particular pe-

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riod, over a standing object of legislation. have very logically concluded that they may alienate that very object of the legislative power itself. Here let me tell these gentlemen, once for all, that I do not deny the power to repeal the act of assumption, but that this repeal does not, and cannot reannex the territory and its jurisdiction to the States to which it formerly belonged; and that the motion before us is not to repeal the act assuming and exercising the jurisdiction, but proposes to divest us of the territory itself, which is the subject of the exclusive legislation of Congress.

Believing that Congress were limited in the exercise of their powers by the Constitution, not only in relation to the number of the objects, but also in the extent of their power over any given subject, I have called on those who have heretofore expressed their enmity to constructive power, to show me the authority for divesting themselves and their successors of one of the standing objects of the legislative power. The gentleman from Virginia (Mr. EPPES,) first up in reply, contented himself in a great degree, with railing at the errors of the Convention—their folly and their wickedness, in inserting into the very heart of our political systems, that cancerous principle, which, unless speedily suppressed, must soon consume the very vitals of national liberty. Having exhausted the stores of his imagination on this subject, he at length thought it necessary to offer some reason and authority for the exercise of so strange a power. Admitting no express power is to be found, he enters into the wide field of construction, and tells us that it is incidental to sovereignty. That, by the definition of the best writers, legislative power and the sovereign power are convertible terms, and that it is one of the incidents of sovereignty to alienate territory. [Here Mr. EPPES rose to explain.] Mr. DENNIS, after hearing the explanation, said, he still understood the gentleman, if he was understood by him at all, as inferring the power from the supposed convertibility of sovereignty and legislative power.

I do not deny that in some countries, the sovereignty and legislative power are the same, and that it is an incident to alienate territory and jurisdiction. But ours is a limited legislative power, and the power which we possess is more restricted than even that of the States. For, as it relates to State authority, all power is delegated except what is prohibited; but the reverse of the proposition is true as relates to the General Government. I do not deny your right to sell territory, but your power to sell a legislative power, a right of exclusive legislation, vested by the Constitution, for a particular purpose, and not contemplated as an object of barter, and of sale, or donation, is what I do deny.

The two gentlemen from Pennsylvania, (Messrs. FINDLEY and SMILIE,) are next in order on the Constitutional question. The former gentleman, whose understanding, stored with the fruits of a long experience in legislative life, I have been taught every day more and more to appreciate, commenced his remarks, by telling us there was no question before us but that of expediency: that the constitutionality of the proposed transfer was a self-evident proposition. I confess sir, I should have been better satisfied, and should have thought it more conformable with the rules of that gentleman, to have undertaken to demonstrate a proposition which his friends, at least, thought required some argumentative support, than in assuming, as conceded, the very point in controversy. But, although he considered it an axiom, and too plain to be reasoned upon, in the outset of his remarks, yet we see him afterwards undertaking to illustrate this axiom, and to prove it accordingly, he tells us, like his colleague, that the power results from the power of *repeal*. But does he not perceive that by the very same arguments that he undertakes to prove that we possess all the power of our predecessors in repealing laws, that our successors will possess the same that we do; and that if we repeal the act of assumption, they may repeal the repealing act and revive the jurisdiction?

But it is considered by many, and it is reasoned from as a conceded point, that Congress may not only elect to exercise their legislative power or not, over the district when acquired, but there is nothing obligatory in the Constitution as to the obtaining of a federal district at all; that if they choose they may forever hold their sessions in a place within the territorial and jurisdictional limits of a State. This is a doctrine which I deny, and of which no proof has yet been afforded in the elaborate argumentation of the *friends* of the resolutions; unless it was intended that a federal district should be acquired in which the operations of the Federal Government were to be conducted free from the possibility of control by State authority, the whole paragraph is a *dead letter*; and although I have admitted that *when such* a district shall have been acquired, *you may exercise*, or not, the exclusive legislation *vested in Congress*, yet I do contend that *the Constitution is* imperative, so far as that such territory shall be acquired, and over which this exclusive legislation shall always potentially exist—in the same manner that a power to make a bankrupt law shall always exist, although you may exercise *it* or not, at discretion. Surely the non-exercise of a power does not annihilate it, for, if so, we have already annihilated several powers committed to our charge, and may annihilate the whole.

The next gentleman who has favored us with his remarks on the Constitutional question is a gentleman from Virginia, and whom to distinguish from the numerous speakers from that State, I will call the new member from Virginia, (Mr. CLARK.) This gentleman certainly gave us a very handsome and ingenious speech, and, like a man of analysis, at once saw and seized the question in controversy, laid down his premises and regularly drew his deductions. Aware of the extent that the principles advocated by his friends would carry them, and that all their doctrines were predicated on the principle that the power not expressly prohibited to Congress was granted, he admitted the correctness of the converse of the

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proposition, and declared he would not contend for the exercise of the power unless it were expressly delegated. Here he conceded more than was required; for, in my turn, I do admit that we may not only exercise the powers specifically delegated, but such as are clearly necessary to carry them into effect. He then proceeds to declare that the express power of making a retrocession is to be found in the words "exclusive legislation;" that exclusive legislation and omnipotent legislation are synonymous terms; and having the power of exclusive legislation over the District, we may do with it whatever in the plenitude of our own potency we may think proper.

I confess, sir, it would never have occurred to me that the most appropriate language in which to delegate a despotic legislative power, was that of exclusive legislation; nor have I ever annexed any other idea to the use of a term which seems to some gentlemen to contain such magical force; or thought that the exclusive legislation to be exercised by Congress meant anything more than a legislative power to be exercised, exclusive of State authority, under the limitations as in other cases. Truly, according to this gentleman's construction, it ought to have been denominated, excluding legislation, as it goes to vest in us the power of excluding from ourselves and our successors one of the permanent objects of the legislative power.

The plain and manifest meaning of the word is to be found in the nature of our Government, which is an *imperium in imperio*, which, as it relates to the action of its legislative power, differs from any other nation in the world. The Federal Government acts over the same territory and the same persons which are operated upon by the governments of the States, and they, in many cases, have a concurrent legislative authority. For example, a State may impose a tax on carriages at the same time that Congress have acted upon the same objects; and it is so in an infinite variety of cases. But in the district selected as the seat of Federal authority, it was thought proper that Congress should have the entire control; and this was to be effected by the power of legislating exclusively of State authority. I am sure the good sense of that gentleman, on a little reflection, will satisfy him of the correctness of this interpretation, and that he will admit the necessity of resorting to some other part of the Constitution to find the express delegation of the power in question, without which, he admits, it is not to be exercised.

That gentleman, however, seems to have been aware that he ought not to depend for the support of his doctrine on such equivocal authority as the term alluded to, and, therefore, resorted to the third section of the Constitution as another authority by which the power was expressly vested. It reads as follows: "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." What other meaning can be attached to this clause, but that of vesting in Congress the right of selling their vacant territory, that is, the right of soil therein? So far from contending for this right of legislating over their territory being considered by the Convention as vesting an omnipotent control over it, as is now contended, and so fully were they impressed with the limited nature of the powers vested in Congress by the Constitution, that they deemed it necessary to delegate to Congress an express power to sell their territory and other property. But it is not the property in the soil, or any other property that you are now about to alienate, but a legislative power—a right of jurisdiction; and if this clause vests in you this power, then you may alienate every other power, and transfer your whole legislative authority to some foreign State. This clause, therefore, proves too much, and the gentleman will discover that the power to alienate territory or other property is as inappropriate to the object of selling legislative authority, or of abridging Congressional jurisdiction over an object of their legislative power, as the term, exclusive legislation.

But, it were vain, sir, to examine into the different theories and authorities of my opponents on this subject. They all tell you the power exists. Some say it does not exist but by implication; others that it does exist by express delegation. Those who contend for it by construction, derive it from different sources; those who say it is plainly written in the Constitution, differ as to the clause and section where it is to be found; although they are all equally astonished that no one else can discover it. Some find it expressly given in one place, and some in two. In this manner they prove, themselves, that it no where exists. That it is not expressly given is clear, or else all would see it in the same place—that it is not given by the construction is equally clear; for it will not be contended that it is necessary or incidental to the execution of any other delegated power, since we may carry into effect all powers without resorting to a retrocession of the district. Indeed, sir, it is a strange sort of constructive power, which vests in Congress the right to alienate a part of its legislative authority, to put itself under the entire control of another jurisdiction, which may prevent us from going on with the national business, altogether, and executing our other powers, and to assign as a reason for it, that it is an incidental power, or a power necessary to carry into effect other powers.

Mr. Speaker, the time was, when the assertion of this doctrine of constructive power, was regarded as a usurpation in Congress, which, unless speedily checked, would result in melting down the State sovereignties into one mass of national authority, and end in establishing a limited, if not an absolute monarchy. The time was, when the exercise of a power which appeared by fair and necessary construction to be necessary to carry into effect the powers vested in Congress, was regarded by the then jealous guardians of State and popular rights, as the acts of tyranny and

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oppression. I allude to the case of the alien and sedition laws. Here the exercise of a constructive power excited the jealous apprehensions of our philosophical politicians, and Congress were equally assailed by the pop-guns of newspaper paragraphists and political pamphleteers, and by the heavy artillery of legislative assemblies. The advocates of these measures admitted there was no express authority given for the exercise of these powers. But, with reference to the alien law, they said, that Congress were invested with the power of the national defence; and if they had no power to expel from their shores the citizens or subjects of a hostile nation, who might from time to time be landed on our territory under the pretext of seeking an asylum in the nation, but intending in this way to insinuate them into the very heart of our country, to be in readiness to join an invading army, it were vain to undertake the execution of the important trust committed to their charge. They therefore claimed, at a dangerous crisis, the right to exercise that power, as incidental and necessary to carry into effect their specified powers. The same power was inferred in the same manner in the passage of the other law, since without the power of suppressing sedition, and the means necessarily leading to it, the Government itself must be subverted. Can any person say there was not better ground for the authority in those cases, if constructive power is at all to be indulged, than in the present instance? And how will the former jealous opponents of constructive power, contend for a doctrine which breaks down all the barriers of the Constitution interposed between the rights of the people and the States on the one hand, and Congressional omnipotence on the other? A principle which establishes the doctrine that the powers not expressly prohibited to Congress, or expressly retained, are granted to them in absolute sovereignty!

But, sir, the paragraph of the Constitution, and the establishment of the District, which is a creature of it, have been distinguished by many and very odious appellations. By a gentleman from New Jersey, (Mr. Elmer,) it has been denominated an excrescence of the Constitution. This gentleman is a professional man, and, as the doctrine of excrescences is connected with his profession, ought to be better acquainted with the term than myself. But my idea of an excrescence is that of a fungus or other substance growing out of a previously existing body. It is presumed that this part of the Constitution is coeval and coexistent with every other part of the instrument. If therefore it become an excrescence because this gentleman chooses so to call it; another gentleman may call, and in the same way make, any other obnoxious passage of it an excrescence; and a third and a fourth may do the same, until the whole body of it will be composed of excrescences; and as these political doctors will conclude they have a right to cut away excrescences, the whole Constitution will be cut to pieces by the sharpened knives of our Legislative surgeons.

[Here Mr. Elmer rose to explain, and said he did not say it was an excrescence of the Constitution, but of the body politic.]

To which Mr. Dennis replied, it did not alter the case, as in the same way he might make the Constitution an excrescence of the body politic.

Other gentlemen have christened the District with various names, and assigned to its political state the appellation of a *monster*; and this monster has at different times, and in the imagination of the different speakers, assumed multifarious qualities and various forms. It has never yet been seen, nor has it yet devoured a single citizen of the District; but it is supposed to be a hydra, which, with its hundred mouths, will soon commence its destructive career, (though these prophets cannot foretell the precise period when it will begin,) and will first eat up all the men, women, and children, in certain parts of the territory, and then overleap its barriers and devour the nation. But it is a little singular, and a phenomenon not yet to be explained by our naturalists, that this monster lurks only on the Virginia side of the Potomac, and in that part of the territory, within the former limits of Maryland, lying to the north of Rock creek; and that whilst it occasionally crosses and recrosses the river, it should never attempt to come within the magical circle with which our philosophers have environed the City of Washington! And, sir, it is a little wonderful, that amidst all the sympathies of these gentlemen for the good people of Columbia, they have never glanced their benevolent eyes towards the dangers of the city! It now remains for me, sir, to make a few remarks relative to the degraded state in which the imaginations of our political metaphysicians have placed the people of this District.

And first of all let me ask, if they be in that abject and deplorable state of slavery which is supposed to exist, who have been the foolish or wicked agents that have put them *there*? I presume they have been placed in *their present* situation by the General Convention, the Legislatures of Maryland and Virginia, and the act of Congress accepting the cession. Of course, the members of these bodies, respectively, must have been either so foolish as not to perceive the effect of their measures, or a very cruel, hardhearted set of men, who, from the mere love of sporting with the rights of their fellow-men, have doomed them to civil and political despotism. There seems to be no alternative between their folly and their wickedness. However, Mr. Speaker, it may be that these bodies, and particularly the General Convention, who were the primary agents in this business, and who have been generally considered by foolish people as equally wise, virtuous, and patriotic, were both fools and despots. As the whole American people and the world have been mistaken upon this point, it is equally probable that the people of the District, their wise men, their professional men, and their judges, who have generally thought that the several provisions of the Constitution restricting the exercise of a despotic power, whether by the Legislative, Executive, or Judiciary departments, applied to this District and other territories, as well as to

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the people of the States, have all been under a gross mistake; that, though they are in the daily habit of experiencing all the practical benefits of civil and political right, except of actual representation, they are mere slaves. But there is no doubt these mists of error are now dissipated, and that they, and all the world, will now be convinced of their mistakes by the omnipotent logic of the illuminated and illuminating supporters of the resolution.

It has been again and again shown, that all the restrictions on the powers of the several departments, both in the body of the Constitution and the amendments thereto, are equally applicable to the people here as to any other people in the Union. At this late hour I will refer you to the fifth amendment only. It is therein declared, "that no person shall be held to answer for a capital or otherwise infamous crime, unless by a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia," &c., "nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he in any criminal case be compelled to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Does this clause apply to the people here, or does it not? If it does not, I cannot see why it does not, and the supporters of the resolution have forgotten to demonstrate that it does not so apply, though no doubt they can easily do so.

Can a people thus guarded be justly obnoxious to the odious appellation of political slaves; and is there any evidence they are so, but the reveries of our sympathetic philosophers? No, sir, the people who feel themselves safe and secure in their rights, and independent in their political opinions, smile at these political quackeries, and know they are to all substantial purposes as well situated as the constituents of those who speak so much about the abstract rights of man. It is true they have no actual representation, but if on that account they are slaves, what will many of them be if restored to Virginia; and what are those citizens of Virginia who, possessing no freehold, are deprived of the right of suffrage? I mention not Virginia here for the purpose of obloquy, but because her right of suffrage is more limited than any other State; because she has been already mentioned by a gentleman of that State, (Mr. JACKSON,) and because, if it be true, that every man who is deprived of a right to participate in the choice of representatives be a political slave, then Virginia will have more of this class of men than any State in the Union. Though the consequence is inevitable, I know the fact will not be admitted by some of the advocates of the resolution. This will prove, sir, that this doctrine of representation and taxation is not susceptible of regulation by the precise rules of arithmetical proportion, and admits of deviations perfectly consistent with the substantial freedom and happiness of a people.

Again, sir, I have been charged with advocating doctrines anti-republican and anti-revolutionary, tending to despotism, and incompatible with the rights of man. Those who make these assertions would have been prudent to have consulted the Declaration of Independence, and re-examined the principles in which originated the Revolution, in order to see how far those principles may be found to comport with or contravene the principles of the resolutions before us; and whether the support of the principles of the resolutions be the best evidence that they are entitled to be regarded as the exclusive champions of those great and essential principles of liberty whereon have been raised the independence and glory of our country. Not having done so, let me do it for them.

One principle of the Revolution was, that of resistance to Parliamentary supremacy, and a claim to apply to us a system of measures and of government contrary to that we had chosen for ourselves, and a right to dispense with certain great and fundamental principles which seemed to belong as well to the colonists as the mother country.

Here the omnipotency of Congress over these people has become a familiar phrase, and claims are set up which seem to regard the people of the territory as the absolute slaves of Congress, who, like the bondmen of ancient Europe, are to be transferred from one master to another as so many appurtenances to the freehold.

Another principle of the Revolution was, that the people have a right to choose their own governors; but these people have chosen Congress for their governors, and these champions of the Revolution say the people here are incapable of judging of their own interest, are unworthy to be consulted, and must be transferred to Maryland and Virginia. It was another grievance complained of by the authors of the Revolution, that the mother country attempted to impair the rights secured by charters and legislative promises at the time of the emigration of our ancestors, and which constituted the leading motives for that emigration.

Here you are about to violate the most solemn engagements, in confidence of which the people of the District have given up whatever rights they may have formerly possessed, which have induced many of them to emigrate from Europe and elsewhere, and here to vest the whole of their pecuniary resources, and to look to Congress for the exercise of that exclusive jurisdiction which they have preferred to the government of the States, to whom the territory formerly belonged, and this, too, in the very teeth of their remonstrances. I might sum up the whole catalogue of grievances which were the foundation of the Revolution, and show that there was not a single violation of our civil or political rights in that instance, which you are not about to sanction in the passage of these resolutions.

I know, sir, some gentlemen have told us that we have no evidence that the people assented to the exercise of Congressional authority, and were

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not consulted in the original transfer. To this remark it would be a sufficient answer, that in the formation of the Federal Constitution, every individual of the United States consented, that if the particular foot of land on which he resided should be included within the ten miles square, he would submit himself to the exclusive legislation of Congress. But although this is the way in which the sense of a people is usually ascertained, to wit: by the sense of representatives, we need not the aid of such support in the present instance. If these skeptics will look over the files of Congress, they will find petitions signed by almost every person living within the three counties of which this District was originally composed, who was capable of signing a petition, counting that jurisdiction as one of the greatest blessings you could extend to them, with which they are still satisfied, and of which it is now proposed to deprive them.

And why are they to be deprived of the right of choosing for themselves? Because they formerly belonged to Maryland and Virginia, and because by restoring them to their former situation they must be so much more eligibly situated, that they and everybody who resists it must be fools, or regardless of all the rights and blessings of a Republican Government. A gentleman from Virginia (Mr. CLARK) has used a very strong comparison between the government of Congress, and of the States of Maryland and Virginia. According to that gentleman, by restoring the people on the west side of the Potomac who are the objects of the first resolution to the State of Virginia, they are to experience the kind and indulgent protection of a parent, instead of the cold indifference and petulance of Congress—an ill-natured stepdame. Perhaps, sir, this idea might be enlarged upon, and in the estimation of that and other gentlemen we might greatly enhance the happiness of the whole American people by releasing them from the jurisdiction of this peevish, crusty, cold-hearted, ill-natured stepdame, and putting them under the kind, maternal, and fostering patronage of this tender and affectionate parent.

Another gentleman from Virginia (Mr. EPPES) has talked much about the blessings of self-government, and other gentlemen have spoken much of the necessity of destroying that monster, which they call taxation without representation. In the first place it may be answered that the people here are not taxed for local purposes, except in their several corporations where they are represented. But if the people must be restored to self-government, as one of the greatest blessings man can enjoy, let them be blessed with self-government in reality, and not merely in name. If this horrific monster must be slain, let the people of Columbia be gratified in destroying him with their own hands, and in their own way. Let him be stifled by a territorial government. Let the people of the District have the entire management of their concerns, and let them enjoy the benefits of a representation and of a government in which their voice will be heard, their will obeyed, and their interest promoted; where they will have the substance, not merely the apparent and nominal blessings of the representative principle.

All those who think we may not only cede the legislative power over the territory to be exercised by the States of Maryland and Virginia, but who also think we may transfer forever the very object itself on which the legislative power is to act, must admit the right to delegate the power to a subordinate authority within the District. I believe myself we cannot transfer the District itself and reannex it to Maryland and Virginia, but that we may consent that an inferior legislative power may regulate the internal concerns of the District, but over which we shall always have the power of revision and control, and of which we cannot divest ourselves or our successors. This power has been already practically recognised in delegating to the several corporations within the District, a legislative power to a certain extent, and which is also recognised by the States in the establishment of their respective corporations. Instead of depriving the people here of the blessings of self-government, as some have conjectured, I have always been of opinion, and still retain my first impressions on the subject, that a Territorial Legislature ought to be extended to the people of the District, reserving to Congress the exclusive right of legislating on certain matters connected with the public property, and their own convenience. And always having the power of repealing or annulling any improper act, we shall retain in our hands all the benefits and advantages of exclusive legislation, whilst we avoid the trouble of regulating the local concerns of the District.

I will now conclude my remarks, after having imposed too long, I fear, on the kind indulgence of the House, by observing, that if the sentiment of the poet be correct that "partial ill is universal good," notwithstanding my abhorrence of the resolutions on account of their injurious effects on the people of the District, I am in some degree reconciled to the proposition on account of the information which has been imparted by the supporters of the resolutions in their various theories and commentaries on the abstract and imprescriptible rights of man, tending so much to the edification of the American people and the advancement of Republican Government.

Mr. HOLLAND.—Mr. Speaker: I rise, sir, to exonerate myself from the charges so liberally cast upon me and upon the friends of the resolutions by the gentleman from Maryland, (Mr. DENNIS.) That gentleman is not contented to find himself in a majority, but he has indulged himself in reprobating the motives of the minority; he has charged them not only with an attempt to violate the Constitution, but also of having a design in a tyrannical manner to take away the sacred rights of all the people of the United States, as well as the rights of the people of this territory; but the gentleman has failed to demonstrate these charges by showing in what manner the Constitution would be violated or the rights of the people im-

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aired. Notwithstanding the severity of his stric-
ıres he has not specified any rights that could in
ıe least be affected, except the value of a small
ortion of private property that might undergo a
emporary depreciation, from an apprehension that
ıe measure was a prelude or stepping stone, as it
as been called, to the removal of the Govern-
ıent from this city. But, sir, apprehension of
ıis kind on the enhancement or depreciation of a
mall portion of private property is of little con-
ideration when it comes in collision with the
ublic convenience—it being a political axiom
hat private emolument or expectations of pecu-
ıiary interest must give place to public good;
nd I also admit that all the argument in favor
f a partial cession would apply with equal force
o a cession of the whole, and was it not for the
pprehensions that a cession of the whole would
xcite, I should prefer it; and so soon as the peo-
ıle are convinced that a removal is not the ob-
ect, I should cheerfully cede the whole territory.
For the present it will be sufficient to cede all
vithout the city. But I am of an opinion that
he measure will have but little effect upon the
rivate property of this place; so soon as it is
nown that a removal is not intended, all private
roperty will regain its intrinsic worth. But, I
vould ask, what bearing can the making munici-
al regulations for the people within the ten
niles square have upon the removal of the Gov-
ernment from this place? To my mind the con-
inuance here will be prolonged by the measure
proposed. So long as you continue to legislate
for these people you will be placed in a disagree-
able situation; to legislate for a people whose in-
terests and localities you are unacquainted with,
and to whom you are not responsible, is to me an
unpleasant task, and has a tendency to sour the
minds of the members; and as it will be attended
with considerable expense, and prolong your ses-
sions, it ultimately will produce a general disgust
unfavorable to this city. The measure proposed
is to relieve all future Congresses from a diffi-
culty—the continuance of which will increase the
evil, without any possible good under the sun.
Let it be remembered that the transfer of the ju-
risdiction does not transfer any of the valuable
and realised property that the Government has
secured at this place. It will continue to be the
property of the Union. It is not the power that
we have of making laws for this territory that
will be any inducement to the continuance of the
seat of Government here. Its permanency rests
upon other principles. This is a central position,
suited to the convenience of a large majority of
the people, and the Government having acquired
much valuable property and comfortable accom-
modations here is the cause of our sitting here.
But so soon as this is changed—when the period
arrives that it will be more for the interest and
convenience of a large majority of the good people
of the United States—they will remove, and they
ought to remove, to a place better suited to their
convenience. Nor do I consider that there is any-
thing in the Constitution that will prevent the re-
moval at any time when the general sentiment
shall dictate the measure, which, in my opinion,
will not be in a short period; not until the popu-
lation of the new acquired territories very much
changes the state of things. But has the gentle-
man demonstrated in what manner the rights of
the people of the United States are involved in
this question? He has said it, and has left us to
conjecture in what way a recession can affect their
rights. And for myself, I cannot conceive of what
consequence it is to the people of the Union whe-
ther the people of Columbia enact their own laws
or whether they are made in conjunction with
the States of Maryland and Virginia, or made by
the Congress of the United States; they can be
affected in no other way than in a pecuniary point
of view; and a recession would exempt them from
this. In every other respect the municipal regu-
lations of the people of this district to the people
of the United States is a thing of no considera-
tion. It might afford an agreeable sensation to
see them governed as freemen, enjoying the rights
of other citizens.

I am not a little surprised at an opinion given
by a gentleman from Pennsylvania (Mr. LUCAS.)
That gentleman seems to think that the people of
this territory at present enjoy as much freedom
as the citizens of Virginia, and was he to choose
his residence, he would make choice of this terri-
tory, as being the place of the most political free-
dom. I think if the gentleman would reflect, he
would find himself incorrect. When we consider
a people in their collective or national capacity,
individual, political disfranchisement is not to be
noticed—then, in a national point of view, what
is the comparison? Virginia has the sole power
to make and execute her own laws, either by the
citizens collectively or in their representative ca-
pacity. She forms every regulation necessary to
their State government, and she has long been in
the possession of a right, and has exercised it, of
being ably represented in both Houses of the
Congress of the United States. Let me ask the
gentleman from Pennsylvania if these are not
highly important political rights—rights peculiar
to a free government—such rights as are not en-
joyed by the people of Columbia? I admit, with
the gentleman, that these people have civil rights.
They are secured in their persons and property;
they can sue and be sued. So can aliens; but
these people, like them, have no political rights.
They may be said to be politically dead, and to
return them to the States from whence they were
taken, would restore them to the rights of citi-
zens; yet it is said to be an act of tyranny to re-
vest them with those rights that have been, and I
hope ever will be, considered as sacred to freemen.
The gentleman from Maryland has said that, by
the Constitution, Congress is commanded to ex-
ercise exclusive jurisdiction over this district, and
that this injunction is extended to all succeeding
Congresses; but, in reading the Constitution, I
am unable to discover any such command. By
the Constitution, Congress is invested with exclu-
sive legislative power over this District, and over
any other portions of territory that may be ceded
by any of the States for the purpose of arsenals,

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&c.; but this investment of power, like many other powers that are given by the Constitution, is not obliged to be exercised. The exercise of these powers must be a matter of sound discretion, and ought to be exercised only when the public good requires it. Does the gentleman see to what extent this doctrine goes? After Congress has exercised a jurisdiction, if they are unable to decline that jurisdiction, but must continue to exercise it over all the cessions that may be made by the States, the consequence will be that by a strange kind of inability in the General Government she will become a monster, and eventually swallow up all the State jurisdictions. The extent to which this principle goes demonstrates its absurdity. The Constitution has vested Congress with exclusive legislation over this territory; or in other words, with sovereign legislative jurisdiction; (exclusive and sovereign, as it applies to the powers of Congress relative to this territory, meaning the same thing,) it follows that Congress has sovereign legislative power over the people of this territory. This being the case, the power of Congress is unlimited; bound by no law but their own will. The will of the sovereign is the law of the sovereign. Congress, therefore, has nothing more to do on this occasion, than to consult its own will, and in doing this Congress should exercise a sound discretion; and if upon mature deliberation it shall be found inconvenient for them to continue the exercise of this power, they may say at what time, and in what manner, and to whom they will transfer it. There is nothing that has given importance to this question but the mere circumstance of this territory being the seat of Government. Divest it from this, and consider it in the abstract, and it will be found that the Constitution does not limit the transfer of their power over any other territory over which they have exercised a jurisdiction. Indeed, the gentleman from Maryland gave up the ground of contest. That gentleman admitted that Congress had a Constitutional right to give to the people of this District a territorial government. That is, that Congress could rightfully cede to the people of this district a part of their legislative powers. This being admitted, does it not then follow that they may cede the whole of their legislative powers to the people of this District? and if they can to the people of this District, cannot they also cede it to the people of this District as being connected with the States of Maryland and Virginia? This to my mind would be the most natural kind of cession. For what purpose would you cede to the people of this District the powers of a territorial government? Would such a government be consistent with the general interest, or give satisfaction to the people of the territory? So far as we have experienced the operation of territorial governments they have been unfavorable, and they have been obnoxious to the people. The people of those governments soon become hostile to their rulers, and press forward to obtain the rights of freemen. It is not in the nature of man to be contented with half freedom. If you give them a territorial government they will be discontented with it, and you cannot take from them the privilege you have given. You must progress. You cannot disfranchise them. The next step will be a request to be admitted as a member of the Union, and, if you pursue the practice relative to territories, you must, so soon as their numbers will authorize it, admit them into the Union. Is it proper or politic to foster an arrangement that will lead to this? Is it politic to add to the influence of the people of the seat of Government by giving a representation in this House and a representation in the Senate equal to the greatest State in the Union? In my conception it would be unjust and impolitic, and to avoid this and other evils, I shall vote against the report of the Committee of the Whole, and in favor of the original resolutions.

The question was then taken by yeas and nays on agreeing to that part of the report which involved a disagreement to the first resolution, and carried affirmatively—yeas 87, nays 46, as follows:

YEAS—Nathaniel Alexander, Simeon Baldwin, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dennis, William Dickson, Thomas Dwight, John B. Earle, James Elliot, William Eustis, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nahum Mitchell, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Thomas Plater, Samuel D. Purviance, Thomas Sammons, Thomas Sandford, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, jun., Isaac Anderson, John Archer, George Michael Bedinger, Phanuel Bishop, John Boyle, William Butler, Christopher Clark, Matthew Clay, John Dawson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, Edwin Gray, John A. Hanna, Josiah Hasbrouck, Joseph Heister, John Hoge, James Holland, Walter Jones, Simon Larned, Michael Leib, Andrew McCord, David Meriwether, Nicholas R. Moore, Jeremiah Morrow, James Mott, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, John Stewart, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, and Alexander Wilson.

Mr. SMILIE moved to amend the second resolution by striking out the words "without the limits of the City of Washington," so that the city as well as the other parts of the district might be receded.

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Only twenty-one members rising in favor of this motion, it was lost.

The question was then taken by yeas and nays on agreeing to the report of the committee, involving a disagreement to the second resolution, and carried affirmatively—yeas 69, nays 39, as follows.

YEAS—Nathaniel Alexander, Simon Baldwin, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Clagett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, John Davenport, John Dennis, William Dickson, John B. Earle, James Elliot, William Eustis, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nahum Mitchell, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jr., Thomas Plater, Samuel D. Purviance, Thomas Sammons, Thomas Sandford, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Isaac Anderson, John Archer, George Michael Bedinger, John Boyle, William Butler, Christopher Clark, Matthew Clay, John Dawson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, John A. Hanna, Josiah Hasbrouck, Jos. Heister, John Hoge, James Holland, Walter Jones, Simon Larned, Michael Leib, Andrew McCord, David Meriwether, Nicholas R. Moore, Jeremiah Morrow, Jas. Mott, Gideon Olin, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, James Sloan, John Smilie, Richard Stanford, John Stewart, Daniel C. Verplanck, John Whitehill, and Alexander Wilson.

So the said motion was rejected.

The question was then taken on agreeing to the whole report of the committee, and carried—yeas 50, nays 28.

FRIDAY, January 11.

Mr. LEIB, from the committee appointed, presented a bill to amend the charter of Georgetown; which was read twice, and committed to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Postmaster General, of the seventh instant, to whom was referred the memorial of Robert Henderson, of the State of South Carolina; and, after some time spent therein, the Committee rose and reported progress.

A message from the Senate informed the House that the Senate have passed a bill, entited "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels, and for other purposes;" to which they desire the concurrence of this House.

Mr. WINSTON, a member of this House for the State of North Carolina, informed the House of the death of his colleague, Colonel JAMES GILLESPIE, late one of the members of the said State in this House: Whereupon,

Resolved, That a committee be appointed to take order for superintending the funeral of JAMES GILLESPIE, late a Representative from North Carolina, and that this House will attend the same.

Ordered, That Mr. ALEXANDER, Mr. WINSTON, Mr. HOLLAND, Mr. WYNNS, Mr. DICKSON, and Mr. WINN, be appointed a committee pursuant to the said resolution.

Resolved, unanimously, That the members of this House will testify their respect for the memory of the said JAMES GILLESPIE, by wearing crape on the left arm for one month.

DRAWBACK OF DUTIES.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom was referred the memorial of Thomas Ketland, of the city of Philadelphia, merchant, made the following report:

The petitioner, with John Ketland and James Williamson, all of Philadelphia, in June, 1799, purchased the ship Washington, in London. It is stated that the ship arrived in the Delaware on the 4th of May, 1800, entered at the custom-house, in Philadelphia, on the 17th of said month, and cleared out for Batavia, on the 9th of July following, at which time she received a sea letter, and other regular documents.

The Washington is a foreign built ship, and, by existing laws, is not entitled to the benefit of an American register.

It appears that merchandise, on which the drawback was payable, was exported in the ship to Batavia, (the quantity not stated,) which, having been previously imported in the same ship, had been charged with the additional ten per cent. on the duties.

The collector retained this part of the drawback, under the direction of the act of the 13th of May, 1800, and which the petitioner is now solicitous should be refunded to him.

The Committee on Commerce and Manufactures reported on this case at the last session of Congress, but the petitioner being of opinion that the committee have misconstrued the material facts upon which their decision was founded, solicits a revision, for reasons mentioned in his petition.

On the 13th of May, 1800, Congress passed an act, in which it declared that no part of the additional duties, payable on goods imported in foreign ships, should be drawn back on exportation. And, on the 14th of April, 1802, another law was passed, declaring that the act above referred to should not be deemed to operate upon unregistered ships or vessels, owned by citizens of the United States at the time of passing the said act, in those cases where such ship or vessel, at that time, possessed a sea letter, or other regular document, issued from a custom-house of the United States, proving such ship or vessel to be American property.

At the last session, from the documents then exhibited, the committee concluded the ship sailed for Batavia without a sea letter, but they did not rest their de-

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cision on that point. It was material only to prove that the Washington, on the 13th of May, 1800, did not possess a sea letter, or any regular documents, issued from a custom-house of the United States, proving her to be American property. It is stated in that report, that the act of 1802 did not mean "to extend its remedial operation, or to retrospect beyond the 13th of May, 1800; and the petitioner's case not coming within the limitation and description therein specified, there did not seem to be even an equitable claim on the Government for the drawback of the additional duties," &c.

A certificate from the Collector of Philadelphia states that the ship cleared out for Batavia on the 9th of July, 1800, and took out a sea letter and the usual documents; so that it is fully proved she does not come within the provisions of the act of April, 1802; for that act was only meant to operate in favor of vessels possessing a sea letter, &c., on the 13th of May, 1800.

By looking at a document furnished the committee, it appears the petitioner places some dependence on the circumstance, that the ship's "manifest" was delivered to a revenue officer, on the 9th of May, but he acknowledges that the entry at the custom-house was not made until the 17th of May. A manifest is not a regular document issued from the custom-house; it is a memorandum or inventory of the inward cargo, to whom consigned, &c., and is generally made out at sea, and is presented to any revenue officer who demands it, and a copy is always necessary to be delivered previous to the entry.

This paper furnishes no evidence whatever that the owners of the ship Washington ought to receive the allowance prayed for. Upon an impartial review of the whole case, therefore, the committee are satisfied—

1st. That the ship Washington, on the 13th of May, 1800, did not possess a sea letter, or any regular document issued from a custom-house of the United States, proving her to be American property.

2d. That, under existing laws, although the ship received a sea letter, &c., on the 9th of July, 1800, and may now possess it, no goods or merchandise imported in that ship, after the date of the act of May, 1800, can be entitled to the allowance of the additional duties, as drawback upon their exportation, either in the same bottom or on any other whatever. And, further, the committee are fully convinced that unregistered vessels of the United States ought to receive the same privileges, in our ports, as those built within the United States, and entitled by the laws to the benefit of American registers; and the ship Washington's case clearly not being within the limits or provisions of the act of April, 1802.

The committee submit their opinion, that the prayer of the petition of Thomas Ketland ought not to be granted.

Referred to a Committee of the Whole on Wednesday next.

SATURDAY, January 12.

Resolved, That the Speaker address a letter to the Executive of the State of North Carolina, communicating information of the death of JAMES GILLESPIE, late a member of this House, in order that measures may be taken to supply any vacancy occasioned thereby in the Representation from that State.

MONDAY, January 14.

The bill, sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light money on foreign ships or vessels, and for other purposes," was read twice, and committed to the Committee of Ways and Means.

The House again resolved itself into a Committee of the Whole on the report of the Postmaster General, of the seventh instant, on the memorial of Robert Henderson, of the State of South Carolina; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and *agreed to* by the House, as follows:

Resolved, That the Postmaster General be authorized to grant such additional sum, not exceeding four thousand two hundred dollars per annum, to the contractor or contractors for carrying the mail in a line of stages between the town of Fayette, in the State of North Carolina, and the city of Charleston, in the State of South Carolina, as he may deem expedient and necessary.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. HUGER, Mr. CLAIBORNE, and Mr. CUTTS, do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

The House again resolved itself into a Committee of the Whole on the bill further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee; and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to prohibit the exaction of bail upon certain suits brought in the District of Columbia; and, after some time spent therein, the bill was reported with several amendments thereto, which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

On a motion made and seconded that the House do come to the following resolution, to wit:

Resolved, That the following be adopted as one of the rules of the House, during the remainder of the present session:

"It shall be the duty of the Speaker to call on the chairmen of all the standing and select committees, at the hour of twelve of the clock, on the Friday of every week during the session; or, if the chairman is absent, on

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the member of the committee present, next in numerical order, to inform the House of the progress made by the respective committees on the subjects referred to them."

And the said resolution being twice read at the Clerk's table, was, on the question put thereupon, disagreed to by the House.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the eighth instant, to whom was referred, on the twenty-third of November last, the memorial of Alexander Murray, late commander of the United States frigate Constellation; and, after some time spent therein, the Committee rose and reported progress.

Mr. RHEA moved the following resolution:

Resolved, That the Secretary of War be directed to lay before this House a statement of the number of the officers and privates in the actual service of the United States during the years one thousand eight hundred and three, and one thousand eight hundred and four; and, also, all the names of the posts where soldiers are stationed, together with the number of privates and officers at such posts; and, also, a detailed statement of the sums expended during the years one thousand eight hundred and three, and one thousand eight hundred and four, on fortifications, arsenals, and magazines.

The House proceeded to take the motion into consideration; when, an adjournment being called for, it was postponed until to-morrow.

TUESDAY, January 15.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement respecting the "moneys which, since the establishment of the present Government, have been paid as fees to assistant counsel, and for legal advice in the business of the United States," in addition to the statements furnished by him on the twenty-fourth of March last, pursuant to a resolution of this House of the third of the same month; which were read, and ordered to lie on the table.

An engrossed bill making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes, was read the third time and passed.

An engrossed bill further to amend the act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the third time and passed.

Mr. HUGER, from the committee appointed yesterday, presented a bill authorizing the Postmaster General to make a further allowance for carrying the mail from Fayette, in North Carolina, to Charleston, South Carolina; which was read twice, and committed to a Committee of the whole House to-morrow.

The motion of Mr. RHEA, of Tennessee, calling on the Secretary of War for the list of officers and soldiers in the service, and the names of forts, &c., where they are stationed, being the unfinished business of yesterday, was, at his own request, postponed till Monday next.

On motion, it was *Resolved*, That a committee be appointed to inquire whether any, and if any, what amendments are necessary to the several acts regulating the grants of lands to the refugees from Nova Scotia and Canada, and to report by bill or otherwise.

Ordered, That Mr. THOMAS, Mr. THATCHER, and Mr. THOMAS MOORE, be appointed a committee, pursuant to the said resolution.

DISTRICT OF COLUMBIA.

The bill to prohibit the exaction of bail upon certain suits within the District of Columbia was brought in engrossed, and read the third time.

The final passage of the bill was opposed by Mr. GODDARD, Mr. ROOT, and Mr. NELSON, and defended by Mr. NEWTON, as a proper measure to prevent the oppression of malignant creditors.

Mr. EPPES desired Mr. BECKLEY to read that part of the Constitution of the United States relative to the extent of the Judiciary power, and that part of the law establishing the Judicial authority of the District of Columbia, with a view of showing that the bill was not essentially necessary.

Mr. EARLY moved a recommitment of the bill to a select committee.

Mr. BEDINGER wished that the bill might go to a select committee, because he considered the principle a valuable one. He imagined, however, that the details were not altogether perfect. He felt concerned on this subject, on account of several of his constituents who had been tricked out of notes and bonds for lands in Kentucky, which had been advertised, and were no longer available against the drawers in that State; but, should it so happen that business called them to Washington, they might be extremely harassed for want of bail.

The reference was opposed by Mr. R. GRISWOLD, as he was against the principle of the bill altogether.

On the question to recommit it, it passed in the negative—ayes 44, noes 59.

The question was then taken on the passage of the bill, and it was lost, there being but thirty members who voted in its favor.

WEDNESDAY, January 16.

The SPEAKER laid before the House a letter from the Secretary of War, accompanying his report on the petition of sundry officers of the Army, stationed at the city of New Orleans, referred to him by an order of the House of the fourteenth instant; which were read, and ordered to be referred to Mr. NICHOLSON, Mr. VARNUM, Mr. G. GRISWOLD, Mr. M. CLAY, and Mr. HUNT, to consider and report thereon to the House.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, enclosing his report on the petition of Fontaine Maury, of the city and State of New York, referred to him by an order of the House of the fourteenth instant; which were read, and referred to the Committee of Claims.

On motion of Mr. LEIB, the House resolved itself into a Committee of the Whole on the bill to amend the Charter of Georgetown. After going through

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the same, and making several verbal alterations, the Committee rose and reported the bill with amendments, which were agreed to by the House.

Mr. VARNUM moved to give the Mayor of Georgetown a qualified veto upon the laws passed by the Aldermen and Common Council.

On the question to agree to the same, the House divided, and there appeared thirty-nine in its favor, and forty against it.

The SPEAKER declared that it was not agreed to.

Mr. SMILIE said he had risen in favor of the motion, but he believed he had not been counted, as the Speaker had passed his seat before he rose.

The question was hereupon put a second time, and there were forty-four in favor of the amendment, and forty-two against it. So the amendment was agreed to.

The next question was, on ordering the bill to be engrossed for a third reading. The House divided, and there were for the motion fifty-seven, against it thirteen. This not being a quorum, the members were called upon to divide a second time, and, there appearing sixty-three in favor of ordering the bill to be engrossed, it was carried in the affirmative.

NAVAL APPROPRIATIONS.

The House again resolved itself into a Committee of the Whole, on the bill making appropriations for the support of Government for the year one thousand eight hundred and five.

Mr. J. RANDOLPH moved to fill the blank, in the clause providing for the expense of intercourse with the Barbary Powers, with $63,500, instead of the sum of $113,000, stated in the estimate for the current year. The difference ($50,000) would make a part of additional appropriations, for which he should move a distinct clause.—Motion carried.

Mr. R. then moved to add the following words "for the contingent expenses of intercourse with the Barbary Powers —— dollars." He said, that he should be obliged to ask $150,000, in addition to the sum reserved out of the preceding appropriation, and of course to fill the blank with the words $200,000. This was rendered necessary because the Mediterranean fund, heretofore liable to this charge, had been subjected, on the motion of a gentleman from Connecticut, to the whole expense of the support of the Navy. He supposed that no difference of opinion could exist on the subject of enabling the Executive to make peace with Tripoli. He had no objection to any restriction which might be thought necessary to limit the application of the additional sum of $150,000, which he required, to the object for which it was intended. But as the words ransom, or tribute, had never been introduced into our statutes, heretofore, he hoped they would not be admitted on this occasion.

Mr. R. GRISWOLD had no objection to making the appropriation required, or even a larger sum; for he was well convinced that the President ought to have funds as well as authority to accomplish any object connected with the present subject, which he might wish to accomplish.

The motion he had made for the appropriation of the Mediterranean fund, to the Naval Establishment, he had conceived to be a proper course of proceeding, and his motion for that purpose had the honor of being seconded by the gentleman from Virginia (Mr. J. RANDOLPH.)

Mr. J. RANDOLPH declared the gentleman to be mistaken.

Mr. R. GRISWOLD did not charge his memory perhaps with precision, as to his having actually seconded the motion, but he would venture to assert that the gentleman had said upon the suggestion that the motion would be a proper one, that if he (Mr. R. G.) would make the motion, he (Mr. J. R.) would second it. He admitted that the appropriations, heretofore made, but not expended, were now locked up and confined to the one object which had been mentioned.

Mr. J. RANDOLPH said that nothing was more disagreeable to him, and it cost him nothing to believe that it was equally so to the gentlemen from Connecticut, than to enter into anything like verbal altercation; but the observations which the committee had just heard, required some notice from him. The gentleman is so far correct, when he states that I agreed to second the motion if he would make it, and I can assure him, that, however reluctant, I should have been as good as my word, if I had not been anticipated by the adroitness of his friends, whose alacrity and promptitude in seconding the motion of that gentleman it is not easy to emulate and impossible to excel. It will be recollected that when the act laying the duties, the proceeds of which were to constitute "the Mediterranean fund," was under consideration, it was opposed by the gentleman from Connecticut on the ground that it was a subterfuge to raise money to cover a pre-existing deficit of revenue: that the loss of the Philadelphia was a mere pretext for raising supplies to defray the ordinary expense of the Navy, which, otherwise, we had not funds to defray—and that whilst the avowed object of the bill was to provide for an extraordinary armament, for a vigorous exertion, which our recent loss demanded, it was in reality a mere fetch to throw the whole weight of the Naval Establishment on this fund. Provision was then offered to be made that the ordinary expense of the Navy, estimated at $650,000, should continue to be defrayed out of the ordinary revenue, and that the application of the "Mediterranean fund" to the objects for which it was avowedly raised should be inviolably secured. It was accordingly provided, in the appropriation bill for the current year, that of the $1,240,000 voted for the naval service, not more than $590,000 should be charged on the Mediterranean fund, leaving the ordinary expense still chargeable on the ordinary revenue. When, therefore, I offered to second the motion, if that gentleman would make it, to strike out the proviso, it was done under the same ideal security as if we had been on the house-top, and I had offered, if he would jump down first, to jump down after him. I did the gentleman the injustice to believe that he had too great a respect for his own consistency to bring forward a motion to effect the very object, the design to bring about which he

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charged upon us at the last session as highly reprehensible. For this act of injustice to his character I sincerely ask his pardon. Hereafter I shall be better informed, and there is no danger that the offence will be repeated. The gentleman's motion prevailed and the whole expense of the Navy was thrown on the Mediterranean fund. The appropriation now asked was for an object, for which that fund was intended to provide. The words of the act of last session (after providing for the armament) are, "and for the purpose also of defraying any other expenses incidental to the intercourse with the Barbary Powers, a duty of two and a half per cent. &c. shall be laid." This fund having been diverted to another purpose, the appropriation now required must be charged on the ordinary revenue. To the public it was a matter of little consequence out of which it should be paid.

Mr. R. GRISWOLD finding himself charged with inconsistency, in having moved to appropriate a fund raised at the last session to the very object he had then said it was raised to meet, did not wonder at such a charge being made, from the reports of the debates, because he had frequently been made to appear in the newspapers as inconsistent, but he hoped he should now be heard and clearly understood. He had said, at the last session, that the two and an half per cent. additional impost was raised to cover the expense of the Navy: and, this session, he had moved that it might be fairly appropriated to that object. Now where is the inconsistency attributed to him? He said then, that under the pretext of a temporary Mediterranean fund, Congress were laying a tax to cover its permanent expenditure. Congress did so, and the money has been raised, and what has now been done? Why, truly, he had moved and the House had agreed to appropriate it without disguise to the object he had foretold it was to cover. In all this he was at a loss to discover his inconsistency.

He did not see what difference it could make on the present occasion out of what fund the money came; whether the temporary two and a half per cent. or the general fund. In either case the money would be equally good, as there is no difference in the value of the coin supplied by either.

He always thought it a better way to go direct, and in a plain path, to his object, without masking or manœuvreing, or covering bills with plausible titles. He would last year have declared plainly that the money was wanting in the Treasury, and not have given their tax bill any captivating title. But, to conclude, he expressed his willingness to give the $150,000 for the object required, or more. He hoped that Congress would grant enough for every purpose connected with the present war, so that our ships may not again be so long in fitting out; but that they may reach the point of destination before the season has elapsed for naval operations.

Mr. J. RANDOLPH congratulated the gentleman from Connecticut, and all who had been conversant with him in public life, on the reform which he had just announced in his political character. That day was to form a new era in the life of that gentleman. Hereafter he was to exhibit himself as a plain, artless man, undisguised in his views, who would frankly disclose his object, and march up to it in a direct line. But, indeed, it seems he has always had a bias towards this open and manly mode of proceeding. The gentleman has always had an abhorrence against bills with specious titles, tending, as far as a mere title could do it, to deceive the public as to the real object in view. It would be a matter of amusement if the Clerk should be called upon to read some of those bills, passed under the gentleman's auspices, whose specious titles and specious defenders were unable to blind the public eye as to their real object—"An act in addition to an act for the punishment of certain crimes against the United States"—in homely phrase, called the sedition act—and some others.

The gentleman declares his readiness to vote money in sufficient quantity to prevent the delay in our future equipments, of which he complains in a recent instance. It, indeed, was one of which the nation might also complain; but which neither money nor diligence in the Navy Department could remedy. It arose out of a circumstance with which the present Administration had nothing to do. It was the necessary effect of placing the capital of the United States in a desert, and the principal navy yard of the Union in a wilderness. The consequence was, that the workmen, the materials, the ships' stores, in short, the supplies of every kind, were to be brought from a distance, (sometimes in carriages,) at an immense expense of time and money. With some of the fairest cities in the world, and with more good ports than all Europe perhaps could boast, the United States had chosen for their metropolis and naval arsenal, such a spot as Peter the Great had been driven to fix upon by necessity—a morass at the head of a long and tedious navigation, where ships are liable to be frozen up for two or three months in the year. With this additional disadvantage, however, that a vessel of any considerable draught of water cannot proceed to sea without the delay of being attended by lighters to carry her guns, which she must take in below. What was the situation of the ships now in the Eastern Branch? Suppose them ready for sea, and that circumstances required a small squadron to be despatched only to protect the entrance of the Chesapeake. They must wait for a thaw. The evils, therefore, of which the gentleman complains are, in some sort, of his own creation. They cannot be remedied until Washington shall become a great commercial city, and the rigors of the climate shall be softened by the benevolence of nature.

Mr. DENNIS did not think it necessary to connect the City of Washington, as the capital of the United States, with the navy yard on the Eastern Branch. The one might be the most fit for its purpose of any which human wisdom could point out, while the other might be liable to some objections which had been urged against it; and he

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did not deny but there were other places equally as commodious for all the purposes of equipping vessels of war. But he considered the arrangement of the navy yard at this place a measure of sound policy.

The question was taken on filling up the blank, without a division, and carried in the affirmative.

THURSDAY, January 17.

The SPEAKER laid before the House a letter, together with a memorial and sundry accompanying documents, in the Spanish language, from Don Joseph de Cabrera, attached to the Legation of Spain, near the United States, now confined in the debtor's apartment of the jail in the city of Philadelphia, under a warrant from the Governor of the State of Pennsylvania, charging him with sundry criminal offences; which were ordered to lie on the table.

Mr. J. RANDOLPH said that the Committee of Ways and Means had received a letter from the Secretary last evening, by which it appeared to be necessary to add an additional item to the appropriation bill, and to make a small alteration in an item already agreed to. The letter was read by the Clerk, and then, on motion, of Mr. J. R., the bill was recommitted to a Committee of the Whole.

After some time spent in considering the same, and making the requisite amendments, the Committee rose and reported. Thereupon, the House proceeded to consider the motion, and having concurred in the amendments reported by the Committee of the Whole, the bill was ordered to be engrossed and read a third time to-morrow.

PAYMENT OF CERTAIN DEBTS.

Mr. CLAIBORNE moved the order of the day for the House to resolve itself into a Committee of the Whole, on the bill making further provision for the extinguishment of the debts still due from the United States. This bill goes generally to make provision for the payment of certain debts liquidated at the Treasury. A new section was proposed by Mr. C., making similar provision for all unliquidated debts due for services rendered or supplies furnished during our Revolutionary war. A debate of considerable length and interest grew out of the question for adding it to the bill.

On motion the Committee divided, and seventy-eight members voting in favor of inserting it in the bill, it was carried.

A motion for striking out the last section, limiting the duration of the bill to —— years, was made by Mr. MACON.

Another debate of some length took place, and when the Committee divided, there were forty-eight in favor of striking out, and fifty-eight against it. So it was determined in the negative.

Mr. ELMER proposed a new section embracing the cases of Messrs. Bowen, Moore, and Elmer, officers of artillery, but who were not attached to the line of any State, providing for an allowance of the depreciation of their pay, which they did not obtain under the resolution of the old Congress, in consequence of having resigned a few days previous to its taking effect.

The motion did not succeed, only [illegible] members voting in its favor.

Mr. THOMAS proposed a new section, [illegible] that the claim of the United States against individual States, for balances which occurred previous to the year 1790, should continue to [illegible] till the —— day of ——, and no longer.

This motion was also lost, only twenty [illegible] in its favor.

The last section, limiting the duration of the law for —— years, being under consideration was proposed to fill up the blank with "two," "three," and "twenty."

The question was taken on the *highest* number, viz: "twenty," and lost, only twenty-seven members voting in its favor.

On filling the blank with "three years," the House divided, and fifty-one were in the affirmative, and forty-two in the negative. So it was carried.

The Committee then rose, and reported the bill and its amendments, and the House proceeded to consider the same.

A considerable debate took place on concurring in the amendment proposed by Mr. CLAIBORNE extending the law to unliquidated claims: and upon the question of concurring, the House divided, and fifty-four were for it, and fifty-six against it. So the amendment was not agreed to.

Several verbal amendments were *afterwards* agreed to, and the bill was ordered *to be engrossed* for a third reading to-morrow.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Friday next.

FRIDAY, January 18.

Mr. JOHN RANDOLPH, from the *Committee* of Ways and Means, presented a bill making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five; which was read twice and committed to a Committee of the Whole House on Monday next.

The Chairman of the Committee of Revisal and Unfinished Business made a further report that the law regulating the manner of taking evidence in case of contested elections had expired and ought to be revived; also that the law for incorporating the inhabitants of the City of Washington would expire with the end of the present session, and that it ought to be renewed. The report was referred to a Committee of the Whole for Monday.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, to whom was committed, on the fourteenth instant, the bill sent from the Senate, entitled "An act to amend an act, entitled an act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels, and for other purposes;" reported that the committee had directed him to report the same to the House, without amendment: Whereupon

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Ordered, That the said bill and report be committed to a Committee of the Whole this day.

An engrossed bill making appropriations for the support of Government, for the year one thousand eight hundred and five, was read the third time and passed.

An engrossed bill to amend the charter of Georgetown was read the third time and passed.

An engrossed bill making farther provision for extinguishing the debts due from the United States was read the third time: Whereupon, the farther consideration thereof was postponed until Monday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill for the relief of the sufferers by fire in the city of New York, in the State of New York; which was read twice, and committed to a Committee of the whole House on Monday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill to establish the districts of Genesee, of Buffalo creek, and of Miami; and to alter the port of entry in the district of Erie; which was read twice, and committed to a Committee of the Whole on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," with an amendment; to which they desire the concurrence of this House.

The Senate's amendment was taken up and considered. It went to allow her a pension for life, from the first day of January, 1805, of two hundred dollars per annum.

Mr. VAN CORTLANDT moved to amend the amendment by striking out the first of January, 1805, and inserting in its stead the fourth of February, 1803, being the day of her husband's decease.

This motion being carried in the affirmative, the bill was returned to the Senate. Shortly after which another message was received from that body, expressing their agreement to the amendment proposed to the House.

A petition of John York, of Brookefield, in the county of Chenango, and State of New York, late collector of the taxes on lands, slaves, and dwelling-houses, for the eighty-third collection district, within the said State, and now confined in the jail of said county, was presented to the House and read, praying relief in the case of a judgment awarded against the petitioner and execution issued thereon, for the sum of eight hundred dollars, including interest and cost of suit, for the payment of which the petitioner was compelled to apply a certain proportion of the proceeds of taxes collected by him in the capacity aforesaid.—Referred to Messrs. ROOT, GREGG, and HASTINGS; to examine and report their opinion thereupon to the House.

Mr. DANA, from the Committee of Claims, made a report upon the application and representation of sundry citizens of Massachusetts, purchasers under the Georgia Company; of the agents of persons composing the New England Land Company, purchasers under the Georgia and Mississippi Companies, and the agent for sundry citizens of South Carolina, purchasers under the Upper Mississippi Company; which was referred to the Committee of the Whole, and ordered to be printed with the accompanying documents.

The SPEAKER made the usual inquiry, "for what day shall it be made the order?"

Mr. DANA moved Monday, observing that he had no idea of the report being printed by that time, or even if it were, he should not call it up; his intention being merely to have it on the minutes as a notice to the parties interested.

Mr. LEIB moved its being made the order of the day for the third of March next.

The third of March being the most distant day, was first put, and a division of the House was called upon the question. There appeared but thirty members in the affirmative; of course it was not carried.

Monday next was then agreed to, without a division.

Mr. NICHOLSON moved the order of the day on the report of the Committee of Claims, on the petition of Alexander Murray, praying to be reimbursed the value, damage, and costs of a certain vessel captured by him, and which had been decided against him by the Supreme Court of the United States; which being agreed to, Mr. TENNEY was called to the Chair.

The Committee, after some time spent in considering the report of the Committee of Claims, adopted the resolution thereof, that the prayer of the petitioner was just, and ought to be granted, sixty-six members voting in favor of the resolution.

The House having concurred in the report of the Committee of the Whole, it was referred to the Committee of Claims, to bring in a bill conformably to the said resolution.

DISTRICT OF COLUMBIA.

Mr. DAWSON, from the committee appointed on the petition of Marcella Stanton, and others, reported a bill, entitled an act to authorize the court of the District of Columbia to decree divorces in certain cases; which was read twice, and referred to a Committee of the Whole on Tuesday next.

Mr. DAWSON prefaced his motion, on this subject, when he introduced it, in the manner following:

He observed that, after the decision which had taken place a few days ago, he had resolved not to meddle any further with the affairs of the District of Columbia, but to leave the inhabitants in the enjoyment of the blessings of that government which they seem to have chosen, and the principles of which were sanctioned by this House.

There was, however, one class of persons who claimed, in all situations, our particular attention; who had not made a surrender of their political rights; and, if they had been defrauded out of their natural ones, were anxious to regain them.

It would be remembered that, at the last session,

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a gentleman from Maryland, who had been absent for some time, and whom he rejoiced now to see in his place, (Mr. NICHOLSON,) presented a petition from a person in this District, praying for a divorce, and he two others for the same relief. These were referred to a select committee, and a bill reported, which remained among the unfinished business; as he learned that the situations and wishes of these unfortunate persons were still the same, he thought the subject ought again to be renewed.

Mr. SLOAN moved the following resolution:

Resolved, That, from and after the fourth of July, 1805, all blacks and people of color, that shall be born within the District of Columbia, or whose mother shall be the property of any person residing within said District, shall be free, the males at the age of ——, and the females at the age of ——.

The House proceeded to consider the said motion, and on the question that the same be referred to a Committee of the whole House, it passed in the negative—yeas 47, nays 65, as follows:

YEAS—Nathaniel Alexander, Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Phanuel Bishop, John Boyle, Robert Brown, Clifton Claggett, Joseph Clay, Frederick Conrad, Jacob Crowninshield, James Elliot, Ebenezer Elmer, William Findley, Andrew Gregg, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Joseph Heister, David Hough, Nehemiah Knight, Simon Larned, Michael Leib, Henry W. Livingston, John B. C. Lucas, Andrew McCord, Nahum Mitchell, Jeremiah Morrow, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Joseph Stanton, William Stedman, John Stewart, George Tibbits, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, and John Whitehill.

NAYS—Willis Alston, jun., William Blackledge, Adam Boyd, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, John Davenport, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, John Fowler, Calvin Goddard, Peterson Goodwyn, Thomas Griffin, Roger Griswold, William Helms, John Hoge, James Holland, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Joseph Lewis, junior, Thomas Lowndes, Matthew Lyon, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rhea of Tennessee, Samuel Riker, Thomas Sandford, John Smith, Henry Southard, Richard Stanford, James Stephenson, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Killian K. Van Renssalaer, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

And then the main question being taken that the House do agree to the said motion as originally proposed, it passed in the negative—yeas 31, nays 77, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, Phanuel Bishop, Robert Brown, Clifton Claggett, Joseph Clay, James Elliot, Ebenezer Elmer, William Findley, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, David Hough, Nehemiah Knight, Michael Leib, Andrew McCord, Nahum Mitchell, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Joseph Stanton, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, and John Whitehill.

NAYS.—Willis Alston, jr., Simeon Baldwin, George Michael Bedinger, William Blackledge, Adam Boyd, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, John Davenport, John Dawson, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, John Fowler, Calvin Goddard, Peterson Goodwyn, Thomas Griffin, Roger Griswold, Joseph Heister, William Helms, John Hoge, James Holland, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rhea of Tennessee, Samuel Riker, Thomas Sandford, John Smith, Henry Southard, Richard Stanford, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

So the said motion was rejected.

MONDAY, January 21.

A memorial of the people called Quakers, at their yearly meeting, held in the city of Philadelphia, in the month of December last, was presented to the House and read, praying that effectual measures may be adopted by Congress to prevent the introduction of slavery into any of the Territories of the United States.—Referred to the committee appointed on the twelfth of November last, on so much of the Message of the President of the United States as relates "to an amelioration of the form of government of the Territory of Louisiana."

Mr. DANA, from the Committee of Claims, presented a bill for the relief of Alexander Murray; which was read twice, and committed to a Committee of the whole House to-morrow.

The bill for extinguishing certain debts due by the United Stotes, being on its third reading, was, on motion of Mr. EPPES, recommitted to a Committee of the Whole.

The House divided on the motion—50 in the affirmative, and 34 in the negative. So it was carried.

Mr. NICHOLSON moved to make it the order of the day for the fourth of March next.

The House divided—39 for it, and 46 against it. It was then made the order of the day for to-morrow.

The House resolved itself into a Committee of the Whole, on the bill authorizing the Postmaster

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General to allow an additional sum of $4.200 for carrying the mail from Fayetteville to Charleston, South Carolina.

The Committee, after some time spent in considering the same, rose and reported the bill with an amendment, which was adopted by the House, and the bill ordered to be engrossed for a third reading to-morrow.

The House resolved itself into a Committee of the Whole, on the bill making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five; and, after some time spent therein, the bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light money on foreign ships or vessels, and for other purposes;" and, after progress, the Committee rose and had leave to sit again.

DUTIES ON REFINED SUGAR.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred the memorial of Moses Rogers, Edmund Seaman, and others, sugar refiners in the city of New York, having had the same under consideration, submitted the following report:

The memorialists are extensively concerned in the manufacture of refined sugar, in the city of New York, and are possessed of establishments adequate (as they state) not only to the supply of the home market, but also to the production of considerable quantities for exportation to foreign countries.

They acknowledge they are protected by the present high duties on imported loaf sugar, to the extent of the domestic demand, but, as their refineries are capable of producing still greater supplies, they pray that a drawback or bounty may be allowed on the exportation, to foreign countries, of all refined sugar in the United States, equivalent to the duty paid on the raw sugar employed in the manufacture.

The committee beg leave to inform the House that similar applications have been frequently made to Congress, and it is almost unnecessary to add that the allowance prayed for has been invariably refused. At the last session of Congress, a lengthy, and, the committee thought, a conclusive report, was made on a resolution of the House "to inquire and report, by bill or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States, and exported to foreign ports and places;" and the committee then offered their opinion, "that it would be improper, under existing laws and regulations, to allow a drawback upon the exportation of domestic refined sugar;" and this report was concurred in by the House. Notwithstanding the repeated decisions of Congress, the present memorialists have hazarded their application; but the committee cannot see that they have offered any new or weighty reasons to induce them to alter their former opinions on this subject.

If the committee are not mistaken, it will be found, upon examination, that the sugar refiners are the most favored body of manufacturers in the United States. Our commercial regulations seem opposed to all prohibitory duties, and to monopolies. These are in direct hostility to systems heretofore deemed valuable, are contrary to what is right and just between one citizen and another, and ought never to be indulged in a free country, except (which could seldom happen) where they are necessary for the safety and protection of the whole people. And where monopolies are granted, or where such high duties exist as enable a particular class of men to engross any article of general use in a community, they only tend to heap up wealth in the hands of a few individuals, at the certain expense of the many. The duties on foreign refined sugar have been several times augmented to benefit the American refiners, and since January, 1795, this sugar has been charged with the high duty of nine cents per pound. It is denied the drawback on exportation, and cannot be imported in less quantities than six hundred pounds, nor in vessels of a less burden than one hundred and twenty tons. The committee are at a loss to conceive the necessity of these severe restrictions. Sugar candy pays a duty, on importation, of eleven cents and one half the pound, and there can be no doubt that this extravagant duty was imposed with a view of favoring the sugar refiners. These high duties amount to almost a prohibition of the two articles; for, it is proved that they have been imported only in the most inconsiderable quantities, in late years, so that the sugar refiners possess the whole American market to themselves. They enjoy a certain monopoly in their business. No foreign loaf sugar can enter into competition with what they manufacture. Bengal and China sugar candy could be imported in considerable quantities, at very reasonable prices; and there is no better substitute for refined sugar, either in the lumps, or when reduced to powder; but the present duty on that article excludes it altogether from the American market, to the injury of the East India trade—a loss of revenue to the United States, and to the benefit of no other persons but the sugar refiners. It might be supposed that these high protecting and prohibitory duties on the foreign article secured to the sugar refiners every important advantage which they could reasonably hope to receive. With the exclusive home trade, supplying the United States, upon their own confession, with every pound of refined sugar consumed in the country, charging their own prices to the consumer, the foreign article excluded from our market, the wide range of speculation all their own, their profits great, and probably beyond any other manufacturer's in the United States, it was rather a matter of surprise to the committee, that the sugar refiners should expect further indulgencies.

Without mentioning all the reasons that have occurred to the committee, against granting the allowance in question, they will suggest some of the objections to which it is liable.

1st. The Louisiana sugar might be used in the manufacture, almost in spite of any regulation that could be safely introduced, (and at New Orleans it would be exclusively employed,) and as it is not charged with any duty, the United States would, in many instances, be compelled to pay the allowance where they had received no equivalent.

2d. It is well known that drawbacks are not payable on any goods and merchandise, after the expiration of

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twelve months, dating from the time of importation, and then only in cases where the original duties have been first received. If the crude sugar should lose the drawback, as it would in one year from the period of its importation, the price would be lowered in the market (presuming it was intended for exportation) in a sum equal to the duties, and it must then be sold for home consumption, probably at a reduced rate.

Now, sugar thus circumstanced, if purchased and manufactured by the refiners, could not be entitled to the allowance of drawback, on any principle whatever; and when it is supposed that the surplus of raw sugar in our market will find its way to Europe in American bottoms, and when it is considered that, in a refined state, it is not a bulky article, it may be doubted whether its reduction of weight would, in cases of exportation, be so advantageous to the carrying trade of the United States as might at first be imagined. If the sugar is exported in its crude state, the freight would be double, and those merchant ships that depended solely on freight would thereby derive at least a trifling advantage.

Although the committee do not wish it to be inferred that they would recommend the exportation of the raw materials found in our markets, in preference to those manufactured by American workmen, and reduced to half their ordinary bulk, merely for the benefit of the extra freight, yet, in respect to the article referred to, it becomes questionable whether the exporting merchant and ship owner do not now enjoy as great, or even greater advantages, than they would if bounties were allowed on refined sugar, to the extent of the quantity which could be manufactured for exportation from the United States.

3d. As the raw sugar, in refining, undergoes a complete transformation, it would be difficult, if not impossible, to guard against some impositions in paying the bounty, and frauds might be attempted on the revenue. The custom-house officers could not always attend at the sugar houses; and, however upright the intentions of the refiners and exporters might be, the certificates must be multiplied, and such precautionary measures be introduced, as would embarrass the fair collection of the public revenue; and the allowance might perhaps tend, in some respects, to lessen its amount, and certainly it could not augment it.

4th. Should the prayer of the petition be granted, no good reason could be offered why New England rum, distilled from imported molasses, or cordage and cables manufactured from foreign hemp, and canvass made into sails, for the use of vessels, should not receive similar allowances. All the manufactured iron, too, which had paid a duty on importation in its unwrought state, would certainly be equally entitled to the benefit of such allowance; and domestic rum, sail cloth made up for ship's use, cordage, and various articles of ironwork, such as anchors, bolts, spikes, nails, and hoops, are exported from the United States in considerable quantities, and it is believed in value far beyond the whole amount of refined sugar which could possibly be disposed of to advantage in foreign markets, and yet the committee do not recollect that the distillers, ropemakers, sailmakers, or blacksmiths, have ever petitioned Congress for a repayment of the duties on the exportation of the articles employed by them, or connected with their respective occupations.

The memorialists allege that, in Great Britain, a bounty on the exportation of refined sugar is allowed, of forty shillings sterling per hundred weight In Great Britain the duties on imports will average about thirty per cent. higher than those paid in the United States, and on sugar, in particular, the duty is twenty-six shillings and six pence sterling per hundred weight, exceeding five and one quarter cents a pound, or double the American duty; still, the drawback on refined sugar exported from England is by no means payable at a certain or fixed standard, and a table of Export drawbacks, now before the committee, fully prove that different rates of drawback are allowed, varying from forty shillings, when the price does not exceed forty shillings, to thirteen shillings, when the price is from sixty-eight to seventy shillings, per hundred weight; and whenever the average price of sugar exceeds seventy shillings per hundred weight, nothing is allowed, and it is presumed that sugar is often at that price in England, exclusive of the duties. But, in the examination of this question, it is of little consequence what commercial regulations exist in other countries, so long as they do not affect our rights, and it is sufficient for us that we adopt such as are known to be beneficial, and most conducive to the interests of this nation; and individuals ought not to complain that other countries follow this or that system, under different circumstances, and that our laws are not shaped to operate for their exclusive advantage.

Protecting duties on such articles as we can conveniently manufacture have been a long time established in the United States; and surely the sugar refiners can have no complaints to offer on that point; for these, the committee trust, it has been proved they possess peculiar, if not exclusive advantages. Various other objections could be adduced, to prove that Congress ought not to grant the allowance on the exportation of sugar refined in the United States, particularly while the present high duties are continued on loaf sugar, imported from Europe, and sugar candy, from the East Indies and China; but it is supposed to be quite unnecessary to enlarge a report already too much extended. The committee therefore respectfully submit the following resolution:

Resolved, As the opinion of the Committee of Commerce and Manufactures, that it is inexpedient to grant any allowance or bounty on refined sugar exported from the United States.

The report was referred to the Committee of the Whole on Wednesday next.

Tuesday, January 22.

An engrossed bill making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five, was read the third time and passed.

An engrossed bill authorizing the Postmaster General to make a further allowance for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina, was read the third time, and passed.

Mr. Nicholson, from the committee appointed, presented a bill fixing the value of rations allowed to the commissioned officers in the Army of the United States; which was read twice and committed to a Committee of the Whole to-morrow.

The House resumed the consideration of a motion of the twenty-first ultimo, directing the Secretary of War to lay before the House "a statement of the number of the officers and privates in

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the actual service of the United States, during the years one thousand eight hundred and three, and one thousand eight hundred and four; and, also, the names of the posts where soldiers are stationed, together with the number of privates and officers at such posts; and, also, a detailed statement of the sums expended, during the years one thousand eight hundred and three, and one thousand eight hundred and four, on fortifications, arsenals, armories, and magazines:" Whereupon, the said motion being again read, was agreed to by the House.

Mr. DANA, from the committee to whom was referred, on the second instant, the petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others, made a report thereon; which was read, and referred to a Committee of the Whole on Thursday next.

Resolved, That the Secretary of War be directed to transmit to this House, copies of any documents in his office, which relate to the case of William Scott, and James and John Pettigrew, stated to have been murdered and plundered by the Cherokee Indians.

The report was referred to a Committee of the Whole on Thursday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented, by leave of the House, a bill in addition to an act, entitled "An act to promote the progress of useful arts and to repeal the act heretofore made for that purpose;" which was read and committed to the Committee of the whole House.

The House resolved itself into a Committee of the Whole on the report of the committee appointed, on the fourteenth of November last, to "inquire into the expediency of making provision, by law, for the completion of the public buildings belonging to the United States, near Philadelphia:" and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House as follows:

Resolved, That the sum of eighteen thousand nine hundred dollars be appropriated for the completion of the arsenal belonging to the United States on the river Schuylkill.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that Mr. LEIB, Mr. MOTT, and Mr. CUTLER, do prepare and bring in the same.

A memorial of the Delegates appointed by various sections of the District of Columbia, signed by Cornelius Coningham, their President, and attested by Nicholas King, their Secretary, was presented to the House and read, submitting to the consideration of Congress sundry propositions, by way of amendment and modification of the acts relating to the government of the District of Columbia, which they pray may be adopted for the convenience and benefit of the memorialists and other inhabitants of the said District.—Referred to Mr. NICHOLSON, Mr. THOMPSON, Mr. PLATER, Mr. LEWIS, and Mr. LUCAS; to examine and report their opinion thereupon to the House.

The House resolved itself into a Committee of the Whole on the bill for the relief of the widow and orphan children of Robert Elliot. The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time tomorrow.

OLIVER EVANS.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred, on the twenty-first ultimo, the petition of Oliver Evans, of the city of Philadelphia, made a report thereon, as follows:

The petitioner has invented many useful improvements on merchant flour mills, for which he obtained a patent, dated January 7th, 1791. This patent expired on the 7th of the present month. He states that he has also made several valuable discoveries, and improvements on steam engines—explanations, and drawings of which have been exhibited to the committee. The petitioner represents, that, owing to the great extent of the United States, and the difficulties usually attending the introduction of improvements in new countries, he has not yet been able to collect any considerable sums from his patent, and having found it necessary to impose on himself a condition, not to expend in new inventions and discoveries any more than the net profits derived from old ones, he finds himself compelled to ask for the extension of his patent right, for the improvement in merchant flour mills, with a view that he may appropriate the proceeds towards completing his further inventions on steam engines, which in his opinion, are, in their operation, from five to ten times more powerful than any others heretofore invented, in proportion to size and weight; and he avers that he has conceived still greater improvements on steam engines, (which he has not yet put in practice) to lessen their expense, and cause them to last longer, increase their power, and diminish the consumption of fuel to about one fourth part.

The petitioner appears to possess a mind capable of conceiving, and a strong propensity for making new discoveries and inventions, and the greater part of his life seems to have been devoted to improvements in labor-saving machines, and if he could be encouraged to persevere, it is highly probable his discoveries may be rendered useful to his country, and at the same time profitable, and honorable to himself.

He is desirous that his patent may be extended for the term of seven years, without injuring those who have already purchased the right of using it; and if this privilege could be granted, he is convinced that it would enable him to complete his other valuable discoveries, which otherwise he apprehends, from the great expense attending them, he may be obliged to abandon, or at least to delay their completion for several years.

The committee have been favorably impressed with the representations made to them by the petitioner, and would venture to recommend that his patent right for the improvement on merchant flour mills, be extended seven years, from the 7th instant. At the same time, the committee are aware (should the petitioner obtain the extension of his patent) that numerous applications will be made to Congress, by other patentees, for the same indulgence, and as the authors of books, maps, and charts, are allowed to renew their patents for the further term of fourteen years, and seeing no objection to a

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general provision calculated to meet the reasonable requests of persons who have made very valuable or important discoveries—they ask leave to report a bill on the subject.

Referred to a Committee of the Whole on Thursday next.

DUTIES ON FOREIGN BOOKS.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom was referred the memorial of the Philadelphia Typographical Society, made the following report:

The petitioners are desirous that Congress should impose greater duties on books imported into the United States. They are under apprehension that, after the conclusion of the present war in Europe, the English bookseller will be able to undersell the American in his own market; and, possessing a sincere conviction that their situation may be greatly ameliorated by restricting the constant and great importation of foreign books, they solicit an augmentation of the present rate of duties on all books imported into the United States, probably with a view of increasing their profits, or, at least, of giving to the American booksellers the preference in their own market, and to which, the petitioners are of opinion, they are justly entitled.

The committee can entertain no doubt that the petitioners are extremely desirous of encouraging the manufacture of books in the United States; and, if the exclusive interest of printers and booksellers were alone to be consulted, it is probable the committee might be induced to recommend the proposed augmentation in the duties; but, it will be recollected that Congress are legislating for the benefit of the whole American People, and not for the sole advantage of any particular individuals.

At the last session of Congress, a law passed, declaring that rags of all sorts, for making paper, should be imported free of duty. The American paper is presumed to be cheaper here, than it can be imported from Great Britain, and, it may be supposed, we shall soon be able to supply the greater part of the demand for the domestic consumption of that article; so that foreign supplies will not be wanted, after a few years; and, although higher wages may be given for journeymen printers and bookbinders, it must be confessed that the art of printing has progressed more rapidly in the United States, than almost any other branch of machinery. This is a truth acknowledged by the petitioners, and assented to, with much pleasure, by the committee; where, then, can be the danger that the English bookseller will be able to undersell the American in his own market? When it is considered that foreign books pay a duty of fifteen per cent. upon their importation, and that, to this charge, the commissions and various shipping expenses at the place of exportation must be added, together with the freight and insurance, the whole amounting, at the lowest calculation, to forty per cent. in favor of, and as a direct encouragement to, the American printers and booksellers, it might be supposed that the petitioners were sufficiently protected, and that they need not be under any apprehension of foreign competition in their business.

The great expenses which must necessarily attend the importation of European books into this country, if there was no other difference in their favor, will, it is hoped, give a decided advantage to the American bookseller.

In the imposition of duties on imported books, or on any article whatever, it was never imagined that the mere importer became ultimately charged with the amount, or that the Government had not in view the collection of a revenue to defray the expenses, and complete the payments of engagements, for which the public faith stands pledged; but surely it could not be supposed that these duties were to be augmented, at a time, to so high a rate as to amount to a complete prohibition on the importation. If a revenue is to be collected, extravagantly high duties ought not to be laid, and, in their augmentation beyond a fair proportion, diminution of the revenue may be expected. If the duties are raised to answer the design of the petitioners in its full extent, the consequence will be, that little or no revenue will be derived from imported books; the petitioners will be exclusively benefitted; they will charge their own prices for American books; there can be no competition, and the nation will be the *only sufferers*.

The American people have still a great predilection for English printed books, notwithstanding it has been frequently proved that they can be as accurately and as elegantly printed here, as in any part of the world. The Committee see no reason why the price should be increased by additional duties, and they are unwilling to augment the charge to those readers, who prefer foreign publications to our own, especially when it is ascertained that books of every description, whether of foreign or domestic manufacture, are, at present, sold at the most extravagant prices in the bookstores throughout the United States.

If the committee entertained an opinion that the art of printing was not sufficiently protected in this country, they would consider themselves bound, immediately, to recommend the adoption of some measure, calculated to meet the wishes of the petitioners, for the reasons stated; and, from the strongest conviction that the proposed augmentation of the duties on books imported into the United States is unnecessary and inexpedient, at this time, they submit their opinion to the House—

That the Board of Directors of the Philadelphia Typographical Society have leave to withdraw their petition.

The report was agreed to.

WEDNESDAY, January 23.

On motion of Mr. THOMAS,

Resolved, That the Secretary of State be directed to lay before this House a list of the names of persons who have invented any new or useful art, machine, manufacture, or composition of matter, or any improvement thereon, and to whom patents have issued for the same from that office with the dates and general objects of such patents.

An engrossed bill for the relief of the widow and orphan children of Robert Elliot was read the third time, and passed.

On motion of Mr. HUGER,

Resolved, That the Secretary of the Treasury be directed to transmit to this House a statement of the foreign tonnage which has been entered at the different custom-houses of the United States for the years one thousand eight hundred and one, one thousand eight hundred and two, one thousand eight hundred and three, and one thousand eight hundred and four; and as correct a statement as in his power of the tonnage of the unregistered ships or vessels which have been owned by citizens of the United States during the said years, and which were in possession of a sea-ste-

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ter, or other regular document, from a custom-house of the United States; and, likewise, a statement of the amount of light-money which has been collected on unregistered ships and vessels, and on other foreign ships and vessels, since the passage of the act for levying and collecting light-money on foreign ships and vessels.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five," with an amendment, to which they desire the concurrence of this House; also, the bill entitled "An act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes," with an amendment, to which they desire the concurrence of this House; and, also, the bill entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," with several amendments, to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five;" whereupon,

Resolved, That this House doth agree to the said amendment.

The House went into Committee of the Whole on the bill for the relief of Captain Alexander Murray. After some time spent in considering and debating the same, the Committee rose and reported the bill without any amendment; it was then ordered by the House that the bill be engrossed for a third reading to-morrow.

Mr. R. GRISWOLD moved a resolution that the Secretary of War be directed to lay before the House a report of the situation of the public buildings on the bank of the Schuylkill, near Philadelphia; what would be the probable expense of completing them; and whether, in his opinion, the public interest will not be promoted thereby.

On motion of Mr. NICHOLSON, the latter part, respecting the opinion of the Secretary, was stricken out.

Mr. VARNUM then moved to add, "and a statement of the quantity of the public stores deposited in the same building." This motion was lost—38 being in its favor and 42 against it.

Mr. GREGG thought such an amendment as the last suggested was necessary; he therefore varied the language, and offered a motion in this shape: "and a statement of the military stores deposited in said buildings." That amendment being agreed to, the question was taken on the original motion as amended, and carried—61 voting in its favor.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes;" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain: Whereupon, the amendments, together with the bill, were committed to the Committee of Commerce and Manufactures.

PROTECTION OF SEAMEN.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying statements and abstracts relative "to the number of 'American seamen who have been impressed or 'detained on board of the ships of war of any 'foreign nation; with the names of the persons 'impressed; the name of the ship or vessel by 'which they were impressed; the nation to which 'she belonged, and the time of the impressment; 'as also certain facts and circumstances relating 'to the same;" prepared in obedience to a resolution of this House of the thirty-first ultimo.

Mr. CROWNINSHIELD said, that the list of impressed seamen, furnished by the Secretary of State, exceeded in number anything he had expected. He thought these impressments ought to be prevented, and that the subject demanded investigation. He had drafted a resolution, which he would submit to the House, having in view to connect this with another very important subject. Many gentlemen must have observed that some late proclamations had been issued by the Governors of the several British West India Islands, interdicting the American trade after May next. The proclamations bore date in October or November, and were to take effect in six months. It appeared to him that the British Government were determined to exclude us from their islands, upon the expectation that their own vessels would be competent to carry the necessary supplies. Mr. C. said we had a right to carry the productions of the United States in American bottoms, and he hoped we should never permit foreign ships to come to our ports and carry on an exclusive trade with any country whatever, where our vessels were not allowed the same privilege. His intention was to prevent the American carrying trade to the West Indies from falling into the hands of other nations. He would not exclude foreign vessels from our ports, but it was desirable that our own export trade should not be monopolized by foreigners. The subject was highly important to this country. Will the United States tamely submit to see some of its best citizens torn from their families and friends, without attempting something for their relief? Shall we see another country pursuing measures hostile to our commercial rights and make no effort to correct the mischief? The West India Islands depended on the United States for their ordinary supplies, and our vessels had usually carried a large proportion of their cargoes on American account; but it appeared now that we were to be shut out from this trade, and it was in future to be carried on in foreign vessels. An effectual remedy would be to prohibit the exportation of

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our productions in foreign bottoms to all ports of islands with which we were not permitted to have intercourse, and in order that the subject might undergo the examination which its importance demanded, he offered the following resolution:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire if any, and what, further provision be necessary for the protection of the commerce and seamen of the United States, and to inquire whether any foreign country has made any late regulations with a view to monopolize any branch of the American carrying trade, to the exclusive benefit of such foreign country, or which in their operation may be injurious to the agricultural or commercial interest of the United States; and also to inquire into the expediency of prohibiting the exportation from the United States of all goods and merchandise whatever in foreign ships bound to any port with which the vessels of the United States are not allowed communication, or where a free and unrestricted trade is not permitted in the productions of the United States, and that the committee be authorized to report by bill or otherwise.

Mr. RANDOLPH wished the resolution to lie for consideration a few days; he would mention Monday. The gentleman had said it was an important subject, and if he had no objection it would be as well to allow the resolution to remain unacted upon for a little time. It might be printed for the consideration of the House, and he rather supposed some alteration would be necessary in the form of the resolution.

Mr. CROWNINSHIELD replied that he was perfectly willing the resolution should lie for consideration, agreeably to the desire of the gentleman from Virginia, and he would consent to any reasonable delay; but he would not consent to its remaining unacted upon till a period so late as to preclude any measures from being adopted this session, because the proclamation would take effect in the month of May. He was not tenacious of forms, it was the substance of things he looked to, and he would with great pleasure agree to modify the resolution to any shape which the gentleman from Virginia might suggest.

A motion was made to refer the resolution to a Committee of the Whole for Monday next; which was agreed to, and the resolution ordered to be printed.

THURSDAY, January 24.

The SPEAKER laid before the House a letter from the Secretary of War, enclosing sundry documents relating to the case of William Scott, and James and John Pettigrew, stated to have been murdered and plundered by the Cherokee Indians, in pursuance of a resolution of this House of the twenty-second instant; which were read and referred to the Committee of the Whole, to whom is committed the report of the Committee of Claims on the petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others.

On motion of Mr. McCREERY,

Resolved, That a committee be appointed to inquire into the expediency of farther continuing in force an act, entitled "An act declaring the assent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December one thousand seven hundred and ninety-three, for the appointment of a health officer;" and that the committee be authorized to report by bill or otherwise.

Ordered, That Mr. McCREERY, Mr. LOWNDES and Mr. NEWTON, be appointed a committee, pursuant to the said resolution.

Mr. CLARK moved the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House a circumstantial report of the claims standing upon the Treasury books against the United States, which are barred by the statutes of limitation; by what authority and by whom the settlements were made, and the person or persons to whom the respective sums are due; with any discriminating circumstances that may exist in the different classes of claims.

The House proceeded to consider the said motion; Whereupon the farther consideration thereof was postponed until Tuesday next.

Mr. NICHOLSON moved for the House to go into Committee of the Whole on the bill for preserving peace in the ports and harbors of the United States, and in the waters under their jurisdiction. The House agreed to the same.

Mr. NICHOLSON introduced two amendments: one to supply the place of the second section of the bill, and the other as a substitute for the fifth section. These clauses being lengthy and important, he wished them to be printed before they were discussed; for which reason he wished the Committee to rise, report progress, and ask leave to sit again.

Mr. R. GRISWOLD had also prepared an amendment in the place of the second section, which he also wished to have printed. It was accordingly received, and the Committee having risen and reported, the amendments were *all ordered to be* printed.

On motion of Mr. CROWNINSHIELD, the House resolved itself into a Committee of the Whole on the bill for the relief of the sufferers by fire in the city of New York.

Mr. EARLY proposed a new section, providing for the cases of those who suffered losses by the hurricane of the 8th of September last, at Savannah, in Georgia; Charleston, Georgetown, and Beaufort, South Carolina.

The Committee having agreed thereto, rose and reported the same, and the bill and amendment were postponed until to-morrow.

Mr. PURVIANCE laid on the table a resolution for referring to the Secretary of State, the Secretary of the Treasury, and the Attorney General, the consideration of the constitutionality and expediency of granting to the inhabitants of the District of Columbia a Legislature chosen by themselves, with instructions, in case they deem it Constitutional and expedient, to report a system to the next Congress.

The engrossed bill for the relief of Captain Alexander Murray was read a third time; and on the question, Shall the bill pass?

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Mr. CONRAD said he could not agree to a measure of the kind. The conduct of Captain Murray had been decided illegal in every court in the United States into which it had been carried. He did not approve of a legislative body re-examining decisions of courts of justice, as they were totally unqualified for the object. He therefore could not be content to give a silent vote; for which reason he called the yeas and nays.

The yeas and nays were taken on the passage of the bill, and were—yeas 66, nays 37, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Simon Baldwin, William Blackledge, Adam Boyd, Joseph Bryan, George W. Campbell, John Campbell, William Chamberlin, Clifton Claggett, Thomas Claiborne, John Clopton, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Thomas Dwight, Peter Early, James Elliot, William Eustis, William Findley, Calvin Goddard, Thos. Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, David Holmes, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Thomas Plater, Jacob Richards, Samuel Riker, Thos. Sandford, John Smilie, John Smith, Richard Stanford, Joseph Stanton, James Stephenson, Samuel Taggart, Benj. Tallmadge, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Alexander Wilson, and Thomas Wynns.

NAYS—Isaac Anderson, David Bard, George M. Bedinger, Robert Brown, William Butler, Levi Casey, Matthew Clay, Frederick Conrad, Ebenezer Elmer, John W. Eppes, Peterson Goodwyn, Andrew Gregg, John L. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, Michael Leib, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, James Mott, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sammons, Ebenezer Seaver, Jas. Sloan, Henry Southard, John Stewart, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, and Joseph Winston.

NAVY YARDS, &c.

Mr. EUSTIS moved the following resolution:

"*Resolved*, That it is expedient to provide by law for defraying the expense incident to fitting and preparing one of the navy yards belonging to the United States, and lying near the margin of the ocean, for the reception and repairing of such ships of war as are now at sea on their return to port, and such other ships or vessels of war as may hereafter return from their cruises or stations."

Mr. EUSTIS said the resolution now submitted to the consideration of the House had grown out of an opinion which impressed itself on his mind, when he first beheld the whole naval force of the United States moored in the Eastern branch of the Potomac. He had ever considered the establishment of a navy yard in this city, as the principal naval arsenal, to be among the errors or misfortunes which had presided over many other arrangements respecting this city and territory. As the United States were at that time at peace with all the world, excepting the Dey of Algiers, as a small part of the force only was necessary to carry on this warfare, and as the ships had been actually hauled up at a considerable expense, there appeared to be no immediate necessity for incurring a further expense in their removal. Our maritime concerns have now experienced a change. We are at war with another of the Barbary Powers, and a greater number of ships have been necessarily taken into the service. We have at this time six frigates, and five or six smaller vessels on duty in the Mediterranean. After a certain time these ships must be relieved. Others must be sent out to take their stations. Those which return will require repairs; and in order to prepare for these contingencies it was proper that some one of the navy yards nearer to the ocean should be put in a condition to receive them. This was the object of the resolution. It was desirable that some place should be selected easy of access, where the water was deep, and in the neighborhood of some large maritime town, having large markets and magazines of the variety of articles required for repairing and fitting ships for sea, with the artizans employed in that business. It was not his intention to describe the advantages or disadvantages of one place or of another. The United States own six navy yards. The whole coast is before the Executive, and such a place will be selected as will combine the greatest number of advantages and best promote the public interests. To those who believed that ships of war could be repaired or fitted out with the same despatch, at the same expense, and with the same ease and convenience, at a place three hundred miles distant from the sea, as they could be in one of the ports laying on its margin, and possessing the advantages which had been stated, no reasoning could be applied which would change their opinions. The proposition was offered to the House to be decided by common sense and understanding. There was one objection, which he had anticipated, and which had some weight in it. The business of the department would in that case be removed from the eye of the Government, and from the more immediate inspection and control of the intelligent and capable officer who directed its operations; this inconvenience would be balanced by the more ample means and resources which his agents would find in the large towns, and by which they would be enabled to carry his instructions more promptly into effect.

The motion was referred to a Committee of the Whole on Monday next.

FRIDAY, January 25.

A Message was received from the President of the United States, transmitting the report of the Director of the Mint. The said Message was read, and, together with the report, ordered to lie on the table.

Mr. LEIB, from the committee appointed on the twenty-second instant, presented a bill making an appropriation for the completion of the arsenal belonging to the United States on the river

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Schuylkill; which was read twice, and committed to a Committee of the whole House on Monday next.

On motion of Mr. CROWNINSHIELD,

Resolved, That the Committee of Ways and Means be directed to inquire whether any, and, if any, what, alterations are necessary to be made in the several acts fixing the salaries and emoluments of the collectors of duties on imports and tonnage; and that the committee have leave to report by bill, or otherwise.

On motion, it was

Resolved, That Mr. NELSON be excused from serving as one of the Managers appointed on the fifth ultimo, on the part of this House, to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," with an amendment; to which they desire the concurrence of this House. The Senate have passed a bill, entitled "An act concerning the mode of surveying the public lands of the United States;" to which they desire the concurrence of this House.

The bill sent from the Senate, entitled "An act concerning the mode of surveying the public lands of the United States," was read twice, and committed to Mr. GREGG, Mr. MORROW, Mr. DENNIS, Mr. ALEXANDER, and Mr. MOTT, to consider and report thereon to the House.

A petition of sundry purchasers of lands of the United States, in the State of Ohio, was presented to the House and read, praying, for the reasons therein specified, that an extension of the time of payment for the said lands may be granted by law, and, also, a remission of interest on the several instalments due on the same.—Referred.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage:" Whereupon, the amendment, together with the bill, was committed to a Committee of the whole House on Monday next.

Mr. MORROW presented two petitions, one from Thomas Orr, the other from Joseph Walker, praying Congress to allow them certain sections of land they had settled upon and improved.—Referred to the committee on the subject of the public lands, appointed on the 7th inst.

Mr. McCREERY, from the Committee appointed for the purpose, reported a bill declaring the assent of Congress to the act of Maryland of December 28, 1793, allowing a health officer at Baltimore.

The bill being twice read, on motion of Mr. LEIB, it was referred to a Committee of the Whole for Monday next.

Mr. ROOT, from the committee appointed for the purpose, reported a bill authorizing the discharge of John York from his imprisonment.—The same was twice read, and referred to a Committee of the Whole for Monday next.

The order of the day for the House to resolve itself into a Committee of the Whole on the report of the Committee of Revisal and Unfinished Business, was taken up.

The first resolution, for reviving and making permanent the law for regulating the mode of taking testimony in cases of contested elections was agreed to.

The second resolution, for renewing the charter of Washington City, being under consideration, Mr. LEIB observed, that it would be unnecessary to act on this subject at this time, as the law of last session had extended the duration of the charter to fifteen years.

On the question, the Committee *disagreed* to the last resolution.

The Committee then rose and reported.

The House immediately considered and concurred in the report of the Committee of the Whole; and the first resolution was referred to the Committee of Revisal and Unfinished Business to report a bill for the purpose.

Mr. LATTIMORE presented a memorial from the Legislative Council and the House of Representatives of the Mississippi Territory, stating sundry grievances to which they were exposed by the act of Congress for the government of the same. They complain that a man is not qualified to vote unless he possess fifty acres of land, whereby those who hold houses and town lots, as well as respectable citizens of considerable personal estate, are disfranchised. The inequality of representation in the several counties to the number of inhabitants in each; the necessity of extending the powers and authorities of an additional judge lately furnished the Territory; the inconveniencies arising from the prescribed mode of the disposal of lands; the necessity of establishing a hospital at the Natchez; and, lastly, an increase of the salaries of the judges.

On motion, the memorial was referred to a select committee of five members.

Mr. R. GRISWOLD, after stating at some length the provision made by the several laws of the United States respecting the duties on the importation of goods, wares, and merchandise, into the United States, and endeavoring to show that saltpetre had been particularly exempted from the payment of duties, under most of them, but that lately the Comptroller of the Treasury had directed the like duties to be taken upon their importation as upon other ad valorem goods—said he regretted that a difference existed on this point; his own opinion, as well as that of several eminent civilians, being the reverse, he moved that the Committee of Ways and Means be instructed to inquire whether saltpetre is at this time liable by law to a duty on the importation thereof into the United States? If liable to a duty, what is the rate thereof, and whether it is not expedient to define by law the duty to be levied hereafter on that article?

After some conversation on the subject, the motion was agreed to.

Mr. CROWNINSHIELD called for the order of the

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ay, on the bill for the relief of the sufferers by he late fire in New York. The motion being greed to, the House took into consideration the mendment proposed by Mr. EARLY, and agreed o in Committee of the Whole, for extending the ike relief to those who suffered by the storm of he 8th of September last, in the ports of Savanıah, Beaufort, Charleston, and Georgetown, in Jeorgia and South Carolina.

The motion being expressly to strike out Georgia and South Carolina, for the purpose of particularizing the ports intended to be relieved, viz: Savannah, Beaufort, Charleston, and Georgeown, a division of the question was called for, ınd the question being put on striking out, it was arried in the affirmative. The remainder of the notion, viz: Shall the above-mentioned ports be nserted? passed in the negative; so there stood a lank in the bill without connexion. It was then uggested that it would be proper to extend this elief all along the coast where sufferings had aken place. But this being opposed as too exensive, and likely to defeat the bill altogether,

On motion of Mr. EARLY the amendment was eferred to a Committee of the Whole, for the urpose of restoring it to the state it was in before t was thus mangled. The motion of reference was arried for Monday next.

POST ROADS.

Mr. G. W. CAMPBELL called for the order of he day on the resolution authorizing the establishment of a post road from Knoxville, in Tenessee, to the settlements on the Tombigbee river, nd so on to New Orleans.

On the question, Will the House resolve itself nto a Committee accordingly? it passed in the negative.

Mr. STANFORD moved to discharge the Comnittee of the Whole, with a view of referring he subject to the Committee on Post Offices and Post Roads.

Mr. NEWTON wished the subject to remain in ts present state, until the information which the House had requested of the President was received.

Mr. G. W. CAMPBELL thought the subject not a proper one for the Committee on Post Offices and Post Roads, and gentlemen might recollect that such a motion had been made when the business was first introduced, and it then failed of success; he hoped the like fate would attend the present motion. It would be recollected that the nformation alluded to by his friend from Virginia, had been requested seven weeks since, and he presumed was not yet to be procured, nor perhaps might it be during the session; he hoped, however, the House would agree to proceed to the examination of the subject.

Mr. GREGG thought it would be as well to refer t to the Committee of the Whole on the bill directing the application of a certain sum of money out of the proceeds of the sale of western ands, for opening certain roads.

Mr. STANFORD observed, the subjects were not similar, as there was a material difference between the useful roads through a country for carrying its produce to market, and a main post road, like the one under contemplation.

The question, on the motion to discharge the Committee of the Whole, was lost without a division.

GEORGIA CLAIMS.

Mr. DANA called for the order of the day on the report of the Committee of Claims, respecting the Yazoo claims to lands. He did this, that, at the time of adjournment, it might be considered as the unfinished business, and might have the preference over every other order of Monday. It would be recollected that the report was made last week, and fixed as the order of the day for Monday last, but he had forborne to call it up till this time, in order that gentlemen, after having had the printed report so long in their hands, might be prepared to meet the discussion, if not the decision.

Mr. NEWTON was about observing that the subject was too important to be taken up in a thin House, and, if gentlemen looked round, they would perceive most of the seats vacant.

He was here reminded by the Speaker that no debate could take place on the priority of business. If gentlemen were not prepared to go into Committee of the Whole, they would vote against the present motion.

Mr. NEWTON said, since that was the case, he would move to adjourn.

The motion to adjourn being decided in the negative,

The SPEAKER put the question on going into Committee of the Whole on the report.

On a division, there were 47 in the affirmative, and 43 in the negative; the motion was of course carried.

The CHAIRMAN proceeded to read the report, and when he had gone through a small part of it,

Mr. CLARK moved that the Committee should rise.

On the question for the Committee rising there were 50 in the affirmative, and 43 against it; it was carried.

The Committee hereupon rose, and reported progress, and asked leave to sit again.

On granting leave to sit again, there was 53 in the affirmative, and the Speaker declared that, in his opinion, the question was carried.

TERRITORY OF LOUISIANA.

Mr. JOHN RANDOLPH, from the committee appointed, on the twelfth of November last, on so much of the Message of the President of the United States as relates "to an amelioration of the form of government of the Territory of Louisiana," to whom was referred, on the 3d ultimo, a memorial, in the French language, with a translation thereof, from sundry planters, merchants, and other inhabitants of the said Territory of Louisiana, made a report, in part, thereupon; which was read, and referred to a Committee of the Whole on Monday next. The report is as follows:

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The grievances which have been felt by the memorialists, are of a nature which your committee believe to be inseparable from those sudden transitions of government to which late political events have subjected the inhabitants of Louisiana. By them, however, they are ascribed to a denial, on the part of the United States, of those rights and immunities to which they declare themselves entitled, in virtue of the third article of the treaty which transferred them to our dominion, and to the immediate enjoyment of which they now claim to be admitted. It is only under the torture that this article of the Treaty of Paris can be made to speak the language ascribed to it by the memorialists, or countenance for a moment that charge of breach of faith, which they have conceived themselves justified in exhibiting against the Government. By that article it is stipulated that "the inhabitants of the ceded territory shall 'be incorporated into the Union of the United States, 'and admitted as soon as possible, according to the 'principles of the Federal Constitution, to the enjoy-'ment of all the rights, advantages, and immunities, of 'citizens of the United States, and in the mean time 'they shall be maintained and protected in the free 'enjoyment of their liberty, property, and the religion 'which they profess."

"They shall be incorporated into the Union, and admitted"—to what? To the enjoyment of all the rights, &c., of American citizens. When? As soon as it can be done in conformity with the principles of the Federal Constitution; meanwhile they are to be "protected," &c.

Could any doubt be excited of the soundness of this construction of the English context, it would be instantly dissipated by a recurrence to its counterpart in the French language,* if the manifest absurdity of the concluding words of the article, which would result from an opposite interpretation, should fail to remove it. For what necessity could exist for a provision securing to the inhabitants of Louisiana the temporary enjoyment of certain minor privileges, when their *immediate* admission to all the rights of American citizens was one of the conditions on which their country was transferred to the United States by France? Whether the words "as soon as possible, according to the principles of the Federal Constitution," be understood to refer to any change, which, in conformity with its own principles, might at some future period be made in that instrument, or to that provision of the Constitution which requires the rule of naturalization to be uniform, they are equally fatal to the claim urged by the memorialists of their right to an immediate participation of those benefits which they cannot possess in their full extent until admitted to their enjoyment by the principles of the Constitution. The imputation, therefore, of a want of good faith in the Government of the United States, is not more unsupported by the language of the third article of the Treaty of Paris, than it is repugnant to the uniform tenor of the American character, from the commencement of the national existence.

But because the memorialists may have appreciated too highly the rights which have been secured to them by the treaty of cession, the claims of the people of Louisiana on the wisdom and justice of Congress ought not (in the opinion of your committee) to be thereby prejudiced. Relying on the good sense of that people to point out to them that the United States cannot have incurred a heavy debt in order to obtain the Territory of Louisiana merely with a view to the exclusive or especial benefit of its inhabitants, your committee, at the same time, earnestly recommend that every indulgence, not incompatible with the interests of the Union, may be extended to them. Only two modes present themselves whereby a dependent province may be held in obedience to its sovereign State—force and affection. The first of these is *not only* repugnant to all our principles and institutions of Government, but it could not be more odious to those on whom it might operate than it would be hostile to the best interests, as well as the dearest predilections, of those by whom, in this instance, it would have to be exercised. The United States are not the property of an hereditary despot, or the rich prize of a military adventurer, whose favorites and followers may batten on the spoil of plundered provinces won by the blood and treasure of their exhausted subjects, but they form the patrimony of a free and enlightened people, who control, while they constitute the only fund from which the men and the money of which military power is composed can be drawn. It can never be the interest, therefore, of the people of the United States to subject themselves to the burdens, and their liberties to the dangers, of a vast military force, for the subjugation of others. The only alternative, then, which presents itself, is believed to be not more congenial to the feelings than to the best interests of the people of the Union. So long as their authority pervades the Territory of Louisiana, so long as their laws are respected and obeyed therein, your committee are at a loss to conceive how the United States are more interested in the internal government of that Territory than of any State in the Confederacy. By permitting her inhabitants to form their own regulations, the voice of discontent would be hushed, faction (if it exist) disarmed, and the people bound to us by the strong ties of gratitude and interest. The spirit of disaffection, should it be excited at any future period by ambitious and unprincipled men, would be in direct hostility to the obvious interests of the people of Louisiana, while the ability of the Union to repress it would remain unimpaired.

In considering this subject, the committee have not been inattentive to those forms of provincial government which have heretofore obtained in the remote territories of the United States. But they have found nothing in them worthy of imitation. The second grade, as it is termed, is of the two less liable to objection, but there are many of its features which they are unable to recommend. Their object is to give to Louisiana a government of its own choice, administered by officers of its own appointment. In recommending the extension of this privilege to the people of that country, it is not the intention of the committee that it should be unaccompanied by wise and salutary restrictions. Among them may be numbered a prohibition of the importation of foreign slaves, a measure equally dictated by humanity and policy; restrictions against the establishment of any form of government, other than a representative Republic; against violations of the liberty of conscience, the freedom of the press, and the trial by jury; against the taxation of the lands of the

* Les habitans des Territoires cédés seront incorporés dans l'union des États Unis, et admis aussitôt qu'il sera possible, d'après les principes de la constitution fédérale, à la jouissance de tous les droits, avantages, et immunités des citoyens des États Unis, et, en attendant, ils seront maintenus et protégés, &c.—Treaty of Paris, of the 30th of April, 1803, Art. III.

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nited States; to which may be added (for further secu-
ty) that such of the laws as may be disapproved by
ongress, within a limited time after their passage, shall
of no force and effect. These, however, are objects
hich may be embraced in any bill which the wisdom
the Legislature may see fit to pass upon the subject.
hey will be proper subjects of consideration after the
termination of the principal question, the extension
self-government to the people of Louisiana. Your
mmittee, therefore, submit the following resolution:

Resolved, That provision ought to be made by law
r extending to the inhabitants of Louisiana the right
self-government.

[The following paper was subsequently presented to the House by the committee.]

After having considered with respectful attention the
servations of the committee on the third article of
e treaty of cession of Louisiana, we avail ourselves
the permission they have given us, to make such
marks as we conceive may be of some use towards
e elucidation of the question on which is principally
unded the claim of our constituents.

We have diligently and carefully examined the arti-
s of the Constitution of the United States, which
ve been pointed out to us as having more or less re-
ion to the present subject.

The first is the article which speaks in a direct and
questionable manner of the admission of new States
to the Union, in these words: "New States may be
mitted by the Congress into this Union," &c. This
ticle, the only one which expresses a clause respect-
g the admission of new States, makes no kind of re-
iction which can be applicable to Louisiana, and so
r we find nothing that can prevent its incorporation.

The next article which has been quoted to us estab-
hes the power of Congress to dispose of, and make
needful ru les respecting, the territory or other pro-
rty belonging to the United States. This, we hum-
conceive, has no relation whatever with the situation
the inhabitants of Louisiana, and is evidently relative
ly to the disposal and management of the property of
United States.

Subsequently, it has been suggested that certain rules
d regulations established in the year 1787, respecting
Territory northwest of the Ohio, are applicable to
, because they are considered as a part of the Consti-
ional laws, and, consequently, must be observed with
pect to Louisiana, which is to be admitted into the
ion according to the *principles* of the Constitution.

This observation leads to two queries: First, is the
linance of 1787 to be considered as a part of the
inciples of the Constitution? Second, is it applicable
Louisiana?

Without questioning whether the ordinance of 1787
ght to be considered as an integral part of the rules
ablished by the Constitution, though it appears to
extremely doubtful, we beg leave to say that it can-
be ranked among the *principles* of the Constitution.
e *principles* of the Constitution we humbly conceive
e the fundamental laws common to all the members
he Confederation. This is only a local regulation,
ich, far from having anything to do with the *princi-*
s of the Constitution, has been made, on the contra-
for those who could not enjoy yet the rights secured
the *principles* of the Constitution.

But in whatever light that ordinance may be consid-
d, it can by no means be applicable to Louisiana.
s clearly and unquestionably limited to the Territory
thwest of the Ohio; and unless it should have been
stipulated afterwards in the Constitution that that regulation would be applicable to any other Territory thereafter to be acquired, it must have remained a local and private rule.

On the other hand we do not conceive what similitude can be found between our country and those territories. The Territory northwest of the Ohio, acquired by the right of war, was a vast desert, almost without any inhabitants, and was the absolute property of the United States. There was no compact, no contract of any kind stipulated by any nations in favor of any population. The United States, being bound by no stipulation whatever, were at full liberty to make such government as they thought fit for that Territory. But the case of Louisiana is evidently different. It is a country which contains already a numerous population, established in it since nearly one hundred years. It becomes a part of the United States by a solemn treaty, containing a positive clause in favor of its inhabitants. Now, to pretend that this engagement goes no further than applying to them the ordinances made for territories, in favor of which no stipulation existed, would be, we conceive, reducing to nothing the third article of the treaty of cession of Louisiana. That article does not stipulate that the inhabitants of the ceded Territory shall be admitted into the Union according to the acts made by Congress to regulate the rights of the inhabitants of the Territory northwest of the Ohio; it expresses, on the contrary, that the Louisianians shall be incorporated into the Union according to the *principles* (the elemental laws) of the Constitution. It is, therefore, in the Constitution that we must look to find on what principles the Louisianians are to be incorporated in it.

Other remarks have been made by the committee tending to show that the incorporation of the inhabitants of Louisiana into the Union cannot be executed without the consent of three-fourths of the several States. Without pretending to enter into any discussion upon subjects of that magnitude, the consideration of which appertains exclusively to the sovereign body of Congress, we will take the liberty to suggest, respectfully, that the treaty stipulates our incorporation into the Union, that the United States have accepted that condition, and that to place it, at the present period, in the power of the individual States to refuse that incorporation, would be exposing the Federal Government to the danger of not fulfilling their promise.

After having briefly stated the principal remarks which have occurred to our memory respecting the suggestions of the committee, we beg leave to present, with all due deference and respect, our own interpretation of the third article of the treaty of cession of our country.

We consider, in the first place, that the clause, which is the ground of our claim, is a stipulation made expressly in favor of the inhabitants of Louisiana then existing, because the French Government had no right to stipulate the incorporation of the *future* citizens of Louisiana. We think that the words "as soon as possible, according to the principles of the Constitution," evidently express that this incorporation is to be executed without any unnecessary delay, and that it is to take place on the same *principles* by which the Constitution has regulated the rights of the individual States, and of the citizens of the United States, in relation to the federal compact. We humbly think that any interpretation tending to procrastinate the incorporation of the *present* inhabitants of Louisiana into the Union

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is directly opposite to the spirit of the third article of cession of our country, the object of which is unquestionably to secure that advantage to the inhabitants who are annexed to the United States by that treaty; that, consequently, any condition depending on future circumstances ought to be inadmissible, because it would expose the inhabitants, who existed in Louisiana when the treaty was made, to be kept out of the enjoyment of rights which have been stipulated for them.

Such is our opinion, which we respectfully submit to the Committee, praying them to accept our thanks for the permission they have given us to express our sentiments on the subject, and to make some allowance for the disadvantage under which we labor to express them in a language which is not altogether familiar to us.

L. DERBIGNY,
P. SAUVE,
DESTREHAN,
Agents of the inhabitants of Louisiana.

MONDAY, January 28.

A petition of sundry purchasers of the lands of the United States in the State of Ohio was presented to the House and read, praying (for the reasons therein stated) that an extension of the time of future payments for the said lands may be granted by law, and also a remission of interest on the several instalments due on the same.—Referred to the committee appointed on the seventh instant, "to inquire whether any and what alterations are necessary to be made in the laws for the disposal of the public lands northwest of the Ohio."

A petition of the members of the Presbyterian Congregation in Georgetown, in the Territory of Columbia, was presented to the House and read, praying that an act of incorporation may be passed, vesting in Stephen B. Balch and other persons therein named, and their successors, such powers, privileges, and immunities, as Congress in their wisdom may deem proper, to enable the petitioners, in behalf of the said congregation, to lease out on ground-rent, or sell, as they may deem expedient, for the purpose of defraying the expenses incident to their mode of worship, and to keep their buildings and grave-yards in decent repair.—Referred to Mr. FINDLEY, Mr. ARCHER, Mr. CUTLER, Mr. JONES, and Mr. BALDWIN.

Mr. J. CLAY, from the committee appointed, presented a bill for establishing trading-houses with the Indian tribes; which was read twice and committed to a Committee of the Whole on Wednesday next.

The House proceeded, by ballot, to the choice of a Manager, on the part of this House, to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in the place of Mr. NELSON, who hath been excused from serving on the subject-matter of the said impeachment; and, upon examining the ballots, Mr. CLARK was found to be duly elected by a majority of the votes of the whole House.

A message from the Senate informed the House that they have passed a bill, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial courts;" to which they desire the concurrence of this House.

On motion, it was *Resolved*, That the Committee of Revisal and Unfinished Business be instructed to inquire whether any, and if any, what alterations are necessary in the "Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," and that the committee be authorized to report by bill or otherwise.

The bill sent from the Senate, entitled "An act to extend jurisdiction in certain cases to the State and Territorial Courts," was read twice, and committed to Mr. J. RANDOLPH, Mr. R. GRISWOLD and Mr. J. CLAY, to consider and report thereon to the House.

On motion, it was *Resolved*, That a committee be appointed to inquire into the expediency of providing by law for the more effectual prevention of frauds and forgeries on the Bank of the United States, and that the committee be authorized to report by bill or otherwise.

Ordered, That Mr. J. CLAY, Mr. DENNIS, and Mr. G. W. CAMPBELL, be appointed a committee, pursuant to the said resolution.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred, on the ninth and sixteenth of November last, the petitions and memorials of a number of merchants, traders, and farmers, on the waters of Roanoke and Cashie rivers, in the district of Edenton, and State of North Carolina, made a report thereon; which was read, and referred to a Committee of the Whole on Wednesday next.

On motion, it was *Resolved*, That a committee be appointed to take into consideration the present situation of the grounds in the City of Washington, which were appropriated for the purpose of laying out public walks and gardens, and to report such measures to this House as may tend to carry into effect the original intention of the proprietors by whom the said lands were granted for public use.

Ordered, That Mr. HOLLAND, Mr. LIVINGSTON, Mr. VARNUM, Mr. HUGER, and Mr. SMILIE, be appointed a committee, pursuant to the said resolution.

The House resolved itself into a Committee of the Whole, on the bill authorizing the discharge of John York from his imprisonment; and, after some time spent therein, the bill was reported with an amendment thereto; which was twice read and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House again resolved itself into a Committee of the Whole, on the report, in part, from a committee appointed on the twelfth of November last, on so much of the Message of the President of the United States as relates to "an amendment of the form of government of the Territory of Louisiana." The Committee rose and reported a resolution thereupon, which was twice read and agreed to by the House, as follows:

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Resolved, That provision ought to be made by ıw for extending to the inhabitants of Louisiana ıe right of self-government.

Ordered, That a bill or bills be brought in, purıant to the said resolution, and that Mr. J. RANOLPH, Mr. R. GRISWOLD, Mr. T. MOORE, Mr. MILIE, Mr. DWIGHT, and Mr. SAMMONS, do preare and bring in the same.

The House again resolved itself into a Committee of the Whole, on a motion relative to "a proision by law for defraying the expense incident o fitting and preparing one of the navy yards beonging to the United States, and lying near the ıargin of the sea, for the reception and repairing f such ships of war as are now at sea, on their eturn to port, and such other ships or vessels of war as may hereafter return from their cruises or tations," referred on the twenty-fourth instant; nd, after some time spent therein, the Committee ose, and reported a resolution thereupon, which ıe House proceeded to consider, when the House djourned.

TUESDAY, January 29.

Another member, to wit: OLIVER PHELPS, from ew York, appeared, and took his seat in the louse.

The SPEAKER laid before the House a letter om the Secretary of War, stating his intention f complying with the resolution of this House of ıe twenty-third instant, relative "to the situation f the public buildings on the banks of the Schuylill, near the city of Philadelphia," so soon as the ecessary information can be obtained from the perintendent of military stores of the United tates.—Ordered to lie on the table.

An engrossed bill authorizing the discharge of ohn York from his imprisonment was read the ird time, and passed.

The House resumed the consideration of the solution reported yesterday from the Committe of the Whole on the subject-matter of a moon referred to the said Committee, on the twentyurth instant, relative to "a proviso, by law, for efraying the expense incident to fitting out and reparing one of the navy yards belonging to the nited States, and lying near the margin of the ean, for the reception and repairing of such ips of war as are now at sea on their return to ort, and such other ships or vessels of war as may ereafter return from their cruises or stations:"

And debate arising thereon, the farther conderation of the resolution was postponed until ıturday next.

Mr. THOMAS, from the committee appointed, e eighteenth ultimo, on a petition of Joshua ands and others, inhabitants and freeholders of e counties of King's and Queen's, in the State New York, reported a bill to authorize the erecon of a bridge across a mill-pond and marsh in e navy yard belonging to the United States, in e town of Brooklyn, in the State of New York; hich was read twice and committed to a Comittee of the Whole to-morrow.

GEORGIA CLAIMS.

The House again went into Committee of the Whole on the Georgia claims.

After reading over the report of the Committee of Claims, which concludes with submitting the following resolution:

Resolved, That three Commissioners be authorized to receive propositions of compromise and settlement, from the several companies or persons having claims to public lands within the present limits of the Mississippi Territory, and finally to adjust and settle the same in such manner as in their opinion will conduce to the interest of the United States: *Provided*, That in such settlement the Commissioners shall not exceed the limits prescribed by the convention with the State of Georgia.

Mr. DANA moved that the Committee rise and report the resolution.

Mr. J. RANDOLPH wished before the Committee rose that the gentleman from Connecticut (Mr. DANA) would assign some reasons for the adoption of the resolution. No two things could be more opposite than the prefatory statement made by the Committee of Claims and the resolution which terminated the report. As there were no reasons assigned, he suspected the gentleman had kept them back with a view of surprising the House by their novelty; but he hoped the Committee would not agree to the motion, unless some better cause was assigned for its adoption than had been hitherto made known.

Mr. DANA said the Committee of Claims, in the report now before the Committee of the Whole, had confined themselves to a statement of facts derived from the documents referred to them. He conceived it to be the business of the Committee of Claims to investigate the facts, and arrange them in such a manner as to free the House from the labor of detail; they had done this, and the report was a summary of all that passed in review before them. It was left to gentlemen to reason on the case according to their course of reflection. Whether the committee reasoned on the subject well or ill, he did not know that gentlemen were bound to follow them in their conclusion. Indeed, he apprehended that were the reasoning ever so energetic, it would not go to satisfy every gentleman. On a question like the present, he despaired of making it satisfactory to the gentleman who had asked for reasons. He was persuaded that gentleman could not be convinced by any argument the committee might have used, and it was idle to call upon them to perform impossibilities.

The question on the Committee's rising and reporting their agreement to the resolution was put, and carried—yeas 61, nays 50.

The SPEAKER having resumed the Chair, Mr. VARNUM reported the foregoing resolution as agreed to.

Mr. BRYAN called for the reading of that rule of the House which restrains interested persons from voting.

The Clerk read the same, as follows:

"No member shall vote on any question in the event of which he is immediately and particularly in-

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terested; or in any other case where he was not present when the question was put."

A motion was made to consider the report of the Committee of the Whole, and carried—yeas 64, nays 51.

Mr. CLARK moved a proviso as an amendment, declaring that no part of the five millions of acres reserved should go to compensate the claimants under the act of Georgia, passed in 1795.

Mr. J. RANDOLPH called the yeas and nays on the amendment.

Mr. DANA observed that the report on the table had been made on the application of persons claiming land under the act of 1795. The amendment, said he, is nothing more or less than a denial to comply with the prayer of the petitioners, and whether it was not to all intents and purposes a substitute for the resolutions agreed to in the Committee of the Whole, he would leave to the Speaker. If it were decided to be a substitute, it could not be received, conformably to the rules of the House.

The SPEAKER said, the resolution reported from the Committee of the Whole was a general one, including all claims; the amendment went to limit and confine the resolution to a particular class, and, therefore, he conceived it to be in order.

Mr. J. RANDOLPH.—It must be manifest to the House that this discussion is forced upon those who are opposed to the report of the Committee; that we are not prepared at this time to meet it. I am among those who hoped that some reasons would be assigned, if indeed reasons can be found, to warrant the step about to be taken. I did hope that, instead of a string of facts and statements which were already before the House, the Committee would have given us something new in the shape of argument, justificatory of the resolution which they have recommended. But I have been disappointed. Nothing is offered either in the report itself, or in debate, which throws a single gleam of light on the subject. I have particular reasons to deprecate a discussion at this time. I shall not trouble the House by detailing them, but briefly state that I feel myself unequal to an immediate investigation of this question, as well from personal indisposition as from the pressure of other important business, which has left me but little leisure to attend to this. The few moments which I have been able to devote to it, have convinced me that much new and important matter remains to be brought to light. But no apology will be received: we are driven to a vote by an inflexible majority.

The objection taken by the gentleman from Connecticut, (Mr. DANA,) and the doubt which he raised on the point of order, respecting the amendment offered by my worthy colleague, (Mr. CLARK,) discloses his drift, and that of the Committee of Claims, whilst it proves the necessity of some such amendment to save citizens of the United States and their property from spoliation and plunder. The gentleman has stated truly that his object was to further the claim of the New England Mississippi Land Company. As I fear I shall have full occasion to exert my voice, I must beg that the memorial of the agents of that company may be read by the Clerk.

Mr. J. RANDOLPH then called for the reading of the act of Georgia of February, 1796, generally called the rescinding act; and he hoped they would have silence whilst the act was reading, as it was a very important one, and ought to influence the decision on the present subject.

The act was read in compliance with his request.

After it was finished, Mr. CLARK moved to adjourn.

On the division, there was 52 yeas, and 55 nays. So the motion was lost.

Mr. CLARK requested that the act of 1795, under which they derived their pretended titles, might be read.

Whilst the SPEAKER was reading the same, Mr. DANA rose and inquired whether it was necessary to read the whole of the law, or whether gentlemen would not be satisfied with the reading of such part of it as bore upon the present question.

Mr. J. RANDOLPH called the gentleman to order for interrupting the Speaker in his reading.

Mr. SPEAKER.—The objection ought to have been made (if at all) when the reading of the law was first called for.

The reading was continued to the end of the act—when,

Mr. J. CLAY moved that the House adjourn.

On a division there were 53 yeas, and 60 nays. Motion lost.

Mr. J. RANDOLPH.—Perhaps it may be supposed, from the course which this business has taken, that the adversaries of the present measure indulge the expectation of being able to come forward, at a future day—not to this House, for that hope is desperate, but to the public, with a more matured opposition than it is in their power now to make. But past experience has shown them that this is one of those subjects which pollution has sanctified; that the hallowed mysteries of corruption are not to be profaned by the eye of public curiosity. No, sir, the orgies of Yazoo speculation are not to be laid open to the vulgar gaze. None but the initiated are permitted to behold the monstrous sacrifice of the best interests of the nation on the altars of corruption. When this abomination is to be practised we go into conclave. Do we apply to the press? that potent engine the dread of tyrants and of villains, but the shield of freedom and of worth? No, sir, the press is gagged. On this subject we have a virtual sedition law—not with a specious title, but irresistible in its operation, which, in the language of a gentleman from Connecticut, (Mr. GRISWOLD,) goes directly to its object. The demon of speculation, at one sweep, has wrested from the nation their best, their only defence, and closed every avenue of information. But a day of restribution may yet come. If their rights are to be bartered away and their property squandered, the people must not, they shall not be kept in ignorance by whom, or for whom it is done.

We have often heard of party spirit—of cau-

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cuses as they are termed—to settle legislative questions, but never have I seen that spirit so visible as at this time. The out-of-door intrigue is too palpable to be disguised. When it was proposed to abolish a judiciary system reared in the last moments of an expiring Administration, the detested offspring of a midnight hour—when the question of repeal was before this House, it could not be taken up until midnight, in the third or fourth week of the discussion. When the great and good man who now fills, and who (whatever may be the wishes of our opponents) I hope and trust will long fill the Executive chair, not less to his own honor than to the happiness of his fellow-citizens; when he, sir, recommended the repeal of the internal taxes, delay succeeded delay, and discussion was followed by discussion, until patience itself was worn threadbare. But now, when public plunder is the order of the day, how are we treated? Driven into the Committee of the Whole, and out again in a breath, by an inflexible majority, exulting and stubborn in their strength, a decision must be had instanter. The advocates for the proposed measure feel that it will not bear a scrutiny. Hence this precipitancy. They wince from the touch of examination, and are willing to hurry through a painful and disgraceful discussion. But it may be asked why this tenacious adherence of certain gentlemen to each other on every other point connected with this subject. As if animated by one spirit, they perform all their evolutions with the most exact discipline, and march in a firm phalanx directly up to their object. Is it that men combined to effect some evil purpose, acting on previous pledge to each other, are ever more in unison than those who, seeking only to discover truth, obey the impulse of that conscience which God has placed in their bosoms? Such men do not stand compromitted. They will not stifle the suggestions of their own minds, and sacrifice their private opinions to the attainment of some common, perhaps some nefarious object.

Having given vent to that effusion of indignation which I feel, and which I trust I shall never fail to feel and to express on this detestable subject, permit me now to offer some crude and hasty remarks on the point in dispute. They will be directed chiefly to the claim of the New England Mississippi Land Company, whom we propose to debar (with all the other claimants under the act of 1795) from any benefit of the five millions of acres, reserved by our compact with Georgia, to satisfy such claims not specially provided for in that compact, as we might find worthy of recompense. I shall direct my observations more particularly to this claim, because it has been more insisted upon, and more zealously defended than any other. It is alleged by the memorialists, who style themselves the agents of that company, that they, and those whom they represent, were innocent purchasers; in other words, ignorant of the corruption and fraud by which the act from which their pretended title was derived, was passed. I am well aware that this fact is not material to the question of any legal or equitable title which they may set up; but as it has been made a pretext for exciting the compassion of the Legislature, I wish to examine into the ground upon which this allegation rests. Sir, when that act of stupendous villany was passed in 1795, attempting under the forms and semblance of law to rob unborn millions of their birthright and inheritance, and to convey to a band of unprincipled and flagitious men a territory more extensive, and beyond comparison more fertile than any State of this Union, it caused a sensation scarcely less violent than that produced by the passage of the stamp act, or the shutting up of the port of Boston, with this difference: that when the port bill of Boston passed, her Southern brethren did not take advantage of the forms of law, by which a corrupt Legislature attempted to defraud her of the bounty of nature; they did not speculate on the necessities and wrongs of their abused and insulted countrymen. I repeat that this infamous act was succeeded by a general burst of indignation throughout the continent. This is matter of public notoriety, and those—I speak of men of education and intelligence, purchasers, too, of the very country in question—those who affect to have been ignorant of any such circumstance, I shall consider as guilty of gross and wilful prevarication. They offer indeed to virtue the only homage which she is ever likely to receive at their hands—the homage of their hypocrisy. They could not make an assertion within the limits of possibility less entitled to credit.

Yes, the act of the 7th of January, 1795, excited emotions of detestation and abhorrence, equal to those produced by the stamp act, or port bill of Boston. But this was not all. It drew upon it the immediate attention of the Federal Government. The authority which is about to be produced to the House is one which I am not in the habit of prostituting to every light occasion. It is one from which those who are daily endeavoring to shelter their crimes and their follies under its venerable shade. will not dare to appeal. Upon looking into the Journals of this House, I find the following Message from the President, dated on the 17th of February, 1795:

"*Gentlemen of the Senate,*
and House of Representatives:

"I have received copies of two acts of the Legislature of Georgia, one passed on the 28th day of December, 1794." [This, sir, is the act which the wavering virtue of the Governor induced him to reject.] "The other on the 7th of January, 1795," [The act under which the different companies, from one of which the memorialists derive their pretended title, claim] "for appropriating and selling the Indian lands within the territorial limits claimed by that State. These copies, though not officially certified, have been transmitted to me in such a manner as to leave no room to doubt their authenticity. These acts embrace an object of such magnitude, and in their consequences may so deeply affect the peace and welfare of the United States, that I have thought it necessary now to lay them before Congress."

Here, sir, is ample notice to the whole world.

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This message was referred to a select committee; consisting of Mr. JOHN NICHOLAS, Mr. MACON, Mr. FINDLEY, Mr. MURRAY, Mr. BOUDINOT, Mr. AMES, and Mr. SHERBURNE; on whose report, after solemn deliberation in the Committee of the Whole, the House, on the 26th of the same month, came to the following resolution: "*Resolved*, That the President of the United States be authorized to obtain a cession from the State of Georgia of their claim to the whole, or any part, of the land within the present Indian boundaries." The very land which the act of the 7th of January had attempted to alienate and sell; and the bill which I now hold in my hand was accordingly brought in, pursuant to the resolution, and passed the House on the 2d day of March. But, unfortunately, the session closed, of necessity, on the following day, and this House is well apprized that the forms of the Senate will not permit any bill to be hurried through that body. A single negative is sufficient to prevent it. The subject was not suffered however to sleep. An act was subsequently passed opening a negotiation with Georgia for the territory in question, of which we have received from her a solemn transfer. Is this notice, or is it not? On a formal Message of the President laying before them the act of 1795—so totally invalid and worthless was that act in their eyes; in such utter contempt did they hold the pretended rights of the grantees under it; that the House of Representatives immediately passed a bill empowering the President to receive a grant of the very land which that act had previously and fraudulently attempted to convey to the four companies. With what face could the President recommend, or Congress endeavor to obtain from Georgia a cession of the whole, or any part of the land within her Indian boundaries, if they believed that the land in question had been conveyed to others by a fair and bona fide sale?—if they attached to the act of January, 1795, any idea of validity? The man who answers this objection shall have my thanks. But, perhaps I shall be told that this was the act of a single branch of the Legislature, and not a law. True, sir, but it was a solemn averment to the whole world that Congress had a right to legislate on the subject. It was notice, on the 17th and 26th days of February, 1794, that the act passed by the State of Georgia, in the preceding month, was void and of no effect—it was loudly proclaimed by the convention of that State, which met in the succeeding May, and was finally consummated by the rescinding act of the 13th of February, 1796, which was subsequently ingrafted on the constitution of Georgia. And yet the New England Mississippi Land Company, under a deed of contemporaneous date (as they say) with this last act, a deed containing not merely a special warranty, but a special covenant that no recourse shall be had against the sellers, for any defect of title in them; a covenant which clearly indicates notice on the part of the buyers of such defect; claiming under a deed by which they purchase such title only as the grantees of 1795 had to sell, in whose stead and place they agree to stand, this company affect to have no notice of any defect of title in those of whom they bought. Sanction the [illegible] of this company, or any other derived from [illegible] of 1795, and what in effect do you declare [illegible] record a solemn acknowledgment that [illegible] have unfairly and dishonestly obtained from [illegible]gia a grant of land to which that State no [illegible] possessed a title, having previously sold it [illegible] for a valuable consideration, of which transf[illegible] Congress was at the time fully apprized. A[illegible] prepared to make this humiliating confessio[illegible] identify yourselves with the swindlers of [illegible] To acknowledge that you have unfairly obta[illegible] from another that to which you know he [illegible] title? I trust, sir, we have not yet reached [illegible] point of moral and political depravity.

The agents of the New England Land Compa[illegible] are unfortunate in two points. They set out w[illegible] a formal endeavor to prove that they are entitled to their proportion of fifty millions of acres of land, under the law of 1795, and this they make their plea to be admitted to a proportional share of [illegible] If they really believed what they say, would they be willing to commute a good legal, or equi[illegible] claim for one tenth of its value? Their memorial contains moreover a suggestion of falsehood. They aver that the reservation of five millions for satisfying claims not otherwise provided for in our compact with Georgia, was specially intended for the benefit of the claimants under the act of [illegible] and that we are pledged to satisfy them out of the reservation. Now, sir, turn to the sixth volume of your laws, and what is the fact? In the first place so much of the reserved five millions as may be necessary, is appropriated specifically for satisfying claims derived from British grants not regranted by Spain; and as much of the residue as may be necessary is appropriated for compensating other claims, not recognised in our compact with Georgia. An appropriation for certain British grants specially, and for other claims generally, falsely suggested to have been made for the especial benefit of the claimants of 1795; and the reservation of a power in the United States to quiet such claims as they should deem worthy of compensation, is perverted into an obligation to compensate a particular class of claims; into an acknowledgment that such claims are worthy of compensation. Can this House be inveigled by such barefaced effrontery? Sir, the act containing this appropriation clause was not brought to a third reading till the first of March. Our power expired on the fourth: it was at the second session of the seventh Congress. It was in the power of those opposed to the corrupt claims of 1795 to have defeated the bill by a discussion. But, sir, they abstained on this ground. If the appropriation of the five millions had not been made at that session, the year within which, by our agreement with Georgia, it was to be made, if at all, would have expired before the meeting of the next Congress, and it was urged, by the friends of the bill, that there were several descriptions of claims to which no imputation of fraud could attach: that by making a general appropriation we secured to ourselves the power of recompensing such claims as, on examination, might be found worthy of [illegible]

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whilst we pledged ourselves to no class of claimants whatever. But that if we should suffer the term specified, in our compact with Georgia, to lapse without making any appropriation, we should preclude ourselves from the ability to compensate any claims, not specially provided for, however just and reasonable we might find them, on investigation, to be. Under these circumstances, and I appeal to my excellent friend from Maryland, who brought it in, for the correctness of my statement, the opponents of the bill gave it no other opposition than a silent vote. And now, sir, we are told that we stand pledged, and that an appropriation for British grants not regranted by Spain, specially, and for such other claims against the State of Georgia, generally, as Congress should find quietworthy, was made for the special benefit of a particular description of claimants, branded, too, with the deepest odium; who dare to talk to us of public faith, and appeal to the national honor!

The conclusion of the memorial is amusing enough. After having played over the farce, which was acted by the Yazoo Squad at the last session, affecting to believe that an appropriation has been made by the act of March 1803, for their special benefit, they pray that Congress will be pleased to give them—what? that to which they assert they are entitled?—by no means—an eighth or tenth part of it—which said eighth or tenth part, if we may credit them, has been already appropriated to their use by law. From a knowledge of the memorialists, and those whom they represent, can you believe for a moment that, if they had the least faith in the volume of argument (I am sorry to profane the word) which they presented to the House to prove the goodness of their title, can you believe that under such impression they would accept a paltry compromise of two shillings in the pound—much less that, to obtain it, they would descend so low! Sir, when these men talk about public faith and national honor, they remind me of the appeals of the unprincipled gamester and veteran usurer to the honor of the thoughtless spendthrift, whilst in reality they are addressing themselves to his vices and his folly.

I have confined myself on this occasion principally to the question of notice, because it has been made an engine to play upon the generous feelings of many, and not because I deemed it material to the question of title. It is not my intention to travel over the ground which I occupied at the last session on the following important points: that Georgia had no right to make the sale; that even if she had, the contract, being laid in corruption and fraud, was null and void, *ab initio:* that, consequently, the question of notice was not material to the question of title, in the hands of third persons; since, the original grant being obtained by bribery and fraud, no right could vest under it; and that the grantees of 1795 could not sell a greater, or better title, than they themselves possessed: and that, even if these positions were as false as they are indisputably true, the present case presents a monstrous anomaly, to which the ordinary and narrow maxims of municipal jurisprudence ought not, and cannot be applied. It is from great first principles, to which the patriots of Georgia so gloriously appealed, that we must look for aid in such extremity. Yes, extreme cases, like this, call for extreme remedies. They bid defiance to palliatives, and it is only from the knife, or the actual cautery, that you can expect relief. There is no cure short of extirpation. Attorneys and judges do not decide the fate of empires.

The right of the State of Georgia to sell (although I do not propose to go largely into that question) is denied by your own statute book, by turning to which you will find, that so far from being able to transfer to others the right of extinguishing Indian title to the land, she has not been able to exercise it for her own benefit. It is only through the agency of the United States that she can obtain the extinguishment of Indian title to the soil within her limits, much less could she delegate it to a few Yazoo men. But, as has been repeatedly stated on former discussions of this subject, even if the question of right on the part of Georgia to sell, and on the part of the grantees to take, be conceded, it cannot be controverted that the fraudulent and corrupt attempt of the Legislature of 1795, to betray the interests of those who had confided in them, was, *ipso facto*, void; that no right could be vested, by it, in the instigators and participators of the fraud, and that these could not convey to others a better title than they themselves possessed. If the authority were worth anything, I myself would cite that of the memorialists themselves and of the Committee of Claims, in support of this position. It is allowed by these authorities, that the title of the purchasers, at second and third hand, is diminished in the ratio which the five millions of acres bears to the whole territory, which they modestly admit to contain thirty-five millions of acres, although there is the best reason to believe it to be nearer fifty. Now, sir, they have not condescended to explain to us by what legerdemain it comes to pass, that a title to thirty-five millions of acres (to take their own statement) is depreciated in their hands so fearfully as to quantity—is reduced to one seventh of its value, whilst the quality of the title to that seventh is proportionally raised. Plain honest men would reason very differently. A man of this stamp would argue somewhat in this way: If the corrupt and corrupting grantees of 1795, sold a claim to thirty-five millions of acres to third persons, surely those persons would have the same title to the whole of the property which they had purchased, that they could pretend to set up to any part of it. It would never occur to such a man, that whilst, as to quality, these persons had bought a better title than the vendors themselves had to sell, yet, by some unintelligible process, this better title was in quantity, and of course in value, wasted in their hands to one seventh part of its original worth: in other words was seven times worse, and at the same time better, than the title of the original grantees. Discoveries such as these have been reserved for the profound legal learning of the agents of the New England Mississippi Land Company, and the ingenuity of the Committee of

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Claims! What, sir, would you say to a pretender to your estate, who after laying claim to the whole of it, and writing a volume of arguments (if I may so abuse the term as to apply it to the sophisticated trash which I hold in my hand) in support of his pretensions, should make it the groundwork of a proposal to receive a seventh, or a tenth part of what he declared himself legally and equitably intitled to, and should at the same time affirm that you were "bound in honor" to accede to his modest, considerate, and generous proposition? Would you not scout him from your presence as a swindler, as a disturber of the peace of society; or would you be trepanned by his artifice, or bullied by his effrontery, out of your property?

The Government of the United States, on a former occasion, did not, indeed, act in this firm and decided manner. But those were hard, unconstitutional times, which ought never to be drawn into precedent. The first year that I had the honor of a seat in this House, an act was passed of a nature not altogether unlike the one now proposed. I allude to the case of the Connecticut Reserve, by which the nation were swindled out of some three or four millions of acres of land, which, like other bad titles, had fallen into the hands of innocent purchasers. When I advert to the applicants by whom we were then beset, I find that among them was one of the very persons who style themselves agents of the New England Mississippi Land Company, who seems to have an unfortunate knack at buying bad titles. His gigantic grasp embraces with one hand the shores of Lake Erie, and stretches with the other to the Bay of Mobile. Millions of acres are easily digested by such stomachs. Goaded by avarice, they buy only to sell, and sell only to buy. The retail trade of fraud and imposture yields too small and slow a profit to gratify their cupidity. They buy and sell corruption in the gross, and a few millions, more or less, is hardly felt in the account. The deeper the play, the greater their zest for the game, and the stake which is set upon their throw is nothing less than the patrimony of the people. Mr. Speaker, when I see the agency that has been employed on this occasion, I must own that it fills me with apprehension and alarm. This same agent is at the head of an Executive department of our Government, subordinate indeed in rank and dignity, and in the ability required for its superintendence, but inferior to none in the influence attached to it. This officer, possessed of how many snug appointments and fat contracts, let the voluminous records on your table, of the mere names and dates and sums declare; having an influence which is confined to no quarter of the country, but pervading every part of the Union; with offices in his gift amongst the most lucrative, and at the same time the least laborious, or responsible, under the Government, so tempting as to draw a member of the other House from his seat, and place him as a deputy at the feet of your applicant; this officer presents himself at your bar, at once a party and an advocate. Sir, when I see this tremendous patronage brought to bear upon us, I do confess that it strikes me with consternation and dismay. Is it [illegible] this? Are heads of Executive departme[illegible] the Government to be brought into this [illegible] with all the influence and patronage atta[illegible] them, to extort from us, now, what was [illegible] at the last session of Congress? I hope [illegible] But if they are, and if the abominable [illegible] practised upon, and by the Legislature of Ge[illegible] in 1795, is now to be glossed over, I for one [illegible] ask what security they, by whom it shall be [illegible] can offer for their reputations, better than [illegible] given for the character of that Legislature [illegible] will pin myself upon this text, and preach u[illegible] as long as I have life. If no other reason [illegible] adduced but a regard for our own fame, if it w[illegible] only to rescue ourselves from this foul imputa[illegible] this weak and dishonorable compromise ought [illegible] receive a prompt and decisive rejection. Is the voice of patriotism lulled to rest, that we no longer hear the cry against an overbearing majori[illegible] determined to put down the Constitution, and de[illegible] to every proposition of compromise? Such we[illegible] the dire forebodings to which we have been heretofore compelled to listen. But if the enmity of such men be formidable, their friendship is deadly destruction, their touch pollution.

What is the spirit against which we now strugle, and which we have vainly endeavored [illegible] stifle? A monster generated by fraud, nursed [illegible] corruption, that in grim silence awaits his prey. It is the spirit of Federalism! That spirit which considers the many as made only for the few, which sees in Government nothing but a job, which is never so true to itself as when false to the nation! When I behold a certain party supporting and clinging to such a measure, almost to a man, I see only men faithful to their own principles; pursuing, with steady step and untired zeal, the uniform tenor of their political life. But when I see associated with them, in firm compact, others who once rallied under the standard of opposite principles, I am filled with apprehension and concern. Of what consequence is it that a man smiles in your face, holds out his hand and declares himself the advocate of those political principles to which you are also attached, when you see him acting with your adversaries upon other principles, which the voice of the nation has put down, which I did hope were buried, never to rise again in this section of the globe? I speak of the plunder of the public property. Say what we will, the marrow and pith of this business will be found in the character of the great majority of its friends, who stand as they have before stood on this floor, the unblushing advocates of unblushing corruption. But this, [illegible] may be said, is idle declamation. We may be told, as we have been told before, that the squanderers of the public treasure are the guardians of the people against their worst enemies—themselves; that, to protect them from further depredation, it is necessary to give this Cerberus of corruption, this many-headed dog of hell, a sop; that it is to your interest to pacify him; and this sentiment is re-echoed by his yells. Good God! Sir, can you believe, can any man believe it!

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there a woman or child in the country weak enough to credit it—that a set of speculators, out of pure regard to the public interest, are willing to sacrifice thirty millions of acres of land? that they press their offer to accept a seventh or a tenth of their claim, from motives of patriotism? Can you believe that their love of country has got the better of their avarice; that their virtue is equal to such a sacrifice at the shrine of the public welfare? Such men, I repeat it, are formidable as enemies, but their friendship is fraught with irresistible death. I fear indeed the "*Danaos et dona ferentes.*" But, after the law in question shall have passed, what security have you that the claimants will accede to your terms of compromise? that this is not a trap, to obtain from Congress something like a recognition of their title, to be hereafter used against us? Sir, with all our wisdom, I seriously doubt our ability to contend with the arts and designs of these claimants, if they can once entangle us in the net of our own legislation. Let the act of March, 1801, of which already they have made so dextrous a use, be remembered. They themselves have pointed out the course which we ought to pursue. They have told us, that so long as we refrain from legislating on this subject, their case is hopeless. Let us then persevere in a "wise and masterly inactivity."

Whenever a bill shall be introduced, in conformity to the principles of the report, if such should unfortunately be the decision of the House, I trust that some gentleman, more competent than myself, will be ready to give it a more effectual opposition. My weak health and want of preparation unfits me for the task. But, sir, if this claim is to be admitted, I hope we shall not fail to go the whole length of our principles; that we shall not narrow down to five millions of acres a legal or equitable title to fifty. If Congress shall determine to sanction this fraud upon the public, I trust in God we shall hear no more of the crimes and follies of the former Administration. For one, I promise that my lips upon this subject shall be closed in eternal silence. I should disdain to prate about the petty larcenies of our predecessors, after having given my sanction to this atrocious public robbery. Their petty delinquencies will vanish before it, as the stars of the firmament fade at the effulgent approach of a Summer's sun.

The Committee rose, and had leave to sit again, and the House adjourned.

WEDNESDAY, January 30.

On motion, it was

Resolved, That the President of the United States be requested to inform this House whether SAMUEL HAMMOND, a member of this House, has not accepted of an Executive appointment, and when?

Ordered, That Mr. BRYAN and Mr. EPPES be appointed a committee to present the foregoing resolution to the President of the United States.

GEORGIA CLAIMS.

The House resumed the consideration of the resolution reported yesterday from the Committee of the Whole, on the Georgia Claims.

Mr. ELLIOT.—It cannot but be considered as a very fortunate circumstance, and one which cannot fail to have a favorable influence upon the final decision of this important question, that, since the delivery of the animated observations which yesterday so powerfully attracted the attention of the House, we have been afforded a few hours of tranquil retirement from the tempest of the forum, for the purpose, useful at all times, and peculiarly so at the present time, of calm reflection. To transfer ourselves in a moment from the flowery fields of fancy, to the rugged road of argument, to descend instantaneously from the elevated scenes of eloquence to the humble walks of common sense, requires an effort transcending ordinary powers. In claiming your attention, Mr. Speaker, for a greater portion of the day than I commonly occupy in debate upon this floor, I shall not address you in the style of compliment or ceremony. It is time to banish from these walls that idle frippery of ceremonious conversation, which is suited only to a new year's compliment, or a birth-day salutation, and to catch a little of the sturdy spirit of antiquity. A bold, a loud, an impressive appeal is made to the American people. In that appeal I fearlessly and most cordially unite. I regret, however, the existence of a precedent which at once justifies and demands these addresses to the people. Much as I wish to disseminate correct information, particularly on a subject which I believe is but imperfectly understood without these walls, except by interested persons, and convinced as I am that the subject is understood, and an opinion formed upon it, by every member of this House, I shall not so completely follow the example before us as to speak to the people in the first instance, but shall, as usual, direct my observations to the House.

I propose to examine, in a concise, and if it be in my power, in an argumentative manner, the following questions, which have a direct application to the amendment proposed by the gentleman from Virginia (Mr. CLARK) to the resolution under consideration, and which, at the same time, open to view the whole extent of the subject:

Did the State of Georgia, in the year 1795, possess a title to the territory in question?

Were the Legislature of Georgia, in 1795, invested with the Constitutional power of making a sale of the territory, and did they make such sale to those from whom the present claimants derive their title or pretended title? And if such sale was made, what title or color of title did it convey?

Were the members of the Legislature of Georgia, in 1796, invested with the Constitutional power of rescinding the acts of their predecessors in relation to such sale, and did they rescind them?

Were the claims or pretended claims of the present claimants in any manner recognised by

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the act of cession of the territory in question from Georgia to the United States? And,

Do justice and policy, or either justice or policy, require that the whole or any part of the five millions of acres, reserved by the act of cession from Georgia to the United States, for the purpose of satisfying claims of a certain description against Georgia, in reference to the said territory, should be appropriated for the purpose of satisfying the claims of the present claimants?

However extensive the outline which I have sketched of the subject, the survey will be a rapid one.

It is necessary that I should make one or two preliminary observations. I have uniformly been opposed to the doctrine which has been so powerfully advocated, that Congress is competent to make a legislative decision upon the validity or invalidity of the conflicting acts of Georgia. We possess no such powers. But as individuals we may express our opinions, Nor am I disposed to do anything which shall have a tendency to impugn the title of the United States to this territory. Without deciding the question of title, my principal object is to show that the claimants are in possession of so strong a color of title, that it will be good policy to authorize a negotiation with them for the abandonment of their claim, especially as we have a prospect of obtaining that abandonment on their part, without going beyond the reservation in the act of cession, and of course without the actual expense of a single dollar to the United States.

Did the State of Georgia, in the year 1795, possess a title to the territory in question?

To answer this inquiry, it is only necessary to make one or two quotations from the articles of agreement and cession, entered into on the 24th of April 1802, between the Commissioners of the United States and those of Georgia. In the first article, "the State of Georgia cedes to the United 'States all the right, title and claim, which the 'said State has to the jurisdiction and soil of the 'lands situated within the boundaries of the United States south of the State of Tennessee," &c. By the second article, "The United States accept 'the cession above-mentioned, and on the condition therein expressed; and they cede to the State 'of Georgia whatever claim, right, or title, they 'may have to the jurisdiction or soil of any lands 'lying within the United States, and out of the 'proper boundaries of any other State, and situated 'south of the southern boundaries of the States of 'Tennessee, North Carolina, and east of the boundary line herein above described, at the eastern boundary of the territory ceded by Georgia to the United States." Whatever claim or title the United States might previously have had to the territory, they thought proper, in 1802, to combine with it, and to fortify it, by that of Georgia; and surely we shall not do any act, or adopt any principle, tending to impair the title under which we now exercise jurisdiction over the territory.

Were the Legislature of Georgia, in 1795, invested with the Constitutional power of making a sale of the territory, and did they main[illegible] sale to those from whom the present cl[illegible] derive their title or pretended title? And [illegible] sale was made, what title or color of title [illegible] convey?

In this age of political revolution and refo[illegible]tion, for I consider it an age of reformat[illegible] well as revolution, there are still certain prin[illegible] and maxims, not merely venerable for their [illegible]tiquity, but consecrated by their conformi[illegible] the common sense and reason of mankind. w[illegible] are considered as universal in their applic[illegible] and irresistible in their influence. Among [illegible] may be numbered the principles which attach [illegible] the government of every regularly organized co[illegible]munity; the power of pledging the public fa[illegible] and that of alienating the right of soil of the va[illegible]cant territory of the nation. In every free government, there must exist the power of legislation, or of making laws; a distinct power charged with the execution of the laws, and a judi[illegible] power. The union of these different powers [illegible] the same man or body of men, is the very essence of despotism. Thus in France prior to the Revolution, it was a fundamental maxim of State that the King was the Legislator of the French Monarchy; and the power exercised [illegible] some instances by certain parliaments, of refusing to register the edicts of the monarch, however in practice it might operate as an obstruction to legislation, was in theory only a matter of form or at most but a temporary check upon the executive power. In oligarchies the legislative power is vested in the rich and noble; and in aristocracies, in a few individuals who are presumed to be the wisest and the best in the community.—In governments of the democratic form, this power resides in the great body of the people, and is exercised by themselves or their representatives. The base of the temple of American liberty is democracy, or the sovereignty of the people; representation and confederation are the principal pillars which support the great superstructure. As the State governments are unquestionably representative democracies, the General Government is a representative federal republic. In every government of the representative form, the representatives of the people are vested with power to pledge the public faith, and to alienate the vacant territory of the nation. Were the members of the Legislature of Georgia, in 1795, invested with this authority? Certainly it was within the sphere of those Constitutional rights and powers which had never been surrendered to the General Government. We have since recognised that authority by receiving a solemn deed of cession of the territory, from a subsequent Legislature of Georgia, transferring to us not only the [illegible] but the right of jurisdiction. Was this auth[illegible] exercised in 1795? In the act of the Legislature of that State of the 7th of January in the [illegible] granting this territory to those from w[illegible] the present claimants derive their claims, certain [illegible] are described, and it is enacted that those [illegible] shall be sold to such and such persons, as tenants in common, and not as joint tenants. The [illegible]

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hall be sold, or, in other words, the right of soil hall be alienated. A proper distinction is taken etween the *dominium utile* and the *dominum irectum* of the civilians. No transfer was made f the right of jurisdiction, although such imagiary transfer forms a prominent article in the easons assigned by the Legislature of 1796 for assing the recinding act. From this view of he subject, whatever may be the present state f the question of legal title, who can doubt that he present claimants, honest purchasers from he original grantees, upon the faith of an indeendent State, and innocent of fraud, if fraud exsted, possess such a color of title, such an equiable claim, as to render it prudent and politic to enter into a compromise with them upon reasonable terms?

Were the members of the Legislature of Georgia, in 1796, invested with the Constitutional power of rescinding the acts of their predecessors n relation to such sale, and did they rescind hem?

Congress is incompetent to the decision of this uestion. Nor is such decision necessary. I will, owever, make one or two inquiries, and state one r two principles, which are applicable to the ubject, which at the same time will go to trengthen the ground I have taken as to color f title in the claimants, and the policy of extinuishing their claims.

Can a Legislature rescind a contract made by ts predecessors?

Writers on national law make a distinction etween laws which operate in the nature of conracts, and those which have no such operation. Every enlightened and reasonable man will subcribe to the opinion that a pledge of the public aith, given by the competent authority, ought to e irrevocable. Laws which pledge the faith of he community, which create contracts, which est rights in individuals or in corporate bodies, t may safely be assumed as a general principle, re irrepealable. Laws of merely municipal operation are alterable or repealable at the pleasure of he existing Legislature.

Can the judicial power declare a Legislative ct void, as having been passed by means of corption?

Different opinions have existed in our country s to the right claimed by the Judiciary, of deciding upon the constitutionality of laws. The better opinion seems to be, that from the nature of ur Government, and the very terms of the Constitution itself, by which that instrument is declared to be the supreme law of the land, the udges not only ought to exercise that power, but hat they cannot avoid its exercise. If I am not nistaken, some gentlemen, who deny that the udges possess this right, are prepared to invest hem with the more dangerous one of setting side a Legislative act on the ground of corruption. To admit that the Judiciary may examine nto the motives of the Legislature in passing aws, or that they may receive and decide upon evilence tending to prove corruption in the Legislative body, would certainly be going much farther than those have gone who have claimed for that department the right of deciding upon the constitutionality of laws. Suppose a trial of title between a person claiming under the act of Georgia, of 1795, and another claiming under the United States, and suppose evidence offered to the court to prove the corruption of the Legislature of Georgia, in what a peculiar situation would the judges be placed? And would they listen for a moment to an application for the admission of such evidence? It may well be doubted. Do not then the present claimants possess a very strong color of title? Is it not prudent to extinguish claims of this description?

Were claims, or the pretended claims of the present claimants, in any manner recognised by the act of cession of the territory in question from Georgia to the United States? And,

Do justice and policy, or either justice or policy, require that the whole or any part of the five millions of acres, reserved by the act of cession from Georgia to the United States, for the purpose of satisfying claims of a certain description against Georgia, in reference to the said territory, should be appropriated for the purpose of satisfying the claims of the present claimants?

I have anticipated the principal arguments in favor of the equity of the claims, and the policy of a compromise with the claimants. The memorialists state that their claims were particularly contemplated by the Commissioners, both of the United States and of Georgia. They have offered us no evidence of this fact, and we are not to take it for granted. Indeed, I am far from thinking it my duty either to advocate or answer the pamphlet of the memorialists, and I shall make but this single allusion to it. Whatever may be its merits, it has had no influence upon my mind in forming my opinion. An examination of the official documents upon our tables will evince, however, that by a very strong implication, if not by express provisions, these claims have been recognised, both by the act of cession, and by the law of Congress passed in consequence. The first condition of the first article of agreement and cession, provides for the payment of one million two hundred and fifty thousand dollars, to the State of Georgia, out of the first net proceeds of the sales of the lands then ceded: the second provides for certain British and Spanish grants: and the third is as follows:

"That all lands ceded by this agreement, to the United States, shall, after satisfying the above-mentioned payment of one million two hundred and fifty thousand dollars, to the State of Georgia, and the grants recognised by the preceding condition, be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever: provided, however, that the United States, for the period and until the end of one year after the assent of Georgia, to the boundary established by this agreement, shall have been declared, may, in such manner as not to interfere with the above-mentioned payment of the State of Georgia, nor with the grants herein before recognised, dispose of or appropriate a

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portion of the said lands, not exceeding five millions of acres, or the proceeds of said five millions of acres, or of any part thereof, for the purpose of satisfying, quieting, or compensating for any claims other than those herein before recognised, which may be made to the said lands, or to any part thereof. It being fully understood, that if an act of Congress making such disposition or appropriation shall not be passed into a law within the above-mentioned period of one year, the United States shall not be at liberty thereafter to cede any part of the said lands on account of claims which may be laid to the same, other than those recognised by the preceding condition, nor to compensate for the same; and in case of any such cession or compensation, the present cession of Georgia, to the right of soil over the lands thus ceded or compensated for, shall be considered as null and void, and the lands thus ceded or compensated for shall revert to the State of Georgia."

It is unnecessary to inquire into the motives which dictated a provision so singular; they are obvious to all who are acquainted with the whole history of the transaction. It was well understood that Congress was to pass the law, and it was passed on the third of March, 1803. The eighth section appropriated so much of the reserved five millions of acres as might be necessary to satisfy the claims not recognised by the preceding agreement, which were embraced by the two first sections of the act, or derived from British grants for lands not regranted by the Spanish Government; and it also contained the following appropriation: "So much of the residue of the 'said five millions of acres, or of the net proceeds 'thereof as may be necessary for that purpose, 'shall be, and is hereby, appropriated, for the pur-'pose of satisfying, quieting, and compensating, 'for such other claims to the lands of the United 'States south of the State of Tennessee, not re-'cognised in the above-mentioned articles of 'agreement, and which are derived from any act 'or pretended act of the State of Georgia, which 'Congress may hereafter think fit to provide for: '*Provided, however*, That no other claims shall 'be embraced by this appropriation but those the 'evidence of which shall have, on or before the 'first day of January next, been exhibited by the 'claimants to the Secretary of State, and re-'corded in books to be kept in his office for that 'purpose, at the expense of the party exhibiting 'the same." The following are the opinions of the Commissioners, the Secretary of State, Secretary of the Treasury, and Attorney General of the United States, upon this subject. On the claims pretended to be derived under the act of Georgia, of the 21st December, 1789, they observe: "Upon a full view of the subject, the 'Commissioners do not perceive that those com-'panies have any equitable claim either for the 'land, or for compensation from the United 'States." Very different is their opinion upon the claims under the act of 1795: "The Com-'missioners think those propositions inadmissible, 'and without pretending to affirm that the Legis-'lature of Georgia was competent to make the 'decision, they feel no hesitation in declaring it 'as their opinion, that under all the circumstances 'which may affect the case, as they have [illegible] 'within their knowledge, and as herein [illegible] 'the title of the claimants cannot be sup[illegible] 'But they nevertheless believe that the [illegible] 'of the United States, the tranquillity of [illegible] 'who may hereafter inhabit that territory [illegible] 'various equitable considerations, which may [illegible] 'urged in favor of most of the present cl[illegible] 'ants, render it expedient to enter into a com[illegible] 'mise on reasonable terms." Here I cannot [illegible] remark, how very difficult it is for feeble m[illegible] to decide important questions upon which gr[illegible] men disagree. The gentleman from Virg[illegible] (Mr. Randolph) is of opinion that it would [illegible] only be impolitic to compromise these claims, [illegible] that the only claims of the applicants are fra[illegible] and villany; the Commissioners, who probably examined the subject with as much attention, at least with as much coolness, as that gentleman, believe that not only the public good requires the compromise, but that various equitable considerations may be urged in favor of most of the present claimants. The Secretary of the Treasury, in his letter of the 9th instant, to the chairman of the Committee of Claims, observes: "My own 'impression was, that the five millions of acres 'would be sufficient to cover all the claims of set-'tlers, British grantees, and others not expressly 'provided for by the articles of agreement and 'also to make a reasonable compensation for 'claims derived or pretended to be derived from 'Georgia; and it appeared to me that the effect 'of the clause would be—first, to prevent Con-'gress from voluntarily confirming, at some fu-'ture time, the said Georgia claims; second, to 'leave it in their power to compromise with that 'description of claimants, by allowing so much 'of the surplus of five millions of acres as they 'might think proper; without, at the same time, 'pledging Government to enter into a compro-'mise, if, upon a full view of all the circumstances 'of the case, a different course was thought more 'eligible." The Committee of Claims, who must have paid more attention to the subject than it is possible for other members to do, "on consider-'ing these various transactions, are of opinion 'that it is proper to make some legislative pro-'vision for the purpose of settling the existing 'claims on such terms as shall appear to be rea-'sonable," and they recommend the appointment of Commissioners for that purpose. Can there any longer be a doubt that the claims are recognised by the act of cession? Can there be a doubt that Congress, by making the appropriation of the five millions of acres, and by subjecting the claimants to great expense in recording and supporting their claims, have tacitly pledged the public faith that some provision shall be made for them? And do not justice and policy require the adoption of the resolution reported by the committee?

The gentleman from Virginia has expressed his surprise that the chairman of the Committee of Claims has contented himself with reporting facts and principles, and that he has not adopted the novel procedure of reporting something to amount to an elaborate speech in favor of the

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claims. As the speech of the gentleman from Virginia is unfortunately destitute of argument against the claims, and as it might be possible to deduce from it reasons in their favor, it might perhaps be proper for him to print it and annex it to the report, as a substitute for that which he thinks the chairman ought to have subjoined for the edification of the House. My feeble optics have been able to discover but one attempt at argument, which is in those observations which relate to the Message of the President, and the proceedings of Congress, on the act of Georgia, in 1795, and which it is contended, were notice, to purchasers and to the world, of fraud. At that time, it was not suspected that fraud had been committed, and the reason for those proceedings was, that the United States possessed, or were supposed to possess, certain claims to the territory. There are certain subtile, sublimated, etherial, heaven-descended geniuses, the soft and silken texture of whose minds would suffer infinite discomposure from the contact of that rude and knotty thing—an argument. That gentleman is not of this description. Too often have we witnessed his argumentative powers to entertain this idea. I regret that he has declaimed instead of reasoning upon this occasion, as I believe that argument, particularly upon important subjects, is more useful than mere declamation. From motives which I cannot develope, for I ascribe improper views to no one, the present is attempted to be made a party question. The people are told that the Capitol has become a scene of political and private iniquity, of fraud and federalism; that the majority of their Representatives are committing a stupendous robbery upon the public patrimony, and their indignation is invoked upon the plunderers. What facts exist to justify these denunciations? Are we about to barter away the rights and interests of the people? Are we about to be guilty of a wanton waste of the public property? Are we guilty of political apostacy? No such thing. We are about to make arrangements for carrying into effect a solemn stipulation in the treaty with Georgia, and a solemn act of our predecessors, by devoting a part of the five millions of acres, specially reserved for that purpose, for which the United States never paid a cent, and never will pay a cent, to the extinguishment of the colorable claims of equitable claimants. Yet we are told that this act of equity, good faith, and good policy, is a stupendous crime, compared with which the flagitious acts of the former "unprincipled Administration" dwindle into "petty larcenies." I am a republican—a democratic republican. I was opposed to the general system of that Administration. But I do not think it magnanimous, or honorable, malignantly to triumph over fallen foes. Nor do I dread the union of honest men. It can be dreadful only to the dishonest.

It is said that the press is under the influence of a virtual sedition law. No, sir. The press—I speak without allusion to political distinctions—is incorrigibly licentious. Has the gentleman from Virginia read, in one of the oracles of our country, mingled with his own praises, the denunciation of the whole representation of one of the largest States in the Union (Massachusetts,) as composed of men destitute both of public and private integrity, and conspirators against the peace of the Union, merely because they differ in opinion from that gentleman upon this single question? Does he know that these denunciations are echoed and re-echoed, by means of the presses called exclusively republican, through almost every village of the nation? Has he heard that the Representatives of remote districts are denounced to their constituents as traitorous to their rights, and that their independence of his imperious mandates is made the powerful evidence of the treason? I hope, sir, that we shall never see the day when a private caucus of a few individuals shall be enabled to dictate to the people in whom to invest their confidence: and I also hope, that the day is not distant, when independence of sentiment, when independence even of party, shall be the surest passport to public confidence and public honors.

It is said that the circumstance that one of the great officers of the Government is numbered among the claimants, ought to scatter consternation through this House. It is unnecessary for me to undertake a vindication of the character of that gentleman. Does his office divest him of the common rights of a citizen? Does it deprive him of the right of petitioning the National Legislature? But his contracts are resorted to for the purpose of proving that he has extended his official influence within our walls. Unfortunate, indeed, is the application of this argument. By the report upon the table, it appears that three members are contractors, and we all see that two of them are opposed to the present claims.

Believing, Mr. Speaker, that this act of enormous robbery, this wanton dissipation of the public treasure, this abominable league between corruption and federalism, of which we hear so much, is neither more nor less than an act of just national policy; believing with the Secretary of State, the Secretary of the Treasury, and the late Attorney General, that "the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms;" and believing that this compromise ought to be delayed no longer, I shall give a decided vote in opposition to the proposed amendment, and in favor of the original resolution, as reported by the Committee of Claims.

Mr. LUCAS.—I am, sir, in favor of the amendment proposed to the report now under consideration. The unparalleled fraud which has been practised by the divers land companies styled purchasers, under the act or pretended act of Georgia of 1795, and by the Legislature that passed that act, have been fully noticed and exposed in the course of the debates which took place on the same subject, during the last session of Congress, and again during these two last days. This no-

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torious fraud, odious as it is on the part of the land companies, is still much more so on the part of the members of the Legislature of Georgia, as their country had confided in them, and that themselves had pledged their faith under the obligation of an oath. But there are other instances of fraud and deception, materially affecting the purchase or claim in question, which have been solely practised by the land companies, and in which the Legislature of Georgia had no kind of participation. These charges cannot be resisted by the ordinary means of denial of facts, but they are supported upon authentic documents.

It ought to be observed that the four land companies who are original purchasers under the act of the Legislature of Georgia, passed on the 7th January, 1795, stated in their petition, containing their proposals to the Legislature to purchase certain lands belonging to the State of Georgia, that the land contained within the bounds which were described in their petition, amounted to 21,750,000 acres. It was evidently upon the faith of this statement, that the Legislature consented to sell that land for $500,000. However, it is now ascertained that the quantity of the land thus described amounts to 35,000,000 of acres, and the companies themselves compute it to be near 40,000,000. From this it appears evidently that the companies have deceived the Legislature by stating what was not true, that the contracts are legal and obligatory. The parties ought not only to have contracted with liberty of choice, but they ought also to have contracted with a due knowledge of the matter, which was the object of the contract. This has not been the case here; the Legislature has sold twice as much land as they intended to sell, or, which is the same thing, they have sold it one time cheaper than it was their intention, and all this loss is the result of the false statement given by the land companies.

It is an incontrovertible maxim of law, that none ought to be benefitted by his own wrongs; this maxim applies with a double force in a contract between the sovereign authority and private persons. The contract between the Legislature and the land companies having been entered into by the means of a statement which proves to be false, and which has been made by the parties that claim the benefit arising thereof, the contract becomes vitiated and of no effect.

Should this wrong not be sufficient to invalidate the contract, there is another wrong that would arise from it; by the act of 1795, a reserve was made of two millions of acres out of the several tracts sold to the Georgia land companies, for the use of such citizens of Georgia as chose to subscribe in the original terms of the purchase. The price paid by the citizens who did subscribe was two cents and one-third per acre, it being the price then supposed to have been paid by the companies, according to the statement originally made of the whole quantity of land contained in the purchase, which, as I have before said, proves to be very near double the land companies would receive from the citizens of Georgia, who clearly had a right to subscribe on the original terms; a price per acre nearly double to that which they themselves would have to pay, and thus have a profit on the citizens of Georgia for the difference in the quantity of acres contained in the purchase arising from the false statement; which reduces, with respect to the speculators, the actual price of the land to little more than one cent per acre, while it remains at two cents and one-third with respect to the citizens of Georgia. However great may have been the departure of the Legislature of Georgia, from the interest of their constituents on this occasion, it appears evidently, that by the expression, "original term," they understand that their citizens should subscribe, if they chose, to the amount of two millions, upon terms similar to those of the land companies. It appears evidently they did believe they were selling the land of the State at the rate of two cents and one-third per acre, whilst, in fact, they received but one cent and one-sixth, which, upon the whole, is a consideration merely nominal.

To the multiplicity of the radical defects with which the title of the companies claiming under the act of 1795 abound, the advocates of the claim of the New England Mississippi Land Company answer, that none of those who compose their company had any participation in the fraud; they are said to be *bona fide* purchasers, perfectly ignorant of the fraud which may have been practised by those of whom they bought. They are represented in their memorial and vindication as plain farmers, mechanics, &c., who have made what they possess by the closest application and industry.

Sir, I stand among those who are the most ready to acknowledge that the inhabitants of New England are conspicuous for their industry; but I am likewise of opinion, that they are not less noted for their sagacity, in their attendance to their interest; and in the art of making good bargains, I view them as being fully competent to cope in dealings with the inhabitants of the Southern States. That they should not have heard of the notorious fraud which has taken place at the passing of the act of 1795, is a great cause of astonishment to me; that they should have made a purchase to the amount of eleven millions of acres, without making inquiries sufficient to discover what almost everybody knew throughout the United States, if possible, increases my astonishment. For my part, having never thought of purchasing any land from the Georgia land companies, I made no inquiry about the acts of the Legislature of Georgia; yet the corruption was so flagrant, the fraud so notorious, that it reached my ears soon after it was passed. A gentleman from Virginia (Mr. Randolph) has justly observed, yesterday, that the President of the United States had, in his address to the two Houses of Congress, at the beginning of the session of 1795, taken a most direct notice of the act of Georgia, passed in January of the same year, as tending to dangerous consequences. Certainly such solemn communications of the first Magistrate, at the beginning of a session, contain matters that are an object of national concern, and generally sought

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or. There is not a paper in the Union that omits ublishing those communications. It would be ossible, however, that this communication would ave escaped the notice of plain industrious farmrs, such as are able, perhaps, to purchase two or hree hundred acres of land; but that a company f sober and discreet speculators, and of New England, too, being about purchasing an immense quantity of land for a great sum of money, should e ignorant of what everybody knows, and of what they ought to know sooner than anybody lse, is a circumstance too unaccountable and extraordinary for me to believe that it really exists. I should rather think that the speculators of New England, sober and discreet as they style themselves to be, found the bargain so good and so tempting, the means of pleading ignorance of fraud committed in the original purchase so easy, the means on the part of the State of Georgia, or its vendee, to prove the notice so difficult, that the sober and discreet speculators of New England thought it advisable to make a gambling bargain, expecting that the two extremities of the United States being engaged in the same speculation, they would combine their force and influence to press hard upon the centre, and save through the conflict their speculation, either in whole or in part. Other strong circumstances lead still more to believe, that the New England Company were well aware of the danger which did exist in making a purchase from the Georgia land companies; and that they were taking unusual risks upon themselves; this appears clearly from the face of their deeds; not only the covenant of warranty is special, instead of being general, but another extraordinary covenant is entered upon by which the Georgia Mississippi Company "is not liable to the refunding of any money in 'consequence of any defect in their title from the 'State of Georgia, if any such there should here-'after appear to be." Was not such covenant smelling strongly of the fraud which the Georgia grant was impregnated with? Could the New England Company take more clearly every risk upon themselves? Could they more expressly preclude themselves from every remedy in law or equity in case of eviction?

I shall forbear to advert any longer on the defects of the titles of the four Georgia companies and the New England company, claiming under the act of 1795. I shall only say that the fraud and collusion by the means of which these grants were obtained having operated a gradual defect, viz: a defect from the beginning, no legal transfer does exist by the first grant, and none of course can exist by the second purchase. My confidence in this opinion is much strengthened by that of three distinguished characters who have been appointed Commissioners, in pursuance of "An act, entitled an act for an amicable settlement of limits with the State of Georgia," &c. These Commissioners have said, in their report, a copy of which I now hold, "that they feel no hesitation 'in declaring it as their opinion that, under all the 'circumstances which may affect the case, as they 'have come within their knowledge and as herein 'stated, the title of the claimants cannot be sup-'ported," meaning the claimants under the act of Georgia of 1795. This opinion derives a great weight, not only from the high official standing, the known correctness, and abilities of these Commissioners, but, also, from the special trust which Congress has reposed in them to investigate those claims, and report on their merits. True it is that these Commissioners did express that, "neverthe-'less, they believe that the interest of the United 'States, the tranquillity of those who may here-'after inhabit that territory, and various equita-'ble considerations, which may be urged in favor 'of most of the present claimants, render it expe-'dient to enter into a compromise on reasonable 'terms;" when I am satisfied from my own opinion and that of the Commissioners "that the title of the claimants cannot be supported." I think that, on the question of expediency, there is no member of this House but that can form an opinion for himself; indeed, if this House did not act from their own ideas on this question, they need not to exercise their opinion upon anything at all. As to me, I cannot see any danger in not gratifying the cupidity of fraudulent purchasers with large quantities of land. I cannot consent to give away the property of the public to a very large amount, for the sake of humoring land companies and strengthening the nerve of speculation. Money is the bane of morals, when put in the hands of land speculators. Let us give them land or money, and we add to their means of seducing future legislatures. I view land speculators as a separate class of men, acting upon principles quite noxious to the rest of society. I view them as being intimately connected with one another, from one end of the continent to the other end. Their strength consists in a perfect combination of their influence; it is through that influence that any individual whose right clashes with their claims, must submit to their terms or lose all; it is a matter of course with land companies to monopolize lawyers, to have them at their command, to make them speak or be silent, as their interest requires.

While we are debating this great question, the land speculators within these walls or out of these walls are in a silent watch, anxiously waiting for the measures we are going to adopt; they appear at present quite modest and unassuming; but, let us throw in their hands five millions of acres of land, and the scene will soon be changed; their wealth, and the consequence attending it, will soon make us sensible of the advantages they will possess over us as individuals; and their children will, in a very little time, be taught to look with contempt upon ours; all the land companies will find new encouragement to rally round Congress from all quarters, and set forth their claims. We have land companies who claim almost all the lands which the United States have purchased on the year before last, from the Kaskaskia and Piankeshaw Indians. These companies, who style themselves the Illinois and Wabash Land Companies, have purchased for a valuable consideration, and without fraud; they have purchased before the Revolution, from Indians that had

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never surrendered to the Crown of Great Britain the right of pre-emption, from Indians who are out of the bounds of the original claim of the confederated Six Nations of Indians.

If we are to follow the doctrine laid down by a gentleman from Vermont, (Mr. Elliot,) which is that the Georgia land companies have, in the first instance, a color of title, and, in the second instance, a strong color of title, for which we ought to give them near five million acres of land, we may as well give as much to the Illinois Company, and again to the Wabash Company, for they also have a color of title, and a color, too, not darkened by fraud. We might, also, at the same rate, adjust and settle the claim of another long-leagued land company, who claim under an Indian grant, a tract of land adjoining the Falls of St. Anthony; for the Indians, under whom they claim, most probably have not acknowledged the sovereignty of the United States over their soil, and might be considered as not bound by the regulations of this country. Thus, land companies, by setting up claims to one hundred million acres of land, might modestly offer to surrender to the United States the nine-tenths of their claim, provided one-tenth part was secured to them by a compromise.

I would not do as a Representative in Congress what I could not do as an individual without blushing. Contracts, in my opinion, cannot be divided by ounces and pennyweights. The titles of the companies claiming under the act of Georgia of 1795, are good or bad; if they are good, Congress ought not to screw out of the hands of these companies the seven-eighths of their well-gotten property; if their titles are bad, Congress ought not to suffer them to have an eighth part of the public property.

Supposing that my neighbor had purchased a plantation, and that I knew well both the plantation and the vender: I would not by any means offer to purchase that same plantation from the original vender, unless I was well convinced that the former conveyance was a mere nullity, and then, should I purchase it, my honor and reputation would forbid me to compromise with the pretended vender contending against me, lest it should be thought that I had purchased what I knew my vender had legally conveyed before; lest it should be thought that I had made that purchase with the view of reserving a part of the benefits of the bargain of another: this being the true case which the United States are placed in, on the present occasion, the regard which I owe to their high dignity and interest, does not permit me to give my consent to a compromise.

Mr. Speaker, the agents of the New England Mississippi Company have attempted to prove in their vindication, page 30, that the sales of extensive tracts of vacant territory are not injurious to the interests of a nation; they have said that the State of New York has been settled under the patronage of landholders; they have said that Virginia, Massachusetts, New York, Pennsylvania, and Connecticut, are distinguished for the extent of their grants. I do not pretend to say that these States have escaped the calamities of land speculation; I will say, however, that those of them wherein land speculation did prevail the least are the most flourishing. Can it be said, indeed, that it is through the means of land speculation that these States have attained the advantages which they now enjoy? Their flourishing condition proves certainly the unconquerable spirit of industry and enterprise of their inhabitants; it proves that, notwithstanding the shackles of land monopoly and hard bargains, which was lying in the way of the yeomanry of those States, they have been able to reach, by hard and persevering toil, the comforts of life and independence. Who did clear that land and improve *their farms* but themselves? Who paid the price *of the* purchase of their lands but themselves? *Was it* necessary for their prosperity and that of their country, that they should pay eight or ten times more for the price of their land than they would if monopolizers had not stepped between them and the Government of their country? The same agents observe, also, page 30, that "in Pennsylvania a complete system existed, which, to *be sure*, has produced embarrassments equally pernicious and distressing to the settler and the landholder." I suppose that the agents allude to the sale of the unappropriated lands of the Commonwealth of Pennsylvania, under the act of April, 1792, situate north and northwest of the rivers Ohio, &c.; however, I beg leave to say, that they are mistaken in giving the system as the cause of the embarrassments; the system was no more complex than what was absolutely necessary to provide for the accommodation of two classes of persons, to wit: Those to whom it was more convenient to give money in the first place, and labor after; and those that could better afford labor at first, and money after; each class had their respective mode of commencing and *completing* their titles clearly devised. *The consequence* resulting from their neglect *to perform certain* conditions, were amply provided for; a partition sufficient to prevent the rights of such persons as the law contemplated from interfering or clashing had been erected. But this partition has been partly thrown down by the irresistible force of divers land companies combined together. I shall not relate, at this moment, the vexations and sufferings which the industrious and inoffensive actual settlers of Pennsylvania have borne and are daily experiencing from several land companies. I shall only say, that the wolves have made a dreadful havoc among the lambs.

Again, I cannot believe that it is good policy to give away an immense property; nay, I believe it to be more dangerous to give it to a few families. The idea of grantees of large tracts of land, brings always to my recollection a multiplicity of other persons without lands and without means of independence. When I look at a castle in Europe, I directly think of the wretched and degraded tenantry, toiling hard to satisfy the luxuries of the proud idler who lives in it.

The extreme of wealth and poverty mostly operates two evils; and these evils become still

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greater in a Republic than anywhere else. Was it not for the landed property being held by a few in Ireland, and were not the three fourths of the people of that country tenants at will, their well known energy and spirit would have enabled them long ago to effect a revolution and ameliorate their fate.

Mr. BOYD.—The question before the House is not whether we are to do a good or an injury to the class of men who are denounced as a band of speculators; but it is whether we shall agree to or reject the amendment to the resolution offered yesterday to the House by a gentleman from Virginia, (Mr. CLARK.) Yesterday was taken up in reading the laws of Georgia, and of the United States, and various other papers, which have been long in the hands of the members, and which no doubt had been so attentively perused by them as to have rendered the reading at this day not indispensably requisite. Mr. B. said, that if papers were to be read for the instruction and edification of the members as to well-known facts, he thought it would have been of more consequence to have read the Declaration of Independence, and the Treaty of Peace of 1783, in which the independence of the United States was acknowledged by the only Power on earth who contended against it. We were then free, sovereign, and independent States, to all intents and purposes, and as sovereign States, each and every State in the Union had full power and authority to dispose of their lands to whom they pleased, and under what conditions they pleased. And if the State of Georgia, in the exercise of her sovereignty, have conveyed to the Mississippi Land Company the right of soil to the land in question, and that Company have transferred the same to the New England Mississippi Land Company, the right is vested in them; unless we have arrived at that stage of political depravity that what was yesterday acknowledged as a right shall tomorrow be declared a wrong.

Why is it that speculators are so much reproached, when we ourselves have become speculators to an extent beyond the aggregate of the land speculations in the United States of America? Has not Congress recently speculated in the purchase of Louisiana, and paid the price, and will gentlemen contend here, as if they mean to be confident they might do, that we have acquired no right to the same because we purchased of France, who had no right to sell, as its Government holds all its powers for the good of the people, and that it is not for the good of the French people that their territories should be alienated from them? Does it follow that when a nation has vested in another its rights of soil and jurisdiction, that the investiture does not hold good without inquiry into the purity of the motives of the contracting parties? Will you, then, prevent men from putting their reliance and confidence in the State Legislatures?

It is asked why, if they have a right to the lands in Georgia which they claim, why do they propose to relinquish to the United States nine-tenths of their claim? It would be a sufficient answer to that question to say, that Congress is the only power possessing the right to extinguish the Indian title to the country, and if Georgia had possessed that right he apprehended the present claimants would have been suffered to go on and improve their farms in that district; they never would have been disturbed in their possession. He was not in favor of speculators, but he had made up his mind never to lay his hand violently upon the claim of any man, more than he would a man's property when he was in full and quiet possession. Nor should he pretend to instruct others in the disposal of their money, persuaded that every man had a right to lay his money out in such way as was most agreeable to himself, and of which he was the best judge.

We are asked, who dare vote for squandering the public money in this wholesale manner? This is my declaration in reply: I dare to vote for the measure proposed by the Committee of Claims. Nay, further, I am bound to vote in its favor. It is my duty so to vote, for I have sworn to support the Constitution of the United States, and that Constitution declares that no State shall make any *ex post facto* law, or law impairing contracts. But why do gentlemen dwell so much upon speculators? The act of Congress to obtain the cession of her Western territory from the State of Georgia, is a speculation upon the speculators who purchased the right of soil to the Mississippi Territory.

I do not inquire whether Georgia sold her land in small tracts or in large districts; nor whether she sold the land to individuals or companies—numbers and quantities I lay out of the question, and confine myself merely to the inquiry, did she sell; and finding that she did sell, and that for a valuable consideration, my mind rests satisfied, and I am compelled to render that justice which the annulling act of Georgia refused. Nay, the price itself does not enter into my contemplation, circumstances may alter the relative value of the price to the article. Will any gentleman say that the price at which Congress have sold their lands to the great purchasers, such as Symmes and others, is a cause to justify our setting those sales aside? I apprehend not. Why, then, do they measure by a different standard in the case of Georgia?

Georgia under the old *regime* was what was called a King's government; the right of jurisdiction was given up to her exercise from the first—the right of soil remained in the Crown. But when we acquired our independence, Georgia took possession, which she was justifiable in doing, of the soil as well as the sovereignty, and thus being possessed of both, it was competent for her Legislature to dispose of the vacant land; and no subsequent Legislature could constitutionally say it avails not, and it shall not hold. I am not ashamed of this opinion; on the contrary, it is corroborated by the practice of all the States in the Union. A grant of land by the Legislature is universally held sacred. It is so under the Government of the United States also, yet neither the State Legislatures are all the citizens of the State, nor are Congress all the citizens of the

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United States, which, according to the doctrine we have heard advanced, are requisite to complete the contract. This being the case, I will not vote for the amendment; it goes to destroy the right which the petitioners have to the reserved fund of five millions of acres; it goes to defeat and overturn a well-established security which the people have for landed property. I will not vote for it, because I do not believe that Congress have a divine right to do wrong. Mr. B. said, if all the speculators were scouted from these walls, he did not know who would remain. He had no quarrel with them about the question, but he should ever contend that every man had a right to pursue his object in his own way; the right grew out of the moral compact agreed to as fundamental in every established and well-regulated society.

Mr. CLARK said he was still in favor of the amendment on the table, and which he yesterday had the honor of submitting. He did not wish it to be understood that the amendment was intended to give a preference to any description of claims under the different acts of the State of Georgia, and provided for by the general resolution, but intended it should meet directly those which have excited the most public attention, have been the most ardently pursued, the most zealously advocated, and attended with the most extraordinary circumstances. If the facts which have accompanied this monstrous business from its origin to the present moment were publicly known, or if it could be retraced through all its cunning and wily mazes, the claims would sink beneath the weight of honest indignation, and instead of now being urged before the Congress of the United States, would be gladly withdrawn from public view, and buried in perpetual silence. He peculiarly wished on this occasion a cool and temperate discussion, to divest ourselves of all feelings either of improper compassion or prejudice, that equally tend to inflame the heart and mislead the judgment. It should be his humble province to endeavor a fair investigation of the naked question, disrobing it of those tinsel habiliments which have been artfully thrown around it for the purpose of concealing its real deformity.

The claims the amendment goes to reject, are derived by a pretended law of the State of Georgia, said to have been passed in the month of January, 1795. He would contend this law was absolutely void, *ab initio*, not only because the Legislature had no power to make such a law, but from the circumstances under which it was made. That the grantees under this law could have no title to the land, either legal or equitable, and that there has been no circumstances attending the subsequent sales, that place the sub-purchasers under superior equitable advantages. It will be particularly necessary, Mr. Speaker, to be attentive to dates; that of the law under which the claims are made, and generally known by the name of the "cession law," has already been noticed. Let us now see how this law passed. It stands characterized by circumstances unparalleled in the annals of pollution—of which, we have the most conclusive evidence before us. The whole State of Georgia has borne testimony to the fact, and it is now deposited in the archives of the Government, that a majority of the Assembly which passed the law were corrupted and bribed. Some had money given them; others shares in the lands they were effecting the sale of. This is so universally admitted and detested, that the most enthusiastic friends of the present claimants cheerfully allow the original grantees had no titles, and he believed there was not one now before Congress with his claim. But it is contended the sub-purchasers had no notice of the fraud in the original contract, but are *bona fide* purchasers for a good and valuable consideration actually paid. This he never could agree to. The evidence before him was the contrary, and he would here take a review of at least a part of that evidence, a great portion of which, no doubt, has been destroyed by the lapse of nine years, but a sufficiency remains when brought together, irresistibly to carry conviction to the mind of the most skeptical. The law itself is almost enough for this purpose. The simple object was to sell to four companies the vacant western land; but to delude the people and lull inquiry, it is called "An 'act supplementary to an act, entitled 'an act for 'appropriating a part of the unlocated territory 'of this State, and for the payment of the State 'troops, and for other purposes, and the protec-'tion and support of the frontier;" and the same fascination is kept up through the enacting clauses, and it is the longest act in the statute book. It goes into a lengthy examination of the State title, of extinguishing the Indian title, and appropriating the money, directing it to be laid out in bank stock. Where, Mr. Speaker, will you find such a law as this? If the object of the Legislature had been correct, would there have been a necessity for clothing the law in such *delusive colors*? No sir! fraud and infamy were *to be cancelled*, and the covering must be thick. *They were, however*, disappointed in their *aim*, for honesty and integrity had yet their residence in the State, and as soon as it was known, the whole country was feelingly alive to the abuse, and a general effervescence pervaded the public mind; this was manifested in the only possible way that remained. The Assembly had adjourned, not to meet again in a twelvemonth. Presentments of the grand juries, in almost all the counties of the State, were made in terms of bitter disapprobation of the law. It was also denounced in the public prints, from one end of the continent to the other. In the month of May, 1795, a convention was held in the State; the grand jury presentments, petitions, and remonstrances from all parts of the country were sent up; these were, by the convention, remitted to the next Legislature as the only competent authority to remedy so enormous an evil. In the month of February before, as has been so ably stated by my valued friend and colleague, (Mr. RANDOLPH.) had this subject been the substance of a communication of the President of the United States to Congress, and a resolution and a bill passed the House of Represent-

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atives on the subject. Shall I, after this, be told the sub-purchasers had no notice? Impossible; no historical event so notorious. But the evidence does not stop here. The Georgia Legislature again assembled in the month of November, 1795. The subject of this nefarious and wicked speculation, that covered the country with shame and disgrace, was taken up, and if a doubt had remained of the corruption, it was then removed by a number of affidavits proving incontestably the fact; and on the thirteenth day of February, 1796, a law was passed, not repealing the act of 1795, but with honest and laudable indignation declaring it null and void, as being bottomed upon fraud and perjury, and unveiling to the world the most flagitious conduct that ever disgraced a Legislative assembly. It is there ascertained and declared, that the land had been sold for three hundred thousand dollars less than what had been offered for it, and the quantity of land much greater than it had been represented. The lands contained in the grants to the four companies were estimated at twenty-one millions of acres, which at five hundred thousand dollars, the price given, is twelve and a half cents per acre; the real quantity is about thirty-five millions of acres; this reduces the price of the garden of the world to nearly one and one-third cents the acre. Take notice, Mr. Speaker, that the law of 1796 does not pretend to repeal the act of 1795, but proclaims, to everybody, that to be void which was in reality so before, and with an honest zeal provides that the money which had been paid should be repaid to the purchaser. This annulling law was so precious to the people, it was a monument so honorable to the State, that when afterwards the citizens of that State arose in the majesty of their strength, resuming all those rights, and acted in convention, this very law was ingrafted in their Constitution.

Here the general evidence ends; and is there yet a remaining hesitation about the proof of notice? To such infidelity the glare of meridian light will not be convincing.

The advocates for the claimants have chosen their ground with great address. If they cannot be supported upon principles of law and equity, they adroitly change their position and take the more defensible stand of policy; but even the ramparts here raised will moulder away and fall to the ground at the conquering touch of truth. Can it be good policy to do what is wrong? Shall virtue and integrity, the foundation of our Government, the pillars, the Boaz and Jachin of the temple, be thrown down and trampled under foot? Shall justice be driven weeping from our walls, and vice and corruption here rear their heinous heads? Forbid it reason, forbid it God! But they have high authority on their side. The commissioners who made the articles of agreement and cession with the State of Georgia recommended it; so they did; but I ask you under what circumstances? In the report they made on this subject, and containing this recommendation, they expressly stated the facts which I have just detailed, and concluded by declaring that "under all circumstances which may affect the case and had come to their knowledge, the claimants could not support their title." Upon what data therefore has this compromise been recommended? As great as those gentlemen may be, and as illustrious as is their characters and services to their country, and as great as is my regard—and in this article I yield to no man—yet it is incomprehensible upon what principles such a conclusion is drawn from such premises. The claimants have no title, yet they ought to be provided for; they have cheated the Government, and therefore ought to be rewarded; they have prostrated the fairest of the social virtues, but they are entitled then to compensation; they have acted with the most unbounded profligacy and immorality, nevertheless, they must be noticed and encouraged; they have speculated, therefore must have money. Is this House prepared to assent to such reasoning, and to accept such a system of policy? A man to entitle himself to justice, ought to have clean hands and a pure heart. With a very ill grace does he ask for equity, with bribery in his hands and perjury and corruption in his heart; and shall a horde of speculators be the peculiar objects of Congressional bounty? Shall they be the selected and chosen few whose magnanimity and virtue shall be rewarded with unbounded wealth?

Permit me now, Mr. Speaker, after having said so much upon the general question, to examine it more minutely and in detail. One particular case before us deserves peculiar attention; it is that known formerly by the name of the Georgia Mississippi Company, now the New England Mississippi Company. Too well known in its old jockey dress, it has changed its livery, and after having been driven from the sporting fields of the South, it has taken up its residence in the East, as the theatre of its future career. The agents for this company have written a large pamphlet in vindication of their claim, and every member has been furnished with a copy as an entertainment for his evening's leisure, and pious employment of his Sabbath's holiday. In this book it is stated that the New England Company finished the contract and took a deed from the Georgia Company on the 13th day of February 1796. This is the very day the annulling law received the Executive sanction in the State of Georgia; a wonderful coincidence of circumstances; it seems almost providential: but how different the employment—the Assembly of Georgia completing an act, the proudest boast of their political life, which posterity will praise and admire, while the New England Company were planning cunning and extensive schemes of speculation, and which, we are told, have been but too successful in their effects—that the widows and orphans of men of wealth are now chewing the crust of poverty from this accursed business. This is the melancholy effect of this baneful influence of speculation; and we are called upon to minister to the very passion, and by our imputed righteousness to expiate the sins of this ruinous, vile, and destructive transaction; and that we shall, by sanctifying their

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claims, fix a stigma on that glorious monument of Georgian honesty, the annulling law. But, to return, will these people after these things tell us they are innocent purchasers without notice for a valuable consideration, *bona fide* paid? Yes, they have told us so, and told us too by lawyers; for of this description are their agents; and who have admitted that it is not necessary to prove positive notice, a constructive one being sufficient. Where did these people reside? In the town of Boston, in the State of Massachusetts. Are they ignorant? No, they are the best informed men in the State, and most of them public characters, and yet had no knowledge of what was passing in the State of Georgia, or in Congress, which then sat at Philadelphia. The newspapers of the South could not penetrate the frozen regions of the North, yet the polluted laws of Georgia could travel there. Permit me modestly to ask the agents, who are professional gentlemen, if the company, upon the most correct construction of the doctrine, were not *pendente lite* purchasers? did they not buy a lawsuit, and ought they not to abide the decision? The Legislature of Georgia convened in the month of November, 1795, and immediately took up the subject, and on the very day of the decision is the deed made to the purchasers; was not, therefore, the case pending when the purchase was made? If I am asked, how could people in Boston know what the Assembly of Georgia were doing? I answer that the purchaser ought to take care the doctrine of latent equity, so much relied upon by the claimants, does not apply here as in individual cases. If a man has an equity which he does not assert, and an honest purchaser interposes it, he is supposed guilty of negligence, by which a third person may be injured, and, therefore, he is not permitted to disturb the honest purchaser, for the best of all reasons, that when one of two innocent persons must suffer, it ought to be him whose act permitted the injury. But suppose a suit had been commenced against the first grantees in the State of Georgia, in a court of common jurisprudence; as early as November, and on the 13th day of the next February it was determined against the grantees, and the patent ordered to be cancelled, would not the purchasers in Boston be bound by it? No legal gentleman will controvert this position. The people of Georgia did more than this. It is true they did not institute a suit, because there was no possible way in which this could be done. No court of competent jurisdiction in which the ordinary process of law could be carried on, and redress afforded, existed; the injury was grievous and sensibly felt; the representatives of the people had violated the most sacred trust, and had justly doomed themselves to their severest vengeance. The case being *sui generis*, all that could be done was immediately accomplished. The grand juries presented, and the people generally petitioned and remonstrated; it was canvassed in every company, and the topic of universal conversation, at least in that part of the country; these circumstances could not have been unknown to the purchasers. One more circumstance on this head, and which he had nearly forgotten: the President's communication was made in February, 1795; on the [illegible] of March following, Congress rose and the Senators and Representatives returned to their respective States with a full knowledge of this wicked transaction, and it would be doing them injustice to suppose they were silent on this important subject. Let the House determine the question by each member asking himself if he did not know it, and on the answer, he would with certainty rely. Should he be told that even all this is not positive proof of notice, in answer, he would assert that it is a mass of testimony strong as invincible, and such as is seldom produced in courts of justice; an unbroken chain of evidence that infidelity itself cannot resist; nothing but a mistaken tenderness for these unworthy speculations can turn the mind aside from the path of truth and justice.

On this subject he would add but one more remark: if all that has been mentioned shall fall short of positive notice, have not these people been guilty of culpable negligence, unaccountable and even criminal remissness. The sources of information were numerous, and the means of information easy and convenient, the contract an important one; they were about to purchase a tract of country nearly as large as the State they lived in; and was it an evidence of simple caution and prudence to proceed thus precipitantly? Is it customary for men—men, too, remarkable for their quicksightedness, to act with such extraordinary temerity? We must leave this ground before we can reconcile the conduct of the purchasers under any reasonable and rational principle of human action; there is one, and only one, on which all these strange things are reconcilable—speculation. Yes, sir, this was the moving cause, the primum *mobile*, the grand desideratum. Gain and loss employed the whole of their attention; they had their data before them, they knew the circumstances, and calculated their chances, and adventured in the game of hazard; and because they have been unsuccessful, our ears are stunned with the yell of lamentation.

Mr. Speaker, law has been dragooned to the support of these claims, judicial authorities have been cited, and decisions in equity quoted. Yes, unhallowed hands, and polluted hearts, have ventured to approach the pure temple of justice. A book on which the claimants very much rely I now hold in my hand. I acknowledge it of high authority, from the sacred equity and immutable principles of justice, on which the decisions are founded. *Powell on Contracts* is the book: in the 221st page of the second book, is a correct and general description given to the qualifications of a contract necessary to engage the interposition of a court of equity, and it must be again repeated, the claimants are the applicants. "must be fair, just, reasonable, *bona fide*, entire in all its parts, mutual, useful, made upon a good and valuable consideration, not merely ordinary, consistent with the general policy of well regulated society, and free from fraud, contravention, or surprise."

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Under these general rules it has been uniformly and invariably decided, that a contract wanting any of these constituent parts, will be set aside in a court of equity; that is, if it be not *bona fide*, and it must not only be so between the contracting parties, but it must not be *mala fide* with respect to others. Fraud has in all well organized societies, and systems of jurisprudence, with which he had any acquaintance, been considered as a sufficient ground to destroy a bargain; it is just and proper it should be so, otherwise what is considered as immoral and detestable in private life, would receive the sanction of a publicly recognised principle, having its foundation in impurity. So far have the conscience of courts of equity gone, that contracts, though fair in themselves, yet, if they had a fraudulent object in view, were set aside; and no rule is more generally received and better established than that contracts made with a view to cheat the Government are void both in law and equity. Here let me pause, and emphatically ask gentlemen, upon what principle of law or equity can these claims be maintained. This Government has never in the most remote degree recognised them or guarantied the title, and what is not a little surprising, the best informed gentlemen on judicial subjects on the other side of the House, are profoundly silent. If the claims could be maintained by reason, argument, law, or justice, would they be satisfied by the silent eloquence of a still vote? This House and their country have something to expect from them, why therefore are they mute? Conscience whispers—management and policy command this silence. He frankly acknowledged it was not competent to him, it was not his wish or design to speak of motives; it would be uncharitable, highly unbecoming, and greatly indiscreet; what he had never been in the habit of doing, and hoped never should do. Every member on this floor, and himself with the rest, had to answer to his country, his conscience, and his God, for his conduct, and he would now solemnly declare, that as greatly as he disapproved the measures of the former Administration, he would rather vote for every one than for the resolution reported by the committee.

Mr. EUSTIS.—If the position taken by the gentleman from Virginia (Mr. CLARK) could be established, it would not in my opinion justify the amendment which he has proposed to the resolution under consideration; because the amendment renders the resolution null and void, and the resolution neither affirms nor admits the legal title. Still, I should be willing to rest the whole merits of the case on the single question, whether the claimants, at the time of making their purchases, had or had not a knowledge of the fraud? In the autumn of 1795, when the sales were generally made in New England, there was no knowledge or suspicion of fraud—the contracts were made in full confidence of the act of a sovereign and independent State—and I know they could have had no knowledge of any fraud in the Legislature of Georgia. We are told by the gentleman that there was "a great uproar throughout the State of Georgia." Whatever might have been the nature or extent of this uproar, I am confident that a knowledge of it had not reached New England at the time the contracts were made. But the proof that there was no knowledge of any fraud depends not on the opinions or assertions of individuals—it is founded on a circumstance which removes all doubt on the subject—it is founded on the price which the purchasers paid for the land. They paid, as they have stated in their memorial, as much per acre for these lands as the State of Massachusetts had received, a few years before, for lands lying in the State of New York. And is it probable that the purchasers who have been represented by a gentleman from Pennsylvania as possessing so much sagacity, and looking so well to their own interests, would have paid or contracted to pay such a price, with a knowledge that the original grant had been fraudulently obtained?

It is also contended, by the same gentleman, that the claimants had knowledge of the rescinding act of 1796. This was impossible in points of time. The sales were generally made in 1795—the rescinding act was passed in January, 1796. It follows, then, that they were innocent purchasers, without knowledge of the fraud or of the rescinding act. Two objections have been made by the gentleman from Pennsylvania, and relied on by the gentleman from Virginia: The first is, that "the original grantees purchased nominally twenty millions of acres, when it appeared that forty millions were contained within their metes and bounds." This was a transaction between the original grantees and the Legislature of Georgia, in which the present claimants had no agency, and for which they are not responsible. The second objection is said to be found in the deeds of the claimants, where it is contended they have furnished evidence against themselves, in the following words: "And, lastly, it is covenanted and expressly agreed and understood, by and between the parties to these presents, that neither the grantees aforesaid, nor their heirs, executors, or administrators, shall be held to any further or other warrantee than is herein expressed, nor liable to the refunding any money in consequence of any defect in their title from the State of Georgia, if such there should hereafter appear to be." This, it is contended, is an acknowledgment on the part of the claimants of a defective title. Let us now turn to the act of Georgia of 1795, under which the original title was derived. We there find a clause in the following words: "And provided, further, that this State and the government thereof shall at no time hereafter be subject to any suit at law, or in equity, or claim, or pretension, whatever, for or on account of any deduction in the quantity of the said territory, or on account of the amount of the purchase-money to be paid as aforesaid, by any recovery which may or shall be had on any former or other claim or claims whatever."

The two sections correspond, in a great degree. The first, instead of a suspicion of any fraud, or a doubt of their title, confirms the opinion which was entertained by the claimants of the

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validity of their title, and their confidence in the act of Georgia.

It is further contended that the petitioners have no equitable claim on the Government. If this be true, the resolution ought not to be adopted. The equity of the claims depends on a fact admitted on all hands—on the fact that they have purchased the lands, and paid a valuable consideration for the same. This constitutes the essence of the claim, and has produced the resolution now before the House. The legality of the claims is not under consideration. The legality of the claims can only be decided by the courts of law, where the title to the whole of the land would be established or set aside. If the title should be established and confirmed, the United States would have no right to possess or dispose of any part of it, although they have contracted to pay the State of Georgia $1,200,000, and to extinguish the Indian title to their lands.

The resolution proposes an equitable compromise and settlement, and that the claimants shall be compensated out of the residue of the five millions, or the proceeds thereof, which have been reserved for this purpose in the third article of the agreement and cession, by which the whole of the territory was ceded by the State of Georgia to the United States.

When the State of Georgia was about making the cession, the claimants appeared and entered their caveat to the Commissioners of the United States against their accepting the cession, for that they had purchased and paid a valuable consideration for the territory. Proposals of compromise were also made to the Commissioners by the claimants. In a correspondence which took place on that occasion, the title of the claimants and the proposals made by them were declared to be inadmissible by the Commissioners; they proceeded to accept the deed of cession of Georgia, informing the claimants at the same time that a reservation would be made, from which it was their intention that they should be reimbursed the moneys actually paid by them. The reservation in the third article was accordingly made, in the following words: "Provided, however, that the United 'States, for the period and until the end of one 'year after the assent of Georgia to the boundary 'established by this agreement shall have been 'declared, may, in such manner as not to interfere 'with the above-mentioned payment to the State 'of Georgia, nor with the grants hereinbefore rec-'ognised, dispose of or appropriate a portion of the 'said lands, not exceeding five millions of acres, 'or the proceeds of five millions of acres, or of any 'part thereof, for the purpose of satisfying, quiet-'ing *or compensating* any claims other than those 'hereinbefore recognised, which may be made to 'the said lands or to any part thereof."

In conformity with this provision, an act was passed making the appropriation, and appointing Commissioners to receive propositions of compromise and settlement, and requiring the registering the claims in the office of State. The time for registering the claims was afterwards prolonged; and during the present session a resolution has been offered by the gentleman from Virgin[illegible] Clark) still further to prolong the tim[illegible] Commissioners proceeded to receive pro[illegible] from the claimants, and after determin[illegible] their propositions were inadmissible, th[illegible] their opinion, in the following words: "B[illegible] 'nevertheless believe that the interest of t[illegible] 'ted States, the tranquillity of those wh[illegible] 'hereafter inhabit that territory, and various 'table considerations which may be urged in [illegible] 'of most of the present claimants, render it e[illegible] 'dient to enter into a compromise on reas[illegible] 'terms."

Without the habit of placing implicit confide[illegible] in the opinion of others, I must confess that [illegible] opinion of three gentlemen appointed by the Go[illegible]ernment, who have examined the whole subject, who have devoted much of their time to it and who must be supposed to be well acquainted with the nature and merits of the claims, has some influence on my mind. They knew that many [illegible] the claimants had advanced large sums of mo[illegible] which in their opinion constituted an eq[illegible]ble title, and they believed that the inter[illegible] the United States required an amicable and reasonable adjustment. And what is the purpo[illegible] the resolution? Does it contemplate the laying any tax or burden on the whole or on any part [illegible] people? It does not. Does it propose that [illegible] claimants shall be paid or compensated to the extent of their demands? No. It refers [illegible] claims to Commissioners to be appointed by [illegible] Government for examination, and such *awards* as their respective merits may entitle them to receive. And out of what fund is the compensation to be made? Out of the residue of the five millions of acres—out of the fund which appears to have been reserved for that purpose.

On the subject of advances *actually made*, I beg leave to mention a single instance. *A judgment* was obtained in the supreme *court of Massachusetts* against an individual *in a sum of upwards* of $80,000, on a bond given for these lands, for payment of which his estate is mortgaged. This gentleman has paid the tribute to nature—his widow and orphan children are represented in one [illegible] the petitions. By the judgment of the court he [illegible] held to pay. If a suit should be instituted for the recovery of the land, and it should be determined there is no legal title, where is the remedy? In the case of the corrupt act of the State of Georgia it has been contended there ought to have been a remedy somewhere, and the State of Georgia sought a remedy in the rescinding act [illegible]. In the present instance, I trust it will be found in the justice and good faith of this Government.

Thursday, January 31.

On a motion made, and leave given by the House,

Mr. Nicholson, from the committee ap[illegible] the twelfth of November last, on so much [illegible] Message of the President of the United States [illegible] relates "to the defence and security of our [illegible] and harbors, and supporting within our waters [illegible]

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authority of the laws," reported a bill to appropriate a sum of money for the purpose of building gun-boats; which was read twice and committed to a Committee of the Whole to-morrow.

ALIEN CREDITORS.

Mr. CLOPTON, from the committee to whom was referred, on the twenty-first ultimo, the petition of sundry British merchants and others, subjects of His Britannic Majesty, within the United States, made a report thereon; which was read, and ordered to be referred to a Committee of the Whole House on Monday next. The report is as follows:

The committee, to whom was referred the petition of sundry British merchants and other subjects of His Britannic Majesty, submit the following report:

The object of this petition is to procure an act for extending the jurisdiction of the circuit courts of the United States, so that the said courts shall have cognizance of "all cases arising under treaties," and of controversies in which an alien is a party, without restriction as to sum, though the matter in dispute, exclusive of costs, should be under the sum or value of $500; or that some other competent tribunal to take cognizance of such causes be established under the authority of the United States.

The petitioners ground their application to the Legislature on the following authorities, viz:

The second section of the third article of the Constitution of the United States, which establishes the judicial power of the United States.

The fourth article of the definitive treaty of peace between the United States and His Britannic Majesty, wherein "it is agreed that creditors on either side shall 'meet with no lawful impediment to the recovery of 'the full value in sterling money of all *bona fide* debts 'heretofore contracted."

And the second article of the convention made the eighth day of January 1802, which recognises and confirms the said fourth article of the definitive treaty.

As reasons for making this application, in support of which they have presented a view of the section of the Constitution and the articles of the treaty and convention which have been recited, the petitioners allege, "that a number of small debts are due from individuals 'widely dispersed throughout the State of Virginia, to 'British creditors, contracted before the peace of 1783; 'and that, for want of a tribunal whose jurisdiction 'shall embrace debts of a smaller magnitude than $500, 'they and their agents are exposed to much trouble, 'incur an heavy expense, and, frequently, with the 'eventual and entire loss of debts, supported by such 'documents and principles as have, in a number of 'similar cases, insured them a recovery in the federal 'circuit courts. That the inferior, and some of the 'superior, courts of the Commonwealth, are not influ-'enced by any uniform course of decision, so that claims 'resting upon precisely the same principles of law and 'evidence, receive different decisions in the different 'courts; and that these courts do not in practice respect 'the decisions of the circuit court and the Supreme 'Court of the United States, on the construction of the 'said 4th article of the British Treaty, in relation to 'British debts."

The committee deem it their duty first to consider whether such a provision as that which is solicited by the petitioners, be expedient and proper, as a general regulation, before they inquire how far the special cases alluded to in the petition, have a claim to the measure. As connected with this view of the subject, a principle of the Federal Constitution presents itself, which is believed to merit serious attention. It is to be remarked that, in the formation of this Constitution, it appears to have been a fundamental principle of great and leading influence, that the powers of the General Government should be so apportioned as not to produce any *unnecessary* diminution in the powers of the State Governments. In conformity with this principle, the powers originally appertaining to those governments, are left in their possession; except those by the exercise of which the general purposes of the Union might be contravened; they are therefore delegated to the Federal Government. This principle strongly characterises the distribution of the legislative power, and it is to be traced in that part of the Constitution which prescribes the limits of judicial power; although, in assigning to that power the objects of its jurisdiction, the principle does not operate so extensively as it does in assigning to the legislative power the object of its jurisdiction. We find that the judicial power does not extend to controversies between citizens of the same State, except in the particular cases where lands are claimed under grants of different States, and obvious is the reason. The State courts, as they always were, so are they still, equally competent to the cognizance of, and a due administration of justice in, all such cases, while they are more convenient to the parties litigant. A transfer of jurisdiction to the federal courts in these cases would *unnecessarily* diminish the authority of the States, and is not necessary to the purposes of the Union; it remains, therefore, exclusively vested in the State courts. We find that the power does extend to controversies between citizens of different States; but here the jurisdiction is not exclusively vested in the Federal Government; in the exercise of it this Government only participates with the State governments. So far, however, as this concurrent jurisdiction is actually exercised, the sphere of State authority is contracted. This authority dwindles and shrinks into narrower limits, as such jurisdiction descends lower in the scale of controversies, embracing in its descent a great variety of cases. Thus the increment of Federal authority produces a proportionate decrease of State authority. To extend this process farther than a due administration of justice requires, is to deviate from an important fundamental principles of the Constitution.

It is presumable that, inasmuch as the Federal Government was instituted for the benefit of every citizen within the United States, this concurrence of jurisdiction, in the case last recited, might have been considered as one of the purposes proper to be provided for in this system; that a citizen of one State having a matter of controversy within the territorial limits of another State, and with a citizen of that State, might take his option of resorting either to the State or to the Federal tribunal for its adjustment and decision. A similar consideration might have induced the extension of jurisdiction to the Federal tribunal, in controversies between citizens of the same State claiming lands under grants of different States. In cases of this description, the extension might have been as strongly recommended on the ground of convenience to the parties, as in ordinary controversies between citizens of different States.

Yet, while regard is thus had to the convenience of those who, residing in one State, have to prosecute in another State, the convenience of the parties on the

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other side ought not to be entirely neglected; equal attention is due to each, and the Legislature will respect both alike in the arrangements it makes towards carrying the power into execution. If citizens of one State are entitled, from the nature and general design of the Government, to draw those of another State before the Federal tribunal in matters of controversy between them, it is believed to be a question of no inconsiderable moment how far a provision for that purpose may be extended, without operating a greater inconvenience on the one side, than any rightful claim to such provision on the other side would justify. This question involves an estimate of the degree of interest which may constitute a proper subject of controversy between the parties litigant before such tribunal. It is believed that, in making this estimate, the just rule of calculation is deduced from the following considerations, viz:

The inconveniences to which the parties on one side will generally be subjected from attendance on a single court, sitting at one particular place in the State, contrasted with the situations of the State courts, so numerous and so dispersed, that almost every man finds one convenient to him; and the excess of costs and charges incident to prosecutions in the former, beyond those which are incurred from prosecutions in the latter courts.

From this view of the question, which presents itself to the Committee as a correct one, their impressions are, that matters of controversy between citizens of different States, which do not involve a very inconsiderable interest to the parties, ought not to be subjected to the jurisdiction of the courts of the United States; that, where the interest involved is considerable, a provision extending their jurisdiction to such cases might operate a degree of oppression to the parties on one side, while those on the other side could derive no greater benefits than what are afforded by the State courts. If this be a well founded opinion, can subjects or citizens of a foreign State have a better claim to such provision? If neither the principles of the Constitution nor any sound maxims of distributive justice are favorable to the idea of extending the jurisdiction of the federal courts to controversies of minor importance between American citizens residing in different States, can those principles or maxims be more favorable to such enlargement of jurisdiction as to similar controversies wherein aliens are parties? Every consideration opposed to such a measure in relation to the former cases, must resist that idea with at least equal force when applied to the cases last mentioned. No good reason, in the opinion of this Committee, can exist in favor of recommending such a discrimination.

Having contemplated this subject on general principles, and having made the foregoing deductions, the Committee then directed their attention to the particular situation of the petitioners, as stated in their memorial. In respect to the trouble and expense to which they allege their agents and themselves are exposed in prosecuting suits for the recovery of their debts in different courts of the Commonwealth of Virginia, it is to be remarked that, if the inconveniences suggested should be removed from them by the establishment of the tribunal they solicit, what would be the consequence? From their own showing, it is evident that a considerable number of individuals—a number much greater than their own number, together with that of their agents and those they represent, would be exposed to greater inconveniences, trouble, and expense, in attending court at one particular place, from [illegible] of whom that place would necessarily be very [illegible] To grant the prayer of the petitioners merely [illegible] ground of complaint, would be to oppress a [illegible] able number of citizens for the accommodation [illegible] much smaller number of persons who are not [illegible] A principle which would justify this step is a [illegible] principle totally inadmissible by this Committee, [illegible] rule by which to decide on what is just and proper.

As to the allegation that they have frequently incurred "entire loss of debts supported by such documents and principles as have in similar cases insured [illegible] recovery in the federal court," the Committee [illegible] observe that, however such different decisions [illegible] have taken place, it is not admitted as a necessary [illegible] ference, that the decisions complained of were [illegible] just as those from which recoveries were obtained. And as to that part of the petition which complains that some of the State courts are influenced by no "uniform course of decision," in cases supported by the "same principles of law and evidence," the Committee would remark that, if such be the fact, of which however, no evidence has been submitted, the inconvenience cannot be peculiar to the petitioners: it must extend to all the citizens of the State who have controversies in the different courts. The Committee cannot perceive any propriety in making a provision for the sole purpose of meeting their *especial* cases.

As another ground of complaint, it is stated that the courts of Virginia do not "in practice respect the decisions of the circuit and supreme courts of the United States," in relation to British debts. While the Committee think it proper to observe, that this part of the complaint is also unsupported, but by the mere allegation of the petitioners, they would remark at the same time that it is not deemed material to inquire into that circumstance, in order to make up their opinion as to the competency of those courts to administer justice between the parties, in deciding the cases in question.

In whatever point of view this subject is considered, this Committee perceive no just ground to disapprove of the policy which dictated the existing limits in the jurisdiction of the circuit courts, so as to deem it proper to recommend any extension of that jurisdiction, or the establishment of any other tribunal, to meet the wishes of the petitioners. They therefore submit the following resolution:

Resolved, That the petitioners have leave to withdraw their petition.

GEORGIA CLAIMS.

The House resumed the consideration of the resolution reported the twenty-ninth instant from the Committee of the Whole, on the Georgia Claims.

Mr. JACKSON.—Mr. Speaker, I rise with some degree of reluctance to address you on the present occasion, not because I fear to give [illegible] to my sentiments on the question before the House, but from the assurance, that the length of time which this subject has occupied at the last [illegible] during the present session of Congress, renders most certain that no new view can be [illegible] and more especially that the opinions [illegible] formed cannot be changed. I would not [illegible] have risen but for the wish that inasmuch as [illegible] most extraordinary course has been pursued [illegible]

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general denunciation of every man who dares, o favor the report on your table has been made, ny reasons may accompany my vote, and I am willing that they together may form the criterion y which my political existence shall be decided. The reluctance I felt in rising is somewhat emoved by the reflection, that the arguments rged on this floor are declared not intended to influence the judgment of this House, but to control he public mind, by an avowed appeal to the people of the United States. Let the appeal be fairly nade, and I fearlessly await their decision. For hat purpose, I deem it proper to offer my sentiments, in order that they may accompany those of my two colleagues who have preceded me. Sir, I am decidedly in favor of the report of the Committee of Claims, and of course opposed to he amendment under consideration. I do not n this occasion regret the absence of party spirit rom these walls, which has been invoked by my colleague (Mr. RANDOLPH.) That party spirit which has been the bane of all Governments; hat party spirit which, disregarding all the forms of justice, tramples its most sacred laws under foot, nd presides without check or control over questions relating solely to private property; or which was displayed in the conduct of Jeffries, who servilely prostrating his sacred functions to the purposes of ministerial vengeance, has justly excited he reproach and execration of posterity: and which, if cherished upon occasions like the present will tend to demolish the fair fabric of our Republican Government. I will not admit that because a majority of this House are in favor of the laims, and desire a prompt decision without debate, it is evidence that "unprincipled men have acquired the ascendency, and knowing themselves to be in the commission of wrong they are silent." Is my colleague aware of the extent of this doctrine? When unprincipled men, said e, acquire the ascendency, they act in concert and re silent—silence and concert then are to him roofs of corrupt motive. Is this always a correct position? Does the gentleman recollect that neasures were adopted a few years past without liscussion, by my political friends in conjunction with him, who were *silent, and united?* I am unwilling to believe that such an inference can result from an union of sentiment. In some instances we are unanimous in our decision of questions, on which no debate takes place; but I have never thought this was proof of the prostration of principle; nor can I suppose that the gentleman himself thinks so; even now we adopt neasures advocated by him, and are nevertheless old that to act in concert is proof of corruption. Having premised that the inferences made by the gentleman were not correct, I will proceed to the nvestigation of the question before the House, viz: Are the claims under the act of 1795, entitled o reference to commissioners for compromise nd settlement, or are they not? My colleague (Mr. RANDOLPH) says the persons who obtained he land from the Legislature of Georgia were guilty of a most detestable fraud; and the present claimants, pretending to be innocent purchasers without notice of fraud, are a set of hypocrites, undeserving the attention of Congress, or the commiseration of mankind. In support of this assertion he has quoted the Message of the President of the United States, in 1795, to Congress, describing in terms of approbation the high character of its author—WASHINGTON—whose memory I revere, and whose name I will teach my children to lisp, and venerate as the father of American freedom, and who with Liberty were the two best gifts bestowed by Heaven upon our favored country! WASHINGTON, my colleague says, gave notice to the nation, and published the rape of unhallowed hands upon the property of the State of Georgia. But, sir, if we examine the Message, and the proceedings of Congress upon the occasion, it will be discovered that no knowledge of fraud in the transactions of the Legislature of 1795, were even known, or suspected; because, if any such information had been received, the known integrity of that virtuous man assures me, he would have communicated it; he would have opposed it with his best exertions, and give me leave to say, deprecated it as much as any man can. The Message of the President, which the gentleman contends contains this ample notice of fraud to all the world, was sent to Congress on the 17th of February, and is to be found in the Journal of the second session of the third Congress, page 245. With permission I will read it.

"*Gentlemen of the Senate and of the House of Representatives:*

"I have received copies of two acts of the Legislature of Georgia, one passed on the 28th day of December, 1794, the other the 7th January, 1795, for appropriating and selling the Indian lands within the territorial limits claimed by that State. These copies, though not officially certified, have been transmitted to me in such a manner, as to leave no room to doubt of their authenticity. These acts embrace an object of such magnitude, and their consequences may so deeply affect the peace and welfare of the United States, that I have thought it necessary to lay them before Congress."

In this Message there is not a single mention of fraud: but that the acts of Georgia might affect the "peace and welfare of the United States." The meaning of this was, not that fraud was committed in the sale, and known to the President; but that the peace of the United States might be endangered by the sale. The country was an important one, both in its extent and situation; then in possession, and claimed by powerful nations of Indians; the magnitude of the prize might induce the claimants and others, deriving titles from them, to make a desperate effort to settle the country, and drive out the Indians. Hence the danger of a war with them, or, as the President expressed it, the fear that the "peace and welfare" of the United States would be affected.

The committee to whom this Message was referred, reported on the twenty-third February, 1795, as will be seen in page 260 of the Journal:

"Mr. Nicholas, from the committee to whom was referred so much of the Message from the President of the United States of the 17th instant, as relates to the

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disposition of the Indian lands, by the Legislature of the State of Georgia, made a report; which was read and ordered to be committed to a Committee of the whole House to-morrow."

On the next day (page 271) the House resolved itself into a Committee of the Whole, and made some progress. On the 25th of February, (see page 276,) the House again resolved itself into Committee of the Whole, and came to several resolutions, which were reported by Mr. Cobb, and were ordered to lie on the Clerk's table. Then follows the following motion:

"*Resolved*, That all persons who shall be assembled or imbodied in arms on any lands belonging to Indians, out of the ordinary jurisdiction of any State, or of the Territory south of the river Ohio, for the purpose of warring against the Indians, or of committing depredations upon any Indian town, &c., shall be punished."

"*Ordered*, That the motion be referred to Mr. Sedgwick, Mr. Madison, and Mr. Hillhouse."

In page 279, on the 26th February, the House considered the resolutions reported by the Committee of the Whole on the preceding day; which were agreed to, as follows:

"1st. *Resolved*, That Congress will co-operate with the President of the United States in giving due effect to all such Constitutional and legal means as he shall adopt and pursue to prevent the infraction of the treaties made with the Indian tribes.

"2d. *Resolved*, That it be recommended to the President of the United States not to permit treaties for the extinguishment of the Indian title to any lands, to be holden at the instance of individuals or of States, where it shall appear that the property of such lands, when the Indian title shall be extinguished, will be vested in, or claimed by particular persons: And that, whenever treaties are held for the benefit of the United States, individuals claiming rights of pre-emption shall be prevented from treating with the Indians concerning the same; and that, generally, such private claims be postponed, to those of the several States, wherever the same may be consistent with the welfare and defence of the United States.

"3d. *Resolved*, That the President of the United States be authorized to obtain a cession of the State of Georgia, of their claim to the whole or any part of the land within the present Indian boundaries.

"*Ordered*, That the first and second resolutions do lie on the table.

"*Ordered*, That a bill or bills be brought in, pursuant to the last resolution, and that Mr. Nicholas, Mr. Macon, Mr. Murray, Mr. Findley, Mr. Boudinot, Mr. Ames, and Mr. Sherburne, do prepare and bring in the same."

"Mr. Sedgwick, from the committee to whom was referred a motion of the 25th inst., respecting such persons as shall be assembled or imbodied in arms on any lands belonging to Indians, out of the ordinary jurisdiction of any State or of the Territory of the United States south of the river Ohio, made a report; which was read, and ordered to be committed to a Committee of the whole House, to-morrow."

The next mention of this subject is in page 285, viz: on the 27th February, the House "resolved 'itself into a Committee of the Whole, on the 'report of the committee to whom was referred a 'motion of the 25th," and came to the resolution contained in page 291:

"*Resolved*, That all persons who, unauthorized by law, and with hostile intent, may be found in arms on any lands allotted to or secured to the Indians by treaties between the United States and any Indian tribe, shall, on conviction thereof, forfeit a sum not exceeding —— dollars, and be imprisoned not exceeding —— months, unless it shall be in continuation of a pursuit to a distance not exceeding —— miles beyond the limits of the particular Indians who shall have recently committed murder, or may be carrying off captives or plunder."

"The second resolution being again read, was amended at the Clerk's table, was, on the question, thereupon, agreed to by the House, as follows:

"*Resolved*, That it shall be lawful for the military force of the United States to apprehend every person or persons found in arms, as aforesaid, and him or them to convey to the civil authority of the United States within some one of the States, who shall, by such authority, be secured to be tried in manner and form as is provided in and by the act, entitled 'An act to regulate trade and intercourse with the Indian tribes.' *Provided*, That no person shall be confined, after his arrest and before his removal, more than —— days."

Here, then, is a faithful abstract of the whole proceedings, evincive of the intention of the President and Congress, and it most clearly appears that these proceedings had no reference to any fraud. The primary object and whole intention to be collected from them was to prevent the settlement of the country by individuals, and by waging war against the Indians, or extinguishing the Indian title; and to prevent a sale by Georgia, except to the United States of their remaining undisposed of territory. Georgia still had a large tract of land after the passage of the act of 1795. But, says my colleague, Congress resolved to apply for the purchase of all the territory in question; and this is notice to the claimants who are now before us. Sir, the gentleman mistakes the *resolution*: it is "that the President of the United States be authorized to obtain a cession *from the State of* 'Georgia, of (mark the expressions) their claim 'to the whole, or any part of the land within the 'present Indian boundaries." Here is a most substantial distinction between the case put by my colleague, and the one stated in the resolve: it is not authorizing the purchase from Georgia of all or part of the territory in question, but of their claim to all or any part of the land within the Indian boundaries. From the whole of the documents, it does appear that neither the President nor Congress knew there was fraud, or that any notice, express or implied was given: that the measure originated in corruption; and it does not by any means appear that the present claimants had such notice.

I will now examine that part of the memorial of the New England Mississippi Land Company which declares that they were specially intended to be provided for in the Convention between the United States and the State of Georgia; and that the act of Congress contains a corresponding provision. Upon this subject my colleague has asserted, that they have "suggested an absolute direct, and palpable falsehood." If they were so

intended, they assert a falsehood; if they were, they do not. A recurrence to the articles with Georgia, and to the act of Congress, will place this subject upon its proper basis, and by them it will appear whether they were intended to be specially provided for, or not. In the agreement with Georgia it is, among other things, declared, page 5, of the Message from the President of the United States, accompanying the article of agreement and cession, which had been entered into between the Commissioners of the United States and of Georgia, dated on the 26th of April, 1802, after the cession of territory as described in the first article, upon the express conditions therein stated, the first of which conditions provides for the payment of the purchase money. The following additional provisions are made:

"*Secondly.* That all persons, who, on the twenty-seventh day of October, one thousand seven hundred and ninety-five, were actual settlers within the territory thus ceded, shall be confirmed in all the grants legally and fully executed prior to that day by the former British Government of West Florida, or by the Government of Spain, and in the claims which may be derived from any actual survey or settlement made under the act of the State of Georgia, entitled 'An act for laying out a district of land situate on the river Mississippi, and within the bounds of this State, into a county, to be called Bourbon,' passed the seventh day of February, one thousand seven hundred and eighty-five.

"*Thirdly.* That all the lands ceded by this agreement to the United States, shall, after satisfying the above-mentioned payment of one million two hundred and fifty thousand dollars to the State of Georgia, and the grants recognised by the preceding condition, be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever: *Provided, however,* That the United States, for the period and until the end of one year after the assent of Georgia to the boundary established by this agreement shall have been declared, may, in such manner as not to interfere with the above-mentioned payment to the State of Georgia, nor with the grants hereinbefore recognised, dispose of or appropriate a portion of the said lands, not exceeding five millions of acres, or the proceeds of the said five millions of acres, or of any part thereof, for the purpose of satisfying, quieting, or compensating, for any claims other than those hereinbefore recognised, which may be made to the said lands, or to any part thereof. It being fully understood that, if the act of Congress making such disposition or appropriation, shall not be passed into a law within the above-mentioned period of one year, the United States shall not be at liberty thereafter to cede any part of the said lands on account of claims which may be laid to the same, other than those recognised by the preceding condition, nor to compensate for the same; and in case of any such cession or compensation, the present cession of Georgia to the right of soil over the land thus ceded or compensated for, shall be considered as null and void, and the lands thus ceded or compensated for, shall revert to the State of Georgia."

Here, sir, is a special provision "for the appropriation of a tract," not exceeding five millions of acres, for the purpose of satisfying, quieting, or compensating for any claims other than those therein before recognised, which may be made to the said lands, or any part thereof. Nothing can be more clear or better settled than that the claims of 1789 and 1795, and especially those of 1795, were specially intended by the articles of cession. If, however, we could doubt as to the meaning of the articles themselves, it would be entirely dissipated on a reference to the report of the Commissioners in page 25 of the same Message; speaking of the propositions of the claimants under the act of 1795, which they deem inadmissible; and of their title, which, they say, "cannot be supported," they add:

"But they, nevertheless, believe, that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms.

"Under this impression, a plan is respectfully submitted to the consideration of Congress, which, although it does not give a full indemnity to every claimant, is believed, from such information as has been received, to give in the aggregate nearly as much as has been paid in the whole by all the present claimants.

"As it is understood and generally agreed, that the five millions of acres reserved by the agreement with Georgia, constitute the fund from which the indemnity is to be paid, it is of primary importance, in order to guard against any depreciation, that the nominal sum in money, which may be offered as an indemnity, should not exceed what the sum may be thought amply sufficient to discharge. The probable amount of the annual sales, and the price affixed to the land by Congress, furnish the only data by which that sum can be determined. The Commissioners have supposed that the sales could not reasonably be estimated to yield more than three or four hundred thousand dollars annually; and although it has been presumed that in opening a land office, the price of the land will, at present, be fixed at two dollars per acre; they have believed that it would be improper to assume the payment of any sum out of the proceeds of the lands, which would bind Congress not to reduce the price hereafter, if other considerations shall render that reduction expedient.

"It is after having considered the subject in that point of view, that the Commissioners have been induced to submit the following propositions as the basis of a compromise.

"First. That so much of five millions of acres as shall remain after having satisfied the claims of settlers and others, not recognised by the agreement with Georgia, which shall be confirmed by the United States, be appropriated for the purpose of satisfying and quieting the claims of the persons who derive their claims from an act of the State of Georgia, passed on the 7th day of January, 1795."

They were specially intended by the Commissioners of the United States, who negotiated the treaty with Georgia; and this intention, as I have urged, plainly appears on the face of the treaty itself. The remaining branch of this inquiry is, Were they specially intended by the provisions of the act of Congress? On the third day of March, 1803, the law upon this subject was enacted, and is to be found in volume 6th, page 273, of the laws of the United States, the 8th and 9th sections of which have reference particularly to this subject.

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SEC. 8. *And be it further enacted,* That so much of the five millions of acres reserved for that purpose by the articles of agreement above-mentioned, as may be necessary to satisfy the claims not confirmed by that agreement, which are embraced by the two first sections of this act, or which may be derived from British grants for lands which have not been regranted by the Spanish Government, be, and the same is hereby appropriated for that purpose; and so much of the residue of the said five millions of acres or of the net proceeds thereof as may be necessary for that purpose, shall be, and is hereby appropriated for the purpose of satisfying, quieting, and compensating, for such other claims to the lands of the United States south of the State of Tennessee, not recognised in the above-mentioned articles of agreement, and which are derived from any act or pretended act of the State of Georgia, which Congress may hereafter think fit to provide for; Provided, however, that no other claims shall be embraced by this appropriation, but those, the evidence of which shall have, on or before the first day of January next, been exhibited by the claimants to the Secretary of State, and recorded in books to be kept in his office for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the Secretary of State for recording the same, at the rate of twelve-and-a-half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence of any claim to the said lands, derived, or pretended to be derived from the State of Georgia, and not recognised by the above-mentioned articles of agreement, ever after be admitted or considered as evidence in any of the courts of the United States, unless it shall have been exhibited, and recorded, in the manner and within the time above-mentioned; and provided also, that nothing herein contained, shall be construed to recognise or affect the claims of any person or persons, to any of the lands above-mentioned; and provided also, that no certificate shall be granted for lands lying east of the Tombigbee river, nor for land situated without the boundary lines established by treaty between the United States and the Choctaws, made the 17th day of October, in the year 1802.

"SEC. 9. *And be it further enacted,* That the Secretary of State, the Secretary of the Treasury, and the Attorney General for the time being, be, and are hereby authorized and empowered to receive such propositions of compromise and settlement, as may be offered by the several companies, or persons claiming public lands in the territory of the United States lying south of the State of Tennessee, and west of the State of Georgia; and report their opinion thereon to Congress at their next session."

They were most certainly intended here; if they were not, the sections are sheer nonsense. Claims derived from any act, or pretended act of Georgia, are none other than the claims of 1795.

My colleague, contending that the claimants have asserted a falsehood in their memorial by alleging they were specially intended to be provided for—in which I trust I have proven he was mistaken—added, and they too talk of national faith and national honor as being pledged to make them compensation. Sir, I do not think with him that the appeal, thus made, is a prostitution of virtue and truth to vile purposes; but that national faith and national honor are pledged to them—not the faith and honor which my colleague ascribes to infamy and baseness, but the faith which, for the honor of my country, I hope will endure forever, and the honor which, co-extensive with our faith, will be the best patrimony we can hand down to posterity, at once their pride and national glory. In support of the opinion I have formed, I refer to the articles with Georgia and the report of our Commissioners advising a compromise; and that the claimants should within a given time register their titles, as also the act of Congress making provision for the quieting and compensating claims derived under any act, or pretended act of Georgia. "Any act or *pretended* act." Here is a most explicit reference to the '95 claims. The Legislature of that State in that year, were guilty of gross fraud and perfidy, their act was repealed, expunged from the records of Georgia, and burned. It was called a pretended act by the repealing Legislature, and it has never been contended that any other act of the State was illegitimate. It is alluded to by the appellation of *pretended act*, in as strong terms as the English language can convey the idea; and the ninth section, which I have read, holds out the assurance of a wish to compromise, by authorizing the Secretary of State, the Secretary of the Treasury, and the Attorney General, to receive propositions from the several companies or persons claiming lands. I repeat it, sir, I think the faith of the Government is pledged to make a compromise with the claimants, if it can be done; if not, I ask why were the claimants required to register the evidences of their titles, at their own expense, in the office of the Secretary of State? Why did we say to the State of Georgia, you must *give* us (remember we did not purchase it) five millions of acres of land to quiet those and other claims, if we had no intention to allow any of them? Why did we pass a law respecting the compensation for claims under any act or pretended act of the State of Georgia, if no claims whatever, under the act or *pretended* act of Georgia, were to be compromised and settled? And why did we call upon the claimants to incur a great expense in registering the evidences of their titles, and to make propositions of compromise, unless we intended that they should derive some benefit from a compliance? Unless, sir, Congress did intend to make some compromise with the claimants, this was a language of deception, as it regarded the State of Georgia, unworthy of the American Government, and it was adding insult to injury, and expense to both, as it regarded the claimants. It declared in effect: "Commissioners of Georgia, we require five millions of acres of land to compensate these and other claims"—it is obtained. "Claimants register your titles at your own expense, or you will be barred"—this is done. Then, "speculators, swindlers, public plunderers, begone! you have nothing to hope or expect from us." Is this conduct dignified? Is it honorable? I trust it is not, and will not be practised. My colleague alleges that the willingness of the claimants to take one-tenth of what they claim, is conclusive evidence of the injustice of the claim. Sir, the claimants,

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in their memorial, state a sufficient answer to this argument: "the delay of justice is its denial." What rational expectations can they have to acquire a sufficient indemnity unless in this way? They may indeed wait until the United States shall have disposed of the lands in question to some person hardy enough to purchase a disputed title, as until then they know they can have no opportunity to try their titles; and then the great expense of the law's delay, and the multiplicity of suits necessary to obtain adjudications to the extent of their claims, will produce unavoidable ruin. There is another substantial reason. They do not wish to contend with the strong arm of Government, and instead of their willingness to effect an amicable compromise operating as an evidence of the injustice of their claims, it affords a great proof of their magnanimity and patriotism. They consider themselves entitled to a full compensation, but, consulting the interests of the nation, they are willing to accept a pittance. My colleague says, he last year proved that Georgia had no right to make a grant of the land in question; this is an immaterial point—it is, however, not conceded. I contend we have obtained a recognition of the justice and equity of the claims, and are bound to provide for them. The same gentleman, not satisfied with the arguments he has used, endeavors to make it a party question, and deplores the absence of party spirit. Justice, Mr. Speaker, like the dews of heaven, should be showered down upon all men indiscriminately. She soars above the horizon of political speculators, and disdains to be told of any distinctions; and when she decides in favor of any man, it is because truth, immutable from the beginning of the world to the end thereof, is on his side, accompanied by reason co-extensive with time itself. Tell me not then, when we invoke her aid, that this or that man is good or bad; she is blind to parties, but eagle-eyed to search out truth. What is it to me if the Postmaster General, who is one of the agents, has as many millions as would balance the wealth of the Old World? If he is entitled, fairly and honestly entitled to more, I will give it. But his official powers scatter confusion; men can be found, clothed with Senatorial honors, who will abandon them, and by accepting offices within his gift, prostrate themselves at his feet, and others are ready to receive the snug contracts he can bestow. Hence, if the measure which he advocates be adopted, it will be proof of "corrupt influence which "scatters confusion." Is the gentleman aware of the tendency of this doctrine? The Executive recommends measures, and as the Executive has many valuable offices in its gift, presumed corruption may be urged in all cases of their adoption; although, as in the case of the Postmaster General, the individual members never receive the smallest benefit from the power of appointment to office; and although the national security, and the integrity of the members, forbid the imputation.

As to the contracts spoken of, the mode of disposal is, to prefer the lowest bidder. The principal clerk in the Post Office Department is a Federalist; and disappointed applicants, when others were preferred from motives of favoritism, would be found ready to promulge the perfidious act. Considering these circumstances, which are most important checks, and that, notwithstanding the avidity with which the press seizes on occasions of supposed impropriety in the acts of the Government, or any of its agents, not a single solitary case of malfeasance has ever been charged against this officer; I am confident none has existed. And here allow me to add, that the friends of this measure, whom my colleague has reduced to a level with ninety-five Yazoo men, have, *quo ad hoc*, the same security for their integrity, that the President of the United States and the Commissioners have for theirs—they recommended what we approve. Yes, sir, this measure, which, if adopted, he declared, made us a party to a nefarious swindling—the approvers of fraud—the felons who filch from the poor their support—which reduced us to a level with the corrupt Legislature of Georgia, in the year 1795, and made us patrons of a stupendous robbery—has been recommended by the President of the United States, and by the Secretary of State, the Secretary of the Treasury, and the Attorney General. The President of the United States, in his Message to Congress at the second session of the seventh Congress, after speaking of the convention with the State of Georgia, which was then ratified, and of certain negotiations with the Indians, adds, "we are to 'view this position as an outpost of the United 'States, surrounded by strong neighbors, and dis-'tant from its support. And how far that monopoly 'which prevents population should here be guard-'ed against, and actual habitation made a condi-'tion of the continuance of title, will be for your 'consideration. A prompt settlement, too, of all 'existing rights and claims within this territory, 'presents itself as a preliminary operation." Remember, sir, that this Message was made on the 15th December, 1802; and the Message containing the convention with Georgia, and the report of the Commissioners, expressly mentioning all the species of claims, and particularly those under the act of 1795, bears date, the 26th of April, 1802, long before the delivery of the communication containing the recommendation I have just read.

And in page 25 of the report accompanying the Message I have quoted, (to wit, the Message of 26th April, 1802,) the Commissioners say, in express terms, they "believe that the interest of the 'United States, the tranquillity of those who may 'hereafter inhabit that territory, and various equi-'table considerations which may be urged in favor 'of most of the present claimants, render it expe-'dient to enter into a compromise on reasonable 'terms." And who, sir, will have the hardihood to say the President of the United States and these high officers of Government have been influenced by sinister motives? It is (says my colleague) the spirit of Federalism which unites us. Sir, I am young in years, and I am a child indeed in politics: If this be the spiritof Federalism, and with all my enmity to it, which I own has been very great, if it consists in complying with pru-

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dent advice and honest engagements, in doing justice to the unfortunate, and deciding on questions of private right by the rules of universal law; I will receive it with open arms; I will cherish it, and hug it to my bosom with the affection of a father for a long lost son returning to the paths of virtue.

My colleague near me, (Mr. Clark,) with the same liberality which characterizes his general conduct on this floor, has investigated the question of the legality of these claims and contended it was most clear that the parties have no species of legal right. I am not disposed to go largely into this examination; the volume presented by the agents, which is called a "profanation of argument," is an able vindication of it; I will, however, notice some of his positions. In establishing his premises, he assumes certain facts as conceded, which are denied in the most express and direct manner. First, that the claimants now before us had notice of fraud when they purchased the lands in question; this notice, he says, was unquestionably given by the Message of the President to Congress, and the proceedings in the House of Representatives. I have answered this assertion by a minute recapitulation of all the proceedings at that period; and I deny that they either express or imply fraud or corruption in the remotest manner. "They had notice by the presentments of the grand juries in the State of Georgia." Sir, I for one can declare I never saw those presentments in the newspapers; nay, farther, I never saw a Georgia newspaper, to my recollection, until I had the honor of a seat on this floor; they are not extensively circulated beyond the limits of the State; and the facts adduced by my colleague prove nothing. But (added the gentleman) here is presumed notice; facts, sir, always defeat presumptions; it is not a principle admitted in law, because it was possible that the party might have obtained notice, the inference must be that he had notice. And how is the fact of notice or no notice to be settled? My colleague well knows that if the United States shall sell any of these lands to individuals, and the claimants do, as they indubitably will, contest the title, the proper process will be the action of ejectment; in which it is a principle, than which no one is better established, that the eldest grant must prevail. What then? why, sir, the settler will resort to a court of equity, whose province it is to relieve against fraud, and he will charge in his bill in chancery that his antagonist derived his title from the act of a corrupt Legislature, and that he purchased of the grantee with notice of such fraud. The answer, which is sworn to, expressly denies the notice, for, sir, the parties solemnly avow they had no notice of fraud or corruption when they purchased, and a knowledge of their high characters leaves no doubt on my mind of its truth; and it is also a well settled rule in equity, that where the answer is responsive to the bill, it shall be conclusive, unless contradicted by two positive witnesses, or one witness, and strong corroborating circumstances. Where, then, is my colleague's doctrine of presumed—implied notice? They are, said he, *pendente lite* purchasers; and here the gentleman must have encountered a good old law maxim, that "a purchaser for a valuable consideration, without notice has a good title," unless he is a *pendente lite* purchaser. What, sir! *pendente lite* purchasers, when they derive their title from the law of an independent Leglislature! the grantees armed with its own records! the great seal of State affixed! a solemn acknowledgment of the receipt of payment in their possession. That it can be assimilated to *lis pendens* between A and B, would indeed be a far-fetched supposition. If any suit was depending, it was between the Georgians and their corrupt agents, for abusing the trust reposed in them not for exceeding their powers. As well might it be urged, that, if an individual give his agent full powers, and he sell his property at a *shameful* sacrifice, that a suit between such individual and his agent is to affect the property which he had power to sell. My colleague declares his willingness to make provision for such claims as shall appear to have originated in purchases without knowledge of fraud—these alone are the claims which I am willing to provide for; but we are solemnly assured by the applicants that they are all in this situation. Is this House competent to a due investigation of fifteen hundred claims? Sir, the whole period of a session will be inadequate to this object. It is to get rid of the great difficulty which such an inquiry would impose, and more especially to remove beyond our reach the possibility of renewing the unpleasant discussion which this subject has produced, and which, for the honor of my country, I hope will never be witnessed again, that I am desirous to refer the question as to the cases which are deserving of compensation, and the extent of it, to commissioners to be selected by the President, in whom the utmost confidence can be placed. My colleague near me declared that no contract originating in fraud can ever be rendered valid by any after transaction. I will prove to him an exception to this rule in the laws and judicial decisions of the State to which he belongs; and this, sir, will be sufficient to show that the universality of the rule cannot be contended for. In Virginia, our laws declare that no bond given for a gaming contract can be available in law; that money won at gaming may be recovered in a suit brought either by the party losing, or any other person who will sue for it; that all conveyances of land on that account shall be utterly void; yet, under this law, the High Court of Appeals have decided that where a party gave a bond for the payment of a gaming debt, and assured a third person in the presence of the obligee that it was good, and he would pay it; which third person received the bond by assignment, he should be ever afterwards incapable of claiming the benefit of the statute, and that the debt should be paid. But I shall be told by the gentleman, this is not a case analogous to the one before us. In answer to this I will say, it is not necessary that it should be; it is a strong exception to his rule, and that was what I engaged to have.

Mr. Speaker, strip this question of all extrane-

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us matter, and what is it? Plainly this: The United States are appointed trustees by the State of Georgia, to dispose of a certain designated fund which belonged originally to Georgia, and by the claimants it is contended was ceded to others, but which Georgia denies was a legitimate act. This fund, as I have shown, cost us nothing; we are requested, nay, we have engaged to appropriate it for quieting and compensating those claims thus contested; and to carry these engagements into execution, we are about to appoint commissioners of our own choice, with powers adequate to the object, and this act is denounced as a stupendous robbery, by an appeal to the people. Be it so. People of the United States, we invite your attention to this transaction; we confide in the purity of our motives, which are influenced by considerations of justice alone; and we rely on you for an approval of our conduct. The persons whose claims are before us, are purchasers of land from the grantees of Georgia, for a valuable consideration, without notice of fraud; those from whom they purchased were in possession of the law of Georgia ratifying the sale of grants, duly executed with all the solemn formalities, and of receipts for the purchase-money. Many of the claimants are among the most distinguished characters in the Northern States; they had held, and then held, important offices under the State authority, and had taken an oath to support the Constitution of the United States; which declares that full faith and credit shall be given to the acts and judicial proceedings of the respective States; their inclination as well as their oaths induced them to give full credit to them. It could not be presumed by them that the Representatives of a sister State had been corrupted; and although the act of sale might have been indiscreet, and a bad bargain to the venders; they knew, also, that the Constitution prohibited the States from passing any *ex post facto* law, by which any title vested in others will be impaired. Under these circumstances, they ask that we should give them a part of the property set apart for satisfying their claims, or permit their right to be decided before the judicial tribunals of the nation; and to grant this request, is what the majority of the House of Representatives believe that justice, no less than sound policy, dictates; and this is what we have been told is a stupendous robbery. I rely on the policy of this measure; that alone is sufficient, in my opinion, to warrant the adoption of this report. We can now quiet these claims by a portion of the five millions; they may, if not quieted, recover fifty millions by the decrees of our courts of justice; this is a serious reason in favor of the policy of the measure. Last year, when, as my colleague alleges, the press was gagged, and a virtual sedition law was in force, he declared "let them get a decree of the courts in their favor, let them take possession of the property, and I will expend the last dollar in the Treasury, and sacrifice the last life in the nation to fight them out of the country." [Here Mr. RANDOLPH declared, loud enough to be heard, that he still said so.]

Mr. JACKSON proceeded. The gentleman declares that he is still in the same mind; that these principles are to be trampled under foot by a lawless soldiery. Is this true policy? God forbid that my colleague, whose influence in this House is equal to the rapacity of the speculator whose gigantic grasp has been described by him, as extending from the shores of Lake Erie, to the mouth of the Mobile, should make the nation think so.* Sir, an enlightened and independent judiciary is the safeguard of the poor against the tyranny of the rich, it is the safeguard of the citizen against the tyranny of his Government. In England, sir, the virtue of the judiciary has, except in a few instances, disgraceful to their authors, been the only refuge of the subject against the gripings of tyranny; the judiciary there has been the pride and boast of that nation, and has excited the eulogies of this. Our judiciary is the sheet anchor of safety against popular fury, or the more destructive though less violent attacks of usurpation. I look to it with veneration and respect, as the preserver of civil rights and civil liberty; but if it is to yield to the power of an army, and its decrees are to be reversed on the points of hireling, mercenary bayonets; then, indeed, naught remains of liberty but the name, a phantom not worth preserving. It is politic, in the language of the President, to compromise these claims; "a prompt settlement, too, of all existing claims within this territory, presents itself as a preliminary operation." It is politic, sir, on every ground; many eminent lawyers, alike superior to the quirks and quibbles of the law, as well as the heresy of making the law yield to a military force, believe in the legality of these claims, and if there is a pretext of law on their side, it will produce more injury than the value of the land they are willing to take. I speak experimentally upon this subject—ten millions of acres of land (by computation) in the district I represent, are claimed by persons called the Indiana Company, by a grant from the Six Nations of Indians! In the year 1744 a public treaty, under the regal authority, was held at Lancaster with those Indians, and at that time they ceded the whole of their title to all the lands within the chartered limits of the State. Some years afterwards, viz: in the year 1768, as an indemnity to a company of merchants for goods forcibly taken by the Indians, they ceded

[* The following is inserted by request:] Mr. RANDOLPH having informed Mr. JACKSON that he had misapprehended what he said in debate on the Georgia claims at the last session, (which has never been published,) and Mr. R. having declared that what he really said was to the following effect, viz: "That if, when the Indian title to the lands in question should be extinguished, and intruders, under the act of Georgia of 1795, should attempt a settlement contrary to law, (a reason urged by some in favor of compromise,) he (Mr. R.) would extend the strong arm of Government, and drag them from the lands of the United States, would spend the last dollar, and sacrifice the last life, before he would submit to the usurpation:" Mr. JACKSON has no hesitation in admitting upon this information, that he may have mistaken Mr. R.'s expressions.

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a large tract of land, bounded by the Laurel Hill, on the east, the Pennsylvania line, on the north, the Ohio river, on the west, and the Little Kenhawa, on the south, to Trent and others. In 1779, this company petitioned the Virginia Legislature to grant them some compensation; this they refused to do, and proceeded to pass sundry resolutions upon the subject, namely, that this grant to Trent and his associates was null and void; that the exclusive right of pre-emption from the Indians was vested in the Government; and that they would vindicate its rights to their utmost power.

Soon after the Constitution was adopted, suit was brought against Virginia in the Federal court, and, in consequence of the amendment concerning the suability of the States, it was dismissed. Various efforts were afterwards made by the company to obtain some allowance, and, finally, they instituted a suit against us in the Virginia circuit court of the United States, which is now depending. I presume, from a reference to the dates of the grants and the established rule that individuals cannot purchase the Indian title, every member of this House will join me in saying that there is no chance of success for the company; yet, sir, the District Attorney of Virginia, who my colleague, on a former occasion, pronounced to be a gentleman of great legal learning, (which I also admit,) has given an opinion in their favor, and he, with other eminent lawyers, equally as learned as himself, are their counsel. The effect of the existence of this claim is, that a tract of country larger than Massachusetts, separated from the province of Maine; larger than Connecticut, New Hampshire, or Vermont; possessing the most salubrious climate in the United States, a most fertile soil, and temperature second to none in the Union; situated, too, upon large navigable rivers; scarcely contains thirty thousand inhabitants: and even now, in consequence of a renewal of the suit, our most valued citizens are abandoning their homes, which are sold for much less than their value, and removing to a country where no such dispute can annoy them. Sir, if we had resorted to a compromise, which they sought and urged, the allowance of their utmost demand would have been much less than the injury we have so sensibly felt.

Mr. Speaker, having taken this view of the subject, I shall, notwithstanding the claimants have been denounced as swindlers, liars, hypocrites, and accessaries to a stupendous robbery, which far outstrips the petty larcenies of the federalists, vote for the reference of their claims to commissioners; because I believe their respectful exercise of a Constitutional right, the right of petitioning, is entitled to attention, and because I do not think they are base men, but abused in a cruel manner, whose lives refute the charges made against them; and if I were permitted to address them upon the occasion, I would say, be not afraid of the shafts of slander, your characters are your shields; and I would add, in the language of a great man, who, after an attentive study of human nature, declared—

"Be thou as chaste as ice, as pure as snow,
Thou shalt not escape calumny."

Mr. FINDLEY said that he claimed the attention of the House for a short time; but from viewing the unusual turn some of the arguments had taken, and the nature of the subject, he found it a matter of some delicacy to know how to proceed. He was opposed to the amendment under debate, and in favor of the resolution, but he observed some members, with whom he had generally voted, and for whose talents he had a high esteem, and in whose integrity he had the utmost confidence, take the other side with such ardent zeal, and in a mode of argument so unusual in public bodies, that on observing this he had hesitated and had voted in the last session for the postponement which took place. He had done this in hopes that the House would in this session meet the case in a temper more becoming their own dignity and the importance and delicacy of the subject. In deciding on this case, they did not act solely in their usual legislative character, which was to make rules for the future conduct of the citizens. In this case they were in the very delicate situation of both parties and judges, in addition to that of legislators—a situation always to be avoided if possible, and when it cannot be avoided, it should be conducted with the greatest decorum. Awed by this situation, Mr. F. said he had again and again viewed the subject in every aspect in which it presented itself to him, and examined it by the rules of equity, of expediency, and policy, with as great attention as he had ever done any case on which he was called to act, and excited by the unprecedented attacks made on the motives and character of the members in opposition to the amendment, when fair and candid argument failed. For his own disinterestedness in the question, he would take the liberty of appealing to the God of judgment, to whom he was to be accountable for the honesty of his decision in this and every other case, and on whose subordinate throne of judgment on earth he considered the House in the present decision to be seated and acting. So tedious an introduction was not usual to him, but on this occasion he thought there was a cause.

By these circumstances he was convinced that on this occasion it was his duty to mention to the House, at least, some of the reasons for the vote which it was his duty to give on this question, but would give them in as few words as it was in his power, to render them intelligible to the House; for this purpose he thought a narrative of the facts was in the first place necessary.

He said he would begin with the Message of the President near the close of the session in February, in the year 1795, informing Congress of the two laws made in Georgia, one in December and the other in the month of February, 1795, (the same Message mentioned by the member from Virginia, Mr. RANDOLPH.) The Message was referred to a select committee, of which he had the honor of being a member, with other very intelligent members from both South and East, (Mr. NICHOLAS, Mr. AMES, &c.) It had long been

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the opinion of men well informed that the title of Georgia to the extent of territory she claimed was doubtful, and that it was too great for any one State to possess in connexion with the Federal Union. The old Congress frequently called on Georgia to make a cession of her unsettled territory, agreeably to the stipulations on which the Confederation was agreed to, but when Georgia did propose a cession, the terms on which it was made were rejected. Other States made cessions of lands to which they had no title, or else had appropriated the lands to individuals before the cession was made; so that, on the whole, but a small quantity of land unencumbered came to the benefit of the United States. But to return: the committee in February, 1795, examined the title of Georgia as far as they had information, the bounds not being certainly known; the unsettled territory of Georgia was believed to be larger than France or Germany, or any other European nation, except Russia, whose Asiatic dominions extend to the Pacific ocean; hence they concluded that such an extent of territory possessed by one State, at the extremity of the United States, and bordering its whole length on the Spanish dominions, with which we were then in danger of a serious contest, it was the opinion of the committee that every proper means should be used to induce Georgia to cede, in a peaceable manner, a proportion of that territory; and, as a first step towards obtaining this object, the committee reported that the Attorney General should examine the titles of the State of Georgia and of the lands claimed by the company from the law of 1795; and they further reported that the President should be authorized to obtain a cession from the State of Georgia of the whole or part of the territory.

It was not certainly known that there was a defect in the title of Georgia, but from the circumstances of the small extent of that colony at the beginning, and in various extensions by different royal proclamations, &c., the title of Georgia was held in doubt. It is well known that the State of Georgia at first was pitched into the State of South Carolina, which for a considerable time granted titles for land south of the State of Georgia, and one degree of latitude which the United States claimed from the definitive treaty with Britain, was yet in the possession of Spain; but this the members of Georgia considered also as within the jurisdiction of that State. This being the case, the committee thought it prudent to make no mention of the supposed defect of the title of Georgia. The committee, and particularly himself, suspected that different laws enacted by that State for the sale of land, and particularly the recent sale of 1795, was encouraged by their own suspicion of a defective title, but they knew nothing of the bribery and corruption assigned as a reason in the year following, for annulling the contract; therefore it was, that no notice to the contractors that Congress doubted the title of Georgia was given. There was no precedent in the United States of a contract authorized by a Constitutional Legislative act being declared null and void by a succeeding Legislature. The power of decisions on frauds and corruptions, or the validity of titles being vested in the courts of justice in all civilized countries, such a decision could only be looked for from that department; but neither a judge who is stated to have been corrupted was impeached, nor any of the members indicted. If this had been done, warning would have been thereby given, and the title might have been called in question; but it was not, nor is not yet done. Therefore, though by the report of the committee printed in the Journals, which few read, it was not published in the laws, which are more generally read and published in the papers, it might have been discerned that Congress had some design of acquiring the sovereignty of some part of that territory, yet no man could infer that there was any intention to interfere with the legal appropriations of the soil, or to what extent the United States would claim or acquire the territory. Therefore, it was justifiable to conclude that no public notice was given of any direct claim of the United States, either to the soil or sovereignty of Georgia. It is well known that the newspapers of Georgia circulate very little in the Middle or Eastern States. Though he read newspapers more than many others, he did not recollect ever to have seen a Georgia paper but with some of the members from that State with whom he then lodged; but though they and himself had disapproved of such an enormous sale of land, he heard no facts stated of fraud and corruption. He had heard, indeed, that several of the members had been the purchasers; but that had been the case in Pennsylvania and other States, of which he also disapproved, but could not prevent.

Mr. F. said, while the case was so situated, the New England purchasers, or long-legged speculators, did not, as his colleague (Mr. LUCAS) had said, go to Georgia, but the long-legged contractors or speculators of Georgia, went above a thousand miles to Massachusetts, an old, thick-settled country, the citizens of which needed land for their families, (a country which annually sent forth numerous emigrants, who generally purchased in large quantities and settled in large bodies together,) and sold the land at seven or eight times the original price, by which they gained near $1,000,000 advance. They went with the patents from the State of Georgia, and the law, and probably the constitution of that State, in their hands. This, alone, was sufficient to encourage purchasers among a people who needed land; but this was not all. The respectability of the characters of the sellers was such as would reasonably induce an opinion, that they could not themselves be deceived, and would not deceive others. Among these were a very respectable judge of the Supreme Court of the United States, who had been a member of the old Congress from almost its commencement till its dissolution, for as long a period as the State constitution would permit, and had been an efficient member of the Convention which prepared the Constitution of the United States, and several State conventions, and a gentleman who was then, and both before

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and after that time, a Senator of the United States, and many other very respectable characters—who, however, he acknowledged, had by that act, forfeited the character they had formerly enjoyed, and yet, strange to tell, neither before nor after the annulling act, he could not call it a law, as no such law could be made under the Constitution of the United States. The sale was annulled; but the judge said to have been corrupted, nor the federal judge, was impeached, nor any of the members of whom it was testified that they had received bribes, or were sharers in the spoil, were indicted, but still enjoy the confidence, as much as they otherwise would have done, of that State. Not one of them were removed from office, or in any official manner consigned to infamy, by the courts of that respectable State, or by impeachment.

The lands sold at Boston were yet in possession of the Indian tribes, and the Indian war but lately extinguished, while, at the same time, the lands in Pennsylvania were sold, the first rate at one shilling and sixpence; the reputed second rate—but in fact equal if not superior in quality and situation—at one shilling the acre; and what remained unsold to the old settlements, at sixpence: and, in New York, still cheaper the acre; when the Georgia purchase, with all its disadvantages, is stated and admitted to have been sold, rough and smooth, good and bad, and of which a large proportion is allowed to be bad, at something above fifteen pence an acre on the amount reserved. Certainly such a speculation, if it was one, was such as he would not have had any share in, and therefore no proof of the superior cunning ascribed to them by his colleague and others.

Mr. F. said that, so far, the bargain and sale were fair and legal; whether it was a good bargain or a bad one, was the look-out of the purchasers; if it was a bad one, Government would have given them no relief. Had nothing extraordinary, or out of the common road, taken place, he believed the attention of Congress would never have been called to the subject. Soon, however, after this contract was made, the Legislature of Georgia declared the contract, and the law under which it was made, to be void or annulled; and in a short time after, a convention of that respectable State disapproved of the constitutional act of the Legislature; but as long as we pay respect to Constitutional obligations and the distribution of the powers of Government, and as long as we respect the Federal Constitution, which expressly asserts that no *ex post facto* law, or law impairing the obligation of contracts, shall be made, we must agree that one session of a Legislature cannot annul the contracts made by the preceding session. If that could be done, the patent for his own plantation might also be set aside, for he acknowledged it is worth more now than the price that he paid for it. This doctrine had never been entertained even in the Revolutionary period. At that solemn period, all contracts were protected.

Mr. F. said that he cheerfully acknowledged that the amount of land sold under the law of Georgia of 1795, was so enormous as that [illegible] State had been a separate and wholly in[illegible]ent government, would have justified, [illegible] degree, an agrarian law; and if the fra[illegible] corruption attested by *ex parte* testimo[illegible] true, would have justified the most exe[illegible] punishment of those who suffered themse[illegible] be corrupted, or who defrauded the Co[illegible]wealth, and this would have proved a de[illegible] the contract itself; but no such thing appe[illegible] have taken place. The judge, who is said to [illegible] received $13,000 for his vote, was not impea[illegible] nor the members who are said to have give[illegible] received bribes, indicted. It appears to have be[illegible] so contrived that the State, or citizens of Georg[illegible] should suffer no loss—that the loss and reproa[illegible] should be transferred to people at the greatest possible distance. He gave credit, however, to the Legislature of Georgia, which met in the year 1796, for making an extraordinary exert[illegible] to free themselves from an extraordinary [illegible] It was a laudable testimony against corr[illegible] and fraud, but no court of justice had yet [illegible] ciding on it, acknowledged it to be la[illegible] it was too slow for warning others at a [illegible] against titles originating under the law [illegible]

The annulling law of 1796 had all the [illegible] that any citizen, at that period, could have wi[illegible] Congress took possession of the governm[illegible] the western parts of Georgia, the parts in w[illegible] the lands in question lay, and erected a terri[illegible] government, without the consent of the Sta[illegible] and passed a law authorizing the President to enter into a negotiation with Georgia on the principles of compromise, for the right of soil. The compromise eventually succeeded, and an act of cession took place between the United States and the State of Georgia. In this act of cession or convention, it was provided that the claims in the counties of Bourbon and Washington, bordering on the Mississippi river, &c., should be protected, and that five millions of acres, or part thereof, should, by the United States, be applied to satisfy, quiet, or compensate, the claims now before the House, and that if they were not so applied, they should revert to the State of Georgia.

On these conditions, Mr. F. said, did Georgia surrender her right of soil. Agreeable to these conditions were the Commissioners of the United States authorized to make and receive proposals, but the Commissioners were not authorized to conclude the agreement, they did report to Congress, and in that report, they state that the claimants cannot, in their opinion, recover by law. This is well founded, because no action can be brought against the United States, nor since the amendment made to the Constitution respecting the suability of States, against a State. Therefore this fund, viz: the five millions of acres apart by the convention of Georgia, to quiet, satisfy, or compensate these claims, must be applied to that purpose, or revert to the State of Georgia, or the faith of the United States be sacrificed.

Mr. F. said, that from this view of the [illegible] he had made up his mind to vote in favor of [illegible]

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report of the Committee of Claims. That he had not made up his mind lightly, that he had been prepossessed against it, but it becoming his duty to decide, he had thrown aside these prepossessions, and examined the case with all the coolness and deliberation of which he was capable, and would give his vote, as he had made up his mind, without consulting or relying on the opinions of others, for he was responsible only for his own opinion.

To this, however, he had heard objections of a kind, and delivered in a manner, which should receive no answer from him. He would, however, take notice of some made by his colleague, (Mr. LUCAS.) He had said, that as the land sold had been estimated at a little above 20,000,000 of acres, and that the second-hand purchasers claimed 40,000,000 of acres, and the Commissioners had made the estimate at 35,000,000 of acres; that this was a proof of fraud on their part, and a sufficient reason for refusing their claim. He said he would beg leave to inform that gentleman that even in the State where he lived, many surveys had much more land than was named in the patent, and the owner would hold the land without being subject to any imputation of fraud. That the sales now in question, and prior sales by the State of Georgia, not being sold by actual admeasurement, but by natural boundaries, closed by parallels of latitude, it was impossible to estimate the amount with accuracy, and that it was the duty of the seller as much as the purchaser, to take care that the estimate was correct, and that, let the mistake be where it would, it was by no means chargeable to the second-hand purchasers; the purchasers to whom bribing the Assembly of Georgia could not be imputed, as they resided at above a thousand miles distant, and never went to Georgia to make a speculation.

Mr. F. said, that on reflection, the acute discernment of his colleague would convince him that the claim of the Wabash company, for confirmation of their purchases from the Indians during the royal Government, and others which he had introduced, that were contrary to the rules of that Government, or speculations which he now informs us are making with the Indians further to the westward, had not the least analogy to the claim in question—that this was so evident as to need no explanation. He further observed that his colleague's, argument drawn from the character he was pleased to make for the people of New England, was irrelevant to the question, and that at least with respect to land speculations, was not founded in fact. If he took the character of those people from the seafaring men who made their living by trading along the southern coasts, that character would by no means apply to citizen farmers of that country.

Such addresses had been openly made to party spirit, and to the motives and virtue of the members, as were unbecoming public bodies, and unprecedented. In this country, we were in the habit of believing that men who took a solemn oath to serve the public faithfully, might differ in their opinion, but that they would still vote agreeable to their convictions, especially when they had no interest in doing otherwise; but, on this question, they were called on to rescue their characters from the charge of corruption and impure motives, and the Legislature turned into a court of inquisition. In support of this unusual mode of argument, his colleague had, with numerous repetitions, said that he would not act in that House otherwise than he would do out of doors, and that he would not act in the House in such a manner as he would blush for out of doors, &c. Mr. F. said he would assure his colleague, that in this they were agreed, and so he believed were all the members of the House; but, as this was an insinuation that the gentlemen ascribed this purity peculiarly to himself, to correct that impression he would assure him that he would also act in this House, as he would do out of doors, and that he would act such a part as never would lay him under the painful necessity of blushing in secret; in a situation where temporary popularity could give no relief to a wounded mind. He wished it still to be understood that he sincerely believed that other members would vote differently with the purest intentions; but these members being honest themselves, did not impute, nor even insinuate, a suspicion of dishonesty, in those who differed from them in opinion; doing so, indeed, looks so much the worse when it is charged on those who are acknowledged to be the majority of the representation of the United States. For his own part, he would not think himself justified in applying such arguments against the smallest minority he had ever seen in a public body.

Mr. F. said, from a long opportunity of observation, he believed that the people of New England were the least skillful or the most simple of any people in the United States, in their purchases of land, and that in endeavoring to account for this, he thought he had found sufficient data. Their country was long settled; in the present generation, there had been few, if any, contests about original titles. They well knew, that in sales between one man and another, there might be fraud, but that Governments should issue fraudulent patents, or grant titles on which disputes might afterwards arise, was a circumstance with which they were unacquainted. He well knew that about the same time that this purchase was made, land-meddling swindlers went from Pennsylvania with bundles of deeds for land, and the law agreeably to which they were made, and sold them in Massachusetts. Indeed, the land was not settled, but sold to individuals or companies. The people in the old settlements had no suspicion, because they had no experience of a vast body of land, at least six counties in Pennsylvania then unsettled, being at the same time appropriated to others. They purchased the fraudulent deeds, and many of them moved their families into the wilderness, and sat down on heavy-timbered land, reputed to be dear of the clearing, and, after they had spent their strength and endured incalculable hardships, found that the land was not their own, but the property of some Penn-

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sylvania or foreign companies, or other land jobbers. He was informed of this peddling or swindling business by the then members from Massachusetts, who inquired of him for information; he informed them that the whole business was a fraud; that all the land in question had been sold long before, though not settled, and he advised them to inform their people. They did so, and put a stop to this mischievous business. But after they had paid the swindlers, and cleared the heavy beach-woods, to make a living, they were ejected; and, no doubt, after paying their money and spending their labor, they were averse to giving up their residence; but, he understood by the newspapers, that they were making overtures to the legal owners for the purchase of the titles.

The lease of the Wyoming settlers from Connecticut in Pennsylvania, which had given so much trouble to that State, and to whose claims he had been opposed, and had assisted in making laws against them, he considered as a proof of the observation he had made; they had rashly confided in a claim of the Connecticut government to part of Pennsylvania, and before that claim was decided had made purchases, and removed their families to the land they had purchased under that claim; they had defended it against the Indians, by whom many of them had been butchered in a most shocking manner; and they had resisted the laws of Pennsylvania, even after judgment was finally given against the claims of Connecticut by a court appointed for that purpose by the old Congress. They defeated even some laws expressly made for their advantage, and continued to live in poverty and uncertainty; long since this contest, they might have taken lands in that State agreeably to law, on very easy terms, and have lived undisturbed. In all this contest, during more than forty years, they have given a continued testimony of simplicity with respect to claims and titles for land, and, at the same time, however, they have set a notable example of perseverance under the greatest difficulties, occasioned by a savage war, and sometimes from an armed force from Pennsylvania. The proprietary government of that State never proposed to quiet these settlements, as had been done with intruders from other States, it having previously granted the land to others, but their obstinate perseverance has had its effect. After trying various and sometimes inconsistent methods, Pennsylvania has found it best at last to quiet their settlements on moderate terms, and for this purpose, to purchase the rights of the original purchasers from the proprietary government.

It had been objected to him by another of his colleagues, that he had himself voted for the repeal of a contract in the State Legislature; from his knowledge of that gentleman's candor and discernment, (Mr. Gregg,) he knew he would not have made this observation, if he had examined the case. Mr. F. said, in the course of a longer life than was common to many, at one time or other, in all the various public bodies, which instituted or conducted republican Governments, he had given some votes which he regretted, and many which he would not give again, if he had the opportunity; and he would never admit that a member was inconsistent for changing his opinion on better information. For what purpose is all our painful studies and wearisome debates, but to inform our judgment; and of what use is this information if we cannot use advantage of it for the public good. And if we have voted wrong, if we cannot correct it by changing our vote, we ought to prevent all discussions, all reading and study, and become mere machines. But though he advocated this right he did not need it on this occasion, nor for his vindication against the charge of inconsistency.

The Bank of North America, the first bank in the United States, not chartered by the old Congress, which had no Constitutional authority to grant charters; but the situation of the United States, at that period, justified an extraordinary exertion. Congress, however, well knowing their own want of power, recommended to the States also to grant charters to the bank. The State of Pennsylvania granted a charter; other States refused to do it. The bank was put in operation. In 1784, a new company applied for a charter; the Bank of North America, the only one at that time in the United States opposed it, although parties were heard by counsel before the Legislature, but the decision on the question was postponed. In 1785, the question was taken up; the bank company was again heard by counsel in favor of their exclusive monopoly, without limitation of time; the incorporating law was repealed, and afterwards, a new charter was granted for a limited time, and with such restrictions of the monopoly as has permitted the operation of other banks in the State of Pennsylvania, and other States. This, however, was a charter of privileges, which, in free Governments, are always subject to the discretion of the *Legislature;* no price is paid for them, and the *privilege may be* always withdrawn when the *public good* requires it. But the claim before the *House is of* quite a different nature; it is a transfer of property by a competent authority, for which a more valuable consideration had been received by that State than for any sale of lands by that State, before or since that time, and the present claimants, on the faith of Government, had their purchase at a still much higher rate.

Much had been said about the extent of the purchase by the original grantees, and the corruption of the Legislature, but that was not before the House. The condition of the convention between the United States and Georgia was that not 40, nor 35, nor 21,000,000 of acres, should be given to satisfy those claims, but that 5,000,000 of acres, or some part thereof, should be given. but 5,000,000 of acres is by that convention vested in the United States as a deposit for that purpose. and if not so applied, the deposit is to be returned to the State of Georgia; these are the facts on record, and if the record is true, the assertion so boldly made, that those who voted in favor of the report of the Committee of Claims were putting their hand into the public purse, that it was pub-

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lic robbery, &c., was not only unfounded, it was mere declamation. He would not say for what purpose. It was not the property or purse of the United States, but a deposit put in the hands of the United States for the very purpose for which the resolution before the House proposes to apply it.

Mr. F. said, that this was not only the opinion of the Committee of Claims, but of the Commissioners of the United States, who had the best opportunity of understanding the subject, and whose talents and integrity, it will be admitted, are not inferior to that of any member on this floor, and, in their words, he would conclude. In their report they say, that "the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations that may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on equitable terms."

Mr. GREGG.—I rise, Mr. Speaker, to congratulate the House, on the question being at length brought within such narrow limits. The validity of the title appears to be nearly abandoned, and the advocates of the resolution seem now disposed to rest its defence almost entirely on the ground of expediency. For my own part I have always felt satisfied with the report of the Commissioners, so far as it respects the question of title. They have investigated the subject with more diligence and attention than can well be bestowed on it by members of this House, and being men distinguished for their abilities and of high official standing, their opinion, certainly, should have great weight. That opinion, as recorded in their report, is, that the title of the claimants cannot be supported. In this opinion I most heartily concur, for I can never be induced to believe that an act so marked with fraud and corruption as the act of Georgia, under which the claimants pretend to derive their title, has been fully proved to be, can vest a title either in law or in equity.

The question of title being given up, any remarks respecting the weight that ought to attach to the rescinding act passed by the Legislature of Georgia, in 1796, will be unnecessary. On that part of the subject I will only just observe, in reply to one of my colleagues (Mr. FINDLEY,) who has stated that act to be without precedent, and that one Legislature cannot repeal an act of a preceding Legislature where it involves a contract, that there is one instance at least of such an act, and that instance is in the State in which he and I live. The case to which I allude, is an act passed by the Legislature of Pennsylvania, for repealing the charter of the Bank of North America. This act, if I am not mistaken, was passed when my colleague was a member of the Legislature, and I believe received his support.

But, leaving the question of title, good policy, say gentlemen, requires us to pass the resolution. In this sentiment, they and the Commissioners appear to unite. The Commissioners acknowledge that the title of the claimants cannot be supported, and yet undertake to recommend a compromise, by stating "that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and certain equitable considerations which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms." Now, I would ask, how is the interest of the United States to be promoted by giving five millions of acres of land to persons acknowledged not to have a good title in law, and none in equity? If our interest is to be promoted in this way, we may soon get rid of all our land. Claimants will not be wanting, if it is to be got for asking.

With respect to the equitable considerations which have been urged so strenuously in favor of the present claimants, I must acknowledge they have not appeared to me so very forcible. The innocence of the claimants has been painted in strong and glowing colors. They have been represented, not only as innocent, but innocent through ignorance. One of my colleagues, in particular, has dilated largely on this idea, and applied it especially to the New England purchasers. In evidence of this, he has referred to the case of the Connecticut intruders in the State of Pennsylvania. But in this allusion he was certainly extremely unfortunate. The case might be cited to prove a position exactly the reverse. The fact is, that these intruders have for many years, by their superior skill and address, held their lands in defiance of the State; and, from appearance, I believe will continue to hold them, without making any compensation to the State; and this instance may serve to show the impropriety and inefficiency of governments pretending to compromise with individuals. The measures pursued by the State of Pennsylvania relative to these claimants have generally been of this description. They have produced no advantage to the State, and have always been converted by the intruders into arguments in favor of their claims. I do know of one case that goes far to prove that there are some persons in the Eastern States extremely uninformed in matters relating to land. The case to which I allude is recent, having occurred but a few days ago. A petition was presented by a gentleman from Vermont, signed by a number of persons, praying to be permitted to form a settlement on the public lands lying Northwest of the river Ohio. On a motion for referring it to a committee, a member from the same State rose and opposed the reference, assigning as a reason, that if the petition should so far receive the countenance of the House as to be referred, the petitioners would instantly commence the sale of rights. Now, if there are people so extremely ignorant as to purchase rights of this description, they certainly ought to be pitied. But will any person say that the present claimants belong to this class? No, sir; they are men experienced in business, by all accounts well versed in transactions relating to land, and as little liable to be imposed on as perhaps any equal number of persons that could be selected.

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But it is said they could not have knowledge of the circumstances under which the act of Georgia of 1795 was passed; that they became purchasers before such information could possibly reach them. This certainly cannot be seriously insisted on. Will gentlemen look at the deeds conveying the titles, and then say the purchasers had no notice? Evidence, if not of the fraud, at least that there was something wrong in the business, is stamped on the very face of all the conveyances. In the report of the Commissioners it is stated "that all the deeds given by the companies, as well as the subsequent deeds, with only two or three exceptions, not only give a special instead of a general warrantee, but have also a special covenant, in the following words: 'And lastly, it is covenanted and expressly agreed and understood by and between the parties to these presents: that neither the grantors aforesaid, nor their heirs, executors, or administrators, shall be held to any other or further warrantee, than is hereinbefore expressed, nor liable to the refunding of any money in consequence of any defect in their title, from the State of Georgia, if any such hereafter there should appear to be." And this notice is rendered still more express and forcible by a reference to a proviso in the act of 1795, in the following words: "And provided further, that this State and the government thereof, shall at no time hereafter be subject to any suit at law or in equity, or claim or pretension whatever, for, or on account of any deductions in the quantity of the said territory, or for, or on account of the amount of the purchase-money to be paid as aforesaid, by any recovery which may or shall be had on any former claim or claims whatever." This clause is contained in a printed pamphlet laid on the table, which, though not official, is presumed to be correct. Surely it cannot be contended that such conveyances did not of themselves give sufficient notice that there was a risk, that there was a defect, or some imperfection in the title; and is Government now to be asked to insure against all risks of this description that adventurers, stimulated by an immoderate thirst of gain, may be disposed to run? I trust not.

Another reason suggested by the Commissioners in favor of a compromise, and on which great stress has been laid in this argument, is the tendency it is presumed it will have, to secure the tranquillity of those who may hereafter inhabit that territory. If passing the resolution would produce that effect, I acknowledge the reason would be a powerful one. But what ground is there for believing that it would produce such effect? Can it be supposed, in the nature of things, that any men possessing a legal title for fifty millions of acres of land would surrender their rights, and accept of five millions? The supposition is too wild to obtain credit. The claimants, I take it, have something in view very different from a compromise. They will not give up their pursuit without a judicial decision. Conscious that their title will not stand the test, they want to fortify it by an act of the Legislature. That this is their scheme, I infer not only from the nature of the case, but from a written memorial I hold in my hand, signed by a person [illegible] himself the agent of the Tennessee Co[illegible]. This memorial was laid on the table two [illegible] ago, but never having been withdrawn by [illegible] party, it is to be considered as expressive of [illegible] determination at this moment. This agent [illegible] that he considers the title of the company [illegible] resents to the lands they claim, as a good [illegible] sufficient title, and prays Congress to point [illegible] some mode by which they may be enabled [illegible] tain an early judicial decision. This is the p[illegible] Some of the claimants are to press for the [illegible] authorizing the compromise, but as some will [illegible] fuse entering into it, none will consider themselves bound, and of course the act will remain unexecuted, but will be a great point gained by the claimants, inasmuch as they can plead it as an argument in favor of their title when it comes under legal discussion. This may happen when the Indian title to these lands is extinguished, [illegible] settlements are commenced under rights [illegible] from the United States. The claimants [illegible] they see proper, may then bring their ejectments and obtain a trial.

The value of the land I consider as of no great importance. I have always viewed the [illegible] cession as a bargain by no means favorable [illegible] Government. In a pecuniary point of view [illegible] not think it will be found so. Good policy, however, under existing circumstances, might have dictated the propriety of accepting it. My objections, therefore, do not depend on the value of the property or on any supposed injury or loss Government might sustain by giving it up. I am opposed, because I believe the resolution will fail in accomplishing the object intended to be produced by it; because I believe it will have an improper influence on judicial decisions, should such decisions ever be had on the case of the claimants, and because of the abhorrence I feel against the fraudulent and corrupt act under which the claimants pretend to derive their title. I cannot vote in favor of any measure that will have the appearance of giving any countenance or sanction to such an act. Under my present impressions, therefore, I must vote in favor of the amendment, and whether it succeeds or not, I shall ultimately vote against the whole resolution.

Mr. Root began by observing that he should not undertake a lengthy and elaborate discussion of the merits of this claim. He was not disposed minutely to inquire into the legality or equity of the claims derived under the act of Georgia of 1795. Although he believed that the New England purchasers were entitled to recover, both law and in equity—that the fee of the land in question was vested in them beyond any legislative control, yet as they had offered terms of compromise, and as gentlemen have inclined to the issue upon the expediency of the measure, he should chiefly confine himself to the answering such objections as he had heard offered in opposition to the claim. He said that he had listened

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attentively during this debate, and the first objection which possessed any claim to argument, fell from the first gentleman from Virginia, (Mr. J. RANDOLPH.) The objection is this: that the New England Company were purchasers with notice—that is, that they had notice of the fraud before they became purchasers; that they knew the sales by Georgia were void, and, purchasing with their eyes open, they must sustain the loss; and how, he inquired, has this notice been shown? By whom and on whom has it been served? The gentleman from Virginia who first spoke on this question has, to be sure, referred us to the President's Message of the 17th of February, 1795, and this he is pleased to denominate a notice. It may be a notice for aught I know, but surely it did not satisfy even Congress, much less the citizens of Boston, that the act of Georgia was passed in fraud, was *ab initio* void, or that a subsequent Legislature would annul the grant. That Message did notify Congress that Georgia had passed a law for selling a part of her vacant lands, and expressed some apprehensions for the future peace of the United States. [Here Mr. ROOT read the President's Message of the 17th February, 1795, and inferred, from the Message itself, that the President's apprehensions arose from the circumstance of that country's being inhabited by warlike Indians, and that he communicated the information to Congress in order that pacific measures might be adopted.] Is this, continued Mr. R., a notice of fraud? Is this a *caveat* to notify purchasers to beware? But, Mr. Speaker, is this Message interpreted into a notice of an adverse claim? If so, in whom did that advere claim exist? Surely not in Georgia, after she had passed all her right. Did it exist in the United States? Such a claim was not asserted by the President in his Message. And indeed it appears, from a perusal of the bill reported by the select committee to whom that Message was referred, that no assertion of claim to the lands in question was then contemplated. [Mr. R. read the bill alluded to, purporting as follows: "*Be it enacted, &c.* that the President be authorized to obtain or accept, by purchase or donation, from the State of Georgia, a relinquishment and cession of the claim of the said State to the whole or any part of the lands lying within the limits of the same, and without the ordinary jurisdiction thereof."] Georgia owned other vacant lands, out of her ordinary jurisdiction, than those sold by her to the several companies of 1795. A cession of these lands to the United States appears to have been the object of that committee, and how could they have acted otherwise? It was known to the gentlemen composing that committee that Congress under the old Confederation, and since the adoption of the Federal Constitution, had repeatedly recognised the right of Georgia to the lands in question. Prior to the year 1788, Congress had, at three several times, requested the State of Georgia to cede a portion of her vacant territory to the United States. In that year the State of Georgia, by an act of her Legislature, authorized the delegates in Congress to cede and convey to the United States a portion of her vacant lands, including the same tract now claimed by the New England purchasers. This territory was to have been ceded, under certain restrictions and conditions, for a certain compensation, to be paid by the United States. Congress refused to accept of the cession, not because the lands were claimed by the United States, not from any supposed defect of title in Georgia, but because the terms were thought to be improper and inadmissible. And Congress thereupon, by another resolution, proposed to accept a cession of the lands in question, on other terms and under other conditions. [Here Mr. R. read copious extracts from the journals of the old Congress, to show the recognition of the right of Georgia to the lands now in controversy.] By several public acts and documents, continued Mr. R., have the Government of the United States, since that time, acknowledged and maintained the right of Georgia to these lands. The United States have also, by tacit consent, acknowledged the right of Georgia. That State, as early as the year 1780, asserted her claim by a public act of her Legislature. In 1789, she made a conditional sale of the same lands, and in 1795, by a legislative act, sold them to the several companies under which the New England purchasers claim to hold. No objection on the part of the United States was made to these several public acts, and, by a known rule of law, silence and acquiescence in such cases is tantamount to an express consent and confirmation. Under these circumstances I should hardly suppose that the President's Message amounted to a notice of an adverse claim. Another gentleman from Virginia, (Mr CLARK.) alleging that "an actual notice is not necessary,"—that "a constructive notice is sufficient," which positions I shall not undertake to deny, has relied with much apparent confidence on the circumstance that the deed to the New England Company was executed on the same day that the rescinding act of Georgia was passed. He infers from this that the citizens of Boston must have known on the 13th of February, 1796, that the Legislature of Georgia were about to annul their grants, and pass their famed rescinding act on that day. We have not yet been told that that celebrated act was long in its passage through the different branches of the Legislature, nor have we any evidence to convince us that the effervescence, of which the gentleman speaks, flew like an electric shock almost instantaneously from Georgia to Massachusetts. It is fair to presume that the purchasers never conjectured that a rescinding act could be passed till after their contract was completed. The covenant for the purchase was entered into at Boston, in the month of September, 1795, between the agent of the original grantees and the New-England purchasers. In October, 1795, payment in full of the balance of the consideration money was made, and the Executive of Georgia made out his order for endorsing satisfaction on the mortgage, and for delivering up the same. The act of the Legislature of Georgia authorizing the grant, the deed executed by the Governor according to law, the certificate of the payment in full of the consideration money, and the Executive order for endors-

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ing satisfaction on the mortgage, being all shown to the New England purchasers, could they believe that the grant was void? Bred to respect the acts of lawful authority, accustomed to repose confidence in the contracts of Government, and educated in the belief that private rights and private property would not be wantonly despoiled, they required some further notice of the fraud—at least of such fraud as might avoid the grant—than the mere surmises or whispers of the traveller. Thus, Mr. Speaker, I think this formidable notice results in this: that the President had been informed of the passage of the act of Georgia of 1795. He thought, unless precautionary steps were taken, that it might embroil us with the Indians, and deemed it proper to communicate the information to Congress.

Another objection is made by the gentleman from Virginia (Mr. J. Randolph) who first addressed you, that the claimants will perhaps reject the proffered compromise, and afterwards plead our own statute book as a recognition of their claim. This objection can easily be remedied in the bill to be passed pursuant to the resolution now under consideration. A proviso can, and undoubtedly will, be inserted, that in case a compromise shall not be effected, the act shall not be so construed as to impair the rights of the United States or to strengthen the title of the claimants.

Another objection, made by both of the gentlemen from Virginia, (Mr. J. Randolph, and Mr. Clark,) who have spoken in opposition to the resolution reported by the Committee of Claims, is, that nothing passed by the act of Georgia of 1795, and this objection is attempted to be supported—first, on the ground that the Legislature of Georgia had no authority to grant. I flatter myself, Mr. Speaker, that I have sufficiently shown that the lands in question were the property of Georgia as a free, sovereign, and independent State, and that she and she alone, had the right of their disposal. But a distinction is taken between the people and their Legislature. It is said that the people of Georgia had never delegated to the Legislature the right to dispose of her vacant lands. By the constitution of Georgia, all legislative powers were delegated to the Legislature, unless particularly excepted, and we do not learn that the power of disposing of their vacant territory was excepted or reserved. The disposition of vacant lands has always been considered legislative power, necessarily belonging to the Legislature, without any express delegation in a constitution. If such delegation of power is necessary, I imagine that but few valid grants can be found in the several States. In support of this objection it is further insisted, that the grant of 1795 was fraudulent—of course, that it is void *ab initio.* The abominable fraud, the gross and odious corruption, which is said to have been practised by, and upon the members of the granting Legislature of 1795, have been depicted in the most artful and detestable colors. But even were I to admit for a moment, that the motives of a Legislature can be questioned in order to nullify their acts, I should extremely doubt whether that abominable corruption did even exist to the extent alleged. Where, let me ask, is the proof of its existence? I can find it nowhere except in *ex parte* affidavits, taken before no one knows who, and sworn to by persons equally strangers. Being voluntary affidavits, the deponents perfectly secure from the pains and penalties of wilful and corrupt perjury. If these legislators were so base and impure, why have they not been arraigned to answer for their crimes? We have heard of no prosecution against them for bribery and corruption. Instead of jails, [illegible] and infamy, they have been rewarded by the continued confidence, not only of the people, but of the Legislature. Several of the members who stand charged with bribery, have since been elected by the people to seats in both branches of their Legislature. Several others have since been appointed by the Legislature to seats on the bench of justice, and one other has since been appointed by legislative act, a trustee of the University of Georgia. Can we believe, Mr. Speaker, that the people of Georgia are so lost to every [illegible] of virtue as to elect men stained with crime and stamped with infamy, to fill seats in the legislative body? Can we believe that the Legislature are so shameless as to defile the sacred bench of justice with such impurity and fraud? At last of all, can you believe that she would commit the care of the education of her youth to a very child of corruption? No sir, it cannot be. I cannot believe that this transaction is so [illegible] as it has been represented. This objection is [illegible] further supported by another gentleman from Virginia, (Mr. Clark,) by a recurrence to that effervescence," which induced the people to rise in the majesty of their strength and declare the act null and void." It is true, sir, that the people, or rather their Legislature, became so *effervescent* in 1796, as to rise in the majesty *of their strength* and kindle a bonfire. Disregarding the sacred nature of contracts, setting at *defiance* the Constitution of the United States, which declares that "no State shall pass any *ex post facto* law, or law impairing the obligation of contracts," and that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State," and sporting with the rights of innocent individuals, that Legislature erected the funeral pyre, bound the helpless victim, and laid it upon the altar. Then, like the patriarchs of old who laid coals upon the altar, they sacrilegeously called down the fire of heaven to aid in the destructive work. The contract was wedded to the Constitution of the United States, and when the latter was about to perish by the hands of Georgia legislators, the former, like a Hindoo spouse, must perish by the same flame that their ashes might be mingled and gathered in the same urn. But to complete the scene of solemn mockery, a convention was called which grafted the rescinding act into their constitution. This effort to give strength to invalidity was equally unavailing. That contract was made under the sanction and authority of the Constitution of the United States, and this Constitution

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hich forbids a State to impair a contract, also eclares that. "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby; anything in the constitution or laws of any State to the contrary notwithstanding."

Another objection made by a gentleman from 'irginia, (Mr. CLARK,) is, that the price was so adequate as to evidence the invalidity of the tle. The price, Mr. Speaker, although apparently adequate, was, under all circumstances, equal or early equal to what had been paid for large tracts old by other States.

This country was remote, and then owned nd inhabited by warlike tribes of Indians. The paniards were on its border, and a part of it was ctually occupied by settlers under Spanish and ritish grants. Yet the New England purchaers paid nearly double the price for which the elightful country of the Tennessee was sold. nd, by a known rule in chancery, if a contract qual at its creation, afterwards becomes unequal, ill execution will be decreed. I perfectly agree ith the gentleman that persons ought to come with clean hands and pure hearts," to seek for stice; and I also agree in another maxim, that e hands of the claimants are presumed to be ean, and their hearts presumed to be pure, unl the contrary be shown. They allege to be nocent purchasers—show that they are otherise before you brand them with infamy.

The gentleman from Pennsylvania (Mr. LUAS) has objected that the Legislature of Georgia ere deceived in the quantity of land by them old, and refers to the commissioners' report, by hich it appears that the country sold contains early double the amount of acres which it was pposed to contain at the time of the sale. Shall is pretence vitiate the contract? Are we to ppose that men selected from all parts of the tate, possessed less knowledge of her vacant teritory than purchasers at a distance? Shall the erchant absolve himself from his contract by aying that he was cheated in the bale of goods hich he had sold, and which, for a long time, he ad under his eye? Will it avail the vender to ay, sir, you have cheated me in the worth of the orse I sold you, and which I had used for a long me? The lands in question were unascertained. he quantity was equally unknown to the venders and to the vendees; of course no fraud can e imputed to the transaction on that score.

The same gentleman from Pennsylvania, and e is joined by his colleague (Mr. GREGG) and by gentleman from Virginia, (Mr. CLARK,) object o this claim on the ground that the deed to the Jew England purchasers contains a covenant of pecial and not of general warranty. Thence hey infer, that these purchasers might presume hat the act was fraudulent, and would be recinded. In my opinion that inference cannot airly be derived from the premises. The grantng Legislature of Georgia, being ignorant of the extent of former grants, as well as of the quantity of acres in that tract of country, very properly provided that the State should not be subject to any suit, claim, or pretension, on account of any deduction in the quantity of said territory. The limits between the United States and the King of Spain were not at that time definitively settled. Hence the propriety of the special covenant, that the Georgia companies should not be liable to refund to the New England purchasers any money in consequence of any defect in their title from the State of Georgia. They knew, and were willing to encounter, these hazards, but they had been too much accustomed to yield confidence in Legislative contracts to believe that they would be wantonly violated.

Mr. Speaker, I have attempted, as far as my feeble abilities would permit, to answer all the objections I recollect to have heard against this claim, and which appear to possess the merit of argument. If I have been successful, I trust the House will pardon me in declaring that I believe the claimants are not only equitably but legally entitled to the relief which they ask. That Georgia had the right to convey, I think cannot be doubted. And even admitting, for argument's sake, that the original sale was fraudulent and void, and that it is competent to a legislative or a judiciary tribunal to inquire into the motives which influenced a prior Legislature in making a contract, still the purchase is good in the hands of subsequent purchasers who come in for valuable consideration and without notice of the fraud; and the subsequent purchasers would more especially be protected against an after purchaser who purchased from the first grantor, and with notice of the prior grant. The United States have purchased of Georgia, with notice that that State had, years before, sold the same lands to certain companies, and that those companies had sold to the present claimants; and shall the United States avoid the first contract as fraudulent? The law books contain no such doctrine.

But suppose, sir, that the act of Georgia of 1795, was stamped with infamy, was generated in corruption, so that no subsequent transfer could cleanse it of the foul stain, still let me ask, would it not be wise, would it not be prudent, to effect a compromise with these claimants? This tract of country is now estimated at about fifty millions of acres. It is not proposed, and indeed we are not permitted by the convention with Georgia, to allow more than five millions of acres to all the different claimants, in consideration of their relinquishment of claim to the forty-five millions of acres. If their claim is a bad one it would be for the advantage of the United States to give ten per cent. for its extinction. Suppose the Indian title to that country was extinguished, and a land office was opened, would the industrious settler pay you as much for that land, with this claim impending over it, as he would for the same land if it were free from all conflicting claims? If he would, in the latter case, pay you two dollars an acre, which is the medium price for which the United States lands are sold, would he give you

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one dollar and eighty cents an acre, knowing that he must encounter a law-suit? No, sir; industrious farmers are are unwilling to purchase a law-suit. That country will never be sold to actual settlers until these claims shall be extinguished or confirmed.

Having offered my sentiments in opposition to the amendment. and in favor of the resolution reported by the Committee of Claims, I confess, Mr. Speaker, that I feel myself not a little embarrassed. I feel myself in an awful dilemma. I feel that I am reduced to a sad, a desperate alternative. I must either acknowledge that I have been bribed, that I am base and corrupt, or, what is almost equally terrible to my feelings, that I have leagued in sentiment with the gentlemen on this side the House, (pointing to the Federal gentlemen.) Unwilling to acknowledge myself corrupt, or that I have been influenced by any circumstance without these walls, I think it justice to myself to declare that neither myself nor any of my connexions, nor any of my constituents, within my knowledge, ever claimed a single foot of this land. If, therefore, I am influenced on this occasion by impure or unworthy motives, it must be by a direct bribe., Unwilling to acknowledge this, I am driven to the other alternative, however painful that election must be, and must acknowledge myself a Federalist. The gentleman from Virginia (Mr. J. Randolph) does not hesitate to denounce to the people all those republican members who dare to think differently from him on this question, as having been bribed or as having gone over to the Federalists. This denunciation is just cause of alarm to all those who, like myself, give their votes according to their own judgment, on the best reflection and most mature deliberation. Coming from that gentleman, it almost astonishes me. To me it appears as terrible as the thunders of Olympus. I fear I shall sink under its weight.

Mr. Speaker, I still entertain a gleam of hope, that my constituents will pardon my presumption in daring to differ from that gentleman in sentiment on this occasion—that they may yet think that I may still be a Republican, although I decline to follow in the servile track of any particular popular leader. This denunciation and proscription of Republican members on this floor, is truly alarming. It is equally alarming to reflect that those gentlemen who have shared the public confidence in the republican districts of the Union, are now declared to be polluted by the embrace of speculators, and are henceforth to be considered as destitute of every moral virtue. If this be true, if the eighth Congress of the United States have such men among them, if corruption already proceeds from your Executive departments, then, indeed, have we arrived to an awful crisis. If this monstrous enormity is practised upon the Republican members of this House, then the whole Republican system of our Government totters to its base. But, sir, these suggestions are but the fantasies of a wild imagination, the chimeras of a heated brain. Before the cool and dispassionate judgment of a discerning mind, they "dissipate into thin air." That officer, in one of the great Executive departments of our Government, to whom the gentleman alludes, I presume is the Postmaster General. That valuable officer is represented as the basest of men, wielding his monstrous engine of patronage and influence to the wicked purposes of corruption. Base as he is said to be, I am proud to say that, for more than ten years past, I have had the honor of his acquaintance. I believe him to be as good, as upright, and as honest a man as any of those other valuable characters who now, happily for our country, preside over the great Executive departments of our Government. His character stands superior to the obloquy of the gentleman from Virginia. That gentleman's denunciations cannot overthrow or destroy him, while talents and integrity are considered as deserving of public esteem and confidence. He is too firmly fixed in the esteem and affections of the people in the eastern section of the Union; his character is too strongly surrounded by the ramparts of virtue, to be shaken by the artillery of that gentleman. Envy may lift her pallid front in vain, the well-earned fame of the Postmaster General will prove an invulnerable shield against her envenomed shafts, and they will fall harmless at his feet.

I hope the gentleman from Virginia will learn, after this, that members are not to be diverted from their object by his threats, and that he will cease to amuse this House with such declamation.

Mr. J. Randolph said, that, as well as his extreme indisposition and excessive hoarseness would permit, he would lay before the House some observations on the various objections which had been urged against the amendment of his worthy and respectable colleague, (Mr. Clark.) for such he was in every point of view. He complained of disingenuous and unfair practices on the part of some of his opponents. They had undertaken to argue, upon a supposed admission of his friend and himself, that the act of 1795 created a contract between the State of Georgia and the grantees therein named. This (said he) is nothing less than begging, or rather, a flagrant robbery of the question. We deny that any contract has been, or could be made under such circumstances—that fraud is a basis on which a contract can be erected. Gentlemen must drive into this morass of corruption, piles of stronger argument and sounder reasoning, before they can build a Stadt-house of a conclusion upon it. It is a quagmire over which they cannot pass; and in their awkward attempts to get round it, they confess, even whilst they effect to deny its existence. Fraud has rendered it without bottom. The act of 1796, is at once declaratory of that fraud, and the highest possible evidence of the fact. The claimants and their advocates themselves concede it, when they cling to the report of the commissioners, by which it is expressly affirmed, and which explicitly declares, that their title cannot be supported. And when they come into this House with that report in their hands, and whine and cringe for our bounty, do they not abandon all pretensions to title? Yes, the advocates of these claims are compelled to ac-

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nowledge the fraud, and yield the ground of contract. How else can they justify their own fraud nd injustice in stripping fair contractors, with a ood title, of seven-eighths of their rightful and ona fide purchase? This point cannot be kept oo much in sight, nor too strongly insisted on.

The venerable gentleman from Pennsylvania, Mr. FINDLEY,) when he gave in his recantation of is last year's opinions on this subject, told you hat General Washington's Message had no reference to the fraudulency of the act of 1795. He considered it as a *caveat* on behalf of the United States, who claimed a great part of the territory n question. Be it so. Was that notice to subsequent purchasers, or not? How will gentleman reconcile this inconsistency? Within the disputed imits between the Federal Government and Georgia, five-sixths of this very New England Company's purchase were comprised, besides that valuable part of the Georgia Company's grant contained in the fork of the Alabama and Tombigbee. The United States contended, that the country west of the Chatahoochee, and south of a parallel of latitude which should intersect the mouth of the Yazoo river, never constituted a part of Georgia —that it was within the limits of the province of West Florida, from which being severed, by the peace of 1783, it became vested in the Confederacy, nd not in the State to which it happened to be ontiguous. The far greater part of the grant to he Georgia Mississippi Company is embraced within these limits: the purchase of the New England Company is stated, by themselves, to have been made from that company, twelve months after the President's Message. The gentleman from Pennsylvania, himself, considers this Message as a formal annunciation of the adverse claim of the United States to the land in question, and, in the same breath, avers that the New England company, subsequent purchasers of that very land, were ignorant of any defect of title in the State of Georgia, or the grantees under her. How will he reconcile this?

The same gentleman has introduced into this debate, the names of two persons; one of them, at that time, a judge of the Supreme Court of the United States, the other a Senator from the State of Georgia; who, he tells us, were deeply concerned n the transaction of 1795. Both these gentlemen are no more. Private character, always dear, always to be respected, seems almost canonized by he grave. When men go hence, their evil deeds should follow them, and, for me, might sleep obivious in their tomb. But if the mouldering ashes of the dead are to be raked up, let it not be for the furtherance of injustice. In every stage of this discussion, whilst I have kept my eye steadily fixed on the enormity of the act of 1795, I have ost sight of the agents. Since, however, some of them have been mentioned, it may not be immaterial to notice the interest which they took in his business. It is too true, sir, that the Senator n question was one of the fathers of the act of 1795. By the Assembly which passed it he was, at the same session, re-elected to the Senate of the United States for six years thereafter. It is equally true, Mr. Speaker, that the notorious British Treaty was ratified by that Senator's casting vote. And as the Yazoo speculation then carried through the British Treaty, now it seems, the adherents of that treaty are to drag the Yazoo speculation out of the mire. The connexion of the two questions at that day is too notorious to be denied. That very Senator, were he now here, would disdain to deny it. With all his faults, he was a man of some noble qualities. Hypocrisy, at least, was not in the catalogue of his vices. The coupling together of the British Treaty and the Yazoo business, cannot surely be unknown to the gentleman from Pennsylvania. He was a member of the House of Representatives which voted the appropriation for carrying that treaty into effect, and is understood to have acted a conspicuous part on the occasion. Can it be matter of surprise that the same Senate that ratified the British Treaty by the casting vote of one of the principal grantees of the act of Georgia of 1795, should refuse to co-operate with the House of Representatives, in measures for obviating the mischiefs of that act? When you see this corruption extending itself to two great departments of Government, can you wonder at the bitterness of its fruit? With their leaders in the Legislature and on the judgment seat, well might the host of corruption feel confident in their strength; even yet they have scarcely laid aside their audacity.

A gentleman from Massachusetts (Mr. EUSTIS,) has said, that the claimants from his State had no notice of the fraud; "that he knows they had not;" I cannot have mistaken him, for I took down the words. Sir, I would ask that gentleman, whence arises the proverbial difficulty of providing a negative, but from the difficulty of knowing one?

[Mr. EUSTIS rose to explain. If he had said that he knew the claimants had not a knowledge of the fraud, he had said too much. It was impossible that any one should know all that was known or passing in the mind of another. Without recollecting the precise words used, he had intended to state his own belief that they had no such knowledge or information. He was resident and conversant with those concerned in the transaction, it was the subject of general conversation, and if there had been any knowledge or report of the kind, he thought it must have come to his knowledge; but he also recollected to have stated at the time that this circumstance did not depend on the knowledge or opinion of any individual—as the price paid for the land precluded any idea or belief that the purchasers could have had any knowledge of the fraud.]

Mr. RANDOLPH resumed. The facts which I am about to mention are derived from such a source that I could almost pledge myself for their truth: When the agent of the Georgia Mississippi Company (under whom the New England Land Company claim) arrived in the Eastern States, he had great difficulty in disposing of his booty. The rumor of the fraud by which it was acquired had gone before him. People did not like to vest their money in this new Mississippi scheme. He accordingly applied to some leading

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men of wealth and intelligence, offering to some as high as 200,000 acres, to others less, for which they were neither to pay money, nor pass their paper, but were to stand on his books as purchasers at so much per acre. These were the decoy-birds to bring the ducks and geese into the net of speculation. On the faith of these persons, under the idea that men of their information would not risk such vast sums without some prospect of return, others resolved to venture, and gambled in this new land fund, laid out their money in the Yazoo lottery and have drawn blanks. And these, sir, are the innocent purchasers by whom we are beset; purchasers without price, who never paid a shilling, and never can be called upon for one; the vile panders of speculation. And in what do their dupes differ from the losers in any other gambling or usurious transaction? The premium was proportioned to the risk. As well may your buyers and sellers of stock, your bulls and your bears of the alley, require indemnification for their losses at the hands of the nation. There is another fact, too little known, but unquestionably true, in relation to this business. This scheme of buying up the Western Territory of Georgia did not originate there. It was hatched in Philadelphia and New York, (and I believe Boston; of this, however, I am not positive,) and the funds with which it was effected were principally furnished by moneyed capitalists in those towns. The direction of these resources devolved chiefly on the Senator who has been mentioned. Too wary to commit himself to writing, he and his associates agreed upon a countersign. His re-election to the Senate was to be considered as evidence that the temper of the Legislature of Georgia was suited to their purpose, and his Northern confederates were to take their measures accordingly. In proof of this fact, no sooner was the news of his reappointment announced at New York, than it was publicly said in a coffee-house there, "then the Western Territory of Georgia is sold." Does this require a comment? Do you not see the strong probability that many of those, who now appear in the character of purchasers from the original grantees named in the act of 1795, are in fact partners, perhaps instigators and prime movers of a transaction in which their names do not appear? Amidst such a complication of guilt, how are you to discriminate; how fix the Proteus? The chairman of the Committee of Claims, who brought in this report, under the lash of whose criticism we have all so often smarted, that he is generally known as the pedagogue of the House, will give me leave on this subject to refer him to an authority. It is one with which he is no doubt familiar. and, however humble, well disposed to respect. The authority which I am about to cite is Dillworth's Spelling Book, and if it will be more grateful to the gentleman, not our common American edition, but the Royal English Spelling Book. In one of the chapters of that useful elementary work it is related, that two persons going into a shop on pretence of purchase, one of them stole a piece of goods and handed it to the other to conceal under his cloak. When charged with the theft, he who stole it said he had it, and he who had it said he did not take it. Gentlemen, replied the honest tradesman, what you say may all be very true, but, at the same time, I know that between you I am robbed. And precisely is our case. But I hope, sir, we will not permit the parties, whether original grantees who took it, or subsequent purchasers who stole it, to make off with the public property.

The rigor of the Committee of Claims has passed into a proverb. It has more than once caused the justice of this House to be questioned. What, then, was our surprise on reading their report, to find that they have discovered flaws in the pretensions of these petitioners. Sir, what! the war-worn soldier of the Revolution, the desolate widow and famished offspring of those who sealed your independence with their blood, ask at the door of that Committee for bread, they receive the statute of limitation. On other occasions you hear of no equity in the Committee. Their claims have not the stamp and seal of equity upon them. *Summum jus* is the law dealt out to them. The equity of the Committee is reserved for those claims which are stained with iniquity and stamped with infamy. It reminds me of the story of a poor, distressed female in London applying for admittance into the Magdalen Charity. Being asked who and what her wretched tale was told in a few words, "I am poor, innocent, and friendless." "Poor girl, replied the director, your case does not come within the purview of this institution. Innocence has no admission here; this is the reception for prostitutes; you must go and sanctify yourself before you can partake of our relief." With equal discretion the directors of the Committee of Claims suffer nothing to find support in their asylum but what is tainted with corruption, and stamped with fraud. Give us these properties and they will give it equity.

But we are told that the United States gave even less for these lands than the price paid by the several companies of 1795. Admitting the fact, (which is unquestionably false,) did Georgia sell to the Union for pounds, shillings and pence? Did North Carolina and Virginia, in their cession of even more extensive countries, for pecuniary profit? Are we become so grovelling that public spirit and the general good go for nothing? The money which we engaged to pay out of the proceeds of the land, although more than double the amount paid by the four companies in 1795 constitutes but a small part of the pecuniary consideration. We are, moreover, pledged to the extinguishment of the Indian title to an immense territory within the present limits of Georgia. It has been whispered in my ear that the fate of a late treaty with the Creeks is to depend on the decision of this question. The British Treaty and the Yazoo were to stand or fall together in 1795. so the Creek Treaty and the Yazoo are to stand or fall together in 1805. But those who hold out this threat, members from Georgia, should know that

er, should be told that they are made of the iternest stuff of republicanism, and can neither e coaxed nor intimidated out of their principles. Of those who talk of the Western lands being icquired for nothing, I would ask if that be an irgument for throwing them away upon flagi-ious men? But were the toils, and dangers, and treasures of the Revolution nothing? The bloody battles, the burning and devastations of the South-ern and Western countries? Was the expedi-tion of the brave and intrepid Clarke, which wants only a Polybius to rival the march of Thrasymene; were the exploits of this Ameri-can Hannibal, who secured the Western country to you, nothing? Were your Indian wars and massacres nothing?

This Government, let me remind you, has ac-quired the confidence of the public by the disin-terestedness of its measures. The repeal of the internal taxes is not the least conspicuous among them. How long will you retain that well-earn-ed confidence, if you lavish on a band of specula-tors a landed capital whose annual interest is more than equivalent to the whole proceeds of those taxes? I will not go into petty details now, but I pledge myself that, whoever makes the cal-culation, will find the value of the land, together with the expense of extinguishing the Indian title, at the rate of our last treaty in that quarter, to yield a clear perpetual annuity, equal to the receipt from the internal taxes. What would you say to a proposition to revive those taxes and mortgage them for the payment of the interest on a Yazoo stock? Do you wonder that we shrink from such a precipice? Shall a republican House of Repre-sentatives sanction this wanton waste of the pub-lic resources to nourish the bane of every Repub-lic? Are you simple enough to believe that the five millions will quiet them? Yes, as the tribute of the Roman world satisfied their barbarian ene-mies. You only whet their appetite and increase their means for extorting more. Like the Gauls, after the sack of Rome, they will make their sec-ond attempt upon the Capitol, before they have divided the plunder acquired in the first. When I see the formidable front displayed by this band of broken speculators, I am irresistibly impelled to inquire, what would have been their force if their attempt on the western country of Georgia had not been baffled by the virtue and patriotism of that State? What is there in this Government that could have coped with them? Sir, you must have built another wing to your Capitol, for the third branch of your Legislature. You would have had a Yazoo estate in your empire, not with a qualified negative, but an absolute veto on all your proceedings. Scarcely would they have left you the initiative.

I have said, and I repeat it, that the aspect in which this thing presents itself, would, alone, de-termine me to resist it. In one of the petitioners I behold an Executive officer, who receives and distributes a yearly revenue of $300,000, yielding scarcely any net profit to Government. Offices in his disposal to the annual amount of $94,000, and contracts more lucrative making up the res-idue of the sum. A patronage limited only by the extent of our country. Is this right? Is it even decent? Shall political power be made the engine of private interest? Shall such a suspicion tarnish your proceedings? How would you re-ceive a petition from the President of the United States, if such a thing can be supposed possible? Sir, I wish to see the same purity pervading every subordinate branch of administration, which, I am persuaded, exists in its great departments.—Shall persons holding appointments under the great and good man, who presides over our coun-cils, draw on the rich fund of his well-earned rep-utation, to eke out their flimsy and scanty preten-sions? Is the relation in which they stand to him, to be made the cloak and cover of their dark de-signs? To the gentleman from New York, (Mr. ROOT.) who takes fire at every insinuation against his friend, I have only to observe, on this subject, that what I dare to say, I dare to justify. To the House I will relate an incident, from which it may judge how far I have lightly conceived or expressed an opinion to the prejudice of any man. I owe an apology to my informant for making public what he certainly did not authorize me to reveal. There is no reparation which can be offered by one gentleman and accepted by ano-ther, that I shall not be ready to make him; but I feel myself already justified to him, since he sees the circumstances under which I act. A few evenings since, a profitable contract for carrying the mail was offered to a friend of mine who is a member of this House. You must know, sir, that the person so often alluded to maintains a jack-all, fed, not (as you would suppose) upon the offal of contract, but with the fairest pieces in the shambles; and, at night, when honest men are in bed, does this obscene animal prowl through the streets of this vast and desolate city, seeking whom he may tamper with. Well, sir, when this worthy plenipotentiary had made his proposal, in due form, the independent man to whom it was addressed, saw at once its drift. "Tell your prin-cipal, said he, that I will take his contract, but I shall vote against the Yazoo claim, notwithstand-ing." Next day, he was told that there had been some misunderstanding of the business, that he could not have the contract, as it was previously bespoken by another!

Sir, I well recollect, when first I had the honor of a seat in this House, we were members then of a small minority; a poor, forlorn hope; that this very petitioner appeared in Philadelphia, on be-half of another great land company on Lake Erie. He then told us, as an inducement to vote for the Connecticut reserve (as it was called) that if that measure failed, it would ruin the republicans and the cause in that State. You, sir, cannot have forgotten the reply he received: "That we did 'not understand the republicanism that was to be 'paid for; that we feared it was not of the right 'sort, but spurious." And, having maintained our principles through the ordeal of that day, shall we now abandon them, to act with the men and upon the maxims which we then abjured? Shall we now condescend to means which we

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disdained to use in the most desperate crisis of our political fortune? This is, indeed, the age of monstrous coalitions; and this corruption has the quality of cementing the most inveterate enmities, personal as well as political. It has united in close concert those, of whom it has been said, not in the figurative language of prophecy, but in the sober narrative of history: "I have bruised thy head, and thou hast bruised my heel." Such is the description of persons who would present to the President of the United States an act to which when he puts his hand, he signs a libel on his whole political life. But he will never tarnish the unsullied lustre of his fame; he will never sanction the monstrous position, (for such it is, dress it up as you will,) "that a legislator may sell his vote, and a right, which cannot be divested, will pass under such sale." Establish this doctrine, and there is an end of representative Government; from that moment republicanism receives its death-blow.

The feeble cry of Virginian influence and ambitious leaders, is attempted to be raised. If such insinuations were worthy of reply, I might appeal to you, Mr. Speaker, for the fact, that no man in this House, (yourself, perhaps, excepted) is oftener in a minority than I am. If by a leader he meant one who speaks his opinion freely and boldly; who claims something of that independence of which the gentleman from New York so loudly vaunts; who will not connive at public robbery, be the robbers whom they may, then the imputation may be just; such is the nature of my ambition; but, in the common acceptation of words, nothing can be more false. In the coarse, language of the proverb, "'tis the still sow that sucks the draff." No, sir, we are not the leaders. There they sit, and well they know it, forcing down our throats the most obnoxious measures. Gentlemen may be silent, but they shall be dragged into public view. If they direct our councils at least let them answer for the result. We will not be responsible for their measures. If we do not hold the reins we will not be accountable for the accidents which may befall the carriage.

But, sir, I am a denunciator! Of whom? Of the gentlemen on my left? Not at all; but of those men and their principles whom the people themselves have denounced: on whom they have burnt their indelible curse, deep and lasting as the lightning of Heaven. But, you are told, not to regard such idle declamation. I would remind the gentleman from New York that, if to declaim be not to reason, so neither is it to be argumentative to be dull. Warmth is the creature of the heart, not of the head. A position, in itself just, can lose no part of its truth from the manner in which it is uttered, whether by the driest and most stupid special pleader, or bellowed with the lungs of a Stentor. Are our opponents ashamed of their cause, that they devolve its defence on the little ones by whom we are beset?

Mr. Speaker, I had hoped that we should not be content to live upon the principal of our popularity; that we should go on to deserve the public confidence and the disapprobation of the gentlemen over the way. But, if everythi reversed, if official influence is to handmaid of private interest, if the ol to be revived with the old men, or an be picked up, I may deplore the defe never will I cease to stigmatize it. Nev hesitate between any minority, far les which I now find myself, and such a ma is opposed to us. I took my degrees House, in a minority, much smaller, of the same stamp. A minority, whose bore the test of rigorous principle, and to the last I will exclaim, *fiat justi cœlum.*

The Committee rose, and the House

FRIDAY, February 1.

The following Message was rece PRESIDENT OF the UNITED STATES:

To the House of Representatives of the

In compliance with the desire of the H resentatives, expressed in their resolution I have to inform them that, by a letter of of May last, from the Secretary of War to mond, a member of the House, it was pro to accept a com mission of Colonel Comma District of Louisiana, when the new Go should commen ce. By a letter of the he signified a willingness to accept; b finitively by one of October twenty-sixth, is, therefore, now communicated. A co been made out for him, bearing date the October last, and forwarded before the letter of October twenty-sixth. No later tion has been received from him, nor is known of his movements.

JAN. 31, 1805. TH. JEFFERSON

The said Message, and the copy of the referred to therein, were read, and ordered on the table.

The SPEAKER laid before the House the Secretary of the Treasury, report, and two statements, marked A and B exhibiting the tonnage of vessels paying foreign duties, entered into the several ports of the United States, during the years 1801, 1802, 1803; and light money collected in the several ports United States, from the first of July tieth of September 1804; prepared in to a resolution of this House, of the ultimo; which were read, and ordered the table.

The following Message was received PRESIDENT OF THE UNITED STATES:

To the House of Representatives of the

For some weeks past, I have had reason every mail from New Orleans, information have fully met the views of the House of tives, expressed in their resolution of first, on the subject of a post road from the ington to New Orleans; but this being not ed, I think it my duty, without further delay municate to the House the information I pos ever imperfect.

Isaac Briggs, one of the surveyors general ted States, being about to return, in July last,

on at Natchez, and apprized of the anxiety existing to ave a practicable road explored for forwarding the mail o New Orleans, without crossing the mountains, offer- d his services, voluntarily, to return by the route con- emplated, taking, as he should go, such observations of ongitude and latitude as would enable him to delineate t exactly, and, by protraction, to show of what shorten- ngs it would admit. The offer was accepted, and he vas furnished with an accurate sextant for his observa- ions. The route proposed was from Washington by 'redericksburg, Cartersville, Lower Sauratown, Salis- ury, Franklin Court House, in Georgia, Tuckabachee, 'ort Stoddert, and the mouth of Pearl River, to New)rleans. It is believed he followed this route general- y, deviating at times only, for special purposes, and re- urning again into it. His letters, herewith communi- ated, will show his opinion to have been, after complet- ng his journey, that the practicable distance between Washington and New Orleans will be a little over one housand miles. He expected to forward his map and pecial report, within one week from the date of his last etter; but a letter of December tenth, from another erson, informs me he had been unwell, but would for- ward them within a week from that time. So soon as hey shall be received, they shall be communicated to he House of Representatives.

TH. JEFFERSON.

FEBRUARY 1, 1805.

The said Message was read, and referred to the Committee of the Whole House to whom was committed, on the seventh of December last, a motion respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also for the establishment of a post road from——, in Georgia, to the said settlement on the Tombigbee, to intersect the former road, at the most convenient point between Knoxville and the Tombigbee."

A petition of the people called Quakers, inhabitants of the State of Ohio, and parts adjacent, signed by order and in behalf of the society of the said people called Quakers, by Horton Howard and Nathan Updegraff, was presented to the House and read, praying a right in fee simple, at the usual price and credit, in the purchase of certain sections of land therein specified, or such other sections, in the ranges of townships within the said State, as Congress, in their wisdom, shall deem reasonable and proper; to be appropriated by the petitioners to promote the laudable purpose of instructing the youth of the society aforesaid, as well as those who may be interested therein, in the progress of useful literature, and of piety and virtue.—Referred to the committee appointed, the seventh ultimo, "to inquire whether any, and, if any, what, alterations are necessary in the laws providing for the sale of the public lands Northwest of the Ohio;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

POSTMASTER GENERAL.

The SPEAKER laid before the House the following letter from Gideon Granger, Postmaster General of the United States:

FEBRUARY 1, 1805.

Hon. NATHANIEL MACON, *Speaker of the House of Representatives of the Congress of the United States.*

SIR: I have received information, from various sources, that both my public and private character and conduct have been arraigned on the floor of the House of Congress by a member of that House, in a debate of the 29th, and in another of the 31st ultimo, in a case where no examination of my official conduct was proposed. As there is not, within my knowledge, any instance of a similar abuse offered to an officer of Government, I know not of any precedent whereby to regulate my conduct. I wish at all times, and more especially on an occasion so extraordinary and unprecedented, to approach the Representatives of the nation with all that respect and regard to which they are entitled. My feelings do not allow me, at present, to exercise that coolness and judgment which I might call to my aid in a case less interesting.

Conscious of the purity of my conduct, and that no charge can be made or supported against me consistent with truth and justice, it is a duty which I owe to my country—to the Government which has confided in me—to myself and my family—to declare (and I do now most solemnly declare) that every charge or insinuation which has been made against my private or public character, or against my fairness and impartiality, or of my attempting by bribery, or in any improper manner, to influence any member of Congress upon any question pending before that honorable body, is absolutely and altogether untrue, and founded at least in error only.

The high respect due to your body and every member of it during your sessions, will not allow me to hazard a conjecture as to the motives of the gentleman who has proclaimed these charges.

I court and solicit of Congress an investigation into my official (and if they please my private) conduct, from the first moment the Post Office Department was committed to my charge to the present period. Nor have I any favor to ask, save only this, that an investigation may be had the present session.

I pray you to communicate this to the House of Representatives; and I tender to that honorable body, and to you, their Speaker, the assurance of my high esteem and respect.

GIDEON GRANGER.*

Mr. VARNUM moved that the letter of the Postmaster General be referred to a select committee to inquire into the subject.

Mr. NELSON hoped the motion would not prevail, as no good purpose could be answered by the

* On the 7th February following, Mr. Granger addressed the annexed explanatory letter to the Speaker:

WASHINGTON CITY, *Feb.* 7, 1805.

SIR: My sole object in addressing to Congress my letter of the first of the present month was to gain an opportunity of refuting the charges and insinuations which had been made against me. The little reflection I could give the subject induced me to believe that it was proper, in a respectful manner, to repel the charges publicly, and in the place where they were made. Nor did it occur to me that the right of an officer to defend his character depended upon the office he happened to hold.

If, however, I erred in this, I presume it cannot be wrong, in defence of my reputation, to address you in

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inquiry. It appeared to him to be an affair of honor between two gentlemen, and Congress had nothing to do with it. If, upon investigation, the charges were found to be true, Congress had no power to remove the Postmaster General from office. For what purpose, then, were they to waste the time of the House in such an inquiry? That was not the proper place to make the application; it should have been made to the President, if made at all, as he had the power of removing officers. The session was far advanced and limited in its duration. A variety of imp[illegible] siness still remained unfinished, and [illegible] some of it would remain so; yet, notwit[illegible] the House was called upon to take [illegible] quarrels between gentlemen. He hope[illegible] tion would not prevail, and that the ge[illegible] would be left to settle the dispute themse[illegible]

Mr. BRYAN called for the yeas and nays.

Mr. ELLIOT.—This House was inform[illegible] member, (Mr. RANDOLPH,) in language [illegible] to be misunderstood, that corruption [illegible]

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your private character as a gentleman. I will own that I am desirous of retaining your friendship and confidence. I will own that I am not indifferent to public opinion, and that I seek the confidence and esteem of my fellow-citizens by the even tenor of a well-spent life, and a regular discharge of all the social duties—not by lessening the esteem and confidence to which others are entitled.

Various charges have been made against me for the interest I have in the Georgia grants—for my being an agent of the New England Company, and for my conduct as such agent. As these charges have not yet appeared in print, I cannot give that specific answer which may hereafter become necessary, and for which I pledge myself to the public, in case such necessity should exist.

I now take the liberty of stating how I became interested in the claims—how the agency was accepted, and what has been my conduct as agent.

First, as to my interest.

When the members of the New England Company formed their contract with William Williamson, as agent for the Georgia Mississippi Company, in September, 1795, I had not the least interest in the concern. Upon the advice of my friends, and at their solicitation, between that period and the first of December, I agreed to become interested, and accepted of a certain share, which was procured for me by a voluntary relinquishment of a part by several gentlemen for that purpose. In January, 1796, the agents came on from Georgia to give the conveyance, and I was deputed as agent for many of the proprietors near Connecticut river; to discharge which trust I proceeded to Boston. Before the business was closed my principals arrived; a variety of considerations induced me to relinquish the adventure, such as the difference of climate, the distance of the property, the warlike habits of the natives, and the want of capital, and before the time of which I am about to speak, I relinquished my right to two friends from Connecticut. Thus my concern with the Georgia lands, as I thought, was closed forever. But on the evening of the Sunday next preceding the second Tuesday of February, 1796, Ashbel Stanley, then of Coventry, in Connecticut, applied to Oliver Phelps, Esq., and myself, and requested us to become surety for him and Jeremiah Ripley, Esq., of said Coventry, (they being partners in trade,) to the Georgia agents, for the space of sixty days, to the amount of $75,000, and assigned for reason that the agents would not take notes signed in the name of the firm, and that he only wanted our names till he could have an opportunity to procure the name of Judge Ripley as an endorser to his notes. The great esteem I had for Judge Ripley, and a knowledge of his ability, induced me to give Mr. Phelps, as I was about to return to Connecticut, a written engagement to assume one-third of the risk, in case he should think [illegible] make the endorsement. Mr. Phelps made the [illegible] ment for Stanley, and took into his hands [illegible] Stanley's conveyance of seven hundred [illegible] sand acres of Georgia Mississippi Compa[illegible] which the endorsement was given; [illegible] signment by Stanley of one hundred [illegible] more, which Seth Wetmore assigned to Sta[illegible] ley failed. Judge Ripley denied the auth[illegible] ley to use his name in a land contract, and [illegible] and myself, as endorsers, had to meet the [illegible] On the fourth day of May, one thousand [illegible] dred and ninety-eight, we satisfied these [illegible] and they were cancelled and delivered up. [illegible] the means of satisfying these endorsement[illegible] compelled to dispose of 670,000 acres of the [illegible] sides a vast deal of other property. When [illegible] for the scrip on the two thousand acres, [illegible] Wetmore to Stanley, and by Stanley to [illegible] found that Wetmore had conveyed the same [illegible] Israel Munson, merchant in Boston. Here [illegible] ficulty presented itself, which has been [illegible] moved. On the 30th of August, 1803, [illegible] enable me to close this dispute, gave me [illegible] of these one hundred thousand acres; and [illegible] of September, in the same year, I effected [illegible] tlement with Mr. Munson, of his claim [illegible] benefit of Phelps and Granger. This [illegible] conveyances from Mr. Phelps and Mr. Munson [illegible] and these facts can be proved by these [illegible] by Judge Ripley, Amasa Jackson, Esq., of New York, Joseph Lyman, Esq., of Northampton, Massachusetts, Clerk of the Supreme Court, John Peck, &c.

On record, will also be found a conveyance of one hundred thousand acres, of December 9th, 1803, from John Peck to me. In this property I have no least interest. It is deposited in my hands [illegible] special bail, in two cases, in favor of Eli W[illegible] Hagerstown, against John Peck, of Boston, [illegible] ing before the court in this district. John [illegible] Mason, Esq., knows this fact.

Finally, I have never been a dealer in the [illegible] nor otherwise than is herein stated, interested [illegible] excepting only that in one instance I have [illegible] some scrip of a gentleman, whose fortune [illegible] sumed by his adventuring in the property [illegible] mand which was subsisting before the [illegible] ruary, 1796.

Secondly. As to my accepting the agency. [illegible] 17th day of February, 1803, the Commissioners [illegible] part of the United States reported to Congress [illegible] of a compromise of these claims, and Congress [illegible] wards, in the same session, made an appropri[illegible] the 5,000,000 acres of land, to satisfy such [illegible] Congress might think best to provide for. [illegible] the business, without a single objection [illegible] knowledge to a compromise, when, in August [illegible]

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way within these walls, and that indirect ad-
tages had been taken to influence the decision
the House upon a question, pending before
n. An officer of the Government, who con-
red his conduct much implicated, has inform-
he House, by letter, that he has been informed
: his public conduct has been arraigned, and
ys an investigation into it. In my opinion,
ning can be more just and reasonable than to
nt it. The Postmaster General has been ac-
ed by a member of this House of things which,
rue, ought to occasion his removal from office.
at was the conduct of the House at the last
ion? When a motion was made to inquire
the conduct of a judge, without any fact be-
stated, we were told that, if any member of
House entertained suspicion of his uprightness,
were bound to grant an inquiry. The same
tleman who, at the last session, demanded, as
atter of right, the appointment of a committee
iquire into the official conduct of Judge Chase,
during this session, made charges of a very
ous nature against the Postmaster General, and
n that officer now requests an inquiry into
conduct, the friends of his accuser oppose the
pointment of a committee of inquiry. I con-
r the House, on this occasion, bound to make
inquiry, both on account of the officer and the
ic, in order that, if the charges made against
him are true, he may be removed from office; if
untrue, that it may be declared so. No possible
harm can result from the inquiry, and it is due to
an officer of Government whose character has
been implicated. We have been told by the gen-
tleman from Maryland (Mr. NELSON) that this
was a matter of private feeling and honor be-
tween two gentlemen. Sir, I cannot agree with
the gentleman, and it appears to me astonishing
that he should consider it in the light he does. So
far from considering it only as a matter of private
feeling and honor, I consider the honor of our
country is interested, and demands an inquiry, and
that it can only be refused the officer who requests
it by an act of despotism.

Mr. NICHOLSON.—I recollect but a single in-
stance in which the conduct of an officer of the
Government has been inquired into, at his request;
that was the case of Mr. Wolcott, the late Secre-
tary of the Treasury, who, upon his resignation,
addressed a letter to the House, requesting an in-
vestigation into his conduct. That letter was
couched in decent terms, and the language was
such that no member could take umbrage at.
Had the letter of the Postmaster General been
written in the same style, I should have had no
objection to the investigation, although I can see
no good likely to result from it. But it is couched
in such language as this House ought not to lis-
ten to. We are told in it, that charges made by
a member of this House are untrue. Are we to
sit here, and suffer such language to be used? I
trust not, sir; had I known the language of the
letter, I should have opposed its being read. If
gentlemen wish an investigation into their con-
duct, they ought to ask it in decent terms; and I
should not oppose it, although, as I before observ-
ed, I can see no good likely to result, for I trust
that the Postmaster General will never be digni-
fied with an impeachment. If the charges against
him are true, the President ought to remove him,
and it is to him that he ought to justify himself.
If, however, gentlemen are anxious that an inves-
tigation should take place, let them lay a resolu-
tion to that effect on the table, and I will give it
no opposition; but I will never agree that such a
letter as the one now on the table be referred to
a committee, and, by that means, give a sanction
to the language contained in it.

Mr. GREGG regretted that such business had
been brought before the House, especially at so
late a period of the session. He did not know
for what purpose an inquiry was to be made; for,
supposing the charges to be true, the House
had no power to remove him. The Postmas-
ter General was not one of those officers who
could be impeached; and the President was the
only one that could remove him. He was oppos-
ed to the motion, conceiving that too much im-
portant business remains unfinished, to take up
new matters, which would answer no good pur-
pose whatever.

Mr. CLARK was opposed to the reference of the
letter, on account of the language which it con-
tained. It charged a member of the House with
having uttered falsehood. In his opinion, such

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of the directors of the New England Mississippi
pany, solicited me to accept an agency in the busi-
. Although I could not see any objection to it, as
s personally interested, and the duties of my office
not the least possible relation to the business, still I
not willing to accept the agency without advice.
ordingly I stated the case to the last Attorney Gen-
who suggested that he would not be understood
ive any opinion on the subject, but for his part he
d not perceive the least objection to my acceptance.
r this the agency was accepted, and I can with the
test truth aver, that I then had not the least idea
ny objection on the part of Congress. The only
culty contemplated was that of bringing the claim-
and the Commissioners to an agreement.
astly. As to my conduct as agent. I acknowledge
I have, in an open, fair, and plain manner, vindi-
d the rights of the company I represent. But I
my attempting to make use of any kind of in-
nce.
ere I appeal to the Commissioners, whether I have
attempted to press anything in relation to the
ness. I make the same appeal to you, sir, and to
y other member of the two Houses of Congress.
have been guilty of what is charged upon me,
e must be some one ready to rise up, and bear tes-
ny against me. I trust I have virtue enough not
ttempt improperly to influence any man. If not,
ld the members of Congress in too high respect to
n them capable of yielding to any improper in-
nce.
or the truth of this statement, I appeal to the Au-
of my existence; and, in support of it, I pledge
character to you and to my country. I cannot
this letter without offering my ardent desire for
nvestigation of my conduct.
am, sir, with high esteem and respect, your hum-
ervant, GIDEON GRANGER.

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language ought not to receive any sanction from the House.

The Postmaster General had demanded an investigation into his conduct on account of some intemperate expressions used by a member of this House. Should the investigation take place, it would probably have a pernicious tendency, because the House would be troubled with similar applications whenever any member happened to speak disrespectfully of an officer of the Government. If the conduct of the officer had been improper, it might not be proper at that time to make the inquiry, as the session was drawing to a close, and they had much important business to transact. He was, therefore, decidedly opposed to the motion of reference, and trusted it would not be agreed to.

Mr. LYON.—I feel, Mr. Speaker, a sympathy for the Postmaster General, who, as well as myself, was so egregiously belied yesterday by the member from Virginia. (Mr. RANDOLPH.)

[Here Mr. NICHOLSON called Mr. LYON to order, whereupon the latter sat down, when the SPEAKER decided that the words were out of order.]

After this decision was made, Mr. LYON again rose to proceed, and was again called to order, but the SPEAKER determining that he was in order,

Mr. BRYAN appealed to the House, and

Mr. NICHOLSON called for the yeas and nays.

The question was then taken, "is the decision of the Chair correct?" And it was determined in the affirmative—yeas 81, nays 34, as follows:

YEAS—Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, Silas Betton, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Matthew Clay, John Clopton, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, John Dennis, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, Calvin Goddard, Peterson Goodwyn, Gaylord Griswold, John A. Hanna, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Joseph Lewis, jun., Thomas Lowndes, Nahum Mitchell, Jeremiah Morrow, James Mott, Anthony New, Gideon Olin, Thomas Plater, Samuel D. Purviance, John Rhea of Tennessee, Erastus Root, Ebenezer Seaver, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stevenson, Sam'l Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

NAYS—David Bard, George M. Bedinger, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Christopher Clark, Joseph Clay, Frederick Conrad, Andrew Gregg, Thomas Griffin, Josiah Hasbrouck, Michael Leib, John B. C. Lucas, Joseph Heister, David Holmes, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Roger Nelson, Thomas Newton, junior, Joseph H. Nicholson, Beriah Palmer, John Rea of Pen[illegible] Jacob Richards, Samuel Riker, Thomas [illegible] Thomas Sandford, James Sloan, John Smith, [illegible] Thompson, and John Whitehill.

Mr. LYON, upon this, immediately said [illegible] up my right; and would not proceed.

Mr. ELLIOT.—However surprising it may [illegible] pear to some gentlemen, it is not so to me [illegible] the language of innocence should be [illegible] pointed. We have been told that the [illegible] couched in disrespectful terms. For my [illegible] cannot perceive anything of the kind in it; [illegible] am surprised that, as it respects the gentle[illegible] who made the charges against him, that he is [illegible] moderate. Gentlemen have said that an inquiry would be of no service; because, if the charges are true, the officer cannot be impeached. If gentlemen will advert to the Constitution, they will find that "all civil officers are liable to impeachment," and removal from office. Surely it [illegible] not be contended that the Postmaster General is not a civil officer. The gentleman from Maryland (Mr. NICHOLSON) differs very widely from his friend from Virginia, (Mr. RANDOLPH) and the Postmaster General. The former [illegible] him as holding an office too insignificant [illegible] dignified with an impeachment, while the [illegible] deems his patronage and influence sufficient [illegible] influence or to bribe the majority of the [illegible] However insignificant the gentleman from Maryland may think the Postmaster General [illegible] is a civil officer, and as such is liable [illegible] peached, and removed from office. We are [illegible] told that a combination has taken place [illegible] some of those who have avowed themselves [illegible] publicans and the federalists, and that [illegible] ties of the country will be endangered. [illegible] have no danger to apprehend from monarchists, aristocrats, or federalists.

Our liberty can only be endangered by those description of persons against whom the [illegible] man from New York, (Mr. ROOT) so emphatically exclaimed—I mean political demagogues and popular leaders! They have been the curse and destruction of every Republic, and I fear will be our destruction. We are cursed with them in this country, and even in this House. But [illegible] that the majority of this House are opposed to them. The great objection which gentlemen make to the inquiry is, that the letter is couched in too disrespectful terms. Will they please bear in mind the charges made against the officer, and, viewing them, is it not a matter of astonishment that he is so mild? As the letter [illegible] this House, it is remarkably respectful. [illegible] what ground, then, can the investigation be refused? If the charges made are true, the [illegible] ought to be removed; if untrue, this House [illegible] in justice to him whose character has been [illegible] sailed to declare that they are so. The gentleman from Virginia (Mr. RANDOLPH) informed [illegible] terday that the Postmaster General kept [illegible] pay a jackall, who went prowling about [illegible] olate city, at midnight, when honest men [illegible] to be asleep, offering bribes to the members; [illegible] the gentleman must have keen optics to dis[illegible]

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ckall, when he is asleep; for he informs us e only goes about when honest men ought isleep; and surely the gentleman is one of escription. Upon every view which I can f this subject, I can see no objection to the y, but the strongest reason in its favor; and e demands that it should be made.

NELSON would offer a few remarks to the e, why he was opposed to the motion. He not undertake to give an opinion as to the cter of the Postmaster General, or whether harges made against him could be substan-. His objection was, that the House had ng to do with charges made by a member st any individual. If the charges were true, resident (and not the House) was the proper n to apply to, to remove the officer. But it een said that the House had the power to ich all civil officers, and, therefore, could im- the Postmaster General. But, because the e was invested with that power, he asked her they were bound to exercise it? Surely And he hoped they would not, when they get rid of the officer by a more summary . Late experience had taught them the le and expense attendant on impeachments, e trusted that no officer would ever be im- ed that could be removed by the President. uld be better to let them remain in office, ugh guilty of misbehaviour, than to spend so a time as they would be obliged to do in cases npeachment. Suppose the motion should be ed to, and the committee appointed, he asked t power they would possess? Were they to ire whether the charges were true or false? termination either way would have no effect the House, because they could not, he trust- mpeach the officer. He was not disposed to nything to hurt the character of the Postmas- General, but he would not give his sanction to easure which would spend so much of the of the House in deciding what he considered ffair of private honor and private feelings be- en two gentlemen. He also considered that adoption of the resolution would pass a cen- upon the gentleman who made the charges, he asked whether the House were disposed ensure one of its members for any warm and uarded expressions about an officer of the ernment? He trusted not. How many times charges been made in the House against the sident of the United States; but that officer never thought it proper to apply to the House an inquiry into his conduct; nor did the House pass a vote of censure on the members who le them. He looked upon this as a question of ute between two gentlemen, and no tribunal ld be erected in the House to decide on it. He uld, therefore, vote against the motion of the tleman from Massachusetts, (Mr. VARNUM,) hoped it would not prevail.

Mr. HUGER knew not what was the opinion of gentleman as to the merits of the question, he was satisfied that a calm decision of it ld not take place at that time. They were ut to establish a precedent, which might be of importance, and it ought to be done after the utmost deliberation. He called upon gentlemen to say, whether it was possible that a calm and impartial decision could be given after so much irritation had been displayed in the debate? In order to afford an opportunity to gentlemen to give the subject a cool and dispassionate investigation, he moved to postpone the further consideration thereof until Monday.

The question was taken thereon, and determined in the affirmative—yeas 93.

The resolution was never after called up.

GEORGIA CLAIMS.

The unfinished business of yesterday on the Yazoo claims was resumed—the amendment offered by Mr. CLARK, under consideration.

Mr. HOLMES observed that as he was a member of the Committee of Claims from whom the report under consideration emanated, he thought it his duty to state to the House the part he acted on that occasion. I was, said Mr. H., in all our deliberations upon this subject decidedly opposed to the adoption of the report, and in every stage of its progression used all fair means in my power to produce a different result; in this however I was unsuccessful. My conduct was governed by a firm conviction that the present claimants had no right in law or equity to the lands in question, and that policy did not demand the interference of the National Legislature. Most of the arguments that operated upon my mind then, and will influence my vote now, have been adduced by gentlemen who preceded me. It is not my intention to detain the House with a repetition of them; one or two however have occurred to me as worthy of consideration, that have not been urged. This must be my apology for addressing you after the able and lengthy discussion the subject has received. I am of the opinion, Mr. Speaker, that the Legislature of Georgia, of 1795, were not authorised to dispose of the lands in question, even if they had been honestly inclined to do so. This opinion is grounded upon the known maxims of Government and the Constitution under which that Legislature existed: The clause giving general powers to legislate for the good of the State, and by which it is contended the power was delegated, is in these words; "The General Assembly shall 'have power to make all laws and ordinances 'which they shall deem necessary and proper for 'the good of the State, which shall not be repug- 'nant to this constitution." By an authority which will be respected by every member of this House and which I beg leave to read, it will be found that general powers to make laws for the good of the State does not extend to a right to part with public property. Vattel, in his Laws of Nations, lays down the following doctrine upon this subject: "The nation having the free dispo- 'sal of all the property belonging to it; it may 'convey this right to the sovereign, and consequent- 'ly confer upon him that of alienating and mort- 'gaging the public property, but this right not ne- 'cessarily belonging to the conductor of the State, 'to enable him to render the people happy by his

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'government, it is not to be presumed that the na-
'tion has given it him, and if it has not made an ex-
'press law for that purpose, it ought to be main-
'tained that the Prince is not invested with it."
In no clause of the constitution alluded to, do we find an express authority to dispose of public property. If, therefore, the authority that I have just read is to have weight with the House in placing a construction upon that instrument, we must be ready to conclude that the people of Georgia did not delegate a power to the Legislature of 1795, to dispose of the lands in question. But, sir, this position is assailed by an argument drawn from the inconvenience of establishing it. We are told that if you adopt the principle that the Legislature of Georgia had no right to sell, you thereby call in question the titles to more than one-third of the cultivated soil in the nation, because no State Legislature in the Union, is, by express provision, authorized to make sale of their lands. I confess, Mr. Speaker, that, although this argument *ab inconvenienti* does not go to contravene the truth of the position I have laid down; yet if I could not by a further reference to the constitution in question, show its inapplicability in this instance, I should be ready to yield the ground I have taken, for it is not my wish, sir, that the lawful and equitable title to the land of a single individual in this community should be wantonly endangered. But, I confidently expect to be able to show that, by adopting this principle, for which I contend, we will not affect the validity of titles derived from States whose constitutions do not contain an express provision to sell. In the constitution of Georgia we find this sentence immediately following the clause I have read from it. "They shall have power to alter the boundaries of 'the present counties, and to lay off new ones, as 'well out of the counties already laid off, as out 'of the other territory belonging to the State." At the period of the adoption of the constitution, the people of Georgia owned an immense tract of unappropriated land. It cannot be doubted but the power granted to the Legislature to lay off new counties, had an allusion to this extensive back country, and it will not be denied but that a power to lay off a county is subordinate to that of selling a county. Can we then for a moment think that the convention who formed the constitution, supposed, by the clause granting general powers to legislate for the good of the State, they invested the Legislature with a right to sell the whole country to an individual, and that they did not by the same clause believe they had empowered them to lay off a new county within it? We cannot sir: the style and general correctness of the instrument warrants no such absurd conclusion. This clause, therefore, Mr. Speaker, is susceptible of no meaning whatever, or must be considered as limiting the power of the Legislature in relation to the lands in question. It may, however, be said, that it is declarative of a preparatory measure to that of disposing of the lands: giving it even this construction, it answers my purpose as well as the one for which I contend, and believe to be correct; because there was no law in force establishing a county within any of the lands in qu time the contract for selling them was We need not, said Mr. H., be told tu tures anterior to 1795, thought themse with the right to sell vacant territor- ions should not be put in competi of the convention that formed the con 1798. The people of a State, in their capacity, are, unquestionably, better resort to for an explanation of pow than Legislatures, who are censum cend the limits of those powers. T did, sir, declare the law of 1795, lands in question, to be an exercise which the Legislature was not express provision they authorize tures to cede the same to the U therefore appears clear to me, as the constitutions of the sever contain a special clause empowe ture to lay off new counties, &c. danger the titles to lands sold under er to legislate for the good of the may safely and correctly vote for the proposed by my colleague, and agai of the Committee of Claims. Perm Mr. Speaker, to suppose, for the sa that I have been mistaken in this opi present claimants establish a title u of their being innocent purchasers amination of this question I shall various circumstances which tend they had notice of the fraud. T been done by gentlemen who prece have no new deductions to make fr Let us then suppose the possible case wholly ignorant of the circumsta the original purchase; still I conte be entitled as innocent purchasers. my opinion I lay down this maxim title is established in any one being an innocent purchaser, presupposed that the person rightful owner has, by his com misplaced confidence, been the ception. Apply it to the present ple of Georgia chargeable with gleet, or misplaced confidence? The the question, the last cannot be ap for the delegation of a power to le good of the State was essentially nec existence of the State; and it cann people were bound to be answerable who might suffer by the wilful and of that power. But, sir, with respect people of Georgia used all means to apprize the whole world of the fra been practised upon them, both pend tiation and after it was completed; the tion at the transaction was no secret aloud of the manner in which they trayed. But there was no official no Mr. Speaker! the organ of the public (the Legislature) was polluted, the people could not approach them, their were incarcerated with gold and impert

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ɔund of truth. What could the people do but wait the constitutional period of electing men that 'ould speak their sentiments? They did so, and ıey stand acquitted of any neglect on their part. y the cession the United States are placed in the tuation that the people of Georgia would have ood in if it had not been made. If therefore the resent claimants had no legal or equitable demand pon them previous thereto, they have none upon s now. One word, Mr. Speaker, with respect to ıe expediency of adopting the resolution proposed y the committee. It never can be expedient to ɔ an act of manifest injustice. If the petitioners re entitled to any part, they are entitled to the 'hole of the lands in question. Can it be just in ;, because we have the power, to compel them to ceive one-eighth part? If, on the other hand, they ıve no title whatever in law or equity, which I ligiously believe, do we not do an act of great justice to the public by giving them near five illions of acres? We unquestionably do. Some lusions have been made in the course of debate the conduct of the Committee of Claims. I gret, Mr. Speaker, that I cannot defend it upon is occasion. I have been for some years past one the victims devoted to take a part in the ardu- s, unpleasant, and unthankful duties assigned to ıt committee—to bear my share not only of ɜ labor, but the importunities and reproaches of ɜ disappointed applicants. No considerations retofore have induced us to relax from that reg- ır administration of justice, conformable to law d precedent, in which we have uniformly met th the approbation of the House. But, long as ave been a member, Mr. Speaker, I cannot turn a single instance wherein the committee have ommended a compromise of a claim; we give t seldom, but when we do give, we honestly re all that is due.

Mr. LYON.—After having taken a view of the ɔject now before the House, during the last ses- n, in all its shapes and bearings, and after hav- ;, in a very ample and explicit manner, given ɜ reasons which governed my vote at that time, was my intention to have given a silent vote on s occasion. The hope of changing the mind of ingle member does not now call upon me to e; no, sir, the uncandid insinuations, the unde- ved reproaches and criminations from a mem- from Virginia have caused me to break through t silence I had imposed upon myself. Yet, ce I am up, permit me to remind you, sir, of t view, and in a very brief manner of those sons which will in every stage of this business uce me to adhere to the contemplated com- mise. It seems that the government of Geor- , in 1792, made an agreement with certain com- ıies which was not fulfilled by the grantees, nor summated by the government of Georgia, for sale of a large part of their western lands; ac- dingly, the Legislature again offered those lands sale, and by solemn legislative and executive ;, did sell, and by deed convey forty millions ıcres of those lands to certain other companies, which they received the compensation agreed That those grantees, having it in their power to show to purchasers the best possible evidence of a good and authentic title, did sell the property thus purchased to other purchasers, who had the best right imaginable to put faith in the authenticated documents and title papers presented to them—documents and title papers as good as any ever obtained from an individual by another, or from a State or a nation by a purchaser. Notwithstanding which the succeeding Legislature, not liking the bargain, assumed or attempted to assume the power of reclaiming the property, and passed an act purporting their intention of invalidating the title given by their predecessors, as well as for the destruction of the records and every evidence of the title given by them.

It appears that the purchasers, when they found Georgia offering to cede those lands to the United States, gave warning and notice of their claims to the Chief Magistrate of the Union; in consequence of which, or for some other cause, a provision for a compromise with the claimants was made in the law which authorized the holding a treaty with Georgia respecting the cession of those lands. Commissioners of the United States, agreeably to the powers vested in them by that provision, have met the claimants, and have, it seems, agreed on terms of compromise, which in my opinion are very advantageous to the United States; which compromise is now before this House for their sanction.

I stated last year that, under my impression of the validity of the title of the claimants, the compromise was more advantageous to the nation than could be expected; more advantageous to be sure than I had previously expected could have been made. I still think it an advantageous bargain, on account of the revenue which will arise from the sale of the residue of the lands—seven-eighths of forty millions, to which an unexceptionable title can then be given, a title which good farmers and useful settlers will not fear to improve under. Advantageous, I say also, on account of the benefit to be derived from the early settlement of some of the best lands, and in the best situation of any the Government claims—a country intersected by many navigable waters, and through which the road goes from almost every State in the Union to Natchez and New Orleans; a road which, in the present state of things, is frequently infested with murderers and freebooters.

Nothing could be more surprising to me than the opposition this, in my opinion, reasonable, necessary and profitable compromise has met with, both last session and this. I say profitable, because it takes not a cent out of the Treasury, nor from any other fund but the land itself; which, however wrong it was to purchase it, knowing it to be sold to others, whose claim was in a measure recognised by the contemplated compromise at the very outset of the negotiation—however wrong, I say, it might have been for the United States to have become the purchasers, they have not paid, nor are they bound to pay a shilling from any other fund than the land itself, notwithstanding all this clamor about robbery. Such has ever been my opinion of public faith, that although I doubt not

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that bribery was used in the Legislature of Georgia in the transaction of 1795, to a certain degree, their successors and the State were bound to abide by the solemn contract. I say solemn, because it appears to be confirmed by the Executive of the State, against whom I do not recollect any charge of bribery to have been made. Had that Executive (who was on the spot, and must have been a better judge of the corruption talked of than we can be) arrested, by his withholding hand, the completion of the contract, and refused his signature to those papers which enabled the purchasers to convey their purchase to others, I should now say, the title being incomplete, we have nothing to fear from it, we want no compromise. This no doubt would have been done had the Executive supposed that the people of Georgia were injured, and that they would support him in that refusal. But, sir, the honors and preferments retained by and conferred on so many of those persons charged with the bribery, leads me to believe that there were causes unknown to me which led to the uneasiness on the part of the people of Georgia, with regard to the sale in 1795, and led to the attempt at resuming the right to the lands in 1796.

In the course of this discussion, we who wish for a compromise of this perplexing business—this business which seems to be kindling the greatest discord in the nation—have been charged with an intention of committing a robbery which is far to exceed all the petty larcenies of the former Administration, and such of us as have aided to depose the former and support the present Administration, are threatened with being for the future considered as Federalists, let our professions be what they may. For my part, I can assure the member who threatens us, that it never in my life gave me pain to be called a Federalist, in the true sense of that word—in the sense in which the word was used by the great man who said, "We are all Federalists, we are all Republicans;" but, sir, it really gives me pain to hear and to see the character of the head of one of the Departments of our Government lugged into this debate, and so illiberally treated. The man I respect highly both for his integrity and talents—in the first of which, in my opinion, he stands behind no man in this nation; and although he has the misfortune to suffer the censure of the member from Virginia, I believe he enjoys almost universal applause for the great zeal, fidelity, and sound discretion with which he has discharged the important functions entrusted to him.

From the drift of the speeches delivered by the member from Virginia, from his call for the Postmaster General's report of a list of his contracts, and from the invitation he has given to an examination of that report, I am led to consider it a duty I owe to myself, in this House, and in the face of the world, to take up that report, and explain the nature of the contracts which there appear in my name. I find my name seven times mentioned in that report: the first is in the 12th page, for a contract for carrying the mail from Cincinnati to Detroit; the second in the same page, and is from Marietta to Cincinnati; these two contracts I never solicited or bid f[illegible] Postmaster General having advertised [illegible] sals, and having received none that [illegible] reasonable, they being new routes and [illegible] for one year only, he wrote to me [illegible] price they stand there at, and I underto[illegible] the business done. For the performance [illegible] latter contract I gave every cent I recei[illegible] without saving one penny for a great deal [illegible] ble, risk, and perplexity, I had taken [illegible] self to get it effected. From the other I [illegible] few dollars toward paying me for the care [illegible] ble, and responsibility I had sustained on [illegible] casion. Long before these contracts were [illegible] informed the Postmaster General that I [illegible] take neither of them again, and the contract [illegible] Cincinnati to Detroit was let to another person [illegible] $105 60 more than was given to me [illegible] seen in the 22d line of page 20 of the [illegible]

The third time my name is mentio[illegible] same 12th page, and is from Harrie[illegible] Massac, a distance of about 180 or 19[illegible] which $654 75 is paid; out of this [illegible] paid for ferriage. For some parts of [illegible] am obliged to give much more than [illegible] ate share of what I receive; some [illegible] give a trifle less; sometimes my own [illegible] the mail. I cannot with precision tell [illegible] or gained in it, but it cannot be $[illegible] The fourth contract is also in the same [illegible] from Russelsville to Eddygrove, or [illegible] dyville; it is 80 miles, for which $[illegible] this is as low if not lower than the [illegible] anywhere south or west of this place [illegible] to the person who performs it the [illegible] of what I receive. The fifth and [illegible] name is mentioned in that report [illegible] page—those are merely a renewal of the [illegible] mentioned contracts, which had expired [illegible] all of those contracts were made before I [illegible] elected to my present seat in this House, before [illegible] had the pleasure of a personal acquaintance with [illegible] the present Postmaster General, and before I ever spoke with him.

The seventh contract is noticed in the last page of the Postmaster General's report, which is [illegible] Massac to New Madrid, from Kaskaskia [illegible] rardeau, from Cahoka to St. Louis, a distance [illegible] more than 200 miles, for $515, out of which [illegible] than $150 must be paid for ferriage, [illegible] ferriages stood at the time of the contract.

This is the true history of the contracts [illegible] which it is insinuated that the Postmaster [illegible] ral has bribed me. I never was bribed [illegible] not all the lands and negroes my [illegible] that could tempt me to do a thing [illegible] or conscience dictated to me to a[illegible] sir, if it was pertinent, show how the [illegible] lance of the present Postmaster Gener[illegible] prived me of the benefit of the only [illegible] contract I ever made with the Govern[illegible] contract made with his predecessor [illegible] very improperly, in my opinion, const[illegible] on account of some words in it not be[illegible] consonant with the intention of the [illegible] parties; believing, however, that the [illegible]

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General designed to do what he thought right, he has not lost my esteem. nor do I think his character can be injured by the braying of a jackall or the fulminations of a madman. But, sir, permit me to inquire from whom these charges of bribery, of corruption, and of robbery, come. Is it from one who has for forty years, in one shape or other, been intrusted with the property and concerns of other people, and has never wanted for confidence—one whose long and steady practice of industry, integrity, and well doing, has obtained him his standing on this floor? Is it from one who sneered with contempt on the importunity with which he was solicited to set a price on the important vote he held in the last Presidential election? No, sir; these charges have been fabricated in the disordered imagination of a young man whose pride has been provoked by my refusing to sing *encore* to all his political dogmas. I have had the impudence to differ from him in some few points, and some few times to neglect his fiat. It is long since I have observed that the very sight of my plebeian face has had an unpleasant effect on the gentleman's nose—for out of respect to this House and to the State he represents, I will yet occasionally call him gentleman. I say, sir, these charges have been brought against me by a person nursed in the bosom of opulence, inheriting the life services of a numerous train of the human species, and extensive fields, the original proprietors of which property, in all probability, came no honester by it than the purchasers of the Georgia lands did what they claim. Let that gentleman apply the fable of the chief and the receiver, in Dilworth's Spelling Book, so ingeniously quoted by himself, in his own case, and give up the stolen men in his possession.

I say, sir, these charges have come from a person whose fortune, leisure, and genius, have enabled him to obtain a great share of the wisdom of the schools, but who in years, experience, and the knowledge of the world and the ways of man, is many, many years behind those he implicates—a person who, from his rant in this House, seems to have got his head as full of British contracts and British modes of corruption as ever Don Quixotte's was supposed to have been of chivalry, enchantments, and knight errantry—a person who seems to think no man can be honest and independent unless he has inherited lands and negroes, nor is he willing to allow a man to vote in the people's elections, unless he is a landholder.

I can tell that gentleman, I am as far from offering or receiving a bribe as he or any other member on this floor; it is a charge that no man ever made against me before him, who from his insulated situation, unconversant with the world, is perhaps as little acquainted with my character as any member of this House, or almost any man in the nation; and I do most cordially believe that, had my back and my mind been supple enough to rise and fall with his motions, I should have escaped his censure.

I, sir, have none of that pride which sets men above being merchants and dealers; the calling of a merchant is, in my opinion, equally dignified, and no more than equally dignified with that of a farmer or a manufacturer. I have a great part of my life been engaged in all the stations of merchant, farmer, and manufacturer, in which I have honestly earned and lost a great deal of property, in the character of a merchant. I act like other merchants, look out for customers with whom I can make bargains advantageous to both parties; it is all the same to me, whether I contract with an individual or the public; I see no Constitutional impediment to a member of this House serving the public for the same reward the public gives another. Whenever my constituents or myself think I have contracts inconsistent with my duties as a member of this House, I will retire from it.

I came to this House as a representative of a free, a brave, and a generous people. I thank my Creator that he gave me the face of a man, not that of an ape or a monkey, and that he gave me the heart of a man also, a heart which will spare to its last drop in defence of the dignity of the station my generous constituents have placed me in. I shall trouble the House no farther at this time, than by observing that I shall not be deterred by the threats of the member from Virginia, from giving the vote I think the interest and honor of the nation requires; and by saying if that member means to be understood that I have offered contracts from the Postmaster General, the assertion or insinuation has no foundation in truth, and I challenge him to bring forward his boasted proof.

Mr. J. CLAY.—It was not my intention to have troubled the House with any observations on the subject, but I think a view may be taken different from any exhibited by the gentlemen who have preceded me. Some of the gentlemen who have advocated the appropriation of the land to satisfy the New England Mississippi Land Company, have been content to rest the claim upon the ground of policy. They have said that if some mode should not be taken to satisfy the Yazoo speculators, they would be incessantly troubling Congress. If these men have any title, it must be by right of pre-emption; and yet that title it was not practicable for them to acquire, as the State of Georgia could not extinguish the Indian title. Notwithstanding, however, their imbecility, the Legislature of Georgia, of 1796, undertook to grant an estate in fee simple. It will require more time to examine this question, and perhaps more abilities than I possess; but I cannot conceive how Georgia had a pre-emption title to the land, while the Indian title still existed. The Congress of the United States possessed the sole power of extinguishing the Indian title to lands within her territories: no individual State has either the right or the power of extinguishing the Indian title to any lands they may claim. Of course, Georgia had no right to grant a title in fee simple.

We are told of the policy of compromising with these speculators, and that they are innocent purchasers. How are they so? Are they not the very men who purchased a fraudulent claim, and does not their deed carry on the face of it a proof

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that they knew it to be fraudulent? There is also a strange coincidence: These people's deeds are dated February 13th, 1796, the very day that the rescinding act was passed, but these instruments were not all executed until May following. [Here Mr. J. Clay read several passages from the pamphlet published by the agents of the New England Yazoo Company, and compared them with the resolution of Congress passed on that subject, from which he inferred an acknowledgment of the present claimants, that they purchased a disputed title.] He went on to state that Governor Strong, who was at that time a Senator of the United States, was made acquainted with the whole transaction; and it could not but be presumed that he and the Massachusetts delegation communicated to their constituents the circumstance.

The general notoriety of the fraud, said Mr. Clay, is such as to convince any man that the present claimants are not innocent purchasers. The very conditions under which they purchased, demonstrate this. They undertake to stand in the shoes of men who had defrauded the State of Georgia through a corrupt Legislature, and when they paid their money, they conditioned that it should not be repaid them, by reason of any defect in the title. The petitioners take it for granted, that, whatever was the fate of the original compact, though bottomed in fraud and consequently null, they have no other resource than in the mercy of this House. Why did they make that stipulation in their deed? Why not take a general warrantee? If the deeds had been executed in the usual manner, they could have recovered their money from the party who had practised upon them. But notwthstanding that article, I still think they should have recourse to the original grantees; let them go to them, and a court of equity will do them justice.

I have no idea of supporting questions of property upon grounds of mere policy; I shall never be inclined to squander millions of the public money, because a gang of swindling speculators may enter this House and prove troublesome to its members. The agents of these men have accidentally acknowledged that they cannot extinguish the Indian title, and, therefore, they cannot get possession of the land. What is a man to get by a contract, when it is impossible to comply with the terms? I was in hopes, that the representation from the State of Pennsylvania would have been unanimous on this question: they ought to know, from the salutary experience of their own State respecting land speculations, whether it relates to the Connecticut, Susquehanna, or Delaware companies, who have kept a part of our State in a continual broil for fifty years, while another set of men, under the garb of the Population and Holland companies, have thrown their warrants over the northwestern corner of the State, and are likely to defeat the great objects which the Legislature had in view, when they disposed of the lands to actual settlers alone. I trust, however, that they will be defeated, and that the courts of justice will determine the case in the manner in which it was recently [illegible] I regret that the oldest member of [illegible] from our State, should, at this late hour [illegible] those republican principles, which he has [illegible] and so ably maintained, to support a [illegible] Yazoo speculators. For my part, I must [illegible] altered man indeed, if I ever consent to [illegible] promise with a gang of speculators holding [illegible] founded in fraud and speculation.

Mr. Bedinger said that as the gentleman [illegible] Virginia, who first spoke in opposition to [illegible] port, had called on the Committee of Claims [illegible] the reasons on which the report was [illegible] and particularly for their reasons for [illegible] on this occasion from the course usually [illegible] of assigning the reasons on which a report was made, he would, as he was a member of the committee, take the liberty of making a [illegible] planation of facts, which might, in some [illegible] afford the satisfaction requested. The [illegible] tee of Claims was composed of seven [illegible] of these, three were opposed to the report. [illegible] contended in committee that the reasons [illegible] report ought to be stated; that before [illegible] on the House to sanction the extraordinary [illegible] lutions recommended, cogent arguments [illegible] adduced. But this course of procedure [illegible] ruled by the majority, for the best reason [illegible] because there was no good ground, no [illegible] ciple, on which these resolutions could [illegible] ported.

When the subject was first submitted [illegible] committee, the minority, of which [illegible] entertained hopes that the principles [illegible] heretofore governed the Committee [illegible] principles long established and sanctioned [illegible] House, would not be dispensed with [illegible] casion. These were, where a claim was [illegible] equitable, to grant a full compensation, [illegible] otherwise to reject it altogether. [illegible] had never conceived it equitable [illegible] when there was a just and legal claim [illegible] a compromise. And it surely would be highly dishonorable to give to any man possessed of a good claim, only a part of his just right. We thought it would be degrading to the dignity [illegible] this House and of the committee to adopt [illegible] practice. The question was, therefore, [illegible] the original grantees any good title, either [illegible] or equity? It was not pretended that [illegible] We hoped that this point would be decided [illegible] committee, and the decision reported to the [illegible] But we were baffled in this expectation [illegible] majority refused to pursue this course.

Driven from this ground, we thought [illegible] rely on the abundant evidences of corruption [illegible] fraud reported by the Commissioners [illegible] tended, using their own words, that [illegible] could not be supported. But here again we [illegible] overruled.

We then called upon the Representatives [illegible] the State of Georgia for such information [illegible] possessed, deeming such information [illegible] towards enabling us to make a satisfactory [illegible] and the House a just decision. But [illegible] ly our inquiries were to little purpose, [illegible]

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jority overruled the course we wished to pursue. The Representatives informed us of many circumstances contradictory to the statements of the petitioners, of which I will state a few. They represented, that when one of the agents mentioned that he claimed for or under a certain James Bulgin, he was told that James Bulgin was at Augusta during the whole session of 1795, but that he was not an original purchaser; which led me to believe that he was fully acquainted with the fraud, and had no just pretensions to compensation. One of the agents, Mr. Pippin, stated in the presence of the committee that he held under Bulgin.

They represented that the statement of money said to have been expended and used for the benefit of the State, was not true; and this was fully explained, I think, to the conviction of every member of the committee.

They represented that the great body of the people of Georgia were opposed to the sale of the lands, and that only a small part, called the combined party, were in favor of selling. That there was at the time of the sale no extraordinary call for money. That the indignation of the whole people of Georgia had overwhelmed the authors of this black transaction. That presentments had within three months been made by grand juries in seven out of nine of the counties of the State. That the road from Augusta to Charleston was used by travellers almost as frequently as the road leading from the Capitol to Georgetown, and that consequently everything of importance which was transacted at Augusta must have soon reached Charleston; travelling from which place to Boston was usual at all seasons of the year.

This, and much more important information, was given by the Representatives from Georgia, men who, from the honor and respectability of their characters are more to be depended upon than any commissioner who may be sent to that State, who most probably would be guided by *ex parte* evidence.

I consider this question as very important. Let it be recollected that the land in dispute is as large in extent as six States of the Union. What, then, would have been the situation of the United States had these avaricious men succeeded in their gigantic designs?

During the course of this discussion, the merits of the Committee of Claims have been often alluded to. To elucidate the conduct of the committee, I have made this explanation. If any credit is due to those who compose the majority they are welcome to all the honor which can flow from their report. I claim no part of it. I deem myself a representative of the people, appointed to guard their interests from violation. I cannot, therefore, render to my constituents any satisfactory reasons for putting the property, thus confided to me, into the hands of individuals not answerable to them for their conduct. I believe it safer that this power should remain in the hands of Congress, than that it should be placed in the hands of the best men that can be appointed.

Mr. DANA said that he had not intended to have risen on the present question, but the respect he owed to the Committee of Claims, which had been attacked by the two gentlemen last up, who were also members of that committee, obliged him to take some notice of what had been said. He had the honor of being chairman of that committee; but it was well known to this House that it was not a place of his seeking; and he believed there was no one member of that committee who aspired to the honor of the toil and drudgery their chairman was compelled to undergo. The gentleman from Kentucky (Mr. BEDINGER) well knows, said Mr. D., that I thought the office ought not to be pressed upon me. He knows the motives on which it was bestowed, and he will have the goodness to recollect that after every other attempt to disentangle myself, I threw out to them an idea that perhaps they would repent having placed me in it. Having, however, once undertaken the task, I performed its duties according to the best of my abilities, and with the greatest assiduity. I did not, however, conceive that when I devoted myself to this service I was to be the servile instrument of any man or set of men, or to be a slave to their opinions. I always gave to the subjects referred to us the best examination and consideration in my power.

Whenever the House decided a question of reference to that committee, whatever might be my own private opinion on the principle, I always considered it my duty to conform the report to the declared will of the House; until that was manifested I always considered myself to act as I judged proper.

It is objected by the two gentlemen who preceded me, that on the present subject the committee pursued a course that had no precedent; if such be the fact, I am uninformed, for be it known that the present chairman of the Committee of Claims had never until this session been a member of that committee: Nor, as a member of Congress, did he know that a proposition of compromise had ever been before referred to the Committee of Claims. So far as his recollection served him, all claims heretofore submitted were for the whole or nothing, and after the applicants had been fully heard before the committee, the question turned upon those two pivots—all or none. On the subject now under consideration, the question was solely as to compromise, and that alone was agitated when the committee took it into consideration; and it will be recollected that the committee adjourned without coming to a decision. The rules of the House which govern in Committees of the Whole, are also applied to the Committee of Claims, and when the House has settled a principle, and referred to the Committee of Claims to make the application, the committee never attempt to travel out of the path prescribed.

I here take the liberty of asking what was the question referred to the Committee of Claims. Certainly it was a proposition for a compromise, or nothing; every member of the committee must know this. I believe there is not a single

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member on this floor who is a stranger to the fact. What, then, sir, was the committee to think of the order of the House? Is it understood that the committee were never to report because compromise was the object? Was it intended to make the committee the mere instruments of delay? Yet it must be so understood if they were not to act. That the subject referred was such as I have stated is very clear, and the fact is so stated in the report before the House. And to show that it was so considered and acted upon by the committee, I will read an extract from the report itself, which, after giving an historical account of the transactions relating to the sale of the vacant lands of Georgia proceeds:

"These conflicting acts present a general question of serious moment, on which the committee abstain from expressing a decided opinion. It is not the object of the present applications, that Congress should decide the question of strict title, as originally claimed under the beforementioned act of the 7th of January, 1795.

"The petitioners request a settlement of their claims, on terms compatible with the articles of agreement before mentioned. At the same time it is proposed, as an alternative, that the whole question of title may be submitted finally to judicial decision. The general provisions of the existing laws of the United States do not authorize the institution of any process on the part of the claimants, whereby such a proposition could be carried into effect. And perhaps it might be questioned, whether a special provision for this purpose would be conformable to the spirit of the agreement with Georgia. It is not suggested that any proceedings of the Government of the United States have encouraged an expectation that such provision would be made.

"The remaining inquiry relates to a settlement of claims by compromise. This is the known object of the present applications; and the Committee of Claims have considered it incumbent on them to attend to the proposition for compromise which has thus been referred to them by the House.

"According to the agreement with Georgia, the reserved five millions of acres constitute the whole fund applicable to any such purpose. What portion of this fund will be requisite for satisfying the claims specially provided for by the two first sections of the act of Congress of the 3d of March, 1803, the committee have not been able to determine. From the residue, however, whatever the same may be, it is prayed that a compensation may be made on account of the claims of the present applicants.

"Some of these claims are known to relate to lands within a portion of territory to which there has been a claim on the part of the United States and of Georgia. The act of Congress, of the 7th of April, 1798, which authorized the establishment of a government in the Mississippi Territory as therein described, made provision for the appointment of Commissioners to adjust and determine with such Commissioners as might be appointed under the legislative authority of the State of Georgia, all interfering claims of the United States and that State to the territory; and also to receive proposals for the relinquishment of any such cession of the whole or any part of the other territory claimed by the State of Georgia and out of its ordinary jurisdiction. A supplementary act, of the 10th of May, 1800, authorized the Commissioners, on the part of the United States, finally to settle, by compromise with the Commissioners on the part of Georgia, any claims mentioned in the act of the 7th of April, 1798; and to receive, in behalf of the United States, a cession of any land therein mentioned, or of the jurisdiction thereof, on such terms as should appear reasonable. The same act also authorized the Commissioners, on the part of the United States, to inquire into the claims made by settlers, or any other persons, to any part of the aforesaid lands, and to receive from such settlers and claimants any propositions of compromise, and lay a full statement of the claims and propositions, together with their opinion, before Congress, for their decision thereon.

"In virtue of these acts, the Commissioners of the United States concluded the beforementioned agreement with Georgia, and thereby settled the interfering public claims."

This shows that, according to their understanding, the thing referred was a compromise, and not a question of strict title. Nor do the Committee of Claims, so far as I have information, ever offer a compromise of a claim that goes for the whole amount. Let gentlemen read over the memorial and they will find that I am correct. Not a member now sitting in his place, but who will accord with the opinion expressed by the committee. Were the committee to report on a question not referred to them. Were we so ignorant of our duty, and so perverse that we could not understand, or would not perform the duties required by the House? And were we to subscribe a declaration of an opinion on a subject not before the committee? Whatever may be the admissibility or inadmissibility of the claim of the present applicants, or my opinion thereon, is not the point I am endeavoring to elucidate; or what is, or was, the sense of the House on referring it to the Committee of Claims. From whatever cause the reference sprung, the thing once consented to ought to be attended to, and it was the duty of the committee to do what they were enjoined to perform.

I do not know that there was any deviation from the usual course of proceeding in the committee on this subject whilst it was pending before them. As respects the mode of conducting the inquiry, I can assert that everything was done as orderly and as carefully as on any other claim ever before them. In the first stage of the business, efforts were made to obtain information from every quarter where it was likely to be procured, whereby the propriety of the claims could be tested, that the whole subject, with all its circumstances, might be drawn to a focus, and presented fully and fairly in one view. A general desire was expressed that any gentleman who could throw any light on it, would be pleased to attend the committee, and communicate such information as he possessed. In consequence of this invitation, two of the Delegates from Georgia were present; one of them a member of this House, the other a member of the Senate. And the inquiry was prosecuted with a degree of minuteness seldom equalled, but never exceeded, in a committee of this body, so far as I have witnessed, since I have had the honor of a seat on this floor.

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One of the first points of inquiry, was to ascertain whether the present claimants had notice of fraud; and whether we could bring home to them the proof of direct knowledge, or short of that, whether they had an indirect knowledge of the fraud. One of the gentlemen, the gentleman from Georgia, who I see now in his place, answered with that candor and frankness, that removed all doubt of the correctness of his information, even if his general character had not been a security for the fidelity of his relations. I consider this circumstance as highly honorable to him, because it was known that he was hostile to the claim; but, sir, so much did that gentleman hold his passion in subjection to his sense of propriety, that his information had, and deservedly had, the most decisive influence upon the members of the committee.

When he was asked, whether the New England Mississippi Land Company had notice of the alleged fraud? He answered, he did not know that that they had. He was asked whether the presentments of the grand juries were published in any newspapers that went to the State of Massachusetts? He could not say that they were; it was not probable that the information was sent there. He was asked if he knew whether an account of those transactions in Georgia, was published in any paper that had a general circulation in the other States? He did not know that they were. Thus far the inquiry went, as to notice to the New England Mississippi Land Company. With respect to the South Carolina Yazoo Company, for whom tracts had been reserved, the inquiries touching that point were the same.

He was asked whether the grand juries made the presentments in such time as that it was probable they could reach South Carolina previous to the contracts being entered into for purchasing the Upper Mississippi Companies' title to their lands? He answered, he could not tell; but added, that the grand juries made their presentments generally at the first courts which sat after the passing of the act of January, 1795, and the first court sat either the third or fourth Tuesday (which of these days, Mr. D. said, he did not perfectly recollect) in February following; and the deed of conveyance is dated the 6th of March. He was asked, what was the distance from the counties in which presentments were made to South Carolina, and whether they might not obtain information through the usual channel of the newspapers; and whether he knew that any of the purchasers had seen an account of those transactions? He answered, that there was nothing to make it probable that the purchasers in South Carolina had notice. There was no variation in the statement made by the two gentlemen.

It was inquired, whether bribery and corruption were punishable by the laws of Georgia? It was answered that nothing existed in the laws of Georgia on that subject. It was asked, had any person been prosecuted and punished in the counties where the presentments were made? He answered that no indictments had been found upon the presentments—not a single one. In this statement, I have confined myself to simple facts, and I appeal to the gentleman to say whether I am not correct.

During this inquiry, I felt astonished that crimes of such enormity as those alleged to have been perpetrated in Georgia should be suffered to pass with impunity, and that not a single prosecution for fraud, bribery, or corruption, had taken place, but that the whole was passed over without making a single example, although presented by grand juries in almost every county of the State, and the universal indignation of the people was excited. What was the inference to be drawn from this statement of facts? Either that the proof of the crime was not sufficiently clear and connected to establish the fact upon a legal inquiry, or that they did not wish to prosecute. The only effect produced was the rescinding act by the next Legislature. To inquire whether that Legislature might not likewise be suspected of bribery and corruption, was a question of too horrible an aspect to enter into the breast of any citizen in this country; the case is unprecedented in the United States. Whether such an inquiry will ever be proper to make or not, I know not; but it was not an inquiry for the Committee of Claims to make, because it was not necessary for them to inquire into the question of strict title. The question was not to give the present claimants all they claim or to give them nothing; the question was not a disdain to compromise with fraud. That might be the result of a judicial investigation of the case, but was by no means the question before the committee. I will here ask whether it is a mark of fraudulent title, or incompetency to support a legal one, when there are interfering or conflicting claims, and a compromise is suggested between the parties, when an inquiry into a legal or equitable title would suspend a settlement until the parties were mutually ruined? Can it be considered as a mark of corruption, that in such a case, a part should be given instead of the whole, and the dispute thereby settled to mutual advantage? Is it a proof of corruption in the party which accepts a fraction instead of a unit, rather than go through a judicial investigation? Is it a proof of no title? But this point is decided by the act of Congress in the settlement with Georgia; the United States took the lands, allowing a portion of the claim of the United States to be applied to quiet the claims made upon Georgia to the amount of five million of acres. So that it cannot be considered a mark of corruption, unless the badge is also attached to the Government of the Union; and I am confident no such idea can be entertained of Congress by the people of this or any other country on earth.

Would gentlemen, in their private concerns, refuse to act upon this principle? Would they not prefer an accommodation to a law-suit, when an adverse claimant exhibited a feasible title, not to say one strictly legal? If gentlemen demur to this mode of settlement, they forget the general practice of this country, and the maxims of private life, that peace and quiet with a part is better than strife and litigation with the whole.

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And such, it appears, was the opinion of the Congress which authorized the Commissioners on the part of the United States to adjust and determine all interfering claims of the United States and of Georgia in the Mississippi Territory, and the Congress of 1800, which authorized the Commissioners on the part of the United States finally to settle by compromise with the Commissioners of Georgia, and to receive a cession of the lands on reasonable terms. The same act expressly authorizes the Commissioners to inquire into the claim of settlers, and to receive from such settlers or claimants any propositions of compromise, the whole to be laid before Congress for their decision.

I apprehend this rapid view of the point in question has thrown the objection to compromise entirely out of sight, or if its recollections are still cherished, I refer them to what was said by the gentleman from New Jersey, (Mr. BOYD,) showing the necessity of getting rid of the claim in the manner proposed; what he said was well urged, and I have not the vanity to think it could be illustrated or embellished by any observations of mine.

The amendment before the House to the resolution goes to direct that the whole five million of acres reserved may be applied to pay the South Carolina and Virginia Yazoo Company claims under the act of 1789, as it excludes every claim made under the act or pretended act of 1795. Let me ask, Mr. Speaker, if this amendment does not defeat the object of the resolution altogether, which is visibly to adjust and settle finally the claim of the present applicants as well as all other claims to public lands in that Territory, and is not consequently inadmissible? But, sir, you have decided it to be in order, and, therefore, I shall not dwell on that point. But are gentlemen ready; are they prepared to go the whole length to which the amendment would carry them; and will they really give to the Virginia and South Carolina Yazoo Companies the five million of acres, when they claim but a very small proportion of that amount? Permit me to call upon the mover (Mr. CLARK) for an explanation of his intention.

Mr. CLARK explained, and stated that the object of his motion was to meet and repel that class of claims which had excited such an interest on this floor, and whose cause had been advocated with such energy—and if it was fortunate enough to obtain a majority in its favor, he was frank enough to declare that he would vote against the whole resolution as amended.

Mr. DANA thanked the gentleman for his frankness, from which he learned that the gentleman meant to defeat the claim of 1789, as well as that of 1795. This being the object, he need not make another observation on the propriety of devoting the whole to the South Carolina and Virginia Yazoo Companies.

Various observations, said Mr. DANA, have been pressed into service, which seem to have no very particular relation to the subject. I will acknowledge that some of those observations deserve some attention on my part, from a regard to the general character and standing of the gentleman who has made them, rather than from their relevancy to the subject, or their intrinsic force. The first general idea thrown out is this: That the proposition of the committee must be wrong, because men of different political sentiments appear in its defence. Let us examine this position, not as a model for argument, but rather as an effort of eloquence; for the gentleman is eloquent, and trusts to eloquence to carry him through all his difficulties. He disdains the arbitrary trammels of logic; and the dull and beaten paths of plain reasoning have nothing to gratify his taste or imagination. For my part, when I see gentlemen avoid the course of plain argument, I am inclined to believe they are aware of the weakness of their cause. And when they who understand a subject, instead of entering into a discussion of its merits, apply their talents in making a pathetic and eloquent appeal to the people from their representatives on this floor, what are we to think of their conduct? If the gentleman had argument on his side, would he have recourse to such means then? No, sir, the gentleman from Virginia does not rely upon the strength of his positions; but he endeavors to storm your judgment through the violence of your passions. The report applies itself to the understanding of honest men, and men of plain and common sense; the inquiry it makes has for its object a compliance with the order of the House, and not a digression toward objects totally distinct and unconnected.

I beg to be indulged in a brief examination of the question whether the agreement of the members of this House, supposed to consist of different political parties, is a proof that they are influenced by bribery or corruption. It is laid down as a broad position, and must equally apply to every vote given in this House, wherein members of both sides have coincided. Last session the national character was struck at by the lawless acts of the pirates of the Mediterranean. The President called for the means of avenging the insulted honor of the nation. The yeas and nays were called on furnishing these means, and the vote turned out to be unanimous. Was this a proof of bribery or corruption on either side? We have had a similar vote this session on giving the people of Louisiana the right of self-government, and the resolution to this effect passed unanimously. But if it is considered as a mark of corruption that the two sides should coalesce, you, Mr. Speaker, are accessory to the crime. The reading of a paper cannot be dispensed with but by the unanimous consent of the House—a vote, to which effect, you are in the daily habit of presenting to us for our approbation, which is almost constantly given. If unanimity is a mark of conspiracy, fraud, and corruption, you, Mr. Speaker, are the great sewer through which it has vent. Excuse me, sir; you know I do not apply these remarks to you as founded in fact, but merely to show the extravagance of the opinion which has been advanced on this point! What, sir, is the world to think of your conduct if it is a stain to have a vote of

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both parties in one's favor? Why, sir, at the last session, you had a unanimous vote of thanks for your able and impartial conduct in the Chair which you then filled, and still so honorably and advantageously fill. With these observations I will dismiss this argument, if argument it may be called.

Another remark has been made respecting the conduct of the Committee of Claims generally. It was said that that committee, regardless of the feelings of humanity, uniformly opposed the claims of our Revolutionary soldiers; that their widows and orphans' tears and supplications were disregarded; and that it was only speculators, swindlers, and public robbers whom they felt compassion for; and we were amused with the story of Magdalen charity. But if the gentleman will look forward, he will see a bill on your table from that very committee providing for these Revolutionary claims. Was it for this reason that the claim of Mrs. Elliot was resisted? Let the gentleman (Mr. Nicholson) say whether his eloquence was exerted on that occasion for this purpose; and let me ask who was the loudest member in resisting that claim? Sir, an opposition to that measure will have to be put into the black catalogue of your sins. Excuse this language, for you know it is only used to show the extravagance of the charge of want of humanity. Will the gentlemen from Rhode Island and Virginia be discharged from the offence of not feeling for the war-worn soldiers, their helpless widows and orphans? So much for a defence of the general character of the Committee of Claims against the charge of want of humanity!

One observation upon the assertion respecting the present applicants, who are represented as bankrupt in reputation as in fortune. If this is the case of any of them, the observations ought to be applied to the individuals and not to the whole body. Who of the applicants are the refuse of every sect and party, it lies not with me to say. Among them, however, appear characters honorable and highly esteemed in their own country. In Massachusetts, the Attorney General is one; another was an Elector at the last Presidential election; another is the District Attorney of the United States; several others occupy posts of great confidence under the State government; and some are members of the Legislature. And who are those of South Carolina? Let the gentleman from that State answer. I ask, would the gentleman from Maryland subscribe to this character on the part of the citizens who are applicants from that State? The total number is one thousand two hundred, and it is horrible to believe that there is such a multitude of unprincipled men in our young country.

The gentleman, who moved the amendment, has quoted several authorities; but I entertain doubts whether they apply to the present subject, and rather incline to believe that the doctrine contained in them applies only to the particular cases in chancery on which they were delivered, and that they are general law maxims. What he said of asking justice with clean hands and pure hearts does not apply; the question being merely, have the applicants equity to entitle them to a proffered compromise? It is admitted that where the claimant goes for the whole or nothing, any want of equity sets the whole aside. He has however candidly conceded that he was willing to make provision for innocent purchasers, if there were any. This confession his heart would not let him refuse, his head admitted the declaration and his ingenuousness has made the expression. He also adds ingenuously, that though he were willing to relieve the innocent purchasers, yet he would not do it whilst they remained in such bad company. His object is to make a discrimination; but how shall we know who are the innocent purchasers he means to save from ruin? How could the Committee of Claims or how could he himself undertake to sift and scrutinize twelve hundred claims during the present session? If then it is admitted that, among this mass of claims, there may be some proper to be relieved, will it not be the better mode to appoint men of your own choice, of sound discernment and industry, to examine the several cases, and do what is right in each? If the gentlemen could not go through these claims himself within the present session—and I doubt if he could within a year, notwithstanding his disregard of relaxation and his indefatigable application to public business; he would never require others to do that to which he found himself incompetent. Leave it, therefore, to men who are competent, and who have leisure; so that justice may be done in cases which require it, and let those who have acted wrong be neglected.

I would not be understood to say that the United States have come under any absolute engagement to meet the present claimants, but the acts of Government have held out encouragement and raised a general expectation that someting will be done to quiet them. If nothing is to be done, we ought not to have put the parties to the expense and trouble of registering their claims in the Department of State.

The only purpose of the resolution is to authorize three Commissioners to receive propositions of compromise and settlement; and to adjust the same in such a manner as will conduce to the interests of the United States, and not exceed the limits prescribed by the convention with the State of Georgia; and the only difficulty will be to find three persons competent to the task. This, however, will be admitted of sufficient force to countervail the resolution.

Mr. Nelson observed, that as the gentlemen on the north side of the House were getting warm, he feared the heat might increase, and reach the south side; in order to furnish gentlemen with an opportunity of cooling, he would move an adjournment.

On the question the House divided—61 in its favor, and 51 against it. The House then adjourned.

Saturday, February 2.

Another member, to wit: Walter Bowie, from Maryland, appeared, and took his seat in the House.

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The SPEAKER laid before the House a report of the Secretary of State, on the memorial of Stephen Sayre, of the State of New Jersey, referred to him by order of the House, on the fifteenth ultimo; which was read, and referred to a Committee of the Whole House on Wednesday next.

On motion, it was

Resolved, unanimously, That SAMUEL HAMMOND, a member of this House from Georgia, having accepted an Executive appointment, has vacated his seat in this House.

Resolved, That a copy of the foregoing resolution be sent to the Governor of Georgia, by the Speaker of this House.

Mr. J. RANDOLPH, from the committee to whom was committed, on the twenty-eighth ultimo, the bill sent from the Senate, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial Courts," reported the same to the House without amendment: Whereupon,

Ordered, That the said bill be read the third time on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" to which they desire the concurrence of this House.

GEORGIA CLAIMS

The consideration of the report of the Committee of Claims on the claims on Georgia lands was resumed.

Mr. HOLLAND.—Mr. Speaker: When this subject was before the House at the last session, I viewed it with the utmost indignation, from an impression that the act of Georgia of 1795, for the sale of their public lands, and under which the petitioners now claim, was an act of the most corrupt Legislature on earth; and I am yet far from believing that all the members who voted in favor of that act were influenced from the purest motives. But upon an examination of the subject, in a cool and dispassionate manner, I find strong grounds for a removal of many of the prejudices that then existed in my mind. Sometime after the passage of the act of 1795, I happened to be in Georgia, and mixing with those who were unfavorable to it, I adopted a prejudice; and when the subject was brought up at the last session my original prejudice was revived and augmented from a whisper in my ear, or from my seeing it in print, that one of the Commissioners of the United States had an interest in the compromise proposed to be made. A combination of these circumstances produced on me a hasty determination never to give a vote that by any possible construction should give a sanction to a measure so originating and involved in fraud. But, sir, after having more time to examine, and on more mature deliberation, I have relaxed from the hasty determination, and have discovered that it was the result of an honest disgust arising from the circumstances that I have stated. But I have since found that many of the facts that I then relied on did not exist, and consequently that my conclusions were drawn from false premises. I have examined with care, whether the suggestion respecting the Commissioner was true. And here I ask pardon of this officer for the unfavorable impression I then entertained of him, having discovered it to be unfounded. That many of the members of the Legislature of the State of Georgia were influenced from improper, impure, and corrupt motives, I have no doubt; but that the conduct of those members, or the act which they passed, was a sufficient cause to authorize the succeeding Legislature to resort to revolutionary measures, is to my mind exceedingly doubtful. There are many causes, however, if we will take the trouble to examine them, which will in a great measure account for the extraordinary proceedings of both those Legislatures, and if their acts can be accounted for without attributing fraud to the one or tyranny to the other, that portion of charity that we are bound to extend to all mankind will impose upon us the most favorable construction. In order to understand these transactions it will be necessary to inquire into the estimated value of land, in the State of Georgia, to which the Indian claim had been extinguished, and also the estimated value of lands in question to which the Indian claim had not been extinguished for years antecedent to the disposal of them by the act of 1795; and, also, inquire whether any external causes subsequent to the act of 1795 produced a different conception relative to the value of those lands. A knowledge of these subjects may be useful, and enable us to judge more correctly and more favorably on the motives of either Legislature. The people of the State of Georgia, as well as the Legislature of the State, for years previous to the passing of the act of 1795, had set a low value upon their vacant lands—lands lying contiguous to the settlements to which the Indian title had been extinguished—lands lying this side of the Oconee. I am credibly informed, and if my information is incorrect let the gentlemen from that State correct me, lands had been sold in 1792-'93-'94 for a cent an acre; sold for a sum only contemplated to indemnify the State for the expense incidental to making titles. And as to the lands in question, their estimated value will be best known by adverting to their legislative acts; their Legislature for years had been attempting to sell these lands; in 1787 a large portion of them was offered to the United States for $171,428; and in 1799, about twenty-five millions of acres was actually sold for a little more than $200,000 to two companies, one called the South Carolina, the other the Virginia Yazoo Land Company; and in this case the land was sold on a credit, and the terms of sale not well understood; the purchasers contended that payments could be made in paper bills; but the State insisted for specie; this not being complied with, the titles were not completed by the subsequent Legislature. In 1795, the quantity of land was estimated at thirty millions of acres; the terms were cash; and the sum five hundred thousand dollars, which was paid, and the titles executed,

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ect to many claims derived from Spain and it Britain, and subject to the Indian title and e claim of the United States, as well as the n of Spain to a part of this territory, and also ect to the sale previously made by the State '99 to the Virginia and South Carolina com- es. It was under these circumstances and licting claims to the lands in question that Legislature of 1795 sold this land. Sir, I l not justify the conduct of any member that posed this Legislature, and I admit that all e members that were partners, or took any sideration for their votes, acted imprudently, probably corruptly. But it is possible that ı Thomas Rayburn, who appears in the most ıvorable point of light, having taken, as it is , $600 for his share of the land, or for his vote, there is no legal proof,) might believe that State was not defrauded; he might believe $500,000, that the company was giving for claim of Georgia to the lands in question, was e than the claim was worth. The price for ch unappropriated lands had been sold, the e the State had offered to take, and the price which Georgia had previously sold it for, au- ized this belief; and that this was his belief, be inferred from his taking $600 for seventy- thousand acres, being 1-4 cent less per acre the State sold it for; for it seems admitted he had his choice to retain his share or re- e the money; his choosing a less sum than public sold it for, is an evidence of the value et upon it, and a confirmation that he thought land well sold. But even admitting that Ray- ı, with many others, acted from impure and upt motives, does it follow that the State has ı defrauded to so high a degree as to justify a ırt to revolutionary measures? Did the peace welfare of the State render the proceedings he Legislature of 1796 indispensable? What the property disposed of? Was it a country ich was needed for the cultivation of her citi- s? No, sir, Georgia had independent of this re vacant lands than fell to her share, or than could cultivate for generations to come. It s a tract of country, remote from her citizens, ımed, as I have before stated, by Spain, by the ited States, and possessed by powerful nations Indians, over which Georgia had no control. vas of no use to Georgia only as an estate for , and she had nothing to sell but a mere nomi- title, derived from a dubious construction of original charter, and for this Georgia re- ved, when in great need of money, $500,000— ıuch greater sum than it had been previously posed for or expected to bring. We have now n the causes that produced this sale under the of 1795; let us examine what probably pro- ed the act of 1796. The deprecated act passed ıuary, 1795, in the same year an office was ned for the sale of the public lands of the ited States; these lands were to be sold for two lars per acre, and as much more as they would ng. The vast disproportion in the price of se lands, and the price which the Legislature 1795, of the State of Georgia, had sold their lands, could not well be accounted for by the people of Georgia other than fraud. Fraud was suggested; a single suggestion in a case of this kind is sufficient. Nothing is so disgusting as for our agents, especially in a legislative capacity, to sacrifice from mercenary motives our interests, and be guilty of a breach of trust. Suspicions will now be admitted as full proof; the torrent went on; the belief became general, that by fraud the Legislature of 1795 had bartered off in the most fraudulent manner millions of acres of the realized property of the State. Under this ideal impression, occasioned in a great degree by the causes I have just mentioned, the people of Georgia were misled, and under this impulse the Legislature of 1796 proceeded, and the honest zeal continued until the subsequent conviction. The people of Georgia were not alone misled by the price of the public lands. It inspired an opinion in the minds of the best informed throughout the Union, that fortunes could instantly be made in purchasing lands from the State for a few cents per acre, and then disposing of them much under the public price. Companies engaged; the land laws of South Carolina were peculiarly favorable; the adventurers had a year's credit for the payment of the purchase money, which was about five cents per acre, and, notwithstanding the enthusiasm, the Legislature did not alter the terms, nor raise the price. Under these fair appearances, many companies formed, who were styled land speculators, throughout the Union, but the consequence was a general failure, a general bankruptcy. One company I was well acquainted with, being in my district, in the county of Wilkes, embarked under the fairest prospects; they were generally men of reputation, influence, and wealth; they entered some millions of acres, but, after having spent much time and money, they were unable to realize their expectations, and found it advisable to apply to the General Assembly to have leave to surrender their lands as an indemnity for the State demands against them in the entrytaker's books, and this was granted as a matter of special favor. I have mentioned these circumstances to show what it was that made the act of Georgia of 1795 so obnoxious to the people of that State; and I am strongly induced to believe that had it not been for the price the General Government set upon her lands in 1795, we should have heard but little concerning the corruption of the Legislature of the State of Georgia in 1795, nor ever have heard of the rescinding act of 1796, nor should we ever have been called upon to sanction an act produced from an overheated zeal arising from a combination of circumstances above stated, to sanction an act that would establish a precedent of a most dangerous nature.

Sir, if the doctrine was once recognised, that a subsequent could examine the motives of an antecedent Legislature, there would be no security for the rights of persons or the rights of property. I do not pretend to say, that there is no case that would not justify a recurrence to revolutionary measures; all that I contend for is that this is not

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a case of that kind; the manner of the sale and the property sold were not so materially connected with the interest of the State as to require a revolution, and I have endeavored to account for the sale of 1795, and the unprecedented and extraordinary act of 1796, from other causes than attributing universal depravity in the one, and absolute tyranny in the other Legislature. There might be other causes in addition to those I have mentioned, that led to and produced those measures, which I shall not notice. But it was declared by the Legislature of Georgia of 1796, that the Legislature of 1795 had no constitutional power to dispose of those lands, and the same doctrine seems to be advocated by gentlemen on this occasion. It is true that there is no specific power given by the constitution of Georgia to their Legislature, enabling them to make a sale of those lands, nor is there such specification of power in any of the State constitutions, nor in the Constitution of the General Governmrnt, yet all the States as well as the General Government have been in the constant exercise of this power. The State of Georgia had previously exercised it; indeed this power is incidental to the legislative authority of every free Government. I therefore consider all objections on the ground of the Legislature of Georgia not having a constitutional authority to dispose of the lands in question of little validity. And I know of no legitimate power that has a right to examine into the motives of the legislative authority of a country: their motives are only to be known by their public acts, and the meaning of those acts so far as they relate to property acquired under them are not to be expounded by a subsequent Legislature, but by the judicial authority of the country. Thus, sir, I have shown the original value of the land in the State of Georgia anterior to the act of 1795, and have demonstrated that the sale under that act was for a much higher price than had been previously asked by the State for those lands, and have endeavored to account for the change of opinion as to the value of lands generally, and the causes that produced so great fermentation and disgust in the people; that the injury was more ideal than real, that the State of Georgia had nothing but a nominal title to the lands in question, and that by the constitution she had a right to dispose of this nominal title in the manner it was disposed of, and that no subsequent Legislature had a right to judge of the motives of an antecedent Legislature, or to impair the rights assumed under a legislative act. I have admitted that there might be a possible case that might justify a recourse to revolutionary measures. But I have shown that the interest of the State did not require it in the present case. And although it may be possible that neither the original grantees nor the sub-purchasers could have any legal remedy in or by the laws of the State of Georgia, as by the act of 1796, judicial remedy seems to be forbidden—yet, sir, in a court possessed of ample judicial power, I have no doubt but that an equitable and just remedy would be obtained, if not to the original grantees, to all innocent purchasers, at least. And here let me observe that it seems to be admitted by gentlemen that innocent purchasers are entitled to an equitable consideration; but they have endeavored to prove that there is none of this description, and that all the petitioners had notice of the original fraud. To prove this notice two cases are relied on. Two gentlemen (Messrs. CLARK and RANDOLPH) from Virginia contended, that the President's Message to Congress on the 17th of February, 1795, is full proof of a notice of fraud. Sir, I consider this communication in a very different point of view. In this Message the President states, that Georgia had passed an act for the disposal of some of their back lands; this communication was evidently intended to excite Congress to adopt measures to induce the State of Georgia to cede to the United States a part of her territory; it is an admission of title in the State, and consequently an admission of a right to sell. So far as this goes (and it is of high authority) it is to my mind a notice of a good title in Georgia, and an inducement to purchase. At all events, it could not by any possibility be construed into a notice of fraud, either in the Legislature or the patentees of the State of Georgia.

The other ground of notice is relied on by a gentleman from Pennsylvania, (Mr. GREGG;) this honorable member states that the deeds obtained from the original patentees are to his mind an evidence and notice of fraud, for that these deeds only convey and guarantee against the State of Georgia. These deeds, like others to lands similarly circumstanced, were not a general but a special warranty; the patentees would have involved themselves extremely had they given any other kind of deeds. The lands in question were known to be subject to sundry claims, and actually encumbered with the Indian title. I was a patentee for a grant of five thousand acres of land derived from an entry made at Hillsboro, being the great office in North Carolina for her western lands, now within the State of Tennessee. Soon after I obtained this grant I sold the land, and from an apprehension that by some arrangement this tract might be subject to the Indian title, I had a similar limitation or provision in the deed. A deed of this kind is evidence of an encumbered estate, but can be no evidence of a fraudulent title. The same gentleman is apprehensive that the sole object of the memorialists is to procure a legislative proposition for the purpose of giving it in evidence in a judicial trial, that is intended to be instituted for the recovery of their whole demand of fifty millions of acres. Had the gentleman paid a little more attention to this point he would have dismissed his fears, it being a settled principle that any propositions that are made for the settling disputes or to avoid a law-suit cannot be admitted as evidence to substantiate a disputed or invalid title. A gentleman up early in this debate, (Mr. LUCAS,) denounced the policy of granting large tracts or monopolies. With whatever force his arguments would have applied had he been in the Georgia Legislature of 1795, when these monopolies were granted, they most certainly can have no application here; the question here is not for granting a monopoly of fifty million of acres,

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t is the reverse, it is the destroying a monopoly by frittering down fifty to less than five million of acres. And in this lies the policy. It is policy in the General Government to quiet the claimants that possses titles to so vast a tract of country; it is policy to avoid, if possible, a judicial decision on this question by a compromise; and it is also justice to do so. The measures that have been adopted by Georgia as well as by the General Government demand this justice at our hands; an examination of the course that has been taken will demonstrate that we have given them ground to expect an equitable compensation for their claims. The State of Georgia has relaxed from their rigorous act of 1796. In their convention with the United States they have set apart the residue of five millions of acres for the purpose of quieting all claims derived from any act or pretended act of the State of Georgia. Can any gentleman say that these claims were not included? The State of Georgia by their Legislature ratified this provision; Congress by their act did the same thing; they did more, they appointed three commissioners to receive propositions of compromise, and further directed all claimants to record the evidence of their claims within a fixed and limited period, and this has been done at the expense of the claimants; and can we now without a dereliction of principle, retract and say that no compromise shall be? Would this be a conduct consistent with justice or policy? So far as I am able to comprehend it, I think it would not. I think we should proceed and put an end to this business and at all events grant some indemnification to innocent purchasers. The gentleman from Virginia (Mr. CLARK) has admitted that innocent purchasers should be indemnified, and were they to apply individually he would make them compensation; and the cases cited from Powell on Contracts recognise the principle, that fraudulent contracts are valid as to the originals in fraud, but are voidable in favor of innocent persons. But the cases read only apply to individual contracts, and never can be supposed to extend to a fraud supposed to be committed by a Legislature. It is believed that no precedent can be found under the sun in which the Judiciary can purge a fraud supposed to be committed by a sovereign legislative body. Under these considerations I think that it would be more consistent with justice and sound policy to go on and not disappoint a reasonable expectation that our public acts have justly excited in the memorialists, and prevent the danger of a judicial decision on the validity of their titles by the compromise proposed by the report of the Committee of Claims. Let us constitute a Board of Commissioners to make the inquiry, and if there are but three innocent sufferers who became such by placing such a faith upon the records of the State of Georgia, as by the Constitution and laws of the United States they were bound to do, these three persons, agreeably to a correct opinion given by the chairman of the Committee of Claims who made this report, are entitled to indemnification. Thus, Mr. Speaker, I have in as concise and intelligible a manner as I have been able, given to the House some of the reasons that will influence me on this occasion, and I entertain a hope that if they are not satisfactory to gentlemen who think differently, that at least I shall be rescued in the mind of those gentlemen who have supposed that many of those who are in favor of this measure are under the influence of speculators, or men in office; but if I am so unfortunate as to be suspected by any as acting under this influence, I have the consolation to know that the suspicion is the production of a heart susceptible of this kind of influence, and not attached to me. I shall however in the meantime vote for the resolution, holding myself at liberty to vote for or against the bill, as I shall approve or disapprove of its details.

Mr. DAWSON.—Mr. Speaker, I am among those who have never considered this as a very important question, at least not so much so as some gentlemen wish to represent it. I believe that neither the peace or safety of the United States, or the cause of republicanism, depend on the adoption or rejection of that resolution, or of its proposed substitute. I believe they rest on a better foundation: the virtue and good sense of the American people. I do also believe, that, if there ever was a question which could be considered as not a party one, this is that question; notwithstanding the efforts of gentlemen to make it so. Some local considerations may attach themselves to it; for the truth is, that the knowing ones of the East have been taken in by some corrupt ones from the South; and thus far it may be said to possess locality. The case is, that some years ago the Government of the United States purchased from our sister State of Georgia, then sovereign and independent, her right to certain lands claimed by her, and lying within her limits, A convention was formed between the United States and the State of Georgia. By that convention, five millions of acres of the said land were set apart to satisfy *just* claims, derived either from the State of Georgia itself, or from the power having a right to sell, previous to her becoming a State.

To ascertain which of the claims were just, and ought to be admitted agreeably to the intention of the contracting parties, and the spirit of the convention, the President of the United States was authorized to appoint commissioners. By virtue of this power, an appointment was made. Three persons were selected, pre-eminent for their virtues and their talents. The Secretary of State, the Secretary of the Treasury, and the Attorney General of the United States; men not only pre-eminent for their virtues and their talents, but holding the highest responsible offices under the Government. Men, not only fitted for the appointment by these considerations, but from one other; they were the very persons who formed the convention with the State of Georgia, and must be supposed to know the intention of the contracting parties, and the spirit of the instrument.

These gentlemen, after much investigation, submitted to us the result of their labors, accompanied by an opinion, that justice, and the interest

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of the United States, required that some compensation should be made to the persons who are now the immediate applicants. This report was not acted upon during the last session, and the petitioners now pray that we will either confirm that report, that we will permit them to go into a court to support their claim according to law, or that we will establish a tribunal ourselves, to determine on it according to justice. The Committee of Claims has recommended the latter. To their proposition, an amendment has been offered, (and which, in my judgment, according to order, is the only subject now under consideration,) which goes not only to a rejection of the report of the Commissioners; not only to a rejection of the claim of the applicants; but to a denial to them to go either into a court of law, or before a tribunal of justice, to support their claims either at law or according to justice. And to this amendment I am most decidedly opposed, whatever my vote may be on the resolution, or rather upon the bill which shall grow out of that resolution. That, sir, will depend on the provisions of the bill; my object is justice, agreeably to the intention of the contracting parties. If a bill can be formed which shall give relief to innocent and distressed purchasers, if any such there are, it shall have my hearty support; if it shall cover fraud or encourage speculation, it shall receive my negative. Mr. Speaker, I have not been induced to make this avowal of my sentiments, and of the line of conduct which I mean to pursue, in consequence of any of the extraordinaay observations which I have heard during this tedious debate; more extraordinary indeed than any which I ever heard, even during the height of Federal intemperance. I was grieved to hear them. Sir, during this discussion, this hall, into which it is presumed that no one comes "whose hands are not clean and whose heart pure," has been filled with the sounds of suspicion, insinuation, bribery, corruption, treason, robbery, and that long catalogue of black crimes, the recollection of which fills the mind with horror, and the mention of which ought to palsy the innocent tongue. A stranger coming within these walls would indeed suppose that he had entered a den of robbers, and not into the sanctuary of the Representatives of a free and virtuous people.

From whence, I pray you, sir, has this arisen? Do gentlemen believe that personal insinuations, acrimonious sayings, and inflated declamation, give force to an argument, dignity to a proceeding, or influence a decision? They may sometimes wound the feelings of an individual, but generally give ease or pleasure to those only who utter them. With me, they pass by as the idle wind which I respect not; or, if they have any influence, it is to confirm me in my opinion, by lessening those who resort to them for lack of argument—by lessening the regret which I feel for separating from those with whom, in general, it is my pleasure to act.

Armed, sir, with the convictions of my own mind, unshielded during my life by others, and unconnected during that time in speculation, even to the amount of one sous, and believing that not a friend, not a connexion, not a constituent that I have, are interested in the rejection or adoption of this report, or, Mr. Speaker, of any of the other claims, I am left free to pursue that course which I deem for the public good; and, for one, at least, of the opponents to the amendment, I am as willing to submit my public conduct, and my political principles to any tribunal, and as ready to support them here, there, or elsewhere, as any of its advocates.

True republicanism, in my judgment, consists in moderation, in humanity, in justice, and in honor. Humanity and justice command the rejection of that amendment; the interest and honor of our country support the other, and *I trust* with confidence that a large majority of this House will obey the sacred mandate.

I repeat, that my object is to protect innocence and to punish vice. If a bill can be formed to afford relief to innocent and distressed purchasers, it shall have my hearty support; if it goes to the protection and encouragement of vice or speculation, I shall be found in the foremost rank *in* opposition. I am willing to make the experiment.

Mr. Nelson said he would not, in imitation of the gentleman just sat down, address the passions of the members with the sweet-scented flowers of eloquence, but he would in plain and homespun language make an appeal to their understandings; and he hoped to be able to demonstrate that the present claimants, one and all, were not entitled to a single foot of the land in question, in point of national justice, in point of law, and *in point* of equity, and that if Congress granted their request they would do an act of high injustice to the whole body politic of the nation.

It astonished me, said Mr. N., to hear the gentleman from North Carolina (Mr. Holland) arguing in justification of the Legislature of Georgia, which made the fraudulent and villanous contract with the Yazoo speculators of 1795, and were I to go into an argument to prove his mistake, I should be deemed one of the most absurd of mankind. I should be endeavoring to prove what no man will deny. Every gentleman I have heard on this floor, except himself, and every one out of doors, nay even the claimants themselves, admit the corrupt views of the Legislature of 1795, and the fraudulent means employed by the speculators; a justification of such a contract coming from that respectable gentleman has indeed astonished me. Why, sir, the claimants rest their claim upon the ground of being innocent purchasers, admitting thereby that their grantors were rogues. If it be now admitted, and I believe it will be admitted by every gentleman in this House, except the gentleman from North Carolina, that those men calling themselves the Legislature of Georgia did make a fraudulent contract—a contract they were not authorized by the Constitution, nor called upon by the people to make, and which they could not make, with a set of unprincipled men as bad as themselves—if it be admitted that the contract was fraudulent, and made without power, it was void *ab initio*, in fact it never was a contract.

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What was the power of the Legislature under the Constitution? Why, to make good and wholesome laws, to advance the happiness and secure the prosperity of the citizens. The Legislature is to be considered the mere agent of the people, not their master. If, as an agent, it made a contract that was fair, or perhaps feasible, and within their powers of agency, it would be binding upon the principal. Such is the doctrine of agency in public as well as in private life. But if I authorize an agent to do certain things for my benefit, and he is detected in a combination with three or four other rascals making a contract to cheat and defraud me of my personal estate, over which I had given him no authority, shall such a contract, though sanctioned with all the forms of law, be binding upon me, and shall I lose my estate by their knavery? No, sir, a court of justice, law, or equity, would equally scout the idea. Yes, sir, I aver it, and will maintain it, that from the moment the Legislature abandoned, or ceased to regard the interests of the people, which was the true rule of their conduct, from that moment they ceased to be the representatives of the people of Georgia, and their acts done contrary to those interests were null and void.

If the act of 1795 was null and void, as I contend it was, and as every gentleman but one has admitted to be the case, then, I ask, how are the present applicants the innocent purchasers they claim to be? Why, sir, if this tract of country, which gentlemen tell us contains 50,000,000 or 40,000,000 of acres, was on and before the year 1795 the property of the people of Georgia, and the Legislature had no right to dispose of the same, and the people have never authorized a conveyance, I would ask whose it is at present? Why, sir, it belongs to the people of Georgia; the fraudulent claim of the claimants, called the Massachusetts' Mississippi Land Company to the contrary notwithstanding. Yet some gentlemen hint that the Legislature of 1796 had no right to rescind the act of 1795. Sir, they did not rescind this act, but passed a law declaratory of the nature of the act of 1795, that it never was of any avail, that it never did exist, that it was void *ab initio*, and that the representatives pretending to make it never were vested with any power on that subject. And all this is verified by the course which was taken by the people afterwards. They assembled in convention to revise and alter their constitution, and in that constitution they have incorporated the declaratory act of 1796, as an indelible mark of their approbation. Will gentlemen say that the people of Georgia have not a right to change or abolish their constitution for their own security, or for the promotion of their own welfare? I believe the right will not be denied, and they have exercised it. I cannot see after this, what ground of law, justice, or equity, the applicants can find to fix their claims upon. A great outcry has been made that they are innocent purchasers, and ought not to suffer for the faults of others. This outcry may take in a few weak men, but certainly this House, with a full knowledge of all the facts, are not to be swayed from the true balance of public and distributive justice. The number of innocent persons concerned in this transaction may be more or less. I know them not, and have only seen the names of two men; these call themselves agents, but agents of whom? Agents of the New England Mississippi Land Company. If we could learn the names of the members of this New England Mississippi Land Company, we might, from our personal knowledge, or from common report, form some idea of their standing in life. But no, sir, they do not present their petition on their individual subscription, but artfully and cunningly conceal themselves under the cloak of their agents; and to be sure, under the cloak of those gentlemen's names, they may talk of innocence. I am sorry to say it, but I can know no man when I stand on this floor to pass between the claimants and the people of the United States, that it looks too much like trick and concealment. All is not fair, or they would be open and above board in their application to the National Legislature.

I believe if the names of the applicants were disclosed, we might find among them some men of worth and talents, but I believe, at the same time, we should be able to trace the names of some of the greatest and most desperate speculators, remarkable for their success in preying on the indigent. We should very probably find some of those persons in connexion with those who preyed upon your Revolutionary soldiers, and obtained their final settlement certificates for a mess of pottage; the universal abhorrence which is now entertained of such characters would condemn their claims, almost unheard to the flames. Ah! sir, is there not something deep to be suspected when such names are concealed from the knowledge of this House? Viewing the subject in this light, I cannot consider the applicants as innocent purchasers, but rather as taking this color in order to avoid detection. How stands the fact? So far as we are informed, a set of men, combined from various parts of the Union, practised upon a weak and corrupt legislative body in Georgia, to get an act or pretended act to pass for the disposal of a vast territory—travel to the North, and there with others of their associates, contrive to change the names of the holders of the property, in order that they may get their heads out of the halter, and leave it upon the innocent purchaser to procure what they knew they themselves would never be able to obtain. I look upon the case to be something like the thief who having stolen a horse, and being likely to be taken, dismounts, and gives the horse to an honest countryman he has overtaken, with a request that he would walk him along the road to the next tavern, where he will wait for him. So the first set of speculators upon Georgia have made a third person an innocent purchaser, that they may obtain from this House what they well knew they never could obtain in their own right. I say this looks too much like trickery; but it is, I trust, a trick too stale to im-

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pose upon the Congress of the United States. It is, I trust, a trick, sir, as old as the settlement of New England itself, and will not pass beyond its boundaries.

But let us take these innocent purchasers on their own ground. An innocent purchaser may be defined a person who verily believes that the party selling, has a fair and legal title to what he is about to dispose of. Now will this cap fit the New England Mississippi Land Company? No, sir, it will not. On the very face of the deed conveying the land, the brand of the fraud is found. Not a man that reads the deed but can see the fraud. Was it ever known that when a man buys land he is willing to take a special warrantee, when he can have a general warrantee? But, sir, admitting that such might be the case, was it ever known that a man was willing to take a title without any warrantee whatever? Nay, worse than no warrantee, that he would, after paying his money, consent to stand in the shoes of another with all its risks and hazards, of which he has not even the smallest knowledge. Was such a man to come to you, Mr. Speaker, and make you such a proposition for the sale of an estate, would you not instantly conceive that the man was a rogue and meant to swindle you out of your money, or that he thought you a fool easily to be imposed upon? If this was not the course of thought your mind would pursue, what else could be your opinion of a proposition to stipulate such a covenant as there is recited in the deeds of the New England Mississippi Land Company? Their covenants say that they shall stand in the place and stead of the original grantees. If, then, the grant was not good in the original grantees, how, in the name of common sense, can it be good to those who by express covenant undertake to stand in their identical place and stead? If you state, sir, that you have no title, and yet I agree to give you money for a conveyance, and oblige myself to stand in your shoes, it is plain that I have not purchased any title. This, sir, is plain, sound sense, intelligible to every farmer and mechanic in the United States, as well as the lawyers at the bar. This covenant is their deed, and it appears to me that the purchasers were willing to enter on a gambling speculation of this kind. We will give one hundredth part of the value for your title, be it such as it is. If we lose, we lose little, if we win we make a great estate. Sir, this spirit leads on to a practice well known to happen every day. A man buys a ticket in a lottery, expecting to win the $50,000 prize. Hundreds and thousands engage in the purchase of tickets; yet there is but one $50,000 prize; and as all, except one, must miss of their aim, they ought and I believe they generally do set themselves down contented, although disappointed in their expectation. So, sir, was the case with the New England Mississippi Land Company, they no doubt expected to make twenty times, or a hundred times the amount of the money they risked in the Georgia land lottery; but they have drawn a blank, and ought to be content. Sir, it was nothing more than a gambling match between the gamesters of the North, and the gamesters of the South. For this time the South has won; perhaps the North may on the next gambling match recover or double their stakes. As to the speculators from the South, they had the advantage in the toss up; they said heads, I win; tails, you lose: they could not lose anything for they had nothing at stake. A gentleman who I have in my eye says, he pities these people; if he would condescend to take a view of them from the elevated stand I have taken, he would see little occasion for pity; he would no longer view them as innocent purchasers, but as gambling speculators, who, having adventured in a play they did not completely understand, have lost the game, and now, like gamblers of the lowest degree, they apply to Congress to return them their money.

The title of these men, as decided by the Commissioners, and as yielded by themselves, is neither legal nor equitable; they only claim on the ground of policy. I do not understand that policy. If I have a title to an estate, I claim the whole. I never compromise. If these persons are entitled to the fifty millions of acres, I say in God's name give it them; do not bring them down to five millions, or less. When they apply to this House for this small pittance of their claim, every one must conceive that they do it in consequence of a defective title. The men, whose names I have seen, are not the kind of men to compound; I am surprised that they would put up with such a scanty provision, they generally, I think, exact to the last farthing. These innocent purchasers of fifty millions of acres of land, who claim your pity, and ask for a part of five millions of acres, are men, that if I do anything for, it shall be justice. What kind of justice would this be considered in common life? My worthy friend from Baltimore, sells me goods to the amount of £500; I tell him I am able to pay him the whole, but then it will be justice to pay him only £5. What would he or the world think of me for such conduct? Congress, to be sure, is a liberal body; I look round this chamber to see the men, who make donations; five millions of acres, with ten millions of dollars to be given—to whom?—and for what? During the short time I have had the honor of a seat on this floor, I have been in the habit of presenting petitions, memorials, applications, &c., for a number of my old brother soldiers, worn down by disease and poverty, who have established the liberty, the independence, and the Government of this country. I have never seen the Committee of Claims, to whom these petitions have been generally referred, recommend the allowance of a single cent; but your purse-proud Yazoo speculators are to have ten millions of dollars, because they have the presumption to ask for it. *O tempora! O mores!*

Mr. Sloan.—Mr. Speaker, in the course of this debate, the time of the House taken up by the supporters of the resolution has been six hours and thirty-three minutes; and by the opposers five hours and two minutes, leaving a balance in our favor of one hour and thirty-one minutes. Hence, agreeable to equal justice, it is our turn now.

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I shall first observe that none more than I regret he great warmth that has appeared in debating ıpon this important subject:—No less important han whether the present Congress will in any legree sanction an act which a former Congress ıas unequivocally declared to be fraudulent; and herefore to all intents and purposes null and void. This I take to be a true state of the question.

Respecting the warmth that has appeared, and which I acknowledge to have risen to too great a ıeight; yet I believe it to have been the product of an honest zeal in the opposers of the resolution, rom a conviction of the speculative degree of fraud that evidently appears in the Legislature of Georgia, and the original contractors of 1795; and, herefore, ought to be looked upon with a charitable eye; more especially when full retaliation ıas been made by the supporters of the resolution. Upon this subject, I shall only notice, hereafter, ome ungenerous allusions made yesterday to my worthy friend from Virginia, (Mr. RANDOLPH.) whose exertions in the sacred cause of liberty rendered his name dear to me, long before I had the ıleasure of a personal acquaintance with him.

It has been said, that the perpetrators, or at least arties to this act, are men of the first respectability n the Union. To this I answer, that I do not now them; nor do I wish to know any man whilst sitting in the seat of judgment. But, granting the fact, does it sanctify the act? Is a fraudlent act less injurious to the community, for being perpetrated by a person or persons that once ossessed the confidence of the people, or by being lothed in purple and fine linen? God forbid that ver such a sentiment should have place within hese walls.

In the course of this debate, some represented he New England speculators as very wise; and thers have represented them extremely ignorant. 'ermit me also to give my opinion, which is, that, f their virtue was equal to their knowledge, they vould shine as stars of the first magnitude in the irmament of the United States.

Mr. Speaker, I desire that what I shall say upon his subject, may be considered as pointed at rinciples that I conceive to be wrong; and not at ndividuals, otherwise than as those individuals spouse and defend such principles.

Believing, as I do, that speculation has heretofore rought our country to the brink of ruin, I hope haritable allowance will be made, if in my subequent observations I treat the subject (in the pinion of some) too severely.

An allusion was made yesterday to my friend om Virginia, (Mr. RANDOLPH.) which I condered ungenerous; it was an intimation that he ad borne no part in the Revolutionary war. Mr. Speaker, if patriotism is confined to those only vho took an active part in that war, soon, very oon indeed, will patriotism be banished from vithin these walls. Yet a little space, until the ll-conquering and irresistible scythe of Time will ut down all the noble patriots who took an active art therein, and number them with the silent ead!

We were also told by a member from Vermont, (Mr. ELLIOT,) from what source the greatest evil and injury to republicanism proceeds; viz: from such demagogues as the member from Virginia before alluded to (Mr. RANDOLPH.) But, Mr. Speaker, notwithstanding the high ground on which that member stands, and his present exalted station, from whence he looks down upon the stripling and his friends, as one did in days of old upon little David; and notwithstanding his supposed superior strains of eloquence, in which he has so emphatically pointed out the late reign of terror, and the proposed union of honest men; as, in this happy land of liberty, infallibility is attached to none, I shall take the freedom of opposing my opinion to his, and say, that not an extreme degree of honest zeal for justice—although the same may not only have scorched the costly robes of speculators, but have caused the body to smart—is the most dangerous source of evil to these United States; but the supporters of speculation, and speculators—those most dangerous enemies of the just principles of our Declaration of Independence. This is the real source of danger, the Pandora's box from which our greatest national evils have and do proceed.

I cannot boast of being a soldier in the Revolutionary war, having been educated in a principle that doth not admit of bearing arms; but, Mr. Speaker, we have had a second revolution, from the powers of a host of speculators, who, as I have before mentioned, brought our country to the brink of ruin. Of the reign of terror that preceded this revolution, I can speak experimentally, having been threatened with imprisonment, and death, for my opposition to the party then in power. My wife and tender offspring were terrified with threats of my being executed for high treason, my estate confiscated, and they reduced, from a comfortable competency, to poverty and want. By whom was this dreadful dilemma, this reign of terror produced? I answer by speculators and their supporters. But a glorious revolution has been effected, not by force of arms, but by the power of truth and reason, those bloodless conquerors, more powerful than the sword! In this revolution my young friend from Virginia, beforementioned, bore a conspicuous part, and remains a zealous supporter of the just principles by which it was effected.

In the course of this debate, preaching has been mentioned. I do not mean to pursue that mode, but shall nevertheless mention a sentence contained in that good old book, so frequently quoted, but whose excellent precepts are too little regarded. It is in the proverbs of Solomon, which my father frequently recommended to my perusal, when but a little boy. The author mentions several great evils which in that day were common amongst men. I shall mention one great evil, which in modern days is common amongst men; that is, for men, after they become vested with legislative or executive authority, to countenance, encourage, and sanction by law, those things which they reprobated in others, when they were in power. Is not this observation verified in the United States at this time? We have reprobated

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the law of primogeniture in England, by which the land obtained under the feudal system, is retained in a few hands; also, their chartered boroughs, moneyed aristocracy, &c. And are not we encouraging and increasing them? And have we not already heard within these walls the alarming doctrine, that a charter once granted cannot be disannulled?

In this happy country, land is equally divided, and it is evident that in those States where the land is divided into small farms, and generally occupied by the proprietors, it is in the highest state of cultivation, and most productive. But, Mr. Speaker, so long as the human species remains liable to corruption, and to be seduced by pride, and an insatiable thirst for riches and power, so long will individuals be striving to destroy this equilibrium, on which depend the peace, liberty, and happiness of mankind. To effect their evil purpose in the United States, the most powerful engines are paper and land speculation. The latter of these, though more slow in its operation, is more certain and therefore more dangerous. It is, in my opinion, the most potent enemy we have to encounter, and most likely to produce in future ages what God grant may never be the case in this land, a numerous train of poor tenants, coming in the most abject manner to my Lord Nightingale, my Lord Scott, &c.

I did not expect, Mr. Speaker, that any member on this floor would have undertaken to support the principle of speculation, but, as that ground has been taken, and the highest authority in the United States adduced to support it, viz: the purchase of Louisiana, it becomes necessary to analyze both the causes and effects of the two cases, and thereby discover what analogy or likeness they bear to each other; and first, let us inquire what led to the purchase of Louisiana? The best answer to this query will be found in the debates of a former Congress, wherein all the learning, talents, and eloquence of divers members were strenuously exerted, and from the length of their speeches, I conclude, exhausted, to prove the absolute necessity of the United States to own the east side of the Mississippi, and the navigation thereof, alleging that it was the key and door of our western country; that we had nothing in our power to give as an equivalent by way of purchase, and, therefore, must take possession of it by force of arms. Was this the case with the New England Yazoo speculators, at more than one thousand miles distance? Was it the key or door through which it was necessary for them to transport the produce of their farms? Again, let me ask, was Louisiana purchased as property only for the President and Senate who ratified the treaty, or for every free citizen of the United States? I suppose the latter, in which opinion I am supported by a law of last session of Congress, declaring null and void all grants for land, above five thousand acres to one person; from which it appears not to be intended as an article of speculation.

I shall dismiss this subject with observing, that the human mind must turn indignant from a comparison of an act the most laudable and most praiseworthy that ever adorned the pa[illegible] rican history, with an act universa[illegible] ledged to have originated in fraud; a[illegible] merits the detestation of every hone[illegible] Yes, Mr. Speaker, when speculators sha[illegible] signed to the contempt they justly meri[illegible] chase of Louisiana shall be recorded in [illegible] of chronicles of the United States, as e[illegible] noble acts of, and under the administra[illegible] great and magnanimous benefactor of [illegible] our present Chief Magistrate.

I shall now proceed to a brief investig[illegible] the legality of the Yazoo claims. It [illegible] alleged that the Legislature of Georgia [illegible] to convey the land now claimed by the [illegible] England Mississippi Company. Granted, [illegible] sale of the land been made honestly to the [illegible] bidder, and upon the most advantageous [illegible] for the benefit of the State, but not in the [illegible] manner in which the sale of the land [illegible] pute was made, wherein the Legislature [illegible] passed the act were purchasers themselves. [illegible] this sentiment I am supported by [illegible] authority, viz: the Congress of the U[illegible] who have, since the fraudulent, pre[illegible] Georgia, on which the present claim [illegible] purchased of said State the same tract. [illegible] Now, if the sale to the Yazoo companies [illegible] and valid, it necessarily follows that an[illegible] quent purchase by Congress must be [illegible] dulent, and unjust, and the United States [illegible] to that fraud.

Mr. Speaker: Fully convinced that [illegible] legal claim, I beg the attention of the [illegible] brief investigation of the supposed [illegible] claim. Our passions have been addre[illegible] member from Massachusetts, (Mr. Er[illegible] half of thousands of innocent sufferers. [illegible] great number, one case has been selected [illegible] from the ingenuity and usual accuracy of the [illegible] said member, there is no doubt but out of so [illegible] a number, he has selected the one best adapted [illegible] his purpose. Let us analyze this case, and when reduced to first principles, see what claim there is in it to the equity and justice of this House. [illegible] is a widow, who, we are told, has lost $[illegible] By what means? By her husband purchas[illegible] much of this land, at sixteen cents per [illegible] amounted to upwards of $60,000; there[illegible] into the pockets of the original specula[illegible] than $50,000 in one sale, giving about seven [illegible] the original price for land yet in possess[illegible] Indians.

Hence, it appears that this purchase [illegible] made with a view of settlement, but [illegible] principle of speculation. Has this case [illegible] upon the equity of Congress? No m[illegible] opinion, than any other species of gambling [illegible] by a widow and children may have bee[illegible] in their property. Such cases, indeed, me[illegible] but if Congress undertakes to reimburs[illegible] widow, whose husband has lost his p[illegible] gambling, we shall soon have an empty [illegible] It is said there are innocent purchase[illegible] such, in my opinion, has been made app[illegible] lieve there are very few, if any; and if [illegible]

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be, having been injured by swindlers of their own State, to them let them look for redress.

I shall now proceed to some remarks on the narrative of the predisposing causes and sale of the land now in dispute, given by my worthy friend from Pennsylvania, to which, from his usual accuracy and correctness, I give full credit; and if, in the course of my observations, I should bring into view the conduct of any who are gone from works to future rewards, I beg the members of this House to bear in mind that the conduct of deceased persons, connected with the subject in dispute, was first brought into view by the supporters of the resolution. To proceed: My worthy friend, before mentioned, (Mr. FINDLEY,) has not given us an abstruse clue, whereby we may unravel the mystery of iniquity, but presented us with a fair, complete, and finished portrait; he did not present us a key, but himself opened wide the door, and presented to our view the nefarious kennel—the Pandora's box—that contained more evil in the same space than was ever before known in the U. States, or I hope ever will be again. He tells us that not the long-legged speculators of the North came to Georgia, but the speculators of Georgia went to the State of Massachusetts. Who were those speculators? The Chief Justice of the United States and a Senator of the State of Georgia. Does the exalted station of those speculators lessen the fraud? No, Mr. Speaker, but in my opinion greatly increases it, and proves beyond a doubt that the Southern and Northern speculators acted in concert, and that for years they had been hovering over and with eagle eye watching their destined prey; and as soon as the Southern vultures found means to strike their horrid talons into it—knowing they could not in peace devour it in the South—they swiftly flew with it to their associates in Northern regions, the farthest boundaries of the United States.

The foregoing portrait exposes clearly to view the whole transaction, and in my opinion fully removes the plea of ignorance, and clearly proves it to have been a long-premeditated and preconcerted plan of the most fraudulent species of speculation that ever disgraced the annals of history. Upon the whole, it appears to me in so monstrous and horrid a shape, that I know of no name in modern language by which it can be properly described. I must therefore recur to the language of the ancients, and describe it under the similitude of the *great red dragon*, which St. John the Divine saw, having seven heads and ten horns, who with his tail drew down to the earth a third part of the stars of heaven! Has not this been literally fulfilled in our land? Has not this horrid monster drawn down, from a station where they once shone as stars of the first magnitude, a third part of those entrusted by the people with Legislative or Executive authority, even to the earth; insomuch, that, deluded by the glittering appearance of worldly pomp and show, and actuated by an insatiable thirst after earthly treasure, they have preferred their own emolument, and the prospect of raising their posterity to opulence and power, to the peace, happiness, and prosperity of the United States—as, in the present case, betraying the trust reposed in them, and sacrificing the interests of their constituents, at the shrine of fraudulent speculation? I shall conclude with fervent prayers on behalf of this beloved country that gave me birth, that the mighty Angel of Justice may speedily lay hold of this *dragon*, bind him with a massy chain, and cast him into the bottomless pit, there to remain, not merely one thousand years, but for ever and ever!

Before I sit down, I shall observe, that notwithstanding I shall vote against the present resolution, if a resolution is introduced for the purpose of bringing in a bill appointing commissioners to investigate the different claims, and select just claims and innocent sufferers' cases, if any such there be, with the proof thereof, to lay before Congress at their next session, in order to be then provided for and finally settled, such a bill shall have my support.

Mr. FINDLEY said that, after the attention he had experienced in communicating his opinions on this subject two days ago, it was with reluctance he called their attention a second time to the same question. He would not have done it if the opposition had been conducted in the usual manner, and if such honorable notice had not been taken of himself, while most of his arguments remained unrefuted, and some of them wholely avoided. His colleague (Mr. CLAY) had lamented the want of unanimity in the members from Pennsylvania, and particularly the want of his own vote. Mr. F. said that he did not know how his colleagues would vote till the question should be taken. He had never consulted them, nor the members of any other State on the subject, nor communicated his opinions to but a few of his colleagues in private, before the question came on. If the members from the State he represented had held a meeting on the subject, they had not informed him, and he did not believe they had; but be that as it may, he would inform the gentleman that he was not sent there to vote on either his opinion or theirs, but on his own. That, in making up his mind, he could assure his colleague that he never had taken greater pains and care to free it from prejudices on the subject, which he acknowledged had been strong, and to examine it in all its aspects by the rules of equity, expediency, and national faith; and that he had decidedly made up his mind. He hoped his colleagues had done so too. It was a subject on which good men might differ in opinion. He had not in any manner denounced his colleague for voting as he had said he would do, and he did not know what authority he had to notice him in the manner he had done. If we were obliged by the Constitution to be unanimous, it indeed suggested an idea of economy he had not thought of before. The State of Pennsylvania by sending one member to give the votes of eighteen, would produce a considerable saving to the United States, and he supposed his colleague would do very well to give the vote for the whole. Some other respectable gentleman, he said, had honored him with particular attention, but in such a manner

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as he had too much respect for the character of this House and his own character, to follow with any remarks.

Mr. F. said he would not, at this late hour, detain the House with any observations on the laws of Georgia of 1795 and 1796, but would offer a few remarks on the title of Georgia to the land in question, as it respected these claims. A gentleman from Virginia, yesterday, (Mr. HOLMES,) had read Vattel on the Law of Nations to prove that some of the Kings in Europe could not alienate the royal domains. He begged leave to observe that this maxim did not apply to this country, which had a common law peculiar to its circumstances. Many of them had vacant land, but this land was not considered so much as part of the sovereignty, as a source of revenue arising from its sale; and the power of disposing of it was vested in, and exercised by, the respective Legislatures; and the constitution of Georgia, in this respect, was similar to that of the other States. None of them had royal domains. Congress had repeatedly acknowledged this right in the Legislature of the State of Georgia, by soliciting a cession of land to be made by it to the United States, and finally by accepting a cession from it, on specified conditions. But being in undisturbed possession, was, agreeably to the practice of this country, sufficient to protect her grants. He believed most of the Union had made compromises of territory, and transfers, even of inhabitants, from one to the other, on the principles of compromise. The State of Pennsylvania has done so with all the neighboring States. The property of the islands of the river Delaware was settled by compromise with the State of New Jersey. The boundary between Pennsylvania and Maryland had been long contested, and was finally settled by compromise in such a manner as that Maryland rights for land in Pennsylvania, and Pennsylvania rights in Maryland were both protected. But the accommodation which applies more fully to the present case, was made with Virginia. On the conclusion of the Indian war which broke out in 1763, a settlement was formed at Redstone Creek, perhaps fifty miles or more within the chartered bounds of Pennsylvania, and the settlers claimed to hold under Virginia. It was forbid by the law of Pennsylvania to settle that country, and the Governor sent as Commissioners General Potter, Col. Allison, and Rev. Mr. Steel, to the place, to inform them of the title of Pennsylvania and to forbid the settling the land, it not then being purchased from the natives. The respectability of the Commissioners was supposed to give weight to the object. They informed the settlers that the land belonged to Pennsylvania, and warned them of the danger of persisting in an unlawful claim. This solemn and candid notice had not the desired effect; citizens from other colonies, and even from Pennsylvania, flocked to that part of the territory, professing to hold under the State of Virginia. At this time, the government of Virginia had given no official titles to the land, but it was well known that the price of land in Virginia was much lower than in Pennsylvania. No such claim was ever made by the United States to any of the territory of Georgia, nor such warning given against purchasing or settling the land.

In a short time after this, however, Lord Dunmore, the last Royal Governor of Virginia, opened a land office in that country, and issued land warrants at one-tenth of the Pennsylvania price, and less than one-twelfth of the fees; and at least three counties were organized by Virginia, within the chartered bounds of Pennsylvania, in which only one county court was organized by Pennsylvania, and the justices of that court were arrested while sitting on the bench, at a place near one hundred miles within the chartered limits of that State, and above seventy miles from the limits afterwards made by compromise. The Revolutionary war commenced, and the settlers under the authority of both States, made temporary compromises, by which the country was protected against invasion and property secured.

Though there had been contentions between the settlers, there had been harmony between the States; and after various attempts which had failed, before the war with Britain ceased, the two States made a compromise. Pennsylvania gave up to Virginia half a degree of her chartered claim, and Virginia gave up to Pennsylvania three organized counties, with their inhabitants. Let it not, however, be said that the actual settlers alone were secured in their pre-emption right, as was usual in Pennsylvania. This was not the case. Those who proved that they held under Virginia, procured patents from Pennsylvania at less than one-tenth of the price which those who held under Pennsylvania had to pay, and those who claimed unseated land under Virginia grants held their claim. That fine body of land called Washington's Bottom, in Fayette county, above forty miles within the present limits of Pennsylvania, has been sold without contest; and about the year 1786, General WASHINGTON, in the character of guardian, recovered seven or eight plantations by the decision of the State court of Washington county, in Pennsylvania, on which so many families had made large improvements, without suspicion of a prior claim, and there is now a claim of the same kind before the supreme court of Pennsylvania, brought by Craughan's heirs, to a much larger amount. There was a larger amount of land contested between Virginia and Pennsylvania than that which is reserved in the convention with Georgia and the United States to satisfy claims. The claims under Virginia had extended into what is now five extensive counties of Pennsylvania. Adding to this half a degree of latitude of the chartered claim of Pennsylvania, for about ninety miles of length, ceded to Virginia, amounts to much more than the residue of the five millions of acres, which is the greatest amount in question. All this was amicably settled by compromise, and the sister States continued in harmony and the country was settled with respectable citizens. The case, he said, which he had mentioned the other day of the claims of the settlers at Wyoming, had been supposed to teach an opposite doctrine; but the

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members who were acquainted with the circumstances would acknowledge it did not. They must acknowledge that the most southern boundary of that State, bordering on Maryland and Virginia, was settled to the utmost western boundary; that the northern boundary, which included the Connecticut settlement, was not settled to half that extent, or at most, very dispersedly settled; that at least ten or twelve counties on that side of the State, laid out by law, could not be organized for want of people, and that all the other side of the State east of the Ohio was thickly settled and organized long ago, and that several counties west of the Ohio are so far settled as to be organized on the southwestern boundary; such were the different effects of a compromise and a continued contest.

Mr. F. said he had reason to beg pardon of the House for calling their attention to so tedious a narrative, and which they might suppose had little relation to the question; but it was his opinion that if the report of the committee and the treaty or convention with Georgia was not carried into effect, though he might not live to see it, the examples he had stated would be found to have a bearing on the subject; but on this view of it he could not enlarge, and he hoped his apprehensions would not be realized. But he was astonished to observe his friends, who on this subject took the other side of the question, depart so widely in their arguments from the question before the House. He said that the laws of Georgia passed in 1789, 1795, and 1796, were certainly not now before the House. The law of Georgia passed in 1789, and the still more extensive, and, he believed, from good information, the most corrupt sale of 1795, were all set aside, and they were not then called on to decide on a territory as extensive as any kingdom in Europe, as the gentleman just sat down (Mr. SLOAN, from New Jersey) had alleged. These monstrous speculations had vanished, as many others had done; the whole square miles it would contain was but little more than was not long since contained in one county through which he had to pass going home, but which is now divided into more counties. He said he disapproved of monopolies, but still more of rendering all property insecure. He disapproved of such speculations.

Mr. F. said, though he had had the best opportunities, he had taken no share in those or any other speculations, yet while there is so much land in the United States at market, he had found they were not attended with all the evils which he had anticipated; they paid high county and road taxes, which they would not have done if they had not been owned by individuals, and no profit could be obtained from them but by sale to actual settlers, which could now be done, on easy terms, and in small instalments. The foreign companies, who held much larger bodies of land in Pennsylvania than any other, were much more mischievous. The poor actual settlers were then dragged 400 miles to the Federal courts in Philadelphia, and from thence to this city, to have their claims decided; and even if they gained the action, they had to part with their plantations to pay their own expenses and the attorneys' fees; this, though a great evil, he believed was an incidental one. That clause of the Constitution of the United States which had been construed to favor this practice, he believed was never intended to bring municipal cases before the Federal courts, and the construction which it had obtained in practice, he had no doubt would soon be remedied. He acknowledged he might be thought to have wandered from the subject, but he supposed he would obtain an easy excuse from gentlemen on the other side, some of whom, in their arguments, had scarcely ever touched the point in question.

This observation might seem harsh, but if time would permit, it could easily be substantiated. The candor of the gentleman from Maryland, (Mr. NELSON,) who was up this morning, he said, he was sure would induce him to acknowledge that, instead of arguing against the obligation of the convention between the United States and Georgia and the law of the United States, whereby we are obliged to apply the deposit of the residue of five millions of acres, or part thereof, to satisfy these claims, or to return the land to the State of Georgia; he had taken other ground, he had collected into one mass all the corruption of the Legislature of Georgia yet unpunished by the Judiciary of their own State, and all the corrupt influence of the original purchasers from that Legislature, and this gentleman, with others on that side of the question, had heaped all the guilt of this speculation and of all the speculations, if not since the world began, at least from the commencement of the Revolution, on the heads of innocent and honest purchasers, against whom, though there was above 1,200 of them, no charge of fraud was brought, and whose characters had been asserted not only to be unimpeachable, but very respectable both in a moral and political point of view, by members whose testimony was entitled to the highest respect; yet the contrary had not only been presumed but argued from as an established fact. He acknowledged, however, that the gentleman just sat down (Mr. SLOAN) had admitted this position was not supported by any kind of testimony, but had told the House that he had found or created a clue out of his own imagination to trace their guilt, and to convince him that the people at 1,100 miles distance acted in concert with the corrupt Legislature of Georgia in preparing a snare for themselves and their friends, but the gentleman had not informed the House how to trace his imaginary clue; visionary clues had been mentioned for other purposes formerly in Congress, but never traced nor realized.

Mr. F. said, that it had been his lot to have been in public bodies of different kinds, in the State government, and also in the Congress of the United States, where party spirit and irritation had run very high—where sometimes one party preponderated and sometimes another, and where parties were nearly equal. But on no question before the present had he heard corrupt motives ascribed to members who differed in opinion; at

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no time had he heard members called on to rescue their characters from the infamy of corruption; at no time had he heard the trumpet of party spirit sounded on the floor of a public body to influence a decision of a claim of property; at no time had he heard the opinions or power of another branch of the Government brought in as a substitute for argument; at no time had he heard the characters of individual members arraigned, instead of replying to their arguments, before the present occasion.

During all his opportunity of observation, Mr. F. said, party spirit was always exerted about the construction of the Constitution, or about the measures of Government, and even in such cases it was never permitted to be mentioned in argument with impunity; but the mention of party in the decision on claims of property would have been considered as a breach of the rules of order and decency by all parties. In times when party spirit rose to an alarming height, he never, even out of doors, heard of any decision on a claim of property ascribed to the influence of party. However far one party might charge the other with political error, and oppose the political measures they pursued, he never had heard the morals or the motives of members attacked on the floor of the House, but had always observed the most remote attempt of that kind suppressed by the authority of the House.

Mr. F. acknowledged he had been astonished at the manner in which the arguments in opposition to the report of the Committee of Claims, in favor of carrying into complete execution the convention with the State of Georgia, had been conducted. These arguments had been uniformly applied to cases that had no connexion with the question before the House. Whether the Assembly of Georgia, in 1789, had made a good bargain or a bad one, or whether the succeeding Assembly, in defeating that contract, had acted on honorable or dishonorable principles; or whether the Assembly of 1795, in their law for the sale, had acted so corruptly as to vitiate the contracts made under that law, though all the other laws made by that same Assembly were sustained; or whether the *ex post facto* act of the Assembly of 1796, impairing the obligation of contracts contrary to the Constitution of the United States, was sufficiently justified by necessity, and could annul the former contracts for a valuable consideration, were questions that had never been decided by a court of justice, nor had Congress any negative or revisionary powers over the laws of Georgia.

Mr. F. said that the whole question before the House arose from the book in his hand (the President's Message.) In pursuance of a resolution of Congress, for that purpose, the President had instructed three commissioners appointed by law, to treat with the State of Georgia for a cession of the territory, or part of it, then possessed by the Indians. The State of Georgia had also appointed three commissioners on their part to meet with the commissioners fully authorized by the United States. A convention or treaty of cession was made to the United States of fifty-two millions of acres of land, subject to specified conditions; five millions of acres of which was appropriated to satisfy specific claims; and the residue, after compensating those claims, was appropriated to satisfy, quiet, and compensate other claims obtained under any law, or pretended law of Georgia, and if not so appropriated within one year, the lands will revert to the State of Georgia.

A law was passed in 1803, to carry the convention of Georgia into execution, in which the residue of the five millions of acres, after the specific claims were satisfied, are expressly appropriated to satisfy, quiet, and compensate the claims in question, and the claimants have been, by Government, invited to release their original claim to thirty-five million of acres, and to make proposals of compromise, and, in the meantime, to register their claims in the office of the Secretary of State. At considerable expense they have made proposals of compromise, and registered their claims, and proposals have been made by the authority of Government to them; and these mutual proposals of compromise have been laid before the Congress by the President, in order that commissioners may be authorized to settle and adjust the claims, and satisfy, quiet, and compensate them, on equitable principles. These, he said, were the facts on record, and from these facts he considered the Government to be under a moral obligation to apply the residue of the five millions of acres, amounting probably to little, if any, more than four millions of acres, and, as a member of the House, he was convinced that he was under a moral obligation to vote for it. He repeated that, agreeably to the opinions of the commissioners, though neither the United States nor the State of Georgia were suable in law, and the claimants had no direct legal remedy, yet that the interest of the United States, the tranquillity of those who may hereafter inhabit the territory, and various equitable considerations, rendered a compromise expedient; a full indemnity is not proposed nor sought.

Some, however, in opposition, had asked, how could this interest of the United States be promoted by it? He would, also, ask if it was not the interest of the United States to fulfil her engagements with good faith? She having never purchased or paid for the land in question, but received it as a deposit to be applied to the relief of those injured claimants, or to be returned to the State of Georgia, whose Legislature had done the injury. The State of Georgia made the deposit for the purpose of making some reparation for the injury, and lest the United States should apply it to her use, had exacted the obligation of returning of it if it was not so applied. He confessed, when he first saw the conditions of the act of cession, he thought this provision expressed an unreasonable jealousy of the United States. But when he heard gentlemen, when argument failed, declaim that, if we applied the residue of the five millions of acres for the purposes for which it was deposited with Government, and appropriated by both the mutual act of cession and the subsequent law of Congress, that we were putting

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our hands into the public purse, robbing the public of millions of dollars, &c., he was astonished.

He said he would ask these gentlemen if they were convinced, on dispassionate examination, that, laying hold on this deposit for the use of the United States, would be for their interest? He was persuaded it would not. The commissioners report that there is above three millions of acres adjoining the Mississippi freed from the Indian claim, and these settlements had been made long since, and the land office of the United States has been open for some time; yet we all know that, notwithstanding the great advantages of the situation, the lands sell and the country settles very slowly indeed. Compare this with the State of Tennessee, which has now three members in this House, and very lately was not known as a State. Compare it with the State of Ohio, which lately was an Indian hunting ground and seat of war, and much more remote from market, and yet this wilderness is now grown to a populous State. He asked why the lands on the Mississippi, with such superior advantages, did not sell, and the population increase in some proportion to other new settlements? The reason to him was plain. Where the title was clear, where there was no danger of future disputes, good people would emigrate and settle their families; where it was not so, no wise man would run the risk of vesting his property, and leaving his family under a cloud of uncertainty.

The United States have purchased fifty-two millions of acres from Georgia, for which they are to make the payments out of the proceeds of the sales, besides the reserve of five millions of acres to satisfy claims against that State. Out of this, in the first place, specific claims of actual settlers, and some others, are to be satisfied, to perhaps more than one million of acres. Georgia sold lands to an amount unknown, in 1789, to the Virginia and Carolina companies, for which part payment was received, and in 1795, that State sold what the commissioners estimated at thirty-five millions of acres, for which payment was fully made, and patents granted in due form, and, by the original patentees, sold to others. None of these sales have ever been set aside by a court and jury, without whose decision no man, under either the Government of the United States or the individual States, can be legally divested of his property. These facts are very generally known, and every man of common information knows, that though the claimants cannot have an action against the State of Georgia or the United States, yet they can have an action against any or all the actual settlers on the land which they claim. This apprehension, if it was worse founded than it is, would be sufficient to prevent the sale and settlement of the land until these claims are settled by compromise, agreeably to the convention with Georgia, and the usual practice of the other States, and the original claim relinquished. Experience and observation had taught him, he said, that the sooner accommodations of this kind were made, they were the easier and the cheaper done. He added, that quieting and satisfying twelve hundred respectable and injured claimants and their connexions, who had been injured by their confidence in the law of a State, and in men who stood high in Government, was certainly the interest and duty of Congress, when it could be done without loss, which it certainly could in this case, for the land in question had cost the United States nothing, but was a deposit from Georgia for that very purpose.

Mr. F. said, that if by the compromise the claimants obtained and accepted of the ninth or tenth part of the land which they had purchased and paid for, they could gain nothing by it except by actual settlement; that compact settlements and improvements made in consequence of the compromise would increase the value and encourage the settlement of the land adjoining, and remove the cloud of doubt that would hang over the sale of these lands, and would also strengthen and enrich the United States in the quarter in which it was weakest and most vulnerable. These considerations had induced him to believe that rejecting the amendment moved, by the gentleman from Virginia, (Mr. CLARK,) and agreeing with the report of the committee was for the interest of the United States, even if they were under no obligation of law or justice. He said he could assure the House that he had possessed as strong prepossessions against the speculations of Georgia as he thought any man could do; that he had examined every avenue of information respecting the case, and sought to find every argument against the claim that his judgment and conscience would admit, before he had to sit on the solemn and awful seat of judgment, before he was called to decide on the case, a case wherein the faith, the honor, and the future peace of the United States, and the fortunes of individuals, were deeply interested, but he undoubtedly had endeavored to divest himself of every prejudice, of every prepossession. To gentlemen who had used the unprecedented freedom of attacking his motives instead of his arguments and of implicating his virtue, he had a right to put the question: Had they divested themselves, of all prepossession? Were they influenced by no prejudice? But passing this, those attacks, without example in any public body, and not justified by any rule of order, had occasioned other members to make declarations of their own character, which nothing but the singularity of the attacks could justify. He thought he was also justified in declaring that he had not now, nor never had any interest in the Georgia or any other speculations, nor had he any friend or relation, to his knowledge, that had; and none of the owners or agents of the companies, or their friends, had attempted to influence his mind on the subject. In making this unusual declaration, he was certain he would be believed by those who knew him best; they knew that he never had even a lawsuit about land in court in his life.

Mr. F. said that, if he had not taken so much pains to understand the subject as he did, the arguments in opposition to the report of the committee and the manner in which the opposition

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had been conducted, would have given his mind a bias in favor of the report. During all his time of observation, and he had not been an inattentive observer, he always found a good cause best supported by arguments that had a close analogy to the subject, and candid address to the judgment, without inflaming the passions. He long had been in the habit, when he came into a court of justice, of judging of the goodness of the cause by the manner of the arguments; whenever he heard a good attorney use sophistry, or arguments that had no real bearing on the subject, or have recourse to animated declamation, he believed the cause was bad, and in this he had seldom been mistaken.

He asked, why was all this heat and uncommon zeal? The gentlemen knew well that no public property was at stake, nor any political principle proposed to be perverted. They knew well that no fraud was proposed to be countenanced. If the Assemblies of Georgia of 1789 and of 1795 were corrupt, and committed frauds on people at a distance, and sold lands to the amount of forty or fifty millions of acres, that monstrous and fraudulent sale would be corrected. The corrupt legislators indeed would not, nor had not been punished; but the innocent purchasers would—they would not at most get the residue of five millions of acres after satisfying numerous claims? How can gentlemen say that we propose to reward frauds, when we propose only to authorize the President to appoint, no doubt, the three best men that the United States can afford, to distribute, not an empire, but the residue of the five millions of acres, or part thereof, among the innocent and injured purchasers, who have, agreeably to the law for that purpose provided, made their proposals and registered their claims? Do we doubt the President's discernment and integrity in the choice, or the ability and honesty of the Commissioners he will choose? For his own part, Mr. F. said, he had no doubt of either; and when he opposed the fulfilling the moral and political obligations of the Government with good faith, he would disclaim the name and character of a republican.

Mr. J. Clay requested his friend, Mr. Clark, to withdraw his amendment, that the House might meet the question at once.

Mr. Clark thereupon withdrew the amendment.

Mr. Varnum begged permission to set the gentleman from Maryland (Mr. Nelson) right. The Committee of Claims had reported a bill, making provision for those who were disabled by known wounds received in the service of the United States during the Revolutionary war, which bill had been twice read, and referred to a Committee of the Whole.

Mr. Nelson.—It is true, sir, there is such a bill upon your table; but where is the gentleman on this floor that will say the bill will pass? besides, it contains so many clauses, such restrictions and modifications, that I really do not know the man who will be bettered a single cent by it. I am not throwing any imputation upon the Committee of Claims; they, no doubt, do their duty; I am simply speaking of the liberty of Congress, and comparing a Yazoo land speculator with an old soldier. The one asks you for an annuity of forty dollars to make him comfortable in his old age; the other, in all the bustle and gayety of life, modestly requests a sop in the pan; give me ten millions of dollars, and that will stay my stomach until dinner is ready; I will call upon you next year. We are about giving five millions of acres of land to stock-jobbers, speculators, and gamblers; this they claim of the liberality of Congress. It is an old saying and a true one, that a man ought to be just before he is generous. We have on our table a statement from the Secretary of the Treasury, stating that there are liquidated claims, justly due from the United States to individuals, to the amount of $290,000; those persons are as undoubtedly entitled to the payment of their just debts, as Yazoo men are to our donations. But, say gentlemen, this is a proper subject for you to exercise your liberality on. I have no idea of that species of liberality, which takes from the body of the community their pence in order to give it away by pounds to individuals. There was a celebrated highwayman in England, of whom it was said, he robbed the rich to give to the poor; I do not know but his morality was better than ours, for we are about to rob the poor to give to the rich. If we must be generous, for Heaven's sake, let us search for more worthy objects; let us look for the war-worn soldier; for a numerous family in distress, and then I will say, be liberal: but no, you will not do that. Recollect, however, that the blessings of the widow and the orphan will be more acceptable to the Deity than altars smoking with the blood of hecatombs.

I am sorry to detain the House so long. I will just briefly recapitulate the reasons, why I do not consider a compromise of this claim to be consistent with good policy. It is not politic to do that which is unlawful or unjust; the act of the corrupt Legislature of Georgia, of 1795, never had any validity; it was void *ab initio*; the faith of the people of Georgia was never pledged; it could not be pledged; for the Legislature had no authority on the subject. If, then, there never was a title granted by the Legislature, these innocent purchasers could not obtain it; they had also notice of the fraud, and cannot therefore be deemed innocent purchasers. If they had a title, then Congress are about to do them injustice, by granting them five instead of fifty millions of acres; and lastly, on the score of liberality, they have no claim, for it is not liberal to take from the pockets of our constituents money to increase the hoards of speculators. We are appointed guardians of the public purse, and it is our duty to prevent a public robbery.

Mr. Varnum.—I do not mean to impeach the motives of any gentleman, but wish to assign reasons why I shall vote in favor of the resolutions reported by the Committee of Claims. They are reasons which may exonerate me in the opinion of those gentlemen who differ from me on the

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present question; and they will be satisfied, when they are convinced their own motives are pure; that mine are the same, although we differ in the views which we take of the subject.

Here Mr. V. recited, in chronological order, all the transactions which had taken place since the commencement of our Revolutionary war in relation to the back lands of the State of Georgia, from which he inferred that the Yazoo act of 1795 was as justifiable as any grant ever made by that State, and that the consideration was equal, if not superior, to any which she had previously obtained.

With respect to the present claimants, he did not conceive they had notice of fraud; that never appeared to him to be the object of the communication of the President of the United States to Congress, in February, 1795. He said, he would give his reasons why he thought that was not the object of the communication. We had recently been engaged in a very extensive Indian war, the flames of which were scarcely smothered, and the exposed situation of the western part of Georgia was such as to render it at times extremely desirable that Georgia should make a cession thereof to the United States. It would be seen, from a perusal of the Message, that the President (Washington) deprecated a continuance of that war; there is not a word in that Message that points to the purchase of the territory by individuals.

[Here Mr. V. read the Message, and everything connected therewith.]

At length Congress finally succeeded in obtaining this land by the cession of Georgia; and if Georgia had no right to dispose of her vacant territory to individuals; neither had she the right to dispose of it to the Union. So well convinced was Georgia of some lien being held upon the property by these and other purchasers, that she made a reservation of five millions of acres to be distributed among the claimants, under the sound discretion of Congress. Mr. V. said, he did not believe the United States entitled to any part of that five millions of acres, while there were any of the claimants of lands under the Government of Georgia left uncompensated. Hence, he did not conceive the position which had been taken a fair one; that we are about to put our hands into the public purse to reward a gang of speculators; or that we are about to rob the poor to give to the rich. He considered Congress as holding these five millions of acres merely in trust for those whom they may find fairly entitled to it. He concurred most heartily in the opinion which had been given by the Commissioners, that "sound policy requires a compromise." He had no concern, no interest in the decision of the question. He mentioned this in order to show gentlemen that his motives were as pure as their own, although their votes might differ.

Mr. Stanton.—Mr. Speaker, I had concluded to have satisfied myself by giving a silent vote on the amendment offered by a gentleman from Virginia, to the report of the Committee of Claims, relative to the Georgia lands. But as an attempt was made yesterday by an honorable gentleman of the committee from the State of Kentucky, with a view to criminate the conduct of the majority of the committee, and in his superabundant goodness, to implicate me in a particular manner, by inuendoes, that a republican member of the committee had gone over to the federal side, it becomes necessary for me to reply. Were that the fact, I shall always take a pride in so doing whenever they happen to be in the right. But the gentleman is incorrect in his statement; the fact is, I never had but one opinion on the subject, sir, when your committee met upon the stupendous speculation which has involved so many serious consequences to the safety and honor of the nation, and such intemperate discussion; that has wounded the feelings and censured the motives of venerable statesmen, whose talents, patriotism, and uniformity of conduct, in support of the rules of morality and sound policy, have never been doubted before. Mr. Speaker, when the committee met they heard the claimants, and those gentlemen from Georgia who opposed the claims with great ability. Your committee then entered into an investigation of the subject. The two honorable gentlemen from Virginia and North Carolina opposed the claims of the petitioners with cogency, to show that the claimants had no right in law or equity, and that it was both imprudent and impolitic for Government to interfere. The honorable gentleman from Kentucky seemed disposed to decline argument, although very able. I endeavored to provoke him to it, but to no purpose. Sir, the honorable member from Virginia who introduced the amendment, advanced a doctrine dangerous to the peace and welfare of the community, in my opinion. That a subsequent Legislature, or Convention, possesses a legitimate right of rendering null and void the doings of an antecedent one of equal constitutional power. Sir, if this pernicious doctrine prevails, I ask where are your boasted liberties, or that security of our persons and property so essentially necessary to our happiness? Gone forever! If this abhorrent doctrine should be sanctioned by Congress, our laws, however just and necessary, passed at the present session, may not only be repealed, but their retrospective operation rendered a nullity. Sir, the idolatrous tenet of our Judiciary, who assume the right not only of expounding and declaring the law, but also of pronouncing what laws are Constitutional, and what are unconstitutional—Mr. Speaker, all the imported diamonds of the East cannot out-blaze the crimson that ought to stain our cheeks, if we admit such dangerous maxims. Experience has taught us the bad effects of our Judiciary system; the tenure by which they hold their offices is such, that they consider themselves too often independent of heaven and earth; it puts the lives of our fellow-citizens at hazard. The honorable member from Maryland, whose lungs are quite equal to his talents, though both eminent, told the House he would not speak to their passions, but to their understandings. In the latter attempt he has failed. He then relapsed into censure; paraphrased on the corruption of the Legislature

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of Georgia; that the claimants were speculators and swindlers, but without proving his assertions, he entertained the House with some funny anecdotes; told us we must be just before we are liberal. I confess he appeared animated, as though he considered himself addressing an ignorant jury, and was laboring to ram down their windpipe, like a fish, tail foremost, a fictitious evidence. The venerable gentleman from New Jersey, whose candor and sagacity on most occasions are conspicuous, rose, and after indulging himself in the order of the day; declamation and censure against speculators, and their fraudulent conduct, as dangerous to the peace of the community, he gravely read an extract from the best of books, an account of a red dragon, which would undoubtedly devour all those concerned in speculation. Sir, I could hardly suppose the gentleman serious, when I recollected he recently informed me of his intention to enter into the business himself. Sir, I hope he will not, lest the red dragon should devour him, as well as his brethren, the Yazoo claimants, and the nation lose his aid in her councils, and the State from which he came, a useful citizen. Sir, I have taken as correct a view of the whole ground on which the claims rest, as my humble abilities admit, and every inquiry and step I have taken, tend to confirm my early impressions, that sound policy dictates the measure, not merely because the Commissioners recommended it in their report made to Congress, and in whose talents and integrity, I place the utmost confidence, and Congress seems (by their various acts) to be disposed to satisfy equitable claims. If they shall appear unjust, they will be rejected. Sir, it is not for me at this late period of my life to quit the field because some of my political friends have apostatized from republicanism. I do not entertain a shadow of doubt of the correctness of the position I have taken; I shall persevere to the end, for such and such only will be saved. Sir, I am equally determined to disregard the frowns of tyrants, and the more despicable wheedlings of sycophants, under whatever garb they may appear. This is my political creed. This is my ultimatum. So help me God.

Mr. VAN CORTLANDT called for the reading of the resolution reported by the Committee of Claims, which being read, as follows:

Resolved, That three Commissioners be authorized to receive propositions of compromise and settlement, from the several companies or persons, having claims to public lands within the present limits of the Mississippi Territory, and, finally, to adjust and settle the same in such manner as in their opinion will conduce to the interest of the United States: *Provided*, That in such settlement the Commissioners shall not exceed the limits prescribed by the convention with the State of Gergia.

Mr. VAN CORTLANDT then moved to strike out the word "finally," and to add the following clause to the resolution: "And that the compro-'mise shall not be considered binding on the 'United States, until confirmed by Congress;" in order that the decision might again come before Congress, that the doings of the Commissioners might not be binding on the United States until confirmed by another Congress.

Mr. J. RANDOLPH.—I hope the worthy gentleman from New York will, at my request, consent to withdraw his amendment. I ask it, because a resolution of a similar nature has been already referred to Commissioners appointed on the part of the United States, viz: the Secretary of State, the Secretary of the Treasury, and the Attorney General. They were authorized to receive offers of compromise from these very claimants, and report thereon to the House. They have done it. Do we expect to get Commissioners more able; men of greater talents; of more sagacity; more tried fidelity, or more impartiality than they were? Can you expect to receive propositions of compromise more beneficial than those which have been already received? The course which the worthy gentleman has pointed out, has been already travelled; those Commissioners have exercised that very authority which his proposition goes to vest in a new board; they have recommended a course for us to pursue; they have told you that there was fraud in the original contract; that it was void *ab initio;* they have told you no title can be derived under it; yet they recommend a settlement. They have, however, stated no reasons in support of their recommendation. When I first read their report, I was filled with unutterable astonishment—finding men in whom I had, and still have, the highest confidence, recommend a measure, which all the facts and all the reasons which they had collected, opposed and unequivocally condemned. I feel myself wandering back into the field of the main question. I meant to confine myself simply to oppose the alteration just proposed. I may, however, be permitted to say, that it has been, if not a well fought field, at least, if they prove victorious, to them a dear bought victory.

Mr. VAN CORTLANDT made an offer so to modify his motion as to confine it to striking out the word "finally."

Mr. J. RANDOLPH spoke against retaining even that part.

Mr. HUGER said he was in favor of the motion for striking out, in order that Congress might make the final decision, as he conceived that they were more competent than any three men, be they who they may. He had, on a former occasion, voted for the examination by the Commissioners, but he never gave his vote that they should finally decide. Congress, on this occasion, should be the *alpha* and *omega*.

He was now convinced, from what he had seen, that it would be absolutely necessary for the General Government to compromise the matter, and he thought that it could by no means be done so well as by Congress itself. At the last session he had voted for a similar amendment, and he was anxious that it should obtain at this time. The next Congress would be called upon by the people, to whom we have made an appeal. If they decide against this claim by sending Representatives to this House who are opposed to it, let their fiat be the law.

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Mr. Van Cortlandt hereupon withdrew his notion for amending the resolution, which was evived by Mr. Huger, and seconded by Mr. Holland.

Mr. Jackson said he was opposed to the amendnent. He would prefer joining with the gentlenen who were in opposition to the measure rather han see this amendment carried. He was fully onvinced that the House of Representatives was otally incompetent to decide upon fifteen hundred laims, which assumed as many different shapes. t would occupy the sessions of two years, and at ast would probably be decided with less equity han it would be by Commissioners. He hoped gentlemen would not give their sanction to the mendment, and he hoped the decision would be aken on the general question, and that it would e final. He had no doubt but that Commissionrs would be found equal to the task, and that hey would not be deterred from doing justice by ny circumstances which had taken place either within or without these doors.

Mr. Huger requested the yeas and nays might e taken on the question for striking out the word finally," but not being supported by the Constitutional number of members, the question was ut on the amendment, and six members only ose in favor of it.

The yeas and nays were then taken on the resolution of the Committee of Claims, and decided n the affirmative—yeas 63, nays 58, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phanuel Bishop, Adam Boyd, John Boyle, John Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Benjamin, Huger, Samuel Hunt, John G. Jackson, Nehemiah Knight, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thather, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, and Marmaduke Williams.

Nays—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, John W. Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, David Holmes, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, John Whitehill, Alexander Wilson, Joseph Winston, and Thomas Wynns.

The resolution was of consequence agreed to.

Mr. J. Randolph.—On this question I have nothing more to say than to congratulate my friends on the vote just taken. We are strong in the cause of truth, and gentlemen will find that truth will ultimately prevail. When I compare the votes of this session with some of the votes of the last, my objections to refer this subject are almost done away. In whatever shape the subject may be again brought before the House, it will be my duty, and that of my friends, to manifest the same firm spirit of resistance, and to suffer no opportunity to pass of defeating a measure so fraught with mischief.

Mr. Dana moved to refer the resolution to the Committee of Claims to report a bill.

Mr. J. Randolph opposed the motion.

On a division of the House, Mr. Dana's motion was carried, when the House adjourned.

[On a subsequent day, a bill was introduced for compromising the claims; but it was not acted upon by the House during the remainder of the session.]

Monday, February 4.

The Speaker laid before the House a letter from the Secretary of War, transmitting a report in relation to sundry claims to land for military services rendered in the late Revolutionary war, in pursuance of the act of the nineteenth of March last, entitled "An act granting further time for locating military land warrants, and for other purposes;" which were read, and referred to Mr. Southard, Mr. Gregg, Mr. Hastings, Mr. Trigg, and Mr. Lowndes, to examine and report their opinion thereupon to the House.

Resolved, That, during the trial of the impeachment now depending before the Senate, this House will attend, at ten o'clock in the forenoon, and proceed on the legislative business before the House, until the hour at which the Senate shall appoint, each day, to proceed on the trial of the impeachment now pending before that body, and that the House then resolve itself into a Committee of the Whole, and attend the said trial.

Mr. Findley, from the committee to whom were referred, on the twenty-eighth ultimo, the petition of the members of the Presbyterian Congregation in Georgetown, in the District of Columbia, reported a bill to incorporate the Trustees of the Presbyterian Congregation of Georgetown, and for other purposes; which was read twice and committed to a Committee of the whole House on Thursday next.

The Speaker laid before the House a letter from the Postmaster General, accompanying a report relative to post roads within the United States, which have not produced one-third part of the expense of carrying the mail upon the said roads during the last year; which were read, and re-

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ferred to the committee appointed, on the sixth of November last "to inquire whether any, and what, amendments are necessary to be made in the acts to establish a post office and post roads within the United States."

A message from the Senate informed the House that the Senate is ready to proceed upon the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court, in the Senate Chamber; which Chamber is prepared with accommodations for the reception of the House of Representatives.

The House, then, in pursuance of a resolution agreed to this day, resolved itself into a Committee of the Whole, and proceeded in that capacity to the Senate Chamber, to attend the trial, by the Senate, of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States; and, after some time spent therein, the committee returned into the Chamber of the House, and Mr. SPEAKER having resumed the Chair, Mr. VARNUM, from the said Committee of the Whole, reported that the committee had, attended the trial by the Senate of the said impeachment, and that some progress had been made therein.

POTOMAC RIVER.

Mr. J. CLAY, from the committee to whom were referred, on the seventeenth of December last, the memorials and petitions of sundry citizens and inhabitants of the District of Columbia, in favor of, and in opposition to, "the building of a bridge across the Potomac river, from the extremity of Maryland Avenue, in the city of Washington, to Alexander's Island, in the said river," made the following report:

That doubts had formerly been entertained by some of the members of your committee of the right of Congress to legislate on the subject referred to their consideration; but inasmuch as an exercise of power, as long as that exercise is uncontroverted, may perhaps be considered as deciding the question of right, your committee are of opinion that a late law renders an investigation of the legitimate powers of Congress in the case unnecessary. The only inquiry is, what would be the advantages or disadvantages attending the erection of a bridge over the Potomac?

It appears to your committee that by the proposed bridge a saving of several miles of distance over a very bad road between the seat of Government and the town of Alexandria would be made; that consequently the southern mail would be transmitted to and from the city of Washington with greater expedition and security than at present; the communication between Alexandria and the northern cities would be rendered more easy and safe, and the general interests of the commerce of the United States, as far as respects the transmission of mercantile information between the northern and southern sections of the Union, would be much promoted. The commerce of Georgetown, it is alleged, will be materially injured by any obstruction which may be caused in the navigation of the river Potomac, and that the erection of a bridge would be an obstruction of such a nature as almost to destroy that commerce. That the inhabitants of that town, having generally settled there with views connected with the exercise of a mercantile profession those views would be counteracted, and their property considerably diminished in value. Your committee have little doubt but that the delay in ascending and descending the river produced by the erection of the contemplated bridge would, in some measure, affect the trade of Georgetown; but that trade is so small that it could scarcely have any great operation on the value of property, or on the prosperity of the town. Georgetown owes its present flourishing state to its vicinity to the city of Washington, and not to any commercial profit arising from the enterprise of its inhabitants. And although some small individual injury might be the effect of erecting a bridge, yet that injury would be far more than counterbalanced by the public benefits arising from the measure—your committee therefore recommend the following resolution:

Resolved, That the prayer of the petitioners, that a company should be incorporated for the purpose of erecting a bridge over the river Potomac, is reasonable, and ought to be granted.

The report was referred to a Committee of the Whole on Wednesday next.

TUESDAY, February 5.

Ordered, That the bill sent from the Senate, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial courts," be recommitted to a Committee of the Whole to-morrow.

The bill sent from the Senate, entitled "An act in addition to an 'Act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," was read twice and committed to a Committee of the Whole to-morrow.

Mr. GREGG, from the committee to whom was committed, on the twenty-fifth ultimo, the bill sent from the Senate, entitled "An act concerning the mode of surveying the public lands of the United States," reported the same, without amendment.

Ordered, That the said bill be read the third time to-morrow.

A Message was received from the President of the United States transmitting a note and documents from the Danish Chargé de Affairs claiming, in the name of his Government, restitution in the case of the brig Henrich. The said Message was read, and, together with the papers transmitted therewith, as, also, the report and other documents made and presented at the last session, in relation to the subject-matter of the claim for restitution of the said brigantine Henrich, referred to the Committee of Claims.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom were referred, on the fifteenth of November last, the petitions of sundry inhabitants of the town of Westerly, in the State of Rhode Island, and of Stonington, in the State of Connecticut, reported a bill to provide for a light-house on Watch Hill Point, in the State of Rhode Island; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. CROWNINSHIELD, from the Committee of

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Commerce and Manufactures, to whom was referred, on the twenty-first ultimo, a memorial of Edward Toppan, and others therein named, of the town of Newburyport, in the State of Massachusetts, merchants, reported a bill for the relief of Edward Toppan, George Jenkins, and William Currier; which was read twice and committed to a Committee of the Whole to-morrow.

On motion, of Mr. CLARK, it was.

Resolved, That the Secretary of State be directed to lay before this House an abstract of all the evidences of title to lands claimed under any act or pretended act of the State of Georgia, passed or pretended to be passed, in the year one thousand seven hundred and eighty-nine and one thousand seven hundred and ninety-five, recorded in his office; noting the dates of the instruments, the names of the parties, the quantity of land, with the species of warranty, and any proviso or condition that may be annexed.

The House resolved itself into a Committee of the Whole on the bill to authorize the erection of a bridge across a mill pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York. The bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth of December, one thousand seven hundred and ninety-three, for the appointment of a health officer." The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The bill for extinguishing certain debts due by the United States was considered in Committee of the Whole.

After some time spent in considering the same, the Committee rose and reported the bill; but were refused leave to sit again.

On motion of Mr. R. GRISWOLD the bill was referred to a select committee of five, to report. During this transaction Mr. EPPES had read a new bill in his place, which went to make immediate provision for the debts still due to our Revolutionary soldiers, and invalid pensioners, which it was intended should go before the committee just appointed. The SPEAKER said the committee had full power to consider the same.

MISSISSIPPI TERRITORY.

Mr. DANA from the Committee of Claims, presented a bill providing for the settlement of sundry claims to lands within the Mississippi Territory.

The bill was read the first time.

Mr. J. CLAY moved that it be rejected.

After a short conversation, the question was taken by yeas and nays—yeas 52, nays 58, as follows:

YEAS—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, John W, Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, John Whitehill, Alexander Wilson, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, Silas Betton, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Clagett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Nehemiah Knight, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, Thomas Plater, Samuel D. Purviance, Erastus Root, Henry Southard, Joseph Stanton William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Matthew Walton, Lemuel Williams, and Marmeduke Williams.

The question was then taken on reading the bill a second time at this time, and carried, yeas 59.

It was then referred to a Committee of the Whole.

On the inquiry of the SPEAKER for what day it should be made the order.

Mr. DANA moved that it be made the order for to-morrow.

Mr. LEIB moved Monday week, in which motion he was supported by Messrs. J. CLAY, and CLARK.

The question was first put upon Monday week, and passed in the negative—yeas 53, nays 59.

This day week was then named, and disagreed to—yeas 55, nays 56.

Monday next was then named, and disagreed to —yeas 55, nays 56.

Saturday was then named, and disagreed to—yeas 52, nays 61.

Friday was then proposed and agreed to—yeas 61, nays 51.

The said bill was then read the second time, and committed to a Committee of the whole House on Friday next.

PRESERVATION OF PEACE.

On the call of Mr. NICHOLSON, the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, was taken up in Committee of the Whole; when, after a short debate, the

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following amendment, previously offered by Mr. NICHOLSON in lieu of the second section, and an amendment in lieu of the fifth section, were agreed to. The bill so amended was reported and ordered to be engrossed for a third reading.

First amendment in lieu of the second section.

SEC. 2. *And be it further enacted*, That whensoever, after the passage of this act, any felony, misprision of felony, misdemeanor, or breach of peace, shall be committed within the body of a county in any one of the United States, and any process of law shall be issued under the authority of the State, for the purpose of arresting the offender, if the said offender shall be on board of any foreign armed vessel, in any port or harbor of the United States, and within the jurisdiction of the State, in which the offence was committed, it shall be lawful for the Governor, or other supreme executive officer of the State, in which the said offence shall have been committed, upon due proof thereof, and upon his being satisfied that the ordinary *posse comitatus* is insufficient to insure the execution of the said process, to issue the order, directed to any officer having command of regular troops, or armed vessel of the United States in the vicinity, requiring him to aid the officer charged with the execution of the process, with all the force under his command or such part thereof as may be necessary, in arresting the offender and all those giving him aid and countenance in resisting the civil authority. And if the said offender shall flee to any place beyond the jurisdiction of the State, and within the jurisdiction of the United States, the officer charged with the execution of the said process shall be and he is hereby authorized to pursue the said offender into such place, taking with him if necessary the said armed force and there arrest him, in virtue of the said process. And if the said offender shall flee to and be on board of any foreign armed vessel being in any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall first demand the delivery of the said offender, of and from the person or persons having charge and command of the said foreign armed vessel, declaring the authority and cause for which the demand is made; and if the said offender be not delivered according to the said demand, or if the officer charged with the execution of the process, be obstructed in attempting to make the demand, then he shall use all the means in his power by force and arms, to enter on board of the said foreign armed vessel, there to search for and arrest the said offender, and all those who are with him giving him aid and countenance, in preventing and resisting the execution of the said process, and the officer charged with the execution of the said process shall convey the said offender and deliver him over to the civil authority of the State, to be dealt with according to law; and all those arrested for being concerned in resisting the execution of the process shall be delivered over to the civil authority of the United States, and shall be punished in the same manner as if they had been concerned in knowingly and wilfully obstructing, resisting, or opposing any officer of the United States, in serving or attempting to serve any warrant or other legal or judicial writ issued under the authority of the United States. But if any of those concerned in making the arrest be killed in a place within the exclusive jurisdiction of the United States, those engaged in resisting the civil authority shall be punished as in case of felonious homicide; and if the person charged with the offence, or any of those concerned with him in resisting, be killed, in a place under the exclusive jurisdiction of the United States, it shall be justified.

Amendment in lieu of the fifth section:

SEC. 5 *And be it further enacted*, That whensoever any officer of an armed vessel commissioned by any foreign Power, shall, on the high seas or elsewhere, commit any trespass on any citizen or vessel of the United States, or any spoliation of the property of any such citizen, or any vexation of trading vessels actually coming to or going from the United States, it shall be lawful for the President of the United States, on satisfactory proof of the facts, by proclamation, forever to interdict the entrance of the said officer, and of any armed vessel by him commanded, within the limits of the United States; and if at any time after such proclamation made he shall be found within the limits of the United States, he shall be liable therefor to be arrested, indicted, and punished by fine and imprisonment, in any court of the United States, having competent jurisdiction; and it shall be a part of the sentence that he shall within such time after the payment of his fine, and the expiration of his term of imprisonment, as the court shall direct, leave the United States, never to return. And if he shall return within the limits of the United States after the passing of such sentence, or be found therein, after the period limited by the court as aforesaid, he shall again be liable to be indicted, fined, and imprisoned, at the discretion of the court, *Provided always*, That if the said officer shall also have committed any other offence made punishable by this act, he shall be liable to prosecution and punishment, the provisions of this section to the contrary notwithstanding.

WEDNESDAY, February 6.

An engrossed bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, was read the third time, and passed.

An engrossed bill to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York, was read the third time; and, on a motion made and seconded, recommitted to a Committee of the whole House to-morrow.

An engrossed bill to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer," was read the third time, and passed.

A message from the Senate communicated to the House a copy of the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the articles of impeachment exhibited to the Senate against him by this House.

The said copy of the answer was read, and ordered to be referred to the managers appointed, on the part of this House, to conduct the said impeachment.

On motion of Mr. LEIB, the House resolved itself into a Committee of the Whole on the bill in addition to an act entitled an act to promote the progress of the useful arts, and to repeal an act heretofore enacted for that purpose.

Mr. LEIB moved to strike out the first section

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of the bill, in order to try the sense of the House on the principle upon which it was founded, viz., to make a general provision for the extension of patent rights under certain modifications to twenty-one years instead of fourteen years, which the existing laws provide for, and with a view to make special provision for the case of Oliver Evans, the great improver of machinery in mercantile mills, &c.

After some discussion, the first section was struck out, and the Committee rose and reported progress; and, on the question, Shall the Committee of the Whole have leave to sit again? the motion was lost.

It was then moved to refer the bill, together with the petition of Oliver Evans, to the Committee of Commerce and Manufactures, and on the question, the motion was lost. The question on engrossing was also lost; so the bill was rejected.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures of the twenty-eighth ultimo, to whom were referred, on the ninth and sixteenth of November last, the petitions and memorials of a number of merchants, traders, and farmers, on the waters of the Roanoke and Cashie rivers, in the district of Edenton, and State of North Carolina; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the same.

The House then proceeded to consider the said report; and the resolution contained therein, being twice read, in the words following, to wit:

Resolved, That it is inexpedient to make Plymouth, in North Carolina, a port of entry:

The question was taken that the House do concur with the Committee of the whole House, in their disagreement to the same, and resolved in the affirmative.

A motion was then made and seconded that the House do come to the following resolution:

Resolved, That it is expedient to make Plymouth, in North Carolina, a port of entry:

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

JUDGE CHASE.

Mr. JOHN RANDOLPH, from the managers appointed to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to whom was, *this* day, referred the copy of an answer of the said Samuel Chase, to the articles of impeachment exhibited to the Senate against him by this House, made a report; which he delivered in at the Clerk's table, where the same was read, and is as follows:

"That they have considered the said answer, and do find that the said Samuel Chase has endeavored to cover the crimes and misdemeanors laid to his charge, by evasive insinuations, and misrepresentation of facts; and that the said answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles; and do submit to the judgment of the House, their opinion, that, for avoiding any imputation of delay to the House of Representatives, in a case of so great moment, a replication be, forthwith, sent to the Senate, maintaining the charge of this House; and that the Committee had prepared a replication accordingly, which they herewith report to the House, as follows:

"The House of Representatives of the United States have considered the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the articles of impeachment against him by them exhibited, in the name of themselves and of all the people of the United States; and observe,

"That the said Samuel Chase has endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations, and misrepresentation of facts; that the answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles; that the said Samuel Chase did, in fact, commit the numerous acts of oppression, persecution, and injustice, of which he stands accused; and the House of Representatives, in full confidence of the truth and justice of their accusation, and of the necessity of bringing the said Samuel Chase to a speedy and exemplary punishment, and not doubting that the Senate will use all becoming diligence to do justice to the proceedings of the House of Representatives, and to vindicate the honor of the nation, do aver their charge against the said Samuel Chase to be true; and that the said Samuel Chase is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place, as shall be appointed for that purpose."

On motion of Mr. J. RANDOLPH the House took the said replication into consideration.

Mr. R. GRISWOLD moved to commit the same to a Committee of the whole House.

Mr. ELLIOT supported, and Mr. J. RANDOLPH opposed the motion.

The question being put, the same was rejected.

Mr. DENNIS moved to amend the replication by striking out therefrom after the words "and observe," the following words:

"That the said Samuel Chase has endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations, and misrepresentation of facts; that the said answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters, contained in the said articles."

The question was taken on this motion, by yeas and nays, and lost—yeas 41, nays 70, as follows:

YEAS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, John B. Earle, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbitts, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Thomas Wynns.

NAYS—Willis Alston, jr., Nathaniel Alexander, Isaac

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Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, John Clopton, Frederick Conrad, John Dawson, Peter Early, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Joseph Heister, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Matthew Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

And then the main question being taken that the House do agree to the said replication, it was resolved in the affirmative—yeas 77, nays 34, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, Peter Early, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffith, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, David Hough, Samuel Hunt, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Resolved, That the replication annexed to the report of the managers, be put into the answer and pleas of the aforesaid Samuel Chase, on behalf of this House; and that the managers be instructed to proceed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

Ordered, That a message be sent to the Senate to inform them that this House have agreed to a replication, on their part, to the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the articles of impeachment exhibited to the Senate against him by this House, and have directed the managers appointed to conduct the said impeachment to carry the said replication to the Senate; and to proceed to maintain the same at the bar of the Senate, at such time as shall be appointed by the Senate.

THURSDAY, February 7.

The SPEAKER laid before the House a certificate of the Secretary, Comptroller, and Treasurer, of the State of New York, relative to the election of GEORGE CLINTON, jr., to serve as a member of this House for the said State, in the place of SAMUEL L. MITCHILL, appointed a Senator of the United States; which was read, and ordered to be referred to the Committee of Elections.

The bill sent from the Senate, entitled "An act concerning the mode of surveying the public lands of the United States," was read the third time, and passed.

Mr. LATTIMORE, from the committee to whom were referred, on the eighth and fourteenth of November last, the memorials and petitions of the Board of Trustees of Jefferson College, in the Mississippi Territory of the United States, and of William Dunbar, an inhabitant of the said Territory, presented to this House during the present and at the last session of Congress, made a report thereon; which was read, and referred to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on an engrossed bill to authorize the erection of a bridge across a mill pond and marsh, in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York, recommitted to the said Committee on the sixth instant. The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

The bill, as amended, was then read the third time and passed.

The House resolved itself into a Committee of the Whole on the bill to appropriate a sum of money for the purpose of building gun-boats. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate will, this day, at two o'clock, meet in the Senate Chamber, and proceed on the trial of Samuel Chase.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom were committed on the twenty-third ultimo, the amendments proposed by the Senate to the bill, entitled "An act for carrying into more complete effect

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the tenth article of the Treaty of Friendship, Limits, and Navigation. with Spain," made a report thereon; which was read, and considered: Whereupon,

Resolved, That this House doth agree to the said amendments.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville. in North Carolina, to Charleston, in South Carolina," with amendments; to which they desire the concurrence of this House. And that the Senate will, to-morrow, at twelve o'clock, proceed to the trial of Samuel Chase.

POST ROADS.

The House resolved itself into a Committee of the Whole on a motion of the seventh of December last, respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlement on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also, for the establishment of a post road from Georgia to the settlements on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee;" to which Committee of the whole House were also referred on the tenth of the said month of December, and on the first instant, the report of a select committee, and a Message from the President of the United States, on the same subject.

Mr. G. W. CAMPBELL observed, that having introduced this resolution, he would very briefly state some of the reasons that induced him to do so, and the grounds upon which he expected the committee to adopt it. He stated the object of the measure to be two-fold. 1st. To obtain a direct route for the transportation of the mail from Knoxville, and also from Georgia. to the Tombigbee settlements, and thence to New Orleans, in order to facilitate the communication with those places by means of the mail. And 2d. To open a communication from East Tennessee to the same places for commercial purposes. This measure, he said, was important to the citizens of East Tennessee, in both those points of view. The mail was conveyed at present, he observed, by a circuitous route, from Knoxville to Nashville, two hundred miles, thence to Natchez, at least five hundred miles, and thence to New Orleans, nearly three hundred miles; making in the whole, from Knoxville to New Orleans, one thousand miles. Whereas the distance from Knoxville to New Orleans by the route proposed to be opened, would not much, if any, exceed five hundred. A gentleman of undoubted veracity, who resided some years in the country through which this road will pass, in the service of the Government, estimates this route in the following manner: From Knoxville to Tellico, thirty-three miles. This part of the route passes through a settled country, and is at present a good road. From Tellico, to a place called the Hickory Ground, in the Creek Nation, near the junction of the Coosa river, with the Tallapoosa, where they form the Alabama and about twenty miles from the Tuckabatchee settlements, two hundred and twenty miles. From thence to Fort St. Stephen's on the Tombigbee river, about one hundred miles; and thence to New Orleans, a direct course, about one hundred and fifty miles, making in all five hundred and three miles; and the largest calculations, as I had been informed, made by the Postmaster General, of this road from Knoxville to New Orleans, was five hundred and fifty miles; making very little more than half the present route. Add to this the distance from Washington to Knoxville, according to the estimated post route, five hundred and forty-seven miles, and the whole distance from Washington to New Orleans, passing by Knoxville—and from thence the proposed route will be about one thousand and fifty miles. This saving of between four and five hundred miles, in transporting the mail from Knoxville to New Orleans, is certainly a very important object to all those who may communicate with the latter place, by means of this route. This road is still more necessary, for the purpose of affording a communication from East Tennessee to the settlement on the Tombigbee, or the eastern parts of the Mississippi Territory. The only mode of communication at present with that country, is by the post road already stated, by Nashville to Natchez, seven hundred—and thence to the Tombigbee, about two hundred; making nine hundred miles. Whereas the real distance along the proposed route, as has been stated, will not exceed three hundred and fifty, or at most between that and four hundred.

The effect of this circuitous route is, at present to cut off the communication, almost entirely, with that country.

But the second object for which we wish this road opened, viz: for commercial purposes, is still more important to our citizens; and is essential for the prosperity of our country.

The only mode by which the people of that country can, at this time, convey their produce to market, is by boating it down the river Tennessee into the Ohio, then along that to the Mississippi, and down that river to New Orleans. Our boatmen employed in this trade are obliged to return by land, as the same boats that carry produce down those rivers, cannot ascend them, and there is but little navigation yet, in boats of any kind, up those waters into the State of Tennessee; and no boats of any considerable burden can pass up the river Tennessee, through the Muscle Shoals, to the eastern part of the State. The only route by which those boatmen can now return from New Orleans, is that already stated, on which the mail is conveyed, being between four and five hundred miles more than they would have to travel by the proposed route. The present road also passes over the Cumberland mountain, a part of which is very bad, and a wilderness at this part of the route, subject to the Indian claim, of between seventy and one hundred miles, without inhabitants. It also passes through another wilderness between Nashville and Natchez, subject

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to the Indian claim, of about four hundred miles, a considerable part of which is stated to be very bad road in winter, and that there are many large water courses to be passed. The difficulties are so great that few of our citizens are willing to embark in this trade, and our farmers, having no convenient vent for their surplus produce, have little or no inducement to industry beyond what may be necessary to produce the ordinary supplies of subsistence. This in a very great degree retards the progress of agriculture, and consequently the prosperity of our country. It is therefore hoped that this House will feel disposed to encourage the farming interests of our infant country by removing those obstacles to its progress that the State authority is incompetent to effect, and that prove so materially injurious to the interests of our citizens. Here it may be proper to remark that this proposed road, so far as it is desired to be established by this measure, passes through a country belonging entirely to the United States, except about sixty miles, and most of it subject to the claim of Indian tribes, being the Mississippi Territory until it enters West Florida, or Orleans Territory. This distance of about sixty miles alluded to, is from Tellico, on the frontiers of the settlements in East Tennessee, to a point beyond the south boundary of that State in the State of Georgia, and near the limits of the Mississippi Territory, being also subject to the Indian claim. A road has already been authorized to be opened in this direction; has been viewed and designated by commmissioners appointed for that purpose from our State, at the expense of the State, and it is expected, by this time, has been opened, being designed to afford us a communication with the State of Georgia. This road will answer the proposed route—at least as far as the limits of our State—being, as before stated, about sixty or seventy miles from Tellico, and about one hundred from Knoxville. There will therefore remain only about one hundred miles (or very little more, if any,) to be opened, to the point at which the road, proposed from Georgia will intersect this route. From this view of the subject, it will appear we do not require the United States to be at any expense in opening a road within the limits of the State of Tennessee, but only to open it through a country belonging exclusively, except the Indian claim, to the United States. With regard to the roads proposed to be opened from Georgia to the Tombigbee settlements, so as to intersect the former road at the most convenient point between Tellico and the said settlements, what has been advanced to show the necessity of the former road will apply with equal force to this. The only route by which the people of Georgia can at present communicate with New Orleans, by means of the mail, or travel to that place along any authorized road, is that already stated, from Knoxville; thence by Natchez to New Orleans; and the people, even on the frontiers of that State, have to travel nearly three hundred miles to Knoxville to take this route, and are not then much, if any, nearer New Orleans than when they set out. This in a great degree cuts off this commu[illegible] that country. The road proposed [illegible] from Georgia, according to the best [illegible] will intersect the road from Knox[illegible] junction of Coosa and Tallapoosa rive[illegible] two hundred miles, or somewhat m[illegible] latter place—of which, as already [illegible] hundred miles at least are opened, a[illegible] one hundred remain to be opened. [illegible] through which the road from Knox[illegible] is represented, by those who are acq[illegible] it, and who have resided many yea[illegible] Indian nations that inhabit it, to be [illegible] country, generally dry, without bei[illegible] any mountains, and very few strea[illegible] siderable size to be crossed, and [illegible] until you arrive at the Tombigbe[illegible] along the high lands that lie betw[illegible] falling into the Tennessee river, [illegible] are discharged into the Coosa and [illegible] ers, and will require but little expe[illegible] a good road. We hope, therefore, [illegible] all those circumstances, Congress [illegible] afford us the aid we require, and w[illegible] tially necessary, to enable us to re[illegible] market that will compensate our far[illegible] industry, encourage agriculture an[illegible] and promote the prosperity of our [illegible]

When Mr. W. had concluded, the C[illegible] rose and had leave to sit again.

The House resolved itself into a C[illegible] the Whole on the report of the C[illegible] Claims, of the twenty-second ult[illegible] tition of Alexander Scott, of the S[illegible] Carolina, on behalf of himself and [illegible] after progress, the House adjourned.

Friday, February [illegible]

Mr. Nicholson, from the comm[illegible] was referred, on the twenty-second [illegible] morial of the delegates appointe[illegible] tions of the District of Columbia [illegible] farther additional to, and amen[illegible] entitled "An act concerning the Dis[illegible] lumbia;" which was read twice, and [illegible] to a Committee of the Whole on M[illegible]

Mr. Nicholson, from the same com[illegible] reported a bill supplementary to an [illegible] "An act more effectually to provide [illegible] ganization of the militia of the Dis[illegible] lumbia;" which was read twice, and [illegible] to a Committee of the Whole on M[illegible]

An engrossed bill to appropriate [illegible] ney for the purpose of building g[illegible] read the third time, and passed.

Mr. Lowndes, one of the member[illegible] State of South Carolina, presented [illegible] an act of the Legislature of the said S[illegible] the twenty-first of December, one thou[illegible] hundred and four, entitled "An act [illegible] the City Council of Charleston, with [illegible] of Congress, to impose and levy a [illegible] tonnage of ships and vessels, for [illegible] therein mentioned;" which was rea[illegible] Mr. Lowndes, Mr. Eustis, Mr. Jo[illegible]

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Ir. McCreery, and Mr. Newton, to examine nd report their opinion thereupon to the House.

Mr. Morrow, from the committee appointed n the seventh ultimo, presented a bill supplementary to the act, entitled "An act making provision for the disposal of the public lands in the ndiana Territory, and for other purposes;" which vas read twice, and committed to a Committee f the Whole on Monday next.

Mr. Southard said it would be well recollected by the House, that, during the last session of Congress, a resolution was introduced into the House which had for its object the imposing of a ax of ten dollars on every slave imported into he United States.

A bill predicated on that resolution was brought n, but was postponed, and not finally acted on. Mr. S. said he had waited with an expectation hat some other member would have brought the ubject again before the House, but as no member had thought proper to do it, and the session s drawing towards a close, he would move the ollowing resolution.

"*Resolved*, That a tax of ten dollars be imposed on very slave imported into the United States."

Referred to a Committee of the Whole on Monday next.

The House, then, in pursuance of a resolution of the fourth instant, resolved itself into a Committee of the Whole, and again proceeded, in hat capacity, to the Senate Chamber, to attend he trial, by the Senate, of the impeachment gainst Samuel Chase, one of the Associate Justices of the Supreme Court of the United States; and, after some time spent therein, the Committee returned into the chamber of the House, and Mr. Speaker having resumed the Chair, Mr. Varnum, from the said Committee of the Whole House, reported that the Committee had again attended the trial by the Senate of the said impeachment, and that a further progress had been nade therein.

A message from the Senate informed the House hat the Senate have passed a bill, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, n the district of Louisiana;" to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five," with an amendment; to which they desire the concurrence of this House.

The House then went into Committee of the Whole on the report of the Committee of Claims, on the petition of Alexander Scott, respecting the slaves taken by the Cherokee Indians in 1794.

After some time spent in considering the same, the Committee rose and reported their concurrence in the report of the Committee of Claims, that the petitioner have leave to withdraw his petition, and the documents accompanying the same. The report was agreed to by the House, on a division—55 in favor, and 24 against it.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina:" Whereupon, the said amendment, together with the bill, was committed to a Committee of the whole House to-morrow.

Saturday, February 9.

The bill sent from the Senate, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the district of Louisiana," was read twice, and committed to a Committee of the Whole on Monday next.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five:" Whereupon,

Resolved, That this House doth agree to the said amendment.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, presented a bill to make Plymouth, in North Carolina, a port of entry; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Southard, from the committee to whom was referred, on the fourth instant, the report of the Secretary of War in relation to sundry claims to land for military services rendered in the late Revolutionary war, in pursuance of an act passed the nineteenth of March last, reported a bill authorizing the Secretary of War to issue military land warrants, and for other purposes; which was read twice, and committed to a Committee of the whole House on Tuesday next.

MISSISSIPPI TERRITORY.

Mr. Latimer, from the committee to whom was referred the memorial of the Legislative Council and House of Representatives of the Mississippi Territory, made the following report:

The memorialists represent that, by that part of the ordinance for the government of the Mississippi Territory, which requires a freehold in fifty acres of land as a qualification of an elector of representatives, many of their respectable fellow-citizens, who are possessed of considerable personal property, houses, town lots, and small tracts of land, are deprived of their elective franchise; and that, by the act authorizing the establishment of a government in the said Mississippi Territory, the appointment of representatives is very unequal in the different counties mentioned in that act; they, therefore, solicit that the aforesaid ordinance may be so amended that, having been a citizen of one of the United States, having resided two years in the Territory, and, in either case, having paid a county or territorial tax, assessed at least six months previous to such election, may be the qualification required of an elector of representatives; and that the aforementioned act, authorizing the establishment of a government in the Mississippi Territory, may be so amended that the General Assembly of the said Territory may have power to apportion the representatives in the different

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counties, according to the number of free male inhabitants above the age of twenty-one years, in such counties, so that there shall not be less than ten, nor more than twelve, of the whole number of representatives.

From a recurrence to the ordinance for the government of the Mississippi Territory, it appears that there is no difference between the qualifications required therein, and those solicited in the memorial, except the freehold in fifty acres of land, which has been already mentioned. The only question, therefore, relative to this part of the subject is, whether it be expedient to dispense with such a qualification.

If the possession of property were at all essential to the qualification of an elector of representatives, your committee cannot see any good reasons why persons possessing considerable personal property, houses, town lots, and tracts of land less than fifty acres, and otherwise qualified, should be precluded from a participation in the right of suffrage with those who possess a freehold in fifty acres of land, which the ordinance requires. But, believing it inexpedient to limit the exercise of that right by any species of property qualification, your committee conceive that it ought to be extended agreeably to the wishes of the memorialists.

In the first section of the act of May 10, 1800, supplemental to the act authorizing the establishment of a government in the Mississippi Territory, it is "*Provided*, That, until the number of free male inhabitants of full age in the said Territory, shall amount to five thousand, there shall not be returned to the General Assembly more than nine representatives."

Your committee have no means of ascertaining the number of inhabitants of the above description, at this time, in the Mississippi Territory. But believing that no objection, except that of some additional expense to the Territory, can arise to the admission of two or three additional representatives, they can perceive no necessity for a continuance of the restrictive provision above quoted. Nor can they perceive any impropriety in authorizing the Legislature of the Territory to apportion the representatives in the manner requested. And your committee ask leave to report a bill for effecting the purposes which they herein consider as expedient.

The report was referred to a Committee of the Whole on Monday next.

Mr. Lattimore reported a bill extending the right of suffrage in the Mississippi Territory, and for other purposes; which was read twice, and committed to the Committee of the Whole last appointed.

The House then again resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Monday, February 11.

The House resolved itself into a Committee of the Whole on the petition of Amy Dardin, of the State of Virginia, presented the twenty-seventh of December last; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of Amy Dardin is reasonable, and ought to be granted.

Ordered That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Claiborne, Mr. Elliot, and Mr. Conrad, do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie. The bill was reported without amendment, and ordered to be engrossed, and read the third time to morrow.

Mr. Lowndes, from the committee appointed on the eighth instant, reported a bill declaring the consent of Congress to an act of the State of South Carolina, passed on the twenty-first day of December, in the year of our Lord 1804, so far as the same relates to authorizing the City Council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports; which was read twice, and committed to a Committee of the Whole to-morrow.

The House then resolved itself into a Committee of the Whole, and proceeded to the Senate Chamber to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Tuesday, February 12.

On motion, it was

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected, of their election; and to regulate the time, place, and manner of administering the oath of office to the President.

Ordered, That Mr. Joseph Clay, Mr. Varnum, Mr. Dennis, Mr. Thomas Moore, and Mr. Dickson, be appointed a committee, pursuant to said resolution; and that the Clerk of this House do carry the resolution to the Senate, and desire their concurrence.

On motion, it was

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to inquire and report whether any, and, if any, what further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing on the fourth day of March next.

Ordered, That Mr. Nicholson, Mr. Roger Griswold, and Mr. Bryan, be appointed a committee, pursuant to the said resolution; and that the Clerk of this House do carry the resolution to the Senate, and desire their concurrence.

An engrossed bill to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie, was read the third time, and passed.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what alteration

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is necessary to be made in the times of holding the district courts of North Carolina, and that the committee have leave to report by bill or otherwise.

Ordered, That Mr. STANFORD, Mr. HUGER, and Mr. MERIWETHER, be appointed a committee, pursuant to the said resolution.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, reported a bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith; which was read twice, and committed to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" and, after some time spent therein, the Committee rose, and were discharged from the further consideration thereof.

Ordered, That the Committee of the whole House to whom was committed, on the second ultimo, the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," be discharged from the consideration of the same; and that the said bill, as also the bill from the Senate last mentioned, be recommitted to the Committee of Claims to consider and report thereon to the House.

A message from the Senate notified the House that the Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday, the thirteenth of February, at noon, for the purpose of being present at the opening and counting the votes for President and Vice President of the United States: That one person be appointed a teller on the part of the Senate to make a list of votes for President and Vice President of the United States, as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals, and if it shall appear that a choice had been made agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

The House resolved itself into a Committee of the Whole on the amendment proposed by the Senate to the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same.

The House then proceeded to consider the said amendment: Whereupon

Resolved, That this House do concur with the Committee of the whole House in their agreement to the same.

Mr. CLAIBORNE, from the committee appointed yesterday, presented a bill for the relief of Amy Dardin, and the legal representatives of David Dardin, deceased; which was read twice, and committed to a Committee of the whole House to-morrow.

A message from the Senate informed the House that the Senate have considered the resolution of this House for the appointment of a joint committee of the two Houses "to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected, of their election, and to regulate the time, place, and manner of administering the oath of office to the President," and do not concur therein.

The House then went into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

WEDNESDAY, February 13.

Mr. TENNEY, from the Committee of Revisal and Unfinished Business, presented a bill to revive and make permanent the act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses, passed the third day of January, one thousand seven hundred and eighty-eight, and in addition to the same; which was read twice, and committed to a Committee of the whole House on Friday next.

On motion, it was

Resolved, That this House will attend in the Chamber of the Senate this day, at twelve o'clock, noon, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States; that Mr. JOSEPH CLAY and Mr. ROGER GRISWOLD be appointed tellers, to act, jointly, with the teller appointed on the part of the Senate, to make a list of the votes for President and Vice President of the United States, as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals; and if it shall appear that the choice has been made agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

The SPEAKER laid before the House a letter and report from the Secretary of the Treasury, the Secretary of War, and the Comptroller of the Treasury, Commissioners under the act, entitled "An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia;" which were read, and referred to the committee appointed, on the fifteenth ultimo, "to inquire whether any, and, if any, what amendments are necessary to the several acts regulating the grants of land to the refugees from Nova Scotia and Canada.

A Message was received from the President of the United States, transmitting treaties with the

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Delaware and Piankeshaw Indians, for the purchase of their right to certain lands on the Ohio, and with the Sacs and Foxes, for a portion of country on both sides of the river Mississippi; and the said Message was read, and, together with the treaties, referred to the Committee of Ways and Means.

A message was received from the Senate informing the House that Mr. Smith, of Maryland, has been appointed a teller of the votes of President and Vice President of the United States, on the part of the Senate, conformably with their vote of the twelfth instant, and are now ready, in the Senate Chamber, to proceed therein: Whereupon, Mr. Speaker, attended by the House, proceeded to the Senate Chamber, and took seats therein; when, both Houses being assembled, the President of the Senate, in the presence of both Houses, proceeded to open the certificates of the Electors of the several States, beginning with the State of New Hampshire; and as the votes were read, the tellers on the part of each House counted and took lists of the same; which, being compared, were delivered to the President of the Senate, and are as follow:

STATES.	President.		V. Pres'dt.	
	Th. Jefferson.	C. C. Pinckney.	Geo. Clinton.	Rufus King.
New Hampshire	7	–	7	
Massachusetts	19	–	19	
Rhode Island	4	–	4	
Connecticut	–	9	–	9
Vermont	6	–	6	
New York	19	–	19	
New Jersey	8	–	8	
Pennsylvania	20	–	20	
Delaware	–	3	–	3
Maryland	9	2	9	2
Virginia	24	–	24	
North Carolina	14	–	14	
South Carolina	10	–	10	
Georgia	6	–	6	
Tennessee	5	–	5	
Kentucky	8	–	8	
Ohio	3	–	3	
Total	162	14	162	14

RECAPITULATION.

For Thomas Jefferson, of Virginia, as President - - - - - - - 162
For Charles Cotesworth Pinckney, of South Carolina, as President - - - 14
For George Clinton, of New York, as Vice President - - - - - - 162
For Rufus King, of New York, as Vice President - - - - - - - 14

The President of the Senate, in pursuance of the duty enjoined upon him, announced the state of the votes to both Houses, and declared that Thomas Jefferson, of Virginia, having the greatest number, and a majority of the votes of the Electors appointed, was duly elected President of the United States, for the term commencing on the fourth day of March next; and that George Clinton, of New York, having also the greatest number, and a majority of the votes of all the Electors appointed, was duly elected Vice President of the United States, for the term commencing on the fourth day of March next.

The two Houses then separated and the House of Representatives being returned to their Chamber, Mr. Speaker resumed the Chair.

The list of the votes of the Electors for President and Vice President of the United States, as declared by the President of the Senate, and herein before recited, was read at the Clerk's table.

On motion, it was

Resolved, That the Committee of Ways and Means be instructed to inquire into the salaries and compensations of the officers of the two Houses of Congress, as established by law, and report such alterations therein as they may deem expedient.

The House resolved itself into a Committee of the Whole, on the bill authorizing the Secretary of War to issue military land warrants, and for other purposes. The bill was reported without amendment. The House then proceeded to consider the bill at the Clerk's table; and, having made some progress therein, the further consideration of the bill was postponed until to-morrow.

A message from the Senate notified the House that the Senate will, at half-past two o'clock, on this day, be ready to proceed on the trial of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

On motion, it was

Resolved, That a committee be appointed, to join such committee as may be appointed by the Senate, to wait on the President, and to notify to him his re-election to the office of President of the United States.

Ordered, That Mr. Nicholson, Mr. Gregg, and Mr. Varnum, be of the said committee, on the part of this House.

The House then went into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Thursday, February 14.

A new member, to wit: George Clinton, jr., returned to serve as a member of this House, for the State of New York, in the place of Samuel L. Mitchill, appointed a Senator of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

The Speaker laid before the House a letter

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from the Secretary of State, accompanied with an "abstract of all the evidences of title to lands claimed under any act or pretended act of the State of Georgia, passed or pretended to be passed, in the years one thousand seven hundred and eighty-nine, and one thousand seven hundred and ninety-five, recorded in his office, noting the dates of the instruments, the names of the parties, the quantity of land, with the species of warranty, and any proviso or condition that may be annexed," in pursuance of a resolution of this House, of the fifth instant; which were read: Whereupon, a motion was made and seconded that the said letter and abstract be printed for the use of the members of both Houses of Congress; and, after debate thereon, the question was taken that the House do agree to the said motion for printing, and resolved in the affirmative—yeas 69, nays 49, as follows:

YEAS—Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, George Clinton, jr., John Clopton, Frederick Conrad, Jacob Crowninshield, John B. Earle, Ebenezer Elmer, John W. Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smith, Henry Southard, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, junior, Simeon Baldwin, Silas Betton, Adam Boyd, John Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Thomas Dwight, James Elliot, William Eustis, William Findley, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, Benjamin Huger, Samuel Hunt, John G. Jackson, Simon Larned, Joseph Lewis, junior, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, John Smilie, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, Matthew Walton, and Lemuel Williams.

Ordered, That the said letter and abstract do lie on the table.

A message from the Senate informed the House that the Senate will, at twelve o'clock, this day, be ready to proceed on the trial of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States; and that, after this day, the Senate will proceed on the said trial, at ten o'clock in the forenoon of each day. The Senate have agreed to the resolution of this House, of the twelfth instant, "for the appointment of a joint committee of the two Houses, to inquire and report whether any, and, if any, what, further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing on the fourth day of March next;" and have appointed a committee on their part, for the purpose expressed therein.

The House then went into a Committee of the Whole, and proceeded to the Senate Chamber, to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

FRIDAY, February 15.

The House again resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase; after which they returned and reported progress.

The SPEAKER laid before the House a letter from the Secretary of War, accompanied with sundry documents, in relation to the situation of the public buildings on the banks of the Schuylkill, near the city of Philadelphia, to the probable expense of finishing the same, and to the military stores deposited in the said buildings, in pursuance of a resolution of this House, of the twenty-third ultimo; which were read, and ordered to lie on the table.

The SPEAKER laid before the House another letter from the Secretary of War, accompanied with "a statement of the number of the officers and privates in the actual service of the United States, during the years one thousand eight hundred and three, and one thousand eight hundred and four; also, the names of the posts where soldiers were stationed during those periods; together with the number of privates and officers at such posts; and, also, a detailed statement of the sums expended during the years one thousand eight hundred and three, and one thousand eight hundred and four, on fortifications, arsenals, armories, and magazines;" in pursuance of a resolution of this House, of the twenty-second ultimo; which were read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and five," with the several amendments; to which they desire the concurrence of this House.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, reported a bill making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase; which was read twice, and committed to a Committee of the Whole immediately.

The House accordingly, resolved itself into the said committee; and, after some time spent therein, the bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

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Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred, on the seventh instant, the petition of Robert Patton and David Williamson, trading under the firm of Robert Patton and Company, and of others therein named, of the towns of Fredericksburg and Falmouth, in the State of Virginia, reported a bill for the relief of sundry persons therein named; which was read twice and committed to a Committee of the Whole to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and five:" Whereupon, the amendments, together with the bill, were committed to the Committee of Ways and Means.

DRAWBACK OF DUTIES

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom was referred the memorial of Stephen Kingston, of the city of Philadelphia, merchant, made the following report:

Stephen Kingston, the memorialist, on the 22d and 23d of July, 1801, entered outwards, at the custom-house of Philadelphia, took out a regular permit, and actually shipped on board the United States frigate George Washington, Captain John Shaw, then destined for Algiers, three bales of cinnamon, fifteen bales of India goods, and eleven hogsheads of loaf sugar, for benefit of drawback and bounty,

All the proceedings at the custom-house, previous to the shipment, appear to have been perfectly regular. The articles were entered outwards, in the usual manner, and an inspector attended to their delivery on board the lighter, and, so far as the committee can discover, the memorialist was willing to comply with every requisite formality at the custom-house, which was enjoined by the laws; yet, it is proved to your committee, that an error was committed by the inspector, in exporting the merchandise. The George Washington was preparing to get under way, and proceed down the Delaware, when the lighter came alongside, and the captain being of opinion that the ship would draw too much water to pass the bar in the river, if the articles were then received on board, ordered the lighter to follow the ship, and they were taken in below the bar, and at some distance out of the Philadelphia district.

In the case under consideration, the articles would have been liable to seizure and confiscation, if they had been relanded in Philadelphia, without permission from the collector. The exporter, therefore, was, in some measure, compelled to ship them on the George Washington; and in doing this, he appears to have pursued a safe and prudent line of conduct; for, if he had peremptorially ordered the lighter to return to Philadelphia, with her loading, he might have exposed himself to a prosecution for an attempt to commit a fraud on the revenue; and his property to almost certain confiscation, Although it is understood that permission was granted in this case, the committee are of opinion that our public vessels ought not to be permitted to carry merchandise for account of private individuals; but as no prohibition then existed to prevent similar shipments, the George Washington having been permitted to clear out in the usual manner, it is conceived that the exporter ought not to lose the drawback, merely because the articles were exported in a national vessel. On the whole, the exporter having complied with the existing regulations of the custom-house, previous to the delivery of the merchandise on board the lighter, and it not appearing that the deviation from the ordinary course which was subsequently committed, proceeded from his fault or neglect, the committee are impressed with an opinion (the irregularity, too, being committed by a captain in the service of the United States) that the memorialist has an equitable claim upon the Government for the drawback and bounty arising on the exportation of the articles mentioned in his memorial, upon the proof being exhibited to the Secretary of the Treasury that the same were actually landed out of the limits of the United States; and the committee submit the following resolution:

Resolved, That the prayer of the memorial of Stephen Kingston is reasonable and ought to be granted.

The report was ordered to lie on the table.

SATURDAY, February 16.

The House again resolved itself into a Committee of the Whole and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase, after which they returned and reported progress.

An engrossed bill making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase, was read the third time, and passed.

Ordered, That the Committee of Ways and Means, to whom were referred, on the thirteenth instant, a Message from the President of the United States, as also the treaties which have lately been entered into and concluded with the Delaware and Piankeshaw Indians, and the tribe of Indians called the Sacs and Foxes, be discharged from the consideration thereof; and that the said message and treaties be referred to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage." The Committee rose and reported their agreement to the same. The House then proceeded to consider the said amendment of the Senate: Whereupon,

Resolved, That this House doth concur with the Committee of the Whole House in their agreement to the same.

MONDAY, February 18.

The House again resolved itself into a Committee of the Whole House, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase; after which they returned and reported progress.

Resolved, That a committee be appointed to join with such committee as the Senate may appoint, to consider and report what business is necessary to be done by Congress in the present session.

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Ordered, That Mr. ROGER GRISWOLD, Mr. J. CLAY, Mr. BLACKLEDGE, Mr. HUGER, and Mr. NICHOLAS R. MOORE, be appointed of the said committee, on the part of this House; and that the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House proceeded to the farther consideration of the bill authorizing the Secretary of War to issue military land warrants, and for other purposes, to which the Committee of the Whole House, to whom it had been committed, reported no amendment, on the thirteenth instant; and the said bill being twice read and amended at the Clerk's table, was, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith; and, after some time spent therein, the Committee rose, reported progress, and were discharged from the farther consideration thereof, and the bill was recommitted to the Committee of Commerce and Manufactures.

TUESDAY, February 19.

Mr. NICHOLSON, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, "to wait on the President and notify him of his re election to the office of President of the United States," reported that the committee did, this day, perform the service assigned to them.

The House again resolved itself into a Committee of the Whole and proceeded, in that capacity, to the Senate Chamber to attend the trial of Judge Chase, after which they returned and reported progress.

Mr. NEWTON, from the committee appointed on the sixth of November last, presented a bill to alter and establish certain post roads, and for other purposes; which was read twice and committed to a Committee of the Whole to-morrow.

An engrossed bill to authorize the Secretary of War to issue military land warrants, and for other purposes, was read the third time and passed.

A message from the Senate informed the House that the Senate have passed the bill entitled "An act further providing for the government of the Territory of Orleans;" to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the thirteenth instant, to whom was referred the memorial of Richard Taylor, of the State of Kentucky; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the memorial of Richard Taylor is reasonable, and ought to be granted.

Ordered That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. THOMAS, from the committee appointed on the fifteenth ultimo, presented a bill supplementary to the act, entitled "An act, regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia;" which was read twice and committed to a Committee of the Whole to-morrow.

Mr. DANA, from the Committee of Claims, presented a bill for the relief of Richard Taylor; which was read twice and committed to a Committee of the Whole to-morrow.

Mr. DANA, from the Committee of Claims, presented a bill for the relief of William A. Barron; which was read twice and committed to a Committee of the Whole to-morrow.

Mr. EPPES, from the committee to whom was recommitted, on the fifth instant, an engrossed bill farther to extinguish the debts due from the United States, made a report thereon; which was read, and ordered to lie on the table.

WEDNESDAY, February 20.

The House again resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase, after which they returned and reported progress.

A Message was received from the President of the United States, transmitting a letter, of September eighteenth, from Commodore Preble, giving a detailed statement of the transactions of the vessels under his command from July the ninth to the tenth of September last past. The Message and papers were read, and referred to Mr. VARNUM, Mr. JOSEPH CLAY, Mr. McCREERY, Mr. DANA, and Mr. LOWNDES; to examine and report their opinion thereupon to the House.

Mr. HOLLAND, from the committee appointed, on the twenty-eighth ultimo, "to take into consideration the present situation of the grounds in the City of Washington which were appropriated for the purpose of laying out public walks and gardens, and to report such measures as may tend to carry into effect the original intention of the proprietors by whom the said lands were granted for public purposes," reported a bill to authorize the leasing of the public lands in the City of Washington; which was read twice and committed to a Committee of the Whole on Saturday next.

Ordered, That the Committee of the Whole to whom was recommitted, on the twenty-fifth of January last, the bill for the relief of the sufferers by fire in the city of New York, be discharged from the consideration thereof; and that the said bill, with the amendment reported thereto by the Committee of the Whole House, on the twenty-fourth of the same month, be committed to the Committee of Commerce and Manufactures.

Mr. DANA, from the Committee of Claims, to whom were referred, on the fifth instant, a Message from the President of the United States, and the documents accompanying the same; as, also,

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the reports and others papers made and presented at the last session, in relation to the subject-matter of a claim for the restitution of the Danis brigantine called the Henrich; made a report thereon; which was read, and referred to a Committee of the Whole to-morrow.

On motion it was

Resolved, That a committee be appointed to inquire whether any and, if any, what, provision is necessary to extend, to all parties interested therein, the benefit of bonds given by Marshals for the faithful performance of the duties of their office; and that they report by bill, or otherwise.

Ordered, That Mr. BALDWIN, Mr. DAWSON, and Mr. NELSON, be appointed a committee, pursuant to the said resolution.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was recommitted, on the eighteenth instant, the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith, reported the same to the House, without amendment.

THURSDAY, February 21.

No quorum being present, the House adjourned until half past two o'clock, P. M.

Eodem Die, 2½ o'clock, P. M.

The House met, pursuant to adjournment, but immediately after adjourned.

FRIDAY, February 22.

Mr. JOSEPH CLAY, from the Committee of Ways and Means, to whom were referred, on the fifteenth instant, the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and five," reported to the House their agreement to the same: Whereupon, the amendments, together with the bill, were committed to a Committee of the Whole to-day.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend the act, entitled 'An act further to amend the act entitled an act to lay and collect a direct tax within the United States;" to which they desire the concurrence of this House.

The SPEAKER laid before the House a letter from the Secretary of State, accompanied with "a list of the names of persons who have invented a new and useful art, manufacture, or composition of matter, or any improvement thereon, and to whom patents have issued for the same from the office of the Department of State, with the dates and general objects of such patents," in pursuance of a resolution of this House of the twenty-third ultimo; which were read, and ordered to lie on the table.

This House resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase: after which they returned and reported progress.

COLLECTOR'S BOND.

Mr. JOSEPH CLAY, from the Comm[illegible] Ways and Means, to whom was referre[illegible] tition of Anthony Benezet and others, [illegible] and surviving heirs of Daniel Benezet, la[illegible] City of Philadelphia, deceased, made the [illegible] ing report:

That Daniel Benezet, the younger brother [illegible] petitioners, was appointed, in March, 1790, colle[illegible] the port of Great Egg Harbor, in the State o[illegible] Jersey; Daniel Benezet the elder, his father, [illegible] his surety in a bond for two thousand dollars [illegible] for the faithful discharge of his duties in the offi[illegible]

Daniel Benezet, the younger, rendered a [illegible] for settlement at the Treasury subsequent to the [illegible] June, 1791, although repeatedly urged [illegible] tinued in the office until the 7th of Mar[illegible] he was superseded by the appointment [illegible] Somers, who had been his deputy.

Daniel Benezet, the elder, died in Apr[illegible] his estate was settled and divided among its [illegible] whom Daniel Benezet, the younger, was [illegible] beginning of the year 1798.

Daniel Benezet, the younger, received fr[illegible] of his father's estate a sum of money [illegible] more than five thousand dollars; he died [illegible] 1798, and his estate was sold to pay his [illegible] finally settled in the year 1801, as far as [illegible] power of his administrators and heirs to act [illegible]

In the year 1802, seven years after his de[illegible] administrator was, for the first time, applied [illegible] Comptroller of the Treasury for some books [illegible] which, it had been intimated, related to the [illegible] of the custom-house of Great Egg Harbor, [illegible] quest that they might be delivered to the [illegible] This request could not be complied with [illegible] books, and very few trifling papers, were [illegible] session of the administrator; the attorney [illegible] trict of New Jersey was then directed to [illegible] suit on the official bond; but finding that the [illegible] interested all lived in Pennsylvania, he gave [illegible] that circumstance to the Comptroller, [illegible] District Attorney for Pennsylvania was [illegible] bearing date the 12th of August, 1803, directed [illegible] stitute a suit for the recovery of the [illegible] 7th of October, 1803, suit was accordingly [illegible] against the administrators of Daniel Benezet, [illegible] and judgment was entered by agreement [illegible] the United States, for two thousand dollars [illegible] stay of execution for six months. It was [illegible] that, if, before the expiration of that time, the [illegible] ants could satisfy the Comptroller that they [illegible] tled to be released, in whole or in part, from the [illegible] of the judgment, it should accordingly be [illegible] the Comptroller's certificate. The Comptroller [illegible] no authority to release any part of the judgment [illegible] petitioners have applied to Congress for relief [illegible] act of Congress, passed September 2d, 1789, [illegible] the duty of the Comptroller to "provide for the [illegible] and punctual payment of all moneys which [illegible] collected," and to direct prosecutions for all [illegible] cies of officers of the revenue."

By an act of Congress, passed August 4th, [illegible] was made the duty of the collectors, once in every [illegible] months, or oftener if required, to transmit [illegible] counts for settlement.

Although Daniel Benezet, the younger, was [illegible] ly pressed to forward his accounts for settlement [illegible] refused or neglected to do so, and although he was [illegible]

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missed from office, probably for delinquency, yet no steps were taken to recover from him the penalty of his bond, during his life, nor from his or his father's estate, until the year 1802, eleven years after his appointment, seven years after his dismissal, five years after the death of his father, and four years after the final settlement and division of his father's estate, and after his own death.

Had any application been made previously to the settlement of either of the estates, the penalty of the bond might have been recovered and paid out of his own effects. But, from the delay, and not to say neglect, of the then Comptroller, no steps were taken until the whole of his property was disposed of, in payment of his private debts.

When it is considered that policy has dictated, in all countries, a limitation of the time in which ordinary debts between individuals may be recovered, and that the humanity of the Government has determined that even penalties and forfeitures, for crimes against the revenue laws, shall not be imposed upon the offenders unless the prosecution be had within a limited time; and particularly, when it is considered that statutes of limitation have been passed, to prevent the allowance of claims against the United States, unless brought before a certain period—claims, too, of the most meritorious nature—it is submitted to Congress whether a consistent regard to justice does not forbid the rigorous exaction of the sum adjudged against the petitioners, especially as the delay has arisen from the negligence of the officers of the Government. Your committee conceiving this case to be extremely severe, think the petitioners entitled to the relief for which they pray, and recommend the following resolution:

Resolved, That the prayer of the petitioners is reasonable, and ought to be granted.

The report was ordered to lie on the table.

SATURDAY, February 23.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the House of Representatives of the United States:

In further compliance with the desire of the House of Represen tatives, expressed in their resolution of December thirty-first, I now transmit the report and map of Isaac Briggs, referred to in my message of the first instant, and received by the last post from New Orleans.

FEB. 23, 1805. TH. JEFFERSON.

The said Message was read, and, together with the report transmitted therewith, referred to the Committee of the Whole to whom was committed a motion respecting "the establishment of a post road from Knoxville to New Orleans.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to regulate the clearance of armed merchant vessels," with several amendments; to which they desire the concurrence of this House.

Mr. NICHOLSON, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, "to inquire and report whether any, and, if any, what, further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing the fourth of March next," made a report thereon; which was read, and referred to the Committee of the Whole on Monday next.

The House then, in Committee of the Whole attended the trial of Judge Chase in the Senate; after which they returned and reported progress.

MONDAY, February 25.

Mr. BALDWIN, from the committee appointed on the twentieth instant, presented a bill relating to bonds given by marshals; which was read twice and committed to a Committee of the Whole to-morrow.

The bill sent from the Senate, entitled "An act to amend the act, entitled 'An act further to amend the act, entitled An act to lay and collect a direct tax within the United States," was read three times and passed.

And then, on a motion made and seconded, the House adjourned until three o'clock, post meridian.

Eodem Die, 3 *o'clock, P. M.*

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana;" and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and five;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same. The House then proceeded to consider the said amendments, and concurred with the Committee of the Whole in their agreement to the said amendments.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to regulate the clearance of armed merchant vessels:" Whereupon, the amendments, together with the bill, were committed to a Committee of the Whole to-morrow.

And the House adjourned.

TUESDAY, February 26.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a statement of the emoluments of the officers employed in the collection of the customs for the year one thousand eight hundred and four; as also a letter to the said Secretary from the Comptroller of the Treasury, in relation thereto; which were read, and ordered to lie on the table.

The House met, and on motion, adjourned until three o'clock, post meridian.

Eodem Die, 3 *o'clock, P. M.*

No quorum being present, the House adjourned.

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WEDNESDAY, February 27.

Mr. R. GRISWOLD, from the committee appointed on the part of this House, jointly with the committee appointed on the part of the Senate, "to consider and report what business is necessary to be done by Congress in their present session," made a report thereon; which was read, and ordered to lie on the table.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom were committed, on the tenth ultimo, the amendments proposed by the Senate to the bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," reported to the House their agreement to the same.

Mr. C., from the same committee, to whom was recommitted, on the twentieth instant, the bill for the relief of the sufferers by fire in the city of New York, made a report thereon; which was read, and ordered to lie on the table.

Mr. C., from the same committee, also reported an amendatory bill for the relief of the sufferers by fire in the city of New York, and for the relief of the sufferers by storm in Georgia and South Carolina; which were ordered to lie on the table.

The House then adjourned until four o'clock, post meridian.

Eodem Die, 4 o'clock, P. M.

The bill sent from the Senate, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana," together with the amendments agreed to on Monday last, were read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill further to alter and establish certain post roads, and for other purposes; and, after some time spent therein, the Committee rose and reported progress.

And the House adjourned.

THURSDAY, February 28.

A Message was received from the President of the United States, transmitting a statement of the militia of the United States. The said Message was read, and, together with the statement of the militia transmitted therewith, ordered to lie on the table.

Another Message was received from the President of the United States, transmitting the account of the fund established by the act of May first, one thousand eight hundred and two, for defraying the contingent charges of Government. The said Message was read, and, together with the account transmitted therewith, ordered to lie on the table.

The House proceeded to consider the report of the Committee of Commerce and Manufactures, of the twenty-seventh instant, to whom was committed the amendment proposed by the Senate to the bill, entitled "An act for the government and regulation of seamen in the merchants' service:" Whereupon, the House concurred with the Committee of Commerce and Manufacture... agreement to the said amendment.

Mr. DANA, from the Committee of C... whom was recommitted, on the twel... the bill sent from the Senate, entitled "A... addition to 'An act to make provision fo... that have been disabled by known wo... ceived in the actual service of the Un... during the Revolutionary war;" and a... which originated in this House, to the ... made a report thereon; which was rea... gether with the said bills, committed ... mittee of the Whole this day.

Mr. D., from the same committee, to ... referred, on the fifteenth ultimo, the ... John F. Randolph and Randolph M... State of Georgia, together with ... and documents accompanying the ... report thereon; which was read, and ... Committee of the Whole this day.

The House proceeded to consider the ... the Committee of Ways and Means ... was referred the petition of Anthony ... others, children and surviving hei... Benezet, deceased, which was read, a... to lie on the table, on the twenty-sec... Whereupon, the report was referred ... mittee of the Whole to-morrow.

On a motion made and seconded that ... do come to the following resolution:

Resolved, That there be allowed to Isa... his assistant —— dollars, as a full comp... their services in exploring and describing ... gible route for the transportation of the ma... City of Washington to New Orleans:

Ordered, That the said motion be re... the Committee of Ways and Means.

On motion, the House resolved ... Committee of the Whole on the bill ... establish certain post roads, and f... ses. The Committee rose and re... amendments thereto; which were ... agreed to by the House. The said ... further amended, and, together with the ... ments, ordered to be engrossed and re... time to-morrow.

On a motion made and seconded that the ... do come to the following resolution:

Resolved, That the Clerk be directed, as so... be, after the present session of Congress, ... three weeks, successively, in two newspapers ... in the District of Columbia, that he is ready ... separate proposals for supplying the House ... sentatives at their next session, with the nece... tionery and printing; which advertisement ... scribe the species of stationery and printing ... and that the proposals to be made must be ... nied with sufficient securities for the perf... And, in the month of September, he shall p... the same newspapers, a statement of the p... which the stationery and printing are propo... furnished by each applicant; and shall notify ... est bidder or bidders, whose securities are de... ficient, of the acceptance of his or their propo...

The House proceeded to consider the ... posed resolution at the Clerk's table; and ...

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being twice read, a motion was made, and the question being put, that the further consideration thereof be postponed until to-morrow, it passed in the negative. And then the main question being taken that the House do agree to the said resolution, in the words hereinbefore recited, it was resolved in the affirmative—yeas 76, nays 30, as follows:

YEAS—Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, Silas Betton, William Blackledge, Walter Bowie, John Boyle, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Findley, Calvin Goddard, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, Jeremiah Morrow, Gideon Olin, Oliver Phelps, Thomas Plater, John Rhea of Tennessee, Samuel Riker, Erastus Root, Ebenezer Seaver, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, George Tibbitts, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

NAYS—David Bard, Robert Brown, Joseph Bryan, Levi Casey, Christopher Clark, George Clinton, jun., John B. Earle, John W. Eppes, Peterson Goodwyn, Josiah Hasbrouck, Joseph Heister, David Holmes, Michael Leib, John B. C. Lucas, Andrew McCord, Nicholas R. Moore, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Thomas Sandford, James Sloan, Philip R. Thompson, Abram Trigg, John Whitehill, and Thomas Wynns.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act further providing for the government of the Territory of Orleans;" and, after some time spent therein, the Committee rose and reported two amendments thereto.

The House proceeded to consider the said amendments: Whereupon, the first amendment being twice read, was agreed to by the House.

The second amendment reported from the Committee of the Whole being twice read, for inserting a new section between the third and fourth sections of the original bill, in the words following, to wit:

SEC. 3. *And be it further enacted*, That the Council and Representatives of said Territory, when met and organized, shall nominate —— persons, resident in said Territory, and citizens thereof, whose names shall be returned to the President of the United States, one of whom the President shall appoint and commission to be the Governor of said Territory, who shall hold his office for the term of —— years from his appointment; shall take the same oath or affirmation, and shall have the same powers and authorities within said Territory, as are given by law to the Governor of the Mississippi Territory. And in case the office of Governor shall become vacant, such vacancy shall be filled in the same manner as is herein provided for appointing the first Governor; and, until a Governor shall be appointed, commissioned, and sworn, in the manner provided by this act, the powers and authorities of Governor shall be exercised by the Governor of the Territory of Orleans, appointed in virtue of an act, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof."

After debate thereon, the question was taken that the House do concur with the Committee of the Whole in their agreement to the said second amendment, and passed in the negative—yeas 46, nays 57, as follows:

YEAS—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Claggett, Christopher Clark, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Ebenezer Elmer, William Findley, John Fowler, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, John G. Jackson, Simon Larned, Joseph Lewis, junior, John B. C. Lucas, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, Gideon Olin, Oliver Phelps, Ebenezer Seaver, John Smilie, Richard Stanford, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, George Tibbits, Killian K. Van Renssalaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, jun., Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Robert Brown, William Butler, John Campbell, Levi Casey, George Clinton, jr., John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, John W. Eppes, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, John Hoge, James Holland, David Holmes, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, Nicholas R. Moore, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Beriah Palmer, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, Thomas Sandford, James Sloan, John Smith, Joseph Stanton, Abram Trigg, Philip Van Cortlandt, Matthew Walton, John Whitehill, Alexander Wilson, and Richard Winn.

Resolved, That the said bill, with the amendment agreed to, be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Richard Taylor. The bill was reported with several amendments thereto; which were severally twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to authorize the Secretary of War to issue military land warrants, and for other purposes," with an amendment; to which they desire the

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concurrence of this House. The Senate have also passed the bill, entitled "An act to amend the charter of Georgetown, with several amendments; to which they desire the concurrence of this House. The Senate have passed a bill, entitled "An act freeing from postage all letters and packets to and from Aaron Burr;" to which they desire the concurrence of this House.

Mr. Newton, from the committee to whom was referred, on the nineteenth, the petition of sundry freeholders and inhabitants of the town of Portsmouth, in the State of Virginia, made a report thereon; which was read and ordered to lie on the table.

Friday, March 1.

An engrossed bill further to alter and establish certain post roads, and for other purposes, was read the third time and passed.

An engrossed bill for the relief of Richard Taylor was read the third time and passed.

The bill sent from the Senate, entitled "An act further providing for the government of the Territory of Orleans," together with the amendment agreed to yesterday, was read the third time and passed.

Mr. Dana, from the Committee of Claims, to whom was referred, on the seventh of December last, the memorial of Nancy Flinn, widow of Thomas Flinn, deceased, made a report thereon; which was read, and ordered to be referred to a Committee of the Whole this day.

The bill sent from the Senate, entitled "An act freeing from postage all letters and packets to and from Aaron Burr," was read twice and committed to a Committee of the Whole on the first Monday in December next.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to amend the charter of Georgetown:" Whereupon,

Resolved, That this House do agree to the said amendments.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act to authorize the Secretary of War to issue Military Land Warrants and for other purposes:" Whereupon,

Resolved, That this House do agree to the said amendment.

The House resolved itself into a Committee of the Whole on the bill supplementary to the act, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" and, after some time spent therein, the bill was reported with two amendments thereto; which were twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time today.

The House resolved itself into a Committee of the Whole on the Message from the President of the United States, of the thirteenth ultimo, accompanied with certain treaties which have been lately entered into and concluded with [illegible] ware and Piankeshaw Indians, and [illegible] Indians called the Sacs and Foxes; [illegible] some time spent therein, the Committee [illegible] reported a resolution thereupon; which [illegible] read and agreed to by the House, as follows:

Resolved, That it is expedient to make [illegible] by law, for carrying into execution the treaties concluded between the United States and the [illegible] ware, Piankeshaw, Sac, and Fox tribes of Indians.

Ordered, That a bill or bills be brought in [illegible] suant to the said resolution; and that the Committee of Ways and Means do prepare and [illegible] in the same.

The Speaker laid before the House [illegible] addressed to him, signed "Th. Jefferson," [illegible] ing, that "he shall take the oath which the Constitution prescribes to the President of the United States, before he enters on the executive office, on Monday, the fourth instant, [illegible] o'clock, in the Senate Chamber."

Ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the report of the joint committee of the two Houses, appointed "to inquire and report whether any, and, if any, what [illegible] ought to be adopted for the accommodation of the President of the United States, [illegible] commencing on the fourth day of March [illegible] and, after some time spent therein, the Committee rose and reported a resolution thereupon, which was twice read and agreed to by the House, as follows:

Resolved, That the President of the United States be authorized to cause to be sold such part of the furniture and equipage belonging to his house, as may be decayed and out of repair; and that the sum of fourteen thousand dollars, together with the proceeds of such sales, be appropriated for the accommodation of the household of the President of the United States, to be laid out at his discretion, and under his orders.

Ordered, That a bill or bills be brought in pursuant to the said resolution; and that Mr. Nicholson, Mr. Roger Griswold, and Mr. Bryan do prepare and bring in the same.

And then, on motion made and seconded, the House adjourned until four o'clock, P. M.

Eodem Die, 4 o'clock, P. M.

Mr. Elliot, from the committee to whom [illegible] referred, on the twenty-sixth of November [illegible] seventh of January last, the petitions of Benjamin Emmons, and of Barnabus Strong, and associates; also, the report of a select committee [illegible] the petition of the said Benjamin Emmons, [illegible] the twenty-seventh of February, one thousand eight hundred and four; made a report [illegible] which was read, and considered: Whereupon [illegible] much of the last clause of the said report [illegible] contained in the following words, to wit: [illegible] 'beg leave to recommend that the further consideration of the prayer of the said petitioners be postponed until the next session of Congress,' [illegible] twice read, was, on the question put [illegible] disagreed by the House.

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A motion was then made and seconded, that the House do agree to the following resolution:

Resolved, That the prayer of the petitions of Benjamin Emmons and of Barnabus Strong, and others, ought not to be granted.

And the question being taken thereupon, it was resolved in the affirmative.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act further providing for the government of the district of Louisiana;" also, a bill, entitled "An act authorizing the sale of a certain lot of land;" to which bills, respectively, they desire the concurrence of this House.

On a motion made by Mr. JOHN RANDOLPH, that the House do come to the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures of three-fourths of the said States, shall be valid and binding, as a part of the Constitution of the United States:

The judges of the Supreme and all other Courts of the United States, shall be removed by the President, on the joint address of both Houses of Congress, requesting the same, anything in the Constitution of the United States to the contrary notwithstanding.

A motion was made and seconded that the said proposed resolution be referred to the consideration of a Committee of the whole House; and the question being taken thereupon, it was resolved in the affirmative—yeas 68, nays 33, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Jas. Holland, David Holmes, John G. Jackson, Walter Jones, Nehemiah Knight, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Oliver Phelps, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Alexander Wilson, Richard Winn, and Thomas Wynns.

NAYS—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, Benj. Huger, Simon Larned, Thomas Lowndes, Nahum Mitchell, Erastus Root, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Another motion was made, and the question being put, that the said resolution be the order of the day for the first Monday in December next, it was resolved in the affirmative.

On a motion made by Mr. NICHOLSON,

Resolved, That the following article, when adopted by two-thirds of both Houses of Congress, and by the Legislatures of three-fourths of the respective States, shall become a part of the Constitution of the United States, viz:

That the Legislature of any State may, whenever the said Legislature shall think proper, recall, at any period whatever, any Senator of the United States, who may have been elected by them; and whenever a vote of the Legislature of any State, vacating the seat of any Senator of the United States, who may have been elected by the said State, shall be made known to the Senate of the United States, the seat of such Senator shall thenceforth be vacated.

A motion was made and seconded, that the said proposed resolution be referred to the consideration of a Committee of the whole House; and the question being taken thereupon, it was resolved in the affirmative—yeas 53, nays 46, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, David Bard, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Frederick Conrad, John Dawson, John B. Earle, Peter Early, J. W. Eppes, Peterson Goodwyn, Adrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Ebenezer Seaver, James Sloan, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Whitehill, Alexander Wilson, Richard Winn, and Thomas Wynns.

NAYS—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, William Findley, John Fowler, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, John G. Jackson, William Kennedy, Simon Larned, Thomas Lowndes, John B. C. Lucas, Nahum Mitchell, Oliver Phelps, Erastus Root, John Smilie, Henry Southard, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Renssalaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Another motion was then made, and the question being put, that the said resolution be the order of the day for the first Monday in December next, it was resolved in the affirmative—yeas 70, nays 28, as follows:

YEAS—Willis Alston, jun., Nathaniel Alexander,

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Isaac Anderson, Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, Joseph Bryan, William Butler, Levi Casey, William Chamberlin, Thomas Claiborne, George Clinton, jun., John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, Calvin Goddard, Peterson Goodwyn, Andrew Gregg, Roger Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Jos. Heister, James Holland, David Holmes, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, Simon Larned, Thomas Lowndes, John B. C. Lucas, Andrew McCord, William McCreery, Nahum Mitchell, Nicholas R. Moore, Jeremiah Morrow, Thomas Newton, jun., Gideon Olin, Oliver Phelps, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, John Smilie, Henry Southard, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, Alexander Wilson, and Thomas Wynns.

NAYS.—David Bard, Walter Bowie, Robert Brown, Martin Chittenden, Clifton Claggett, Joseph Clay, Thomas Dwight, Gaylord Griswold, William Helms, David Hough, Michael Leib, Roger Nelson, Anthony New, Joseph H. Nicholson, Beriah Palmer, John Randolph, James Sloan, Richard Stanford, Joseph Stanton, William Stedman, Samuel Thatcher, David Thomas, George Tibbits, Abram Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, John Whitehill, and Richard Winn.

An engrossed bill supplementary to the act, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," was read the third time, and passed.

Mr. NICHOLSON, from the committee appointed, presented a bill further to provide for the accommodation of the President of the United States; which was read twice, and committed to a Committee of the Whole to-day.

The bill, sent from the Senate, entitled "An act further providing for the government of the district of Louisiana," was read twice, and ordered to be read the third time to-morrow.

SATURDAY, March 2.

Mr. JOSEPH CLAY, from the Committee of Ways and Means, presented a bill making an appropriation for carrying into effect certain Indian treaties; which was read twice, and committed to a Committee of the Whole this day.

The bill, sent from the Senate, entitled "An act further providing for the government of the district of Louisiana," was read the third time and passed.

The House resolved itself into a Committee of the Whole on the bill further to provide for the accommodation of the President of the United States. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-day.

The bill, sent from the Senate, entitled "An act authorizing the sale of a certain lot of land," was read the first time, and the further consideration postponed until the first Monday in December next.

The House resolved itself into a Committee of the Whole on the bill, sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels," to which the Committee of Ways and Means, to whom it had been referred, reported no amendment, on the eighteenth of January last; and, after some time spent therein, the Committee reported the same to the House without amendment.

The House then proceeded to consider the said bill: Whereupon a motion was made and seconded that the further consideration thereof be postponed until the first Monday in December next, and the question being put thereon, it passed in the negative—yeas 43, nays 46, as follows:

YEAS—David Bard, Silas Betton, Adam Boyd, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Frederick Conrad, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, John W. Eppes, Calvin Goddard, Peterson Goodwyn, Andrew Gregg, Gaylord Griswold, Roger Griswold, John Hoge, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Thomas Lowndes, John B. C. Lucas, Nahum Mitchell, Beriah Palmer, Thomas Plater, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sammons, Thomas Sandford, Henry Southard, Richard Stanford, William Stedman, John Stewart, Samuel Taggart, Benj. Tallmadge, Samuel Tenney, Samuel Thatcher, and George Tibbits.

NAYS—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, William Blackledge, Walter Bowie, Robert Brown, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, John Dawson, John Fowler, Josiah Hasbrouck, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, Thomas Mann Randolph, Jacob Richards, James Sloan, John Smilie, Joseph Stanton, Philip R. Thompson, Abram Trigg, Joseph B. Varnum, John Whitehill, Lemuel Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

And then the main question being taken, that the said bill do pass, it was resolved in the affirmative.

An engrossed bill further to provide for the accommodation of the President of the United States, was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act supplementary to an act, entitled 'An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty;" to which they desire the concurrence of this House.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by

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known wounds received in the actual service of the United States, during the Revolutionary war, the bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," with several amendments; to which they desire the concurrence of this House.

The Senate have passed a bill, entitled "An act making provision for the widow and orphan children of Thomas Flinn;" also, a bill, entitled "An act for the relief of George Scoone and Alexander Cameron;" to which bills, respectively, they desire the concurrence of this House.

The House resolved itself into a Committee of the Whole on the amendments of the Senate to the bill, entitled "An act to regulate the clearance of armed merchant vessels. The committee reported to the House their agreement to the same, with sundry amendments thereto. The House then proceeded to consider the said amendments of the Senate: Whereupon,

Resolved, That this House doth agree to the said amendment, with amendments.

A message from the Senate informed the House that the Senate have passed sundry resolutions "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron;" to which they desire the concurrence of this House.

The said resolutions of the Senate were read: Whereupon, the resolutions were committed to Mr. R. GRISWOLD, Mr. NICHOLSON, and Mr. J. CLAY, to consider and report thereon to the House.

The House then adjourned until five o'clock, post meridian.

Eodem Die, 5 o'clock, P. M.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," with an amendment; to which they desire the concurrence of this House; also, the bill, entitled "An act further to alter and establish certain post roads, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory and for other purposes:" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act further to alter and establish certain post roads, and for other purposes:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The bill sent from the Senate, entitled "An act for the relief of George Scoone and Alexander Cameron," was read twice and committed to a Committee of the Whole this day.

The bill sent from the Senate, entitled "An act making provision for the widow and orphan children of Thomas Flinn," was read twice and committed to a Committee of the Whole this day.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for carrying into effect certain Indian treaties. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-day.

A message from the Senate informed the House that the Senate disagree to the amendment proposed by this House to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for the persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war."

The House proceeded to consider the said message: Whereupon,

Resolved, That this House doth insist on their said amendment, and desire a conference with the Senate on the subject-matter thereof; to which conference this House doth appoint Mr. DANA, Mr. ROOT, and Mr. NELSON, the managers on their part.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act for the relief of George Scoone and Alexander Cameron." The bill was reported without amendment, read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act making provision for the widow and orphan children of Thomas Flinn. No amendment being made, the said bill was then read the third time, and passed.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase:" Whereupon, the said amendments, together with the bill, were committed to a Committee of the Whole immediately.

The House, accordingly, resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the same.

The House then proceeded to consider the said amendments of the Senate: Whereupon, the question being taken that the House do agree with the Committee of the whole House in their disagreement to the first amendment of the Senate, by strik-

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ing out, in the first section of the bill, line third, the words "on behalf of the House of Representatives, and of all the people of the United States, to attend the Senate in support," and inserting, in lieu thereof, the words "to attend the Senate on the trial."

It was resolved in the affirmative.—yeas 60, nays 18, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Robert Brown, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, John Dawson, William Dickson, John B. Earle, Ebenezer Elmer, John W. Eppes, William Findley, Peterson Goodwyn, Andrew Gregg, Joseph Heister, James Holland, David Holmes, Walter Jones, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, and Richard Winn.

NAYS—Simeon Baldwin, Jacob Crowninshield, Manasseh Cutler, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Benjamin Huger, Samuel Hunt, Nahum Mitchell, Samuel D. Purviance, William Stedman, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, and Peleg Wadsworth.

Resolved, That this House doth agree to all the other amendments of the Senate to the said bill.

The bill sent from the Senate, entitled "An act supplementary to the act, entitled 'An act making an appropriation for carrying into effect the Convention between the United States of America, and His Britannic Majesty," was read three times, and passed.

Mr. R. GRISWOLD, from the committee to whom were referred the resolutions of the Senate, "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," made a report thereon; which was read, and considered: Whereupon, the resolution was recommitted to the same committee. A message from the Senate informed the House that the Senate agree to the conference desired by this House on the subject-matter of the amendments disagreed to by the Senate to the bill entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," and have appointed managers at the said conference, on their part.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for carrying into effect certain Indian treaties. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third day.

SUNDAY, March 3.

An engrossed bill, making an appropr[illegible] carrying into effect certain Indian tre[illegible] read the third time.

Resolved, That the said bill do pas[illegible] the title be, "An act making appropr[illegible] carrying into effect certain Indian tre[illegible] for other purposes of Indian trade a[illegible] course."

On motion, it was

Resolved, That the Committee of [illegible] authorized to adjust and settle an acc[illegible] liam Duane, for arrears of printing [illegible] the House, at the second session of [illegible] Congress, and to direct payment of [illegible] they shall allow thereon; first, out of [illegible] remaining unexpended of the appropr[illegible] by an act of the present session, app[illegible] sixth day of December, one thousa[illegible] dred and four, "to make good a def[illegible] appropriation for the contingent ex[illegible] Houses of Congress, authorized by [illegible] fourteenth day of March last;" and [illegible] of the sum appropriated for the cont[illegible] of this House for the present year.

Mr. FINDLEY, from the Committee of [illegible] to whom was referred the certificate [illegible] of GEORGE CLINTON, jr., returned to [illegible] House, as a member for the State of N[illegible] the place of Samuel L. Mitchi[illegible] Senator of the United States, [illegible] thereon; which was read, and is as [illegible]

"That they have examined the ca[illegible] credentials of the election of George C[illegible] are of opinion, that he is entitled to a [illegible] House."

Ordered, That the said report [illegible] table.

The House resolved itself into [illegible] the Whole on the bill for the relie[illegible] sons therein named. The bill was [illegible] out amendment, and ordered to be [illegible] read the third time to-day.

Mr. DANA, from the managers ap[illegible] terday, on the part of this House, to [illegible] ference with the Senate, on the disag[illegible] of the two Houses on the amendment[illegible] sent from the Senate, entitled "An a[illegible] tion to 'An act to make provision for p[illegible] have been disabled by known wounds [illegible] the actual service of the United States [illegible] Revolutionary war," reported that th[illegible] had met the conferees on the part of [illegible] but could come to no agreement on the [illegible] matter of the said amendments.

The House resolved itself into a C[illegible] the Whole on the bill to revive and [illegible] nent, the "Act to prescribe the mode [illegible] evidence in cases of contested election[illegible] bers of the House of Representatives [illegible] ted States, and to compel the attenda[illegible] nesses," passed the third day of January [illegible]

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sand seven hundred and ninety-eight, and in addition to the same. The bill was reported with two amendments thereto, which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to extend jurisdiction in certain cases, to the State and Territorial courts. The bill was reported with several amendments thereto, which were severally twice read, and agreed to by the House.

The said bill, together with the amendments, were then read the third time, and passed.

An engrossed bill for the relief of sundry persons therein named, was read the third time.

Resolved, That the said bill do pass, and that the title be, "An act for the relief of Robert Patton, and others."

Mr. ROGER GRISWOLD, from the committee to whom was, yesterday, recommitted their report on the resolutions of the Senate, "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," made a supplementary report, proposing sundry amendments to the said resolutions, which were twice read, and agreed to by the House.

Ordered, That the said resolutions, with the amendments, be read the third time to-day.

An engrossed bill to revive and make permanent the "Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," passed the third day of January, one thousand seven hundred and ninety-eight, and in addition to the same, was read the third time, and passed.

On motion, that it be

Resolved, That the Clerk of this House be authorized and directed to pay, out of the moneys appropriated to defray the contingent expenses of this House, to Joseph Wheaton, Sergeant-at-Arms; also, to Thomas Claxton and Thomas Dunn, the Doorkeeper and Assistant Doorkeeper, two hundred dollars, each, for their extra services during the present session; to John Phillips, fifty dollars, and to Alexander Claxton, fifty dollars.

The House proceeeded to consider the said proposed resolution at the Clerk's table: Whereupon, the further consideration of the said resolution was postponed until the first Monday in December next.

Mr. VARNUM, one of the members for the State of Massachusetts, presented to the House a letter from the Governor of the said State, enclosing an attested copy of two concurrent resolutions of the Senate and House of Representatives of the State of Massachusetts, passed the fifteenth of February, in the present year, "instructing the Senators and requesting the Representatives in Congress, from the said State, to take all legal and necessary steps, to use their utmost exertions, as soon as the same is practicable, to obtain an amendment to the Federal Constitution, so as to authorize and empower the Congress of the United States to pass a law, whenever they may deem it expedient, to prevent the further importation of slaves from any of the West India islands, from the coast of Africa, or elsewhere, into the United States, or any part thereof:" Whereupon, a motion was made and seconded that the House do come to the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as a part of the said Constitution, to wit:

"That the Congress of the United States shall have power to prevent the further importation of slaves into the United States and the Territories thereof."

The said proposed resolution was read, and ordered to lie on the table.

The resolutions sent from the Senate "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," together with the amendments agreed to this day, were read the third time; and on the question that the same do pass, it was unanimously resolved in the affirmative.

The House resolved itself into a Committee of the Whole on the bill to provide for a light-house on Watch-hill Point, in the State of Rhode Island. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-day.

The order of the day for the House to resolve itself into a Committee of the Whole on the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith, was called for: Whereupon, the said order of the day was postponed until the first Monday in December next.

Mr. NEWTON, from the Committee on Post Offices and Post Roads, to whom was referred, on the twenty-third of January last, the petition of sundry inhabitants of York county, in the State of Pennsylvania, made a report thereon; which was read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction:" Whereupon, the amendments, together with the bill, were committed to Mr. NICHOLSON, Mr.

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Crowninshield, and Mr. Huger, to consider and report thereon to the House.

On a motion made and seconded,

That the thanks of this House be presented to Nathaniel Macon, in testimony of their approbation of his conduct in the discharge of the arduous and important duties assigned him while acting as Speaker."

It was resolved unanimously: Whereupon, Mr. Speaker made his acknowledgments to the House in manner following:

"*Gentlemen:* Accept my thanks for the vote which you have been pleased to pass, approving my conduct in the chair: permit me to assure you that it has been my constant endeavor so to conduct myself as to do justice to each member; and the highest gratification which I can receive is your approbation."

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the Clerk of this House be, and he is hereby, authorized to pay, out of the contingent fund of this House, the sum of two hundred and fifty dollars to Samuel Hamilton, jun., as a compensation for his services in the library; and two hundred and fifty dollars to Alexander Claxton, as a compensation for his services as a messenger in the House of Representatives.

The House proceeded to consider the said proposed resolution: Whereupon, the further consideration thereof was postponed until the first Monday in December next.

A message from the Senate informed the House that the Senate adhere to their disagreement to the amendment, insisted on by this House to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war."

An engrossed bill to provide for a light-house on Watch-hill Point, in the State of Rhode Island, was read the third time and passed.

The House adjourned until five o'clock, P. M.

Eodem Die, 5 o'clock, P. M.

A message from the Senate informed the House that the Senate insist on their amendments disagreed to by this House to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers, on their part.

The Senate have agreed to the amendments proposed by this House to the resolutions "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," with amendments; to which they desire the concurrence of this House.

The House proceeded to reconsider the amendments insisted on by the Senate to the bill, entitled "An act making an appropriation for the payment of the witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase:" Whereupon,

Resolved, That this House doth insist on their disagreement to the said amendments.

Resolved, That this House do agree to the conference desired by the Senate on the subject-matter of the said amendments; and that Mr. John Randolph, Mr. Early, and Mr. Nicholson, be appointed managers at the said conference, on the part of this House.

Mr. Nicholson, from the committee to whom were this day committed the amendments proposed by the Senate to the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," reported to the House their agreement to the same.

The House then proceeded to consider the said amendments of the Senate; and on the question that the House do concur with the select committee in their agreement to the same, it was resolved in the affirmative.

The House proceeded to consider the amendments proposed by the Senate to the amendments of this House to the resolutions "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron:" Whereupon,

Resolved, That this House do agree to the said amendments to the amendments.

The House proceeded to consider their amendment insisted on by this House to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," to their disagreement to which the Senate have adhered: Whereupon,

Resolved, That this House do recede from their said amendment.

On motion, it was

Resolved, That the Committee of Accounts be authorized to settle and adjust the account of Alexander Claxton, for his services, rendered to this House during the present session, and allow such sum as they may deem due to him, out of the contingent fund of this House: *Provided,* That the same shall not exceed one hundred dollars.

The order of the day for the House to resolve itself into a Committee of the Whole on the bill to authorize the Circuit Court of the District of Columbia to decree divorces in certain cases, being called for, a motion was made, and the question being put, that the said order of the day be postponed until the first Monday in December next, it was resolved in the affirmative.

A message from the Senate informed the House that the Senate adhere to their amendments to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," to their disagreement to which this House has insisted.

Mr. John Randolph, from the managers appointed on the part of this House, to attend the

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conference with the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," made a report: Whereupon, the House proceeded to reconsider the said amendments; and the same being again read,

Resolved, That this House do adhere to their disagreement to the said amendments: and so the said bill was lost.

A motion was then made and seconded that the House do come to the following resolutions:

Resolved, That the Clerk of this House be, and he is hereby, directed to pay out of the contingent fund of this House, to every witness summoned on behalf of the House of Representatives, to attend the Senate in support of the impeachment of Samuel Chase, for every day's attendance, the sum of three dollars, and the further sum of twenty cents for each mile in coming from and returning to his place of abode.

Resolved, That the Clerk be likewise directed to pay, out of the said fund, any other expense incurred by order of the managers of the said impeachment, and certified by their chairman.

On which motion, various efforts were made to obtain a decision of the House on the previous question, "that the House do now proceed to consider the said motion;" but no result could, in any instance, be obtained for the want of a quorum.

After which, a quorum being present,

A message from the Senate informed the House that the Senate have appointed a committee, on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the President of the United States, and notify him of the proposed recess of Congress.

The House proceeded to consider the foregoing message of the Senate, and

Resolved, That this House do agree to the same, and that Mr. JOHN RANDOLPH, Mr. HUGER, and Mr. NELSON, be appointed of the said committee, on the part of this House.

Mr. JOHN RANDOLPH, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them that he had no further communication to make during the present session.

A message from the Senate informed the House that the Senate, having finished the Legislative business before them, are now ready to adjourn.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn, without day; and that the Clerk of this House do go with the said message.

The Clerk, accordingly, went with the said message; and being returned,

The SPEAKER adjourned the House, *sine die.*

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APPENDIX

TO THE HISTORY OF THE EIGHTH CONGRESS.

COMPRISING THE MOST IMPORTANT DOCUMENTS ORIGINATING DURING THAT CONGRESS, AND THE PUBLIC ACTS PASSED BY IT.

LOUISIANA.

[Communicated to Congress January 16, 1804.]

To the Senate and House of Representatives of the United States:

In execution of the act of the present session of Congress for taking possession of Louisiana, as ceded to us by France, and for the temporary government thereof, Governor Claiborne of the Mississippi Territory, and General Wilkinson, were appointed Commissioners to receive possession. They proceeded, with such regular troops as had been assembled at Fort Adams from the nearest posts, and with some militia of the Mississippi Territory, to New Orleans. To be prepared for anything unexpected which might arise out of the transaction, a respectable body of militia was ordered to be in readiness in the States of Ohio, Kentucky, and Tennessee, and a part of those of Tennessee was moved on to the Natchez. No occasion, however, arose for their services. Our Commissioners, on their arrival at New Orleans, found the Province already delivered by the Commissaries of Spain to that of France, who delivered it over to them on the twentieth day of December, as appears by their declaratory act accompanying this. Governor Claiborne, being duly invested with the powers heretofore exercised by the Governor and Intendant of Louisiana, assumed the government on the same day, and, for the maintenance of law and order, immediately issued the proclamation and address now communicated.

On this important acquisition, so favorable to the immediate interests of our Western citizens, so auspicious to the peace and security of the nation in general, which adds to our country territories so extensive and fertile, and to our citizens new brethren to partake of the blessings of freedom and self-government, I offer to Congress and our country my sincere congratulations.

JAN. 16, 1804. TH. JEFFERSON.

CITY OF NEW ORLEANS, *Dec.* 20, 1803.

SIR: We have the satisfaction to announce to you, that the Province of Louisiana was this day surrendered to the United States by the Commissioner of France; and to add, that the flag of our country was raised in this city amidst the acclamations of the inhabitants.

The enclosed is a copy of an instrument of writing, which was signed and exchanged by the Commissioners of the two Governments, and is designed as a record of this interesting transaction.

Accept assurances of our respectful consideration.

WM. C. C. CLAIBORNE,
JAMES WILKINSON.

JAMES MADISON, *Secretary of State.*

The undersigned, William C. C. Claiborne, and James Wilkinson, commissioners or agents of the United States, agreeably to the full powers they have received from Thomas Jefferson, President of the United States, under date of the 31st October 1803, and twenty-eighth year of the independence of the United States of America, (8th Brumaire, 12th year of the French Republic,) countersigned by the Secretary of State, James Madison, and citizen Peter Clement Laussat, Colonial Prefect, and Commissioner of the French Government, for the delivery, in the name of the French Republic, of the country, territories, and dependencies of Louisiana, to the commisioners or agents of the United States, conformably to the powers, commission, and special mandate which he has received, in the name of the French people, from citizen Bonaparte, First Consul, under date of the 6th June, 1803, (17th Prairial, eleventh year of the French Republic,) countersigned by the Secretary of State, Hugues Maret, and by his Excellency the Minister of Marine and Colonies, Decres, do certify by these presents, that on this day, Tuesday, the 20th December, 1803, of the Christian era, (28th Frimaire, twelfth year of the French Republic,) being convened in the hall of the Hotel de Ville of New Orleans, accompanied on both sides by the Chiefs and Officers of the Army and Navy, by the municipality and divers respectable citizens of their respective Republics, the said William C. C. Claiborne and James Wilkinson, delivered to the said citizen Laussat their aforesaid full powers, by which it evidently appears that full power and authority has been given them jointly and severally to take possession of, and to occupy the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th day of April last past,

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(10th Floreal,) and for that purpose to repair to the said Territory, and there to execute and perform all such acts and things, touching the premises, as may be necessary for fulfilling their appointment conformably to the said treaty and the laws of the United States; and thereupon the said citizen Laussat declared that, in virtue of, and in the terms of the powers, commission, and special mandate dated at St. Cloud, 6th June, 1803, of the Christian era, (17th Prairial, 11th year of the French Republic,) he put from that moment the said Commissioners of the United in possession of the country, territories, and dependencies of Louisiana, conformably to the first, second, fourth, and fifth articles of the treaty and two conventions, concluded and signed the 30th April, 1803, (10th Floreal, 11th year of the French Republic,) between the French Republic and the United States of America, by citizen Barbé Marbois, Minister of the Public Treasury, and Messrs. Robert R. Livingston and James Monroe, Ministers Plenipotentiary of the United States, all three furnished with full powers, of which treaty and two conventions the ratifications, made by the First Consul of the French Republic on the one part, and by the President of the United States, by and with the advice and consent of the Senate, on the other part, have been exchanged and mutually received at the City of Washington, the 21st October, 1803, (28th Vendemiaire, 12th year of the French Republic,) by citizen Louis André Pichon, Chargé des Affaires of the French Republic near the United States, on the part of France, and by James Madison, Secretary of State of the United States, on the part of the United States, according to the *procès verbal* drawn up on the same day; and the present delivery of the country is made to them, to the end that, in conformity with the object of the said treaty, the sovereignty and property of the colony or province of Louisiana may pass to the said United States, under the same clauses and conditions as it had been ceded by Spain to France, in virtue of the treaty concluded at St. Ildefonso, on the 1st October, 1800, (9th Vendemiaire, 9th year,) between these two last Powers, which has since received its execution by the actual re-entrance of the French Republic into possession of the said colony or province.

And the said citizen Laussat in consequence, at this present time, delivered to the said Commissioners of the United States, in this public sitting, the keys of the city of New Orleans, declaring that he discharges from their oaths of fidelity towards the French Republic, the citizens and inhabitants of Louisiana, who shall choose to remain under the dominion of the United States.

And that it may forever appear, the undersigned have signed the *procès verbal* of this important and solemn act, in the French and English languages, and have sealed it with their seals, and have caused it to be countersigned by the secretaries of commission, the day, month, and year above written. WM. C. C. CLAIBORNE, [L. S.]
JAMES WILKINSON, [L. S.]
LAUSSAT. [L. S.]

Proclamation by His Excellency, William C. C. Claiborne, Governor of the Mississippi Territory, exercising the powers of Governor General and Intendant of the Province of Louisiana.

Whereas, by stipulations between the Governments of France and Spain, the latter ceded to the former the colony and province of Louisiana, with the same extent which it had at the date of the above-mentioned treaty in the hands of Spain, and that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States; and whereas the Government of France has ceded the same to the United States by a treaty duly ratified, and bearing date the 30th of April in the present year, and the possession of said colony and province is now in the United States, according to the tenor of the last mentioned treaty; and whereas the Congress of the United States on the 31st day of October, in the present year, did enact that, until the expiration of the session of Congress then sitting, (unless provisions for the temporary government of the said territories be made by Congress,) all the military, civil, and judicial powers, exercised by the then existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner as the President of the United States shall direct, for the maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion; and the President of the United States has, by his commission, bearing date the same 31st day of October, invested me with all the powers, and charged me with the several duties heretofore held and exercised by the Governor General and Intendant of the Province.

I have, therefore thought fit to issue this, my proclamation, making known the premises, and to declare, that the government heretofore exercised over the said Province of Louisiana, as well under the authority of Spain as of the French Republic has ceased, and that of the United States of America is established over the same; that the inhabitants thereof will be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; that, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess; that all laws and municipal regulations which were in existence at the cessation of the late government, remain in full force; and all civil officers charged with their execution, except those whose powers have been especially vested in me, and except, also, such officers as have been intrusted with the collection of the revenue, are continued in their functions, during the pleasure of the Governor for the time being, or until provision shall otherwise be made.

And I do hereby exhort and enjoin all the inhabitants, and other persons within the said province, to be faithful and true in their allegiance to the United States, and obedient to the laws and

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authorities of the same, under full assurance that their just rights will be under the guardianship of the United States, and will be maintained from all force or violence from without or within.

In testimony whereof I have hereunto set my hand.

Given at the city of New Orleans, the 20th day of December, 1803, and of the independence of the United States of America, the twenty-eighth.

WM. C. C. CLAIBORNE.

The Governor's Address to the citizens of Louisiana.

NEW ORLEANS, *Sept.* 20, 1803.

FELLOW-CITIZENS OF LOUISIANA: On the great and interesting event now finally consummated—an event so advantageous to yourselves, and so glorious to United America—I cannot forbear offering you my warmest congratulations. The wise policy of the Consul of France has, by the cession of Louisiana to the United States, secured to you a connexion beyond the reach of change, and to your posterity the sure inheritance of freedom. The American people receive you as brothers, and will hasten to extend to you a participation in those inestimable rights which have formed the basis of their own unexampled prosperity. Under the auspices of the American Government, you may confidently rely upon the security of your liberty, your property, and the religion of your choice. You may with equal certainty rest assured that your commerce will be promoted and your agriculture cherished—in a word, that your true interests will be among the primary objects of our National Legislature. In return for these benefits, the United States will be amply remunerated if your growing attachment to the Constitution of our country, and your veneration for the principles on which it is founded, be duly proportioned to the blessings which they will confer. Among your first duties, therefore, you should cultivate with assiduity among yourselves the advancement of political information. You should guide the rising generation in the paths of republican economy and virtue. You should encourage literature; for without the advantages of education, your descendants will be unable to appreciate the intrinsic worth of the Government transmitted to them.

As for myself, fellow-citizens, accept a sincere assurance, that during my continuance in the situation in which the President of the United States has been pleased to place me, every exertion will be made on my part to foster your internal happiness, and forward your general welfare; for it is only by such means that I can secure to myself the approbation of those great and just men who preside in the councils of our nation.

WM. C. C. CLAIBORNE.

[The following papers, relating to the opposition of Spain to the cession of Louisiana to the United States, were transmitted to Congress with the President's Message of November 8, 1804.]

Extract of a letter from Don Pedro Cevallos, Minister of State of his Catholic Majesty, to Mr. Charles Pinckney, dated at the Pardo, February 10, 1804.

"At the same time the Minister of His Majesty in the United States is charged to inform the American Government respecting the falsity of the rumor referred to, he has likewise orders to declare to it that His Majesty has thought fit to renounce his opposition to the alienation of Louisiana made by France, notwithstanding the solid reasons on which it is founded; thereby giving a new proof of his benevolence and friendship towards the United States."

Copy of a letter from the Marquis of Casa Yrujo to the Secretary of State.

PHILADELPHIA, *May* 15, 1804.

SIR: The explanations which the Government of France has given to His Catholic Majesty concerning the sale of Louisiana to the United States, and the amicable dispositions on the part of the King my master towards these States, have determined him to abandon the opposition which, at a prior period, and with the most substantial motives, he had manifested against that transaction. In consequence, and by special order of His Majesty, I have the pleasure to communicate to you his royal intentions on an affair so important; well persuaded that the American Government will see, in this conduct of the King my master, a new proof of his consideration for the United States, and they will correspond, with a true reciprocity, with the sincere friendship of the King, of which he has given so many proofs.

God preserve you many years.

M. CASA YRUJO.

JAMES MADISON, Esq.

To all whom these presents shall come: Whereas, by an act of Congress, authority has been given to the President of the United States, whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river of Mobile, and of the other rivers, creeks, inlets, and bays, emptying into the Gulf of Mexico, east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district for the collection of duties on imports and tonnage, and to establish such place within the same as he shall deem it expedient to be the port of entry and delivery for such district; and to designate such other places within the same district, not exceeding two, to be ports of delivery only:

Now know ye, That I, Thomas Jefferson, President of the United States, do hereby decide, that all the above mentioned shores, waters, inlets, creeks, and rivers, lying *within the boundaries of the United States*, shall constitute and form a separate district, to be denominated "the district of Mobile;" and do also designate Fort Stoddert, within the district aforesaid, to be the port of entry and delivery for the said district.

Given under my hand, this 20th day of May, 1804.

TH. JEFFERSON.

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GREAT BRITAIN.

Communicated to the Senate, October 24, 1803.

To the Senate of the United States:

I lay before you the convention* signed on the 12th day of May last, between the United States and Great Britain, for settling the boundaries in the northeastern and northwestern parts of the United States, which was mentioned in my general Message of the 17th instant, together with such papers relating thereto as may enable you to determine whether you will advise and consent to its ratification. TH. JEFFERSON.

OCTOBER 24, 1803.

Convention with His Britannic Majesty.

In order that the boundaries between the territories of His Britannic Majesty and those of the United States of America may be more precisely ascertained and determined than has hitherto been done, the parties have respectively named their Plenipotentiaries, and given them full powers to negotiate and conclude a convention for this purpose; that is to say, His Britannic Majesty has named for his Plenipotentiary the Right Honorable Robert Banks Jenkinson, commonly called Lord Hawkesbury, one of His Majesty's most honorable Privy Council, and his principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the consent of the Senate thereof, has appointed for their Plenipotentiary, Mr. Rufus King, their Minister Plenipotentiary to his said Majesty; who have agreed upon and concluded the following articles:

ARTICLE 1. The line hereinafter described shall and hereby is, declared to be the boundary between the mouth of the river St. Croix and the Bay of Fundy; that is to say, a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the Commissioners appointed for that purpose; thence through the middle of the channel between Deer island on the east and north, and Moose island, and Campo Bello island on the west and south, and round the eastern point of Campo Bello island to the Bay of Fundy; and the islands and waters northward and eastward of the said boundary, together with the island of Campo Bello, situated to the southward thereof, are hereby declared to be within the jurisdiction and part of his Britannic Majesty's Province of New Brunswick; and the islands and waters southward and westward of the said boundary, except only the island of Campo Bello, are hereby declared to be within the jurisdiction and part of Massachusetts, one of the said United States.

ART. 2. Whereas, it has become expedient that the northwest angle of Nova Scotia, mentioned and described in the Treaty of Peace between His Majesty and the United States, should be ascertained and determined; and that the line between the source of the river St. Croix, and the said northwest angle of Nova Scotia, should be run and marked, according to the provisions of the said Treaty of Peace: It is agreed that for this purpose, Commissioners shall be appointed in the following manner, viz; one Commissioner shall be named by His Majesty and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two Commissioners shall agree in the choice of a third; or, if they cannot agree, they shall each propose one person; and of the two names, so proposed, one shall be taken by lot in presence of the two original Commissioners; and the three Commissioners, so appointed, shall be sworn impartially to ascertain and determine the said northwest angle of Nova Scotia, pursuant to the provisions of the said Treaty of Peace: and likewise to cause the said boundary line between the source of the river St. Croix, as the same has been determined by the Commissioners appointed for that purpose, and the northwest angle of Nova Scotia, to be run and marked according to the provisions of the Treaty aforesaid. The said Commissioners shall meet at Boston, and have power to adjourn to such place or places as they shall think fit; they shall have power to appoint a secretary and employ such surveyors, and other assistants, as they shall judge necessary: the said Commissioners shall draw up a report of their proceedings which shall describe the line aforesaid, and particularize the latitude and longitude of the place ascertained and determined, as aforesaid, to be the northwest angle of Nova Scotia; duplicates of which report, under the hands and seals of the said Commissioners, or of a majority of them, together with duplicates of their accounts, shall be delivered to such persons as may be severally authorized to receive the same in behalf of their respective Governments; and the decision and proceedings of the said Commissioners, or a majority of them, made and had as aforesaid, shall be final and conclusive.

ART. 3. It is further agreed that the said Commissioners, after they shall have executed the duties assigned them in the preceding article, shall be, and they hereby are, authorized, upon their oaths, impartially to ascertain and determine the northwesternmost head of Connecticut river, according to the provisions of the aforesaid Treaty of Peace; and likewise to cause the boundary line described in the said Treaty of Peace, between the northwest angle of Nova Scotia and the said northwesternmost head of Connecticut river, to be run and marked pursuant to the provisions of the said Treaty. The said Commissioners shall meet at Boston, and have power to adjourn to such other place or places as they shall think fit. They shall have power to appoint a secretary, and employ such surveyors and other assistants as they shall judge necessary. The said Commissioners shall draw up a report of their proceedings, which shall describe the boundary line aforesaid, and particularize the latitude and longitude of the westernmost head of Connecticut

* The Senate having assented to this convention on the condition that the fifth article should be expunged, the ratifications of the respective Governments were never exchanged.

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river, duplicates of which report, under the hands and seals of the said Commissioners, or of a majority of them, together with duplicates of their accounts, shall be delivered to such persons as may be severally authorized to receive the same, in behalf of their respective Governments; and the decision and proceedings of the said Commissioners, or of a majority of them, made and had as aforesaid, shall be final and conclusive.

ART. 4. It is further agreed that the aforesaid Commissioners shall be respectively paid in such manner as shall be agreed between the two parties, such agreement to be settled at the time of the exchange of the ratifications of this Convention, and all other expenses incurred by the said Commissioners shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by the said Commissioners; and, in case of death, sickness, or necessary absence, the place of any Commissioner shall be supplied in the same manner as such Commissioner was appointed, and the new Commissioner shall take the same oath, and do the same duties.

ART. 5. Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned in the Treaty of Peace between His Majesty and the United States, it is agreed that, instead of the said line, the boundary of the United States in this quarter shall, and is hereby declared to be the shortest line which can be drawn between the northwest point of the Lake of the Woods and the nearest source of the river Mississippi: and for the purpose of ascertaining and determining the northwest point of the Lake of the Woods and the source of the river Mississippi that may be nearest to said northwest point, as well as for the purpose of running and marking the said boundary line beween the same, three Commissioners, upon the demand of either Government, shall be appointed, and authorized, upon their oaths, to act; and their compensation and expenses shall be ascertained and paid, and vacancies supplied, in the manner provided in respect to the Commissioners mentioned in the preceding articles; and the decisions and proceedings of the said Commissioners, or of a majority of them, made and had pursuant to this convention, shall be final and conclusive.

In faith whereof, we the undersigned, Ministers Plenipotentiary of His Britannic Majesty and of the United States of America, have signed this present convention, and caused to be affixed thereto the seals of our arms.

Done at London, this 12th day of May, 1803.

HAWKESBURY, [L. S.]
RUFUS KING. [L. S.]

The Secretary of State to Rufus King, Minister, &c., of the United States to Great Britain.

DEPARTMENT OF STATE,
Washington, July 28, 1801.

SIR: By the Treaty of Peace, the mouth of the St. Croix is supposed to be in the bay of Fundy. But as the Commissioners have, in their decision, settled the mouth of that river, called the Schoodiac, to be in Passamaquoddy Bay, at a place called Joe's Point, it is left undetermined to which nation the islands in the last mentioned bay, and the passages through them, into the bay of Fundy, belong, It appears to have been the intention of the two nations, in adjusting their limits at the peace, to make navigable waters, where they were the boundary, common to both, by a divisional line running through the middle of their channels. Hence, it is believed, that, if it be true that one of the passages from the mouth of the river, intended as the St. Croix, into Fundy bay, be seldom and imperfectly navigable, and the other constantly and completely so, it will be most conformable to the Treaty of Peace to establish it as the boundary. Supposing, on the other hand, that the Treaty of Peace should be literally executed, as far as practicable, and the line drawn from Joe's Point, due eastwardly, Great Britain would be excluded from both passages. At present, it is believed that the following description of the passage to be settled as the boundary, would be satisfactory to both nations: "Beginning in the middle of the channel of the river St. Croix, at its mouth; thence, direct, to the middle of the channel, between Pleasant Point and Deer island; thence to the middle of the Channel, between Deer island on the east and north, and Moose island and Campo Bello island on the west and south, and round the eastern point of Campo Bello island, to the bay of Fundy. The other (western) channel has a bar across it, which is dry at low water.

These ideas are thrown out only for consideration. I shall probably have it in my power shortly to transmit you a commission to settle this point, with definitive instructions. Meanwhile, you may break the business to the British Ministry, but without implicating any fixed mode of settlement.

RUFUS KING, &c.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, *June* 8, 1802.

SIR: You will herewith receive a commission, giving you powers to adjust, by proper stipulations, with the British Government, whatever remains to be decided in relation to the boundary between the two nations.

In executing the first part of this trust, relating to the bay of Pasamaquoddy, you will recur to the observations contained in my letter of the 28th of July last. I refer you also to a copy, herewith enclosed, of a letter from Judge Sullivan, heretofore agent of the United States, on the controversy regarding the river St. Croix, in answer to some inquiries from me on the subject now committed to you. His information and his reasoning will be useful in the discussion; and, to illustrate both, I also enclose herewith a copy of the map to which he refers in the beginning of his letter.

The essential objects to be secured to the United States are, the jurisdiction of Moose island, and

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the common navigation of the bay, and the channels leading to the sea between Deer island and the island of Campo Bello. To the observations of Judge Sullivan, in support of the rights of the United States, it need only be added, that the outlet through Moose island being the only adequate communication with the sea from a great and valuable territory of the United States, they are entitled to the full use of it on that principle, as well as on others, and with the less pretext for objection, as the trifling island of Campo Bello is the only territory held by Great Britain on one side of the channel.

In pursuance of the next object, viz: the establishment of boundaries between the United States and New Brunswick, on one side, and of Canada on another, it will be proper to provide for the immediate extension of the line which is to run from the south of the St. Croix, and which is represented as necessary to guard against interfering or encroaching grants under American and British authorities. As the course of this line is to be due north, and is to proceed from the point fixed by a survey already made, the running of it will be sufficiently provided for by an appointment of a Commissioner by each of the two Governments, and an appointment, by the two Commissioners, of a surveyor. In fixing the point at which the line is to terminate, and which is referred to as the northwest angle of Nova Scotia, the difficulty arises from a reference of the Treaty of 1783 "to the highlands," which it is now found have no definitive existence. To remove this difficulty, no better expedient occurs than to provide for the appointment of a third Commissioner, as in article five, of the Treaty of 1794; and to authorize the three to determine on a point most proper to be substituted for the description in the second article of the Treaty of 1783, having due regard to the general idea that the line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic, from those emptying themselves into the St. Lawrence. The Commissioners may also be authorized to substitute for the description of the boundary between the point so fixed, and the northwesternmost head of Connecticut river, namely, a line drawn along the said highlands, such a reference to intermediate sources of rivers, or other ascertained or ascertainable points, to be connected by straight lines, as will admit of easy and accurate execution hereafter, and as will best comport with the apparent intention of the Treaty of 1783.

The remaining provision necessary to complete the boundary of the United States will be a stipulation amending the second article of the Treaty of 1783, in its description of the line which is to connect the most northwestern point of the Lake of the Woods with the Mississippi. The description supposes that a line running due west from that point, would intersect the Mississippi. It is now well understood that the highest source of the Mississippi is south of the Lake of the Woods; and, consequently, that a line, due west, from its most northwestern point, would not touch any part of that river. To remedy this error, it may be agreed that the boundary of [illegible] States, in that quarter, shall be a [illegible] from that source of the Mississippi w[illegible] est to the Lake of the Woods, and [illegible] westwardly, as a tangent, and, from [illegible] touched, along the water-mark of the [illegible] most northwestern point, at whic[illegible] the line running through the lake. T[illegible] McKenzie's late publication is probab[illegible] which I can refer you on this subje[illegible]

From the mutual and manifest [illegible] Great Britain and the United States [illegible] ment of all uncertainties concerning [illegible] is hoped you will find a ready con[illegible] the propositions which you will h[illegible] them. Should difficulties or delay [illegible] which relate to the boundary con[illegible] sissippi and the Lake of the Wo[illegible] necting the Connecticut river an[illegible] established as the northeast corne[illegible] States, it will be proper to separate [illegible] other subjects of negotiation, and [illegible] latter to a conclusion.

With the highest respect and [illegible] &c. JAMES M[illegible]

RUFUS KING, Esq.

BOSTON, Ma[illegible]

SIR: Having the honor of receiv[illegible] of the 10th inst., I hasten to comm[illegible] my ideas of the subject-matter of it[illegible]

When I was under a commissio[illegible] the United States, on the controvers[illegible] Britain regarding the river St. Croix [illegible] to the office of the Secretary of State [illegible] bay of Passamaquoddy, of the Sch[illegible] the lines of the whole dispute. That m[illegible] rately and elegantly composed from [illegible] observations and actual surveys. [illegible] under your eye, there is no need of [illegible] fac-simile; but I refer you to that [illegible] tion of this letter.

The Treaty of 1783 with Great B[illegible] dently contemplates a river, as in S[illegible] which has its mouth in the bay of F[illegible] rivers claimed by the parties empty [illegible] in the bay of Passamaquoddy. The a[illegible] United States urged the Commissione[illegible] the boundary through that bay to the s[illegible] the treaty expressly recognised the [illegible] river as in the bay of Fundy, which [illegible] the ocean, and the other bay united [illegible] be considered as the river's mouth; [illegible] clined it, on an idea that their com[illegible] tended no further than to an authori[illegible] mouth and source of the river, an[illegible] whichever would be the river, it ha[illegible] three leagues from the sea, in Passa[illegible] bay; they, therefore, limited their de[illegible] southerly line, to a point between S[illegible] and the shore of the United States.

The whole of the waters of Passa[illegible] eastward and northward of Moose isl[illegible] the island of Campo Bello, are navig[illegible] sels of any burden. The channel betw[illegible]

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and Deer island is the best. The channel between Moose island and the continent of the United States is shoal, narrow, and not navigable for vessels of consequence. That between Campo Bello and the main, called the west passage, is rendered hazardous and dangerous by a bar of rocks, and is so narrow and shoal, that no vessel of considerable size will be risked there excepting on a fair wind, and at the top of high water. The tides there are exceedingly rapid, and rise near about fifty feet. Therefore, any settlement which would deprive the United States of a free navigation as far to the eastward and northward as the channel you propose; that is, to the one between Moose and Deer islands, and north of Campo Bello, would ultimately destroy the important commerce and valuable navigation of an extensive territory within the United States; for, as you may observe on the maps, there is no river of consequence between the Schoodiac and the Penobscot; and that the waters which issue from numerous and extensive lakes, in the interior parts of the country, running into the sea, as the Schoodiac, will give an advantageous and invaluable transportation to the articles of commerce.

Your construction of the Treaty of 1783, which renders the waters dividing the nations common to both, (where they are navigable,) must be reasonable and just. The English people have, in many instances, practised upon the treaty under such a construction. There has been no interruption to the American navigation, in any part of Passamaquoddy bay; but our vessels have proceeded through that bay to the shore of the United States, at and near Moose island, and have gone into the Schoodiac, above St. Andrew's point, and anchored on the western side of the channel, where they have discharged their cargoes. There have been some seizures where goods have been carried from those vessels over to the English side, but the goods have been condemned, and the vessel discharged. These seizures being made within the jurisdiction of the United States, as to the vessels, were clearly infractions of the law of nations.

There was a seizure lately made of a vessel of one Goddard of Boston. She was taken from her anchor on the American side of the channel, in the river established by the Commissioners as the St. Croix, and carried over to New Brunswick: but she was acquitted by the Court of Admiralty, with damages and costs. Campbell, who made the seizure, appealed to England, merely to avoid the costs and damages, where the cause is now depending under the attention of Robert Slade, a proctor, who is the advocate for Mr. Goddard.

There is a clause in the treaty, that the United States shall comprehend the islands within twenty leagues of any of the shores of the United States, and lying between lines drawn due east from the aforesaid boundaries, between Nova Scotia on the one part, and East Florida on the other, as they shall respectively touch the bay of Fundy, and the Atlantic ocean. This circumstance, that the mouth of the St. Croix is settled to be between St. Andrew's point on the east, and the American shore on the west, three leagues within the island of Campo Bello, draws this consequence to the treaty, that nearly all the islands in Passamaquoddy bay are within the United States, by the above provision in the treaty, unless they are taken out by an exception, which I shall presently notice. A line, due east (as you will see on the plan) from the Schoodiac mouth at St. Andrew's point, takes in nearly all the bay. A line south, sixty-seven degrees east, will go to the north of Campo Bello, and take two-thirds of Deer island on the west. A southeast line, from the middle of the Schoodiac mouth, passes on the channel between Moose and Deer islands, and through the centre of Campo Bello.

The consequences attached to this provision may be, in some measure, controlled by an exception annexed to it in these words, "excepting such islands as now are, or heretofore have been, within the limits of the Province of Nova Scotia."

The island of Campo Bello is confessedly within the exception, and, therefore, it may be said that the principle of common privilege to navigable waters will not give our nation a right to a navigation northward of, and between, that and the other islands in the bay, because that they, being all within the same exception, the right of a common navigation in both nations may not extend to the waters between that and them. But the answer to this is, that the clause establishes the jurisdiction of the United States, by lines which clearly include all the islands in the bay of Passamaquoddy, and all within the bay of Fundy comprehended to the south of the east line drawn from St. Croix; while the exception can extend only to the islands formerly within the jurisdiction of Nova Scotia, inclusive of the privileges necessary to the occupancy of them. The principle, therefore, of the common right to navigation or navigable waters which divide two nations, cannot apply here; because, in that case, the line of national jurisdiction seems to be settled on the channel; but here, in this case, the jurisdiction is definite, express, and ceded, according to the lines agreed on, as above described.

The ancient charter of Nova Scotia to Sir William Alexander, in 1638, included all the country from the Kennebeck to the bay of Chaleur. The treaty cannot mean, by the expression "heretofore within Nova Scotia," all the islands in that charter. If it mean the islands which were within a more recent description of it, where the boundary westward was the St. Croix, excluding the territory of Acadia, which was placed under the jurisdiction of Massachusetts, by the charter of that Province in 1692, and bounded on that river, the river Schoodiac being now the established St. Croix, there can be no question in regard to Massachusetts extending to the channel where it joins that river. But Moose island, which I have described before, lies two leagues below what the Commissioners made the mouth of the St. Croix, and very near the American shore. This was never granted by the Crown of England, or by the Government of Nova Scotia,

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before the Treaty of Peace; nor was there ever an occupancy of it by subjects acknowledging the authority of Nova Scotia; nor did that Province ever attempt to exercise authority there. Long before the Revolutionary war, it was in the occupancy of the people of, and from the late Province of Massachusetts Bay. The soil has, I believe, been granted by that Province, or by the State since the Revolution, to the people who had it in possession. I do not know the date of the grant. There have been, as I am informed, recent grants by the Province of New Brunswick of that island; but no formal claim on the part of the English nation has been made to it. The grantees of that Province, who have speculated on the pretended right of the English nation, have excited civil officers, under the authority of the Province of New Brunswick, to attempt to execute precepts there. These attempts were repelled, and I have not heard that they have been recently renewed. Should the jurisdiction of that island be found within the English authority, there can be no doubt how the right of property would be settled. This renders the dispute of consequence to the Commonwealth of Massachusetts in a pecuniary point of view.

If the argument above stated does not prove that the jurisdiction of the United States is extended to all the waters of Passamaquoddy bay, but that the treaty leaves the navigable waters of the same, which form the natural boundaries common to both, it is of great consequence, that any claim made under the Crown of the English Empire to Moose island should be subverted. But if their having the island under the reservatory exception does not deprive the United States of the jurisdiction on all the waters southward of the east line, drawn from the mouth of the Schoodiac, the consideration of the property alone gives consequence to the question.

The channel where the waters more directly issue from the Schoodiac to the bay of Fundy, between Moose and Deer islands, and between Deer island and Campo Bello, as described in your letter of instructions to the Minister, is quite adequate to all navigation of our country.

You mention a resolve of the Legislature, wherein the subject of the navigation in Passamaquoddy bay is mentioned. I have attended to a resolve of the tenth of March, which proposes that the Governor should request the President of the United States to take measures for settling the disputed jurisdiction to certain islands in Passamaquoddy bay; but I do not know of any dispute in that bay as to islands, excepting what I have stated as to Moose island.

The settlement and plain establishment of a line from the head or source of the Cheputnatecook, which is the source of the St. Croix, and empties its waters through a long chain of lakes into the Schoodiac, has become necessary, because that Massachusetts is making grants of the lands in that quarter, and the province of New Brunswick is in the same practice, controversies may be created by interfering locations in pursuance of, or under pretence of, those grants. Such controversies can have no guide to their adjustment, excepting lines drawn through a vast extent of wilderness, where many known and unknown causes will affect the magnetic variations. These disputes on national, or even colonial, or State jurisdiction, are not easily settled when they are connected with private claims.

By the Treaty of Peace, it is provided that the boundaries shall be "from the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north, from the source of the St. Croix, to the highlands; along the highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river."

You will see by the maps of that part of the country, that the line which runs north from the source of the St. Croix, crosses the river St. John a great way south of any place which could be supposed to be the highlands; but where that line will come to the northwest angle of Nova Scotia, and find its termination, is not easy to discover.

The boundary between Nova Scotia and Canada was described, by the King's proclamation, in the same mode of expression as that used in the Treaty of Peace. Commissioners who were appointed to settle that line, have traversed the country in vain to find the highlands designated as a boundary. I have seen one of them, who agrees with the account which I have had from the natives and others, that there are no mountains or highlands on the southerly side of the St. Lawrence, and northeastward of the river Chaudiere. That, from the mouth of the St. Lawrence to that river, there is a vast extent of high flat country, thousands of feet above the level of the sea, in perpendicular height; being a morass of millions of acres, from whence issue numerous streams and rivers, and from which a great number of lakes are filled by drains. That the rivers originating in this elevated swamp pass each other wide asunder, many miles in opposite courses, some to the St. Lawrence, and some to the Atlantic sea.

Should this description be founded in fact, nothing can be effectively done, as to a Canada line, without a commission to ascertain and settle the place of the northwest angle of Nova Scotia, wherever that may be agreed to be; if there is no mountain or natural monument, an artificial one may be raised. From thence, the line westward to Connecticut river may be established by artificial monuments erected at certain distances from each other; the points of compass from the one to the other may be taken; and the ascertaining the degree of latitude, which each one is placed on from actual observation, may be very useful. Though there is no such chain of mountains as the plans or maps of the country represent under the appellation of the highlands, yet there are eminences from whence an horizon may be made to fix the latitude from common quadrant observations.

In the description of the morass, which is said to crown the heights between the United States

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and Lower Canada, it ought to have been noticed, that, those swamps are vastly extensive, yet, in the acclivity from the Atlantic to their highest elevation, as well as in their declivity to the St. Lawrence, great tracts of valuable country are interspersed. On the banks of the river Chaudiere, and perhaps on the banks of other rivers, running to the St. Lawrence, the settlements are approaching fast towards those of the United States. This circumstance will soon render an established line of national jurisdiction absolutely necessary.

Should there be anything within my power which will give aid to the Government on this occasion, you will please to command me.

I am, sir, with sentiments of sincere respect, your most humble servant,

JAS. SULLIVAN.

Hon. JAMES MADISON.

Mr. Gore to the Secretary of State.

LONDON, *October* 6, 1802.

SIR: I have the honor to acknowledge the receipt of your several letters to Mr. King, under the following dates, viz: 8th June, 20th, 23d, and 26th of July, and 23d of August; the latter by Mr. Brent: all of which came to hand since his absence from this place. That of June 8th, covering commission and instructions to this gentleman to adjust whatever remains to be decided in relation to the boundaries between the United States and the British Government, was received, and forwarded to him before he left Harwich.

According to his desire, and with a view to expedite the business, I requested an interview of Lord Hawkesbury, for the purpose of making to him such communications on this subject as might enable him to enter on the negotiation with effect, on the return of Mr. King. After having opened the business at our first meeting, he requested it might lay over until Mr. Hammond, the under Secretary of State, should come from the seaside, where he then was for his health, to afford him an opportunity of conferring with this gentleman, who was much acquainted with the business to which the communication referred. On Mr. Hammond's arrival, I saw Lord Hawkesbury, and, with the map of the St. Croix, as reported by the Commissioners under the fifth article of the Treaty of 1794, and Arrowsmith's map of the United States, endeavored to trace out the boundaries that were still requisite to explain to him the views of the President, and to impress on his mind the reasonableness and justice thereof, in regard to the British nation. He appeared disposed to accede to the propositions, so far as they relate to the boundary line through the Passamaquoddy, the mode suggested of adjusting that between the United States and New Brunswick, and fixing the point intended in the Treaty of 1783, by the northwest angle of Nova Scotia, and establishing the boundary between such point and the northwesternmost head of Connecticut river. It is, however, to be understood, that the disposition manifested by his lordship was founded on the belief that, on inquiry, he should find the islands in Passamaquoddy bay to have been possessed by, and to belong to, the respective nations as the proposed line would place them; and that, on further reflection, no insurmountable objection should occur to the plan proposed for running the other lines and fixing the point referred to. On these subjects, he doubtless intends to consult with Colonel Barclay, the British Commissioner for ascertaining the St. Croix, who is now in some part of Great Britain, and who is expected in London early in the Winter. On that part of the boundary which is to connect the northwest point of the Lake of the Woods with the Mississippi, he observed that it was evidently the intention of the Treaty of Peace that both nations should have access to, and enjoy the free use of that river; and he doubtless meant that this access should be to each nation through their own territories. He remarked, that commissions, which I had proposed for ascertaining the relation of the Lake of the Woods and the Mississippi, if any doubt remained on this head, and running the line between these two waters, according to your proposition, might establish such a boundary as would secure to each nation this object. To the remark I made no reply, other than by observing that the line suggested was what naturally seemed to be demanded by just interpretation, where such a mistake had happened, as was herein supposed; but this I did, however, chiefly with a view of not assenting to his proposal, and in a manner rather declining than courting the discussion. It will probably be persisted in; and I much doubt if the Government will be inclined to adjust any boundary in this quarter, that has not the right desired for its basis.

I have considered it important to apprize you of the view entertained by the British Government in this respect, that the President may have an opportunity, if he should choose, to forward Mr. King any instructions relative to the boundary in question. The papers marked A, herewith enclosed, are copies of the notes that passed from me to Lord Hawkesbury, and minutes of the proposals made him in conversation, and traced out on the maps before mentioned, and of his note in reply. These, with the above detail of what passed in conversation, will communicate to you all that has been, or probably will be, done on this subject, before Mr. King's return, which may be expected in November, and doubtless before Lord Hawkesbury will have an opportunity of consulting the persons alluded to in his note.

Your letter of 20th July, with the enclosed copy of the letter of the Secretary of the Treasury to the Comptroller, respecting the portages, or carrying places, and the exemption from duty of small vessels trading between the northern and northwestern boundaries, came to hand on the 10th of September, and I lost no time in stating their contents to Lord Hawkesbury in a note, (copy whereof is herewith enclosed,) in order to rebut any argument in favor of the pretensions of the British traders, from a supposed acquiescence on the part of the Government of the United States

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and to insist on such a construction of the terms, portages, and carrying places, as might comport with the safety of the revenue of the United States, and the interest of their citizens. I afterwards had a conference with him on this subject, in which he acceded to the construction contained in my note; and, as to the tonnage duty, he said it certainly merited, and should receive, all due consideration.

I have the honor to be, with great consideration and respect, sir, your obedient and humble servant,

C. GORE.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
August 24, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to inform him that, since the departure of Mr. King, he has received for this gentleman instructions and a full power from the President of the United States, to adjust, by amicable negotiation, with the Government of His Britannic Majesty, whatever remains unsettled as to the boundaries between the territories of the two nations.

Mr. Gore takes the liberty of proposing to his Lordship to communicate to him, whenever he shall be at leisure to attend thereto, the views of the President of the United States, in order that his Lordship may give to the subject such consideration as he shall think its importance requires; and that, having a distinct knowledge thereof, his Lordship may, on the return of Mr. King, be enabled to concur in such measures for defining and settling the boundary lines between the two countries, as shall appear most conducive to their mutual interests and future harmony.

Mr. Gore flatters himself that Lord Hawkesbury will see, in this proposal of the President, a new proof of the sincere and earnest desire of the Government of the United States to live in friendship with that of His Britannic Majesty, inasmuch as it invites to an adjustment, by amicable negotiation, of not only whatever may now be the occasion of inquietude between the parties, but also of everything, as far as can be foreseen, which may interrupt in future that good understanding so essential to the interests and happiness of both nations.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
September 22, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to inform him that the President of the United States, ever desirous to continue uninterrupted the harmony so happily subsisting between the Government of said States and that of His Britannic Majesty, and by a constant vigilance and unremitted attention to every circumstance that might have a tendency, however remote, to disturb the same, in order to prevent its effect by such seasonable interposition as the occasion may require, has given directions that it should be represent[illegible] Majesty's Government, that certain tra[illegible] jects of His Britannic Majesty, have [illegible] tensions to transport goods and merchan[illegible] of duty, through certain rivers, and over [illegible] country, in the northwestern parts of the [illegible] States, and entirely within their jurisd[illegible] der the clause of the third article of the [illegible] of Amity, Commerce, and Navigation [illegible] the said United States and His Britannic [illegible] which provides "that no duties sha[illegible] on any goods which shall merely be carri[illegible] any of the portages, or carrying places [illegible] side, for the purpose of being imme[illegible] embarked, and carried to some other pa[illegible] places."

Mr. Gore flatters himself that [illegible] should take the trouble to look in [illegible] ferred to, he will see that such [illegible] support from the most liberal const[illegible] terms relied on, namely, the right to [illegible] exempt from duty, "over portages [illegible] places;" and that these words, so use[illegible] intend other cases than where the wa[illegible] a boundary between the parties been [illegible] gable, and where a transit by land [illegible] quired and resorted to, in order to re[illegible] common waters where they are again [illegible]

While the United States are actu[illegible] most sincere and earnest desire to g[illegible] facility to the trade and commerce of the [illegible] of His Britannic Majesty, not inconsis[illegible] due regard to the rights of their o[illegible] and the safety of their revenue, the[illegible] obliged to resist, as incompatible wi[illegible] tensions so unauthorized, and must sp[illegible] such regulations in this respect, as the [illegible] their public revenue renders indispe[illegible] however, interfering, in the smallest de[illegible] the rights of His Britannic Majes[illegible] under the stipulations of said tre[illegible] always be held sacred by the Gover[illegible] United States.

Mr. Gore has also the honor, acc[illegible] instructions of his Government, to repr[illegible] Lord Hawkesbury, that the United States [illegible] a view to render the intercourse as co[illegible] and free as possible to their citizens a[illegible] jects of His Britannic Majesty living [illegible] and northwestern boundaries of said S[illegible] in the British provinces of Upper a[illegible] Canada, and thereby promote a good [illegible] ing between the inhabitants thereof, by [illegible] all impositions on the vessels of either [illegible] there, at their last session passed an a[illegible] from tonnage duty all vessels, whether [illegible] American, not above fifty tons burden [illegible] between the ports of the northern and [illegible] ern boundaries of the United States, a[illegible] ish provinces of Upper and Lower Canada.

He is also directed further to represe[illegible] Majesty's Government, that vessels of the [illegible] States, in the British ports, within [illegible] waters, are subject to a duty of six cen[illegible] The disposition manifested by His Maje[illegible] ernment to concur in equalising the [illegible]

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vessels of the two countries, and to do it rather by abolishing than assimilating the duties on them, raises an expectation, on the part of the President of the United States, that His Majesty's Government will be disposed to place vessels belonging to citizens of said States, in such British ports, on an equality with those of the subjects of His Majesty in the ports of the United States within said waters.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
September 28, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to transmit, herewith enclosed, minutes of what he took the liberty to suggest, in conversation with his Lordship this morning, relative to the unascertained boundaries between the United States and the possessions of His Britannic Majesty.

Mr. Gore requests his Lordship will please to consider them, conformably to his declaration then personally made to his Lordship, as intended to afford a general idea of the views of the President of the United States on the subject to which they relate, rather than containing proposals not liable to modification, at the will of the American Government, or its representative; it being distinctly understood that the same may be altered as reflection shall suggest to Mr. King, or any other person to whom the negotiation may be committed at a future day, should it not be finished by this gentleman in the ensuing Winter, of which, however, Mr. Gore will not permit himself to doubt, as so many reasons concur to evince the fitness of the present time for adjusting and establishing, for the mutual benefit of the parties, the boundaries referred to; which, being left open and unsettled until, as the natural and almost inevitable consequence of such a state of things, private gain and individual passion shall intermingle themselves in the question, will prove the most fruitful source of difference and misunderstanding between two nations whose essential interests demand the most amicable and friendly intercourse.

MINUTES, &c.

Boundaries from the mouth of the St. Croix, through the Bay of Passamaquoddy, and to the Atlantic ocean.

Beginning in the middle of the river St. Croix, at its mouth; thence, direct to the channel between Pleasant point and Deer island on the east and north, and Moose island and Campo Bello on the west and south, and round the northeastern point of Campo Bello island, to the Bay of Fundy.

Boundaries between the United States and New Brunswick.

In tracing and establishing the boundary between the United States and New Brunswick, there may be some question what are the highlands intended by the Treaty of Peace?

To run the line from the source of the St. Croix, and fix the point at which it is to terminate, no mode more proper seems to suggest itself than that of instituting a commission, and appointing Commissioners, as in the fifth article of the treaty of 1794; the report of whom to ascertain and establish this part of the boundary, as in the second article of the treaty of 1783, having due regard to the idea that the line ought to terminate on the ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence.

The same Commissioners may be authorized to substitute for the description of the boundary between the point so fixed and the northwesternmost head of Connecticut river, a line drawn along the said highlands, with such reference to intermediate sources of rivers by straight lines, as will admit of easy and accurate execution hereafter, and best comport with the apparent intentions of the treaty of 1783.

Boundary from the Lake of the Woods to the Mississippi.

The second article of the treaty of 1783, supposes that the most northwestern point of the Lake of the Woods may be connected with the Mississippi, by running a line due west from that point, and that a line so drawn would intersect that river.

The highest source of the Mississippi is now supposed to be south of the Lake of the Woods, and consequently a line due west from its northwest point will not touch any part of said river.

If this be true, some provision is necessary to complete the boundary of the United States and the British possessions in this quarter, by amending the second article of the treaty of 1783 in that respect, according to the stipulations of the fourth article of the treaty of 1794.

Supposing the most northern branch of the source of the Mississippi to be south of the Lake of the Woods, as seems now to be understood, it is suggested, as consistent with justice and the mutual convenience of the parties, to establish the boundary of the United States in this quarter, by a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it westwardly, as a tangent, and from the point touched along the watermark of the lake to its most northwestern point, at which it will meet the line running through the lake.

Commissioners might be appointed to ascertain the local relation of the Mississippi to the Lake of the Woods, and, if as was supposed by the Treaty of Peace, to run the line there agreed on. But if the relative situation of these two waters be as now believed, to establish the boundary by running a line as above described.

*** To the original were added the second article of the definitive Treaty of Peace of 1783; the fourth article of the Treaty of Amity, Commerce and Navigation, &c. of 1794, (both which articles relate to the boundaries;) and the following.

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Extract from Mackenzie's voyage.

"The Lake of the Woods is in latitude 49° 37′ north, and longitude 94° 31′ west.

"The northernmost branch of the source of the Mississippi is in latitude 47° 38′ north, and longitude 95° 6′ west, ascertained by Mr. Thomson, astronomer to the Northwest Company, who was sent expressly for that purpose in the spring of 1798. He, in the same year, determined the northern bend of the Missouri to be in latitude 47° 32′ north, longitude 101° 25′ west; so that, if the Missouri were even to be considered as the Mississippi, no western line could strike it."—*History of the Fur Trade, page* 85.

Lord Hawkesbury to Mr. Gore.

DOWNING STREET, *Oct.* 4, 1802.

Lord Hawkesbury presents his compliments to Mr. Gore, and has the honor to acknowledge the receipt of his note of the 28th ultimo, together with the minutes which were enclosed in it.

Lord Hawkesbury is fully sensible of the expediency of adjusting, by some definitive arrangement, the several points to which those minutes refer, and will be ready to enter into a negotiation for that purpose either with Mr. Gore or Mr. King, within as short a period as the circumstances of the case will conveniently admit. In the mean time, it may perhaps be necessary for Lord Hawkesbury to obtain information from persons in the country on some of the subjects which are likely to be brought into discussion. But Mr. Gore may be assured that Lord Hawkesbury is desirous of avoiding any unnecessary delay, and that he will feel the sincerest disposition to terminate the negotiation in such a manner as may be reciprocally advantageous both to Great Britain and to the United States, as may tend, by removing all causes of future dispute, to improve and conciliate the harmony and good understanding which so happily subsists between the two countries, and which are so essential to their several interests and prosperity.

Extract.—The Secretary of State to Rufus King, dated

DEPARTMENT OF STATE,
December 16, 1802.

By the communications of the 6th day of October, received from Mr. Gore, it appears that the proposition for adjusting the boundary in the northwest corner of the United States is not relished by the British Government. The proposition was considered by the President as a liberal one, inasmuch as the more obvious remedy for the error of the treaty would have been by a line running due north from the most northern source of the Mississippi, and intersecting the line running due west from the Lake of the Woods; and inasmuch as the branch leading nearest the Lake of the Woods may not be the longest or most navigable one, and may consequently favor the wish of the British Government to have access to the latter. The proposition, for these reasons, would not have been made but from a desire to take advantage of the present friendly [illegible] of the parties for the purpose of closing [illegible] tions of boundary between them. As [illegible] probable, however, that the settlement [illegible] ticular boundary will for some time be [illegible] and as the adjustment proposed is not [illegible] the British Government in the same [illegible] President, it is thought proper that [illegible] for the present be pursued; and that [illegible] questions of boundary should be adjusted [illegible] little delay as possible. In the mean [illegible] information with respect to the [illegible] the Mississippi, and the country [illegible] them, may be sought by both parties [illegible] understood that the United States [illegible] to be guided by the result of such [illegible] future negotiation, as if the proposition [illegible] red to had never been made by the [illegible] be most agreeable to the British G[illegible] have an early survey instituted, with [illegible] proper boundary in this case, the P[illegible] thorizes you to concur in such an arrangement.

Mr. King to the Secretary of S[illegible]

LONDON, *February* [illegible]

SIR: I have duly received your letters [illegible] and 23d December. By Lord Hawkesbury, I have conferred with Colonel [illegible] specting the continuation of the boundary [illegible] the bay of Passamaquoddy, who has [illegible] jection to the line we have proposed [illegible] appears to think that it would be impo[illegible] to us the island of Campo Bello, unless [illegible] should be desired by its inhabitants [illegible] tion has been made to our title to M[illegible] and at present I foresee nothing to [illegible] tlement of this boundary, except the [illegible] engaging the Minister to bestow upon [illegible] sufficient time to understand it. W[illegible] the line between the source of the [illegible] the northwest corner of Nova Scotia [illegible] reason to suppose there will be [illegible] its being ascertained in the way [illegible] posed. Not having been able to [illegible] of Lord Hawkesbury upon the subject [illegible] able to give you any information [illegible] line between the northwest corner of [illegible] tia and the head of Connecticut river [illegible] the Lake of the Woods and the Mis[illegible]

With perfect respect and esteem [illegible] honor to be, sir, your obedient and faithful [illegible]

RUFUS K[illegible]

Mr. King to the Secretary of St[illegible]

LONDON, *May* [illegible]

SIR: I have the honor to transmit herewith [illegible] convention which I yesterday signed [illegible] cate, with Lord Hawkesbury, relative [illegible] boundaries.

The convention does not vary any [illegible] rial from the tenor of my instructions [illegible] through the bay of Passamaquoddy [illegible] interest in that quarter. The provision [illegible] ning, instead of describing, the line be[illegible]

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northwest corner of Nova Scotia and the source of the Connecticut river has been inserted, as well on account of the progress of the British settlements towards the source of the Connecticut, as of the difficulty in agreeing upon any new description of the manner of running this line, without more exact information than is at present possessed of the geography of the country.

The source of the Mississippi nearest to the Lake of the Woods, according to McKenzie's report, will be found about twenty-nine miles to the westward of any part of that lake, which is represented to be nearly circular. Hence, a direct line between the northwesternmost part of the lake, and the nearest source of the Mississippi, which is preferred by this Government, has appeared to me equally advantageous with the lines we had proposed.

With respect and esteem, I have the honor to be, sir, &c. RUFUS KING.

Report of the Committee of the Senate on the foregoing Convention.

Mr. Adams, from the committee to whom the treaty with Great Britain, signed at London, on the 12th of May, 1803, was referred, reported thereon, as follows:

That, from the information they have obtained, they are satisfied that the said treaty was drawn up by Mr. King three weeks before the signature of the treaty with the French Republic of the 30th of April, and signed by Lord Hawkesbury, without the alteration of a word; and that it had, in the intention of our Minister, no reference whatsoever to the said treaty with the French Republic, inasmuch as he had no knowledge of its existence. But, not having the means of ascertaining the precise northern limits of Louisiana, as ceded to the United States, the committee can give no opinion whether the line to be drawn, by virtue of the third article of the said treaty with Great Britain, would interfere with the said northern limits of Louisiana or not.

[The following papers were communicated to the Senate with the foregoing report.]

Mr. Adams to the Secretary of State.

DECEMBER 16, 1803.

SIR: Some difficulty having arisen in the Senate, in considering the expediency of advising and consenting to the ratification of the Treaty of Limits between the United States and Great Britain, signed on the 12th of May, 1803, a committee of that body has been appointed to inquire and report upon the subject.

The difficulty arises from the circumstance that the treaty with the French Republic, containing the cession of Louisiana, was signed on the 30th of April, 1803, twelve days earlier than that with Great Britain; and some apprehension is entertained that the boundary line, contemplated in the third [fifth] article of the latter, may, by possible future construction, be pretended to operate as a limitation to the claims of territory acquired by the United States in the former of these instruments.

But as the ratification, if it can be effected without unnecessary delay, is a desirable object, it has occurred to the committee that Mr. King may possibly have it in his power to give information which might remove the obstacle. I have, therefore, in behalf of the committee, to ask whether, from any information in possession of your Department, or which may be obtained, in such manner as you may deem expedient, it can be ascertained whether the third article of the treaty with Great Britain was concluded with any reference whatsoever to that with the French Republic, or with any right or claim which the United States have acquired by it.

I am, with much respect, sir, your very humble and obedient servant,

JOHN QUINCY ADAMS.

The SECRETARY OF STATE.

The Secretary of State to Mr. Adams.

DECEMBER 16, 1803.

SIR: Having transmitted to Mr. King the inquiry contained in your letter of ——, I have received the answer, of which a copy is enclosed. The Office of State possesses no further information on the particular point in question with the committee.

With great respect, I have the honor to be, sir, your most obedient, humble servant,

JAMES MADISON.

Rufus King to the Secretary of State.

NEW YORK, *Dec.* 9, 1803.

SIR: The draught of the Convention with Great Britain respecting boundaries, having been settled in previous conferences, was drawn up and sent by me to Lord Hawkesbury on the 11th of April; on the 12th of May the Convention was signed, without the alteration of a word of the original draught; and, on the 15th of May, the letter of Messrs. Livingston, and Monroe, (a copy of which was annexed to my No. 100,) announcing the treaty of cession with France, was received and communicated by me to Lord Hawkesbury. At the date of the signature of the Convention with Great Britain, I had no knowledge of the treaty with France; and have reason to be satisfied that Lord Hawkesbury was equally uninformed of it. It results, that the Convention with Great Britain was concluded without any reference whatsoever to the treaty of cession with France.

With perfect respect and esteem, I have the honor to be, your most obedient faithful servant.

RUFUS KING.

[The following resolution was passed by the Senate.]

IN SENATE U. S. *Feb.* 9, 1804.

Resolved, unanimously, That the Senate do advise and consent to the ratification of the Convention between the United States and His Britannic

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Majesty, for fixing the boundaries between the United States and great Britain, concluded at London, May 12, 1803, with the exception of the fifth article.

MOROCCO.

[Communicated to the Senate, November 4, 1803.]

To the Senate and House of Representatives of the United States:

By the copy, now communicated, of a letter from Captain Bainbridge, of the Philadelphia frigate, to our Consul at Gibraltar, you will learn that an act of hostility has been committed on a merchant vessel of the United States, by an armed ship of the Emperor of Morocco. This conduct on the part of that Power, is without cause and without explanation. It is fortunate that Captain Bainbridge fell in with and took the capturing vessel and her prize. And I have the satisfaction to inform you, that, about the date of this transaction, such a force would be arriving in the neighborhood of Gibraltar, both from the East and West, as leaves less to be feared for our commerce, from the suddenness of the aggression.

On the 4th September, the Constitution frigate, Captain Preble, with Mr. Lear on board, was within two days sail of Gibraltar, where the Philadelphia would then be arrived with her prize, and such explanations would probably be instituted as the state of things required, and as might, perhaps, arrest the progress of hostilities.

In the meanwhile it is for Congress to consider the provisional authorities which may be necessary to restrain the depredations of this Power, should they be continued.

TH. JEFFERSON.

NOVEMBER 4, 1803.

U. S. FRIGATE PHILADELPHIA,
East of Malaga about ten miles.
August 29, 1803.

DEAR SIR: I wrote you from Gibraltar on the 24th instant, mentioning that we should sail the next morning for Malta.

Hearing at the Rock that two Tripolitans were off Cape de Gatt, made me proceed with all expedition to examine that part of the Spanish coast. On the 26th, it blowing very fresh, at 8 P. M. being nearly up with Cape de Gatt, fell in with a ship carrying only her foresail, which had a brig in company, under the same sail. It being night, and her guns housed, prevented an immediate discovery of her being a cruiser. After hailing for some time, found that she was a vessel of war from Barbary. On which information, I caused her boat to be sent on board the frigate Philadelphia, with her passports, from which I discovered that she was a cruiser belonging to the Emperor of Morocco, called Meshboha, commanded by Ibraham Subrarez, mounting twenty-two guns, and manned with one hundred men. By not making ourselves known to the officer who came on board, he confessed that the brig in company was an American, and had been with them three or four days; was bound to some port in Spain; had been boarded by them, but not detained. The low sail the brig was under induced me to suspect that they had captured her, notwithstanding their having your passport, which it must appear from the sequel was only obtained to protect them against the American ships of war. I sent my first lieutenant on board, to examine if they had any American prisoners. On his attempting to execute my orders, he was prevented by the captain of the cruiser. This increased my suspicion, and I sent a boat with armed men to enforce my intentions. After they were on board, they found Captain Richard Bowen, of the American brig Celia, owned by Mr. Amasa Thayer, of Boston, and several of his crew, who were taken the 17th instant from Barcelona, bound to Malaga, within two or three leagues of the Spanish shore, and about twenty-five miles to the eastward of Malaga. The captain and crew they had confined below deck, which they always did when speaking a vessel. After making this discovery, I instantly ordered all the Moorish officers on board the frigate, for I had no hesitation in capturing her after such proceeding on their part, and violation of the faith of passports, which ought to be sacred. Owing to the high wind and sea, it took me the greatest part of the night to get the prisoners on board, and man the prize; which detention occasioned losing sight of the brig. The following morning, discovering many vessels in divers directions, the day was spent by the frigate and prize in chasing to find the captured brig. About 4 P. M. made her coming round the Cape de Gatt from the eastward, standing close in shore for Almeira bay, owing to the wind being very fresh. We were going slow in approaching her: the greatest exertions were made by Lieutenant Cox, in towing and rowing the prize. Fortunately, the wind increased in the evening, and we recaptured her at 12 o'clock at night. The Moors confessed that they came out for the sole purpose of capturing Americans to be sent to Tangier. I have received a paper from them, written in Moorish, which they say is their authority from the Governor of Tangier for so doing. I enclose this to John Gavine, Esq., with a particular request to have it safely conveyed to you, that you may be informed of the circumstances, and act accordingly. I believe the Governor of Tangier is much disposed for hostilities with the United States: the Moorish prisoners accuse him as the sole cause of their present situation. I sincerely hope that this capture may be productive of good effect to the United States with the Emperor, who may be assured that if he unjustly goes to war with the United States he will lose every large cruiser he has; and God grant that it may not in the least prove a disadvantage to you. My officers and self have made it a marked point to treat the prisoners not only with the lenity that is due from humanity, but with particular attention to civility, to impress on their minds a favorable opinion of the American character. That you may receive this information as early as possible, I despatch my boat on shore

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at Malaga, to request W. Kirkpatrick, Esq. Consul, to forward it by express to Gibraltar. I shall be extremely anxious to hear from you, as also for the arrival of Commodore Preble, to receive his instructions relative to the captured ships. I am bound to Gibraltar bay with the prize, but am fearful that we shall be detained for want of an eastwardly wind. I am, &c.

WM. BAINBRIDGE.

[Communicated to the Senate, December 5, 1803.]

To the Senate and House of Representatives of the United States:

I have the satisfaction to inform you that the act of hostility mentioned in my Message of the 4th of November, to have been committed by a cruiser of the Emperor of Morocco on a vessel of the United States, has been disavowed by the Emperor. All differences in consequence thereof have been amicably adjusted, and the Treaty of 1786 between this country and that has been recognised and confirmed by the Emperor, each party restoring to the other what had been detained or taken. I enclose the Emperor's orders given on this occasion.

The conduct of our officers, generally, who have had a part in these transactions, has merited entire approbation. The temperate and correct course pursued by our Consul, Mr. Simpson, the promptitude and energy of Commodore Preble, the efficacious co-operation of Captains Rodgers and Campbell of the returning squadron, the proper decision of Captain Bainbridge, that a vessel which had committed an open hostility was of right to be detained for inquiry and consideration, and the general zeal of the other officers and men, are honorable facts which I make known with pleasure. And to these I add, what was indeed transacted in another quarter, the gallant enterprise of Captain Rodgers, in destroying, on the coast of Tripoli, a corvette of that Power of twenty-two guns. I recommend to the consideration of Congress a just indemnification for the interests acquired by the captors of the Mishouda and Mirboha, yielded by them for the public accommodation.

TH. JEFFERSON.

DECEMBER 5, 1803.

[Translation.]

Praise be given to God alone. May God be propitious to our master Mahomet and to his family.

Know all those who shall see this noble writing—all our governors—those encharged with our affairs, and captains of our vessels, that the American nation are still, as they were, in peace and friendship with our person exalted by God.

Their vessels are safe both at sea and in port, and so are their merchants; and you are not to disturb the peace between us and them. What has happened with their and our vessels, has only been an affair among the vessels; but the said nation continues respected as they were with us, and under all security, and equally so their vessels.

Wherefore, we hereby order that all those of our governors; those charged with the command of our ports, and captains of our vessels who shall see this writing, that they act in all respects for the fulfilment of this order, and that they do not deviate therefrom; those who shall contravene it will be punished with a severe punishment.

This order was given on the 21st Chemadi, the second in the year 1218, (9th October, 1803.) and at last we are in peace and friendship with the said American nation, as our father (to whom God be merciful,) was, according to the Treaty made on the first day of Rhamadan, in the year 1200.

The original of the foregoing was translated from Arabic to Spanish by Don Manuel de Baccas, and from Spanish to English by

JAMES SIMPSON.

Certified at Tangier, October 15, 1803.

[Translation.]

Praise be given to the only God. May God be propitious to our master Mahomet and to his family.

Our servant the Governor Ben Abdel Sadak, and all officers of our port of Mogadore: May God assist you. Peace, with the mercy and blessing of God, be with you.

Now know ye, that the Almighty having reconciled what had happened with the American nation because of the acts of the vessels, and that we are now, as we were before, with them in peace and friendship, as settled with our father, (to whom God be merciful!)—Take care—take care that none of you do anything against them, or show them any disrespect or disregard, for they are, as they were, in friendship and in peace, and we have increased our regard for them in consequence of the friendship they have manifested to our person, which God has exalted. And we order that you be careful and diligent in all their concerns, and we order that you do well with their vessels and with their merchants. Peace be with you all.

October 11, 1803.

The original of the foregoing was translated from the Arabic to Spanish by Don Manuel de Baccas, and from Spanish to English by

JAMES SIMPSON.

Certified at Tangier, October 17, 1803.

IMPRESSMENT OF AMERICAN SEAMEN.

[Communicated to Congress, December 5, 1803.]

To the Senate of the United States:

In compliance with the desire of the Senate, expressed in their resolution of the 22d November, on the impressment of seamen in the service of the United States by the agents of foreign nations, I now lay before the Senate a letter from the Secretary of State, with a specification of the cases of which information has been received.

TH. JEFFERSON.

DECEMBER 5, 1803.

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DEPARTMENT OF STATE, *Dec* 2, 1803.

SIR: Agreeably to a resolution of the Senate, passed on the 22d of last month, requesting the President of the United States to cause to be laid before them such information as may have been received relative to the violation of the flag of the United States, or to the impressment of any seamen in the service of the United States, by the agents of any foreign nation, I do myself the honor to transmit to you the enclosed abstract of impressments of persons belonging to American vessels, which, with the annexed extracts from the letters of some of our agents abroad, comprises all the information on the subject that has been received by this Department since the report to Congress, at its last session, relative to seamen. To the first mentioned document I have added a summary showing the number of citizens of the United States impressed and distinguishing those who had protections as citizens; those who are stated to be natives of the British dominions, and not stated to be naturalized as citizens; and those of all other countries, who are not equally stated to have been naturalized in the United States.

Another source of injury to our neutral navigation has taken place in the blockade of Guadaloupe and Martinique, as notified in the annexed letter from Mr. Barclay, Consul General of His Britannic Majesty for the Eastern States.

Besides the above, I have received no official information of any material violations of our flag during the present European war, except in the recent aggressions of the Emperor of Morocco.

With very high respect, I have the honor to be, sir, your most obedient servant,

JAMES MADISON.

The PRESIDENT *of the United States.*

[The abstract of names is omitted. But the following is a summary of impressments by the British from American vessels:]

DEPARTMENT OF STATE,
December 2, 1803.

Forty-three impressments of citizens of the United States appear to have been made, of whom twelve had protections.

Ten of natives of the British dominions, and not stated to be naturalized as American citizens; and

Seventeen of all other countries, who are not stated to have been naturalized in the United States.

Summary of Impressments by the agents of other Powers, from American vessels.

Two by the agents of France.

One by the agents of the Batavian Republic.

Extract of a letter from James Maury, Esq., Consul of the United States at Liverpool, to the Secretary of State.

MARCH 24, 1803.

"I had the honor to write to you on the 25th ultimo, since which the alarm of war has occasioned a great press for seamen. Many of our, confident, as I suppose, in the continuance of peace, had not taken the caution, before leaving home, to be furnished with regular documents of citizenship, which exposes them to impressment."

Extract of a letter from John Fox, Esq., Consul of the United States at Falmouth, to the Secretary of State.

MAY 14, 1803.

"The impress is very severe. The citizens of the United States are not molested; two or three, without protections, and on board British ships, have been taken. I have made application for their release, but it is necessary that *the seamen* should bring certificates of their *citizenship with* them, otherwise they will run great risk of being impressed."

Extract of a letter from Wm. Savage, Esq., agent of the United States, for the relief and protection of their seamen at Jamaica, to the Secretary of State.

JUNE 25, 1803.

"There has been a hot press throughout this island. In this port about sixty seamen have been taken out of American vessels; immediately after which, I made application to the Admiral, who liberated the American citizens. Some few vessels on the north side have lost their men, and have experienced distress from the measure. The names of the persons impressed I have a minute of, and on the arrival of the frigates, in which they are, I shall make application for their discharge."

Copy of a letter from Thomas Barclay, Esq., Consul General of His Britannic Majesty for the Eastern States of the United States, to the Secretary of State.

OCTOBER *20, 1803.*

SIR: I have the honor to enclose you the copy of a letter which I yesterday received from Commodore Hood, Commander-in-Chief of His Majesty's ships of war on the windward station, notifying the blockade of the islands of Martinique and Guadaloupe by the squadron under his command.

I have the honor, &c.

THOMAS BARCLAY.

CENTAUR, OFF MARTINQUE,
July 25, 1803.

SIR: I beg you will have the goodness to acquaint the American Government, and agents of neutral nations, the islands of Martinique and Guadaloupe are, and have been, blockaded by detachments of His Majesty's squadron, under my command, since the 17th June last, that they may have no plea for attempting to enter the ports of those islands. By your acknowledging the receipt of this, you will greatly oblige, sir, your most obedient servant,

SAMUEL HOOD,
Commodore and Commander-in-Chief.

T. BARCLAY, Esq., *Consul General, &c.*

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SPAIN.

[Communicated to the Senate, Dec. 21, 1803.]

To the Senate of the United States:

On the 11th of January last, I laid before the Senate, for their consideration and advice, a convention with Spain on the subject of indemnities for spoliations on our commerce, committed by her subjects during the late war; which convention is still before the Senate. As this instrument did not embrace French seizures and condemnations of our vessels in the ports of Spain, for which we deemed the latter Power responsible, our Minister at that Court was instructed to press for an additional article comprehending that branch of wrongs. I now communicate what has since passed on that subject. The Senate will judge whether the prospect it offers will justify a longer suspension of that portion of indemnities conceded by Spain, should she now take no advantage of the lapse of the period for ratification. As the settlement of the boundaries of Louisiana will call for new negotiations on our receiving possession of that province, the claims not obtained by the convention now before the Senate may be incorporated into those discussions.

TH. JEFFERSON.

DECEMBER 21, 1803.

Extract of a letter from the Secretary of State to Charles Pinckney, Esq., Minister Plenipotentiary, &c., at Madrid, dated

MARCH 8, 1803.

The Convention signed with Spain in August, though laid before the Senate at an early day, had no question taken on it till the close of the session. It was then postponed till the next session, which is to commence in November. More than a majority, but less than two-thirds, which the Constitution requires, would have acquiesced in the instrument in its present form; trusting to the success of further negotiations for supplying its defects, particularly the omission of the claims founded on French irregularities. But it is understood that it would have been a mere acquiescence; no doubt being entertained that Spain is bound to satisfy the omitted as well as the included claims. In explaining, therefore, the course taken by the Senate, which mingles respect for the Spanish Government with a cautious regard to our own rights, you will avail yourself of the opportunity of pressing the reasonableness and the sound policy of remodelling the convention in such a manner as to do full justice. I need not repeat the observations heretofore made on the Spanish responsibility for the conduct of French citizens within Spanish jurisdiction; but it may be of use to refer you to the enclosed copy of a royal order issued by the Spanish Government in 1799, which will enable you to remind them of their own view of the subject at that time. In this document it is expressly declared, that the French consular jurisdiction was not admitted, and that French consuls in Spanish ports were in the same condition with those of every other nation. After such a declaration against the authority of French consuls, the Spanish Government would be chargeable with no less disrespect to the French Republic than to itself, in saying that Spain was not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. A document, which I add, will explain the just sentiments entertained by the Batavian Government during the same period, in relation to a case turning on the same principle.

Extract of a letter from the Secretary of State to Charles Pinckney Esq., Minister Plenipotentiary, &c., at Madrid, dated

MARCH 22, 1803.

As the convention you signed with Spain will be now submitted to further negotiation, it will be proper, in addition to the general remarks contained in preceding letters, to suggest some particular alterations which are calculated to remove doubts, and to provide for its convenient execution.

1st. The words "excesses of individuals," in the caption of the convention, are liable to exception. The term "excesses" has not a definite meaning in the sense in which it is here used, and "individuals" might be restricted at least as a purely English word to private citizens or subjects, as distinguished from those who are vested with public authority. The English part of the caption in the words quoted uses the preposition *of* in lieu of the Spanish words *cometidas por*, which are preferable.

It is believed that the form of words, "who have sustained losses, damages, or injuries, in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it," &c., would be an improvement of importance.

2d. From the first section, it would seem that the fifth commissioner is to be appointed by the common consent of the two nations, or, in case of disagreement, by lot from two persons, one of whom is to be named by each nation. The formation of the board would be very much facilitated by substituting the agency of the commissioners on each side, in the appointment of the fifth commissioner either by consent or by lot.

3d. To equalise the compensation of the commissioners, to provide for the payment of the expenses of the board, and to obviate the case of the death, sickness, or necessary absence of either of them, the eighth article of the British Treaty will serve as an approved model.

4th. It would be desirable to add the words "justice, equity," before the laws of nations, &c. in the close of the second article, and a clause to the oath, whereby the commissioners should engage not to sit at the decision of a case in which they might as individuals be directly or indirectly interested.

5th. The third article limits the term within which claims are to be made to eighteen months;

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but the board should be vested with a power to extend it further in special cases, so as not to exceed two years in all. The close of this article admits of the same alteration as was suggested above with regard to the caption.

6th. A criticism, perhaps an unfounded one, having been made upon the word testimony, used in the fourth article, as if it were restricted to parole deposition, it may not be amiss to change it for the word evidence, or to couple them, so as to read "all testimony and evidence, the authenticity of which," &c.

A perseverance in our claims, grounded on the wrongs permitted to be done by French cruisers and tribunals, it is expected will produce a correspondent alteration in the whole convention, and a retrenchment of the sixth article. It will be obvious to you how convenient it will prove if you can terminate your negotiation so as to produce the requisite modifications of the convention in season to preclude its reconsideration in the Senate, at their next session, in its present shape.

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

MAY 12, 1803.

I find, by your letter of the 22d, that the convention signed with this country is to be submitted to further negotiation, on the ground, I suppose, principally, that it did not include the claims for French captures. Your letters, to which the only one I have received refers, have not yet come to hand, and therefore I only know it is to be submitted to further negotiation; and that with some alterations respecting the mode of appointing to vacancies in the commission; extending the time at the discretion of the board to two years; equalising the compensation; altering the terms "excesses of individuals," and the expression respecting testimony. I am to persevere in obtaining redress for the French captures and wrongs permitted to be done by French cruisers and tribunals, which will certainly produce, if obtained, an alteration in the whole convention. I have been some time endeavoring, in every conversation I have had, to obtain the promise to include the arbitration of the French captures, but without effect: for it may be necessary here to state, that, although Mr. Cevallos did positively, in one of his letters last summer, promise to include them, if I would add the words "segun los principios que constituen la moralidad de las acciones," yet that very day, or a very short time after, when I had some inclination to add the words, and take the clause with that addition, he flew the way, and would not agree to it. I was, therefore, obliged to take the convention, such as it was, or none at all;-and as it gave up nothing, secured very important and extensive claims, and opened the door to others, I always hoped the Senate would have ratified it conditionally, striking out the sixth article, and annexing one including the claims for French captures and condemnations, and ordering me, in very strong and decisive terms, to tell the Government here that they w[illegible] termined to have the whole or none. I[illegible] been done, I believe they would conse[illegible] I suppose, the arbitration for the Frenc[illegible] and condemnations not being include[illegible] principal objection to ratifying it at the [illegible] session, I shall now take that ground a[illegible] upon their being included, even if I a[illegible] to add the words he proposed to answer [illegible] I have already quoted. I shall also co[illegible] self as not at liberty to sign any convention [illegible] does not include them in some manner [illegible] may be acceptable; but as this s[illegible] of the most grating and disagreeable [illegible] to the Spaniards, and as they cons[illegible] tremely hard to be obliged to pay [illegible] condemnations, I wish to know [illegible] structions, whether I am to make [illegible] pensable part of the convention, and [illegible] agree to any which does not include [illegible] shape. This is the ground I take a[illegible] as the Spaniards are not very quick [illegible] negotiations, and are particularly [illegible] business at this time, when they exp[illegible] tween France and England, and of [illegible] they will be involved, it is not imp[illegible] instructions may reach me before I [illegible] business. Should war take place, it [illegible] probable I shall succeed, and I shall [illegible] style of my representations by the p[illegible] improbability of a rupture.

Mr. Pinckney to the Secretary of [illegible]

MADRID, Augu[illegible]

DEAR SIR: My last despatches, and [illegible] preceded them, will have conveyed [illegible] propositions I submitted to this Go[illegible] the subject of our claims, and pa[illegible] captures and condemnations by the Fr[illegible] will also have informed you of the [illegible] ner in which I have been expecti[illegible] Mr. Monroe since the 20th of M[illegible] the instructions he would bring m[illegible] to add such offers, or bring the q[illegible] spoliations by the French in some m[illegible] this Government, to tempt them to [illegible] propositions. After waiting until be[illegible] ginning of this month,* I received a [illegible] Mr. Monroe and Mr. Livingston, acq[illegible] with the cession of Louisiana; and a[illegible] Mr. Robert Livingston yesterday, sa[illegible] Monroe was gone to London, to res[illegible] Minister from the United States. In c[illegible] of this, I have again pressed upon th[illegible] ment a decision with respect to the F[illegible] tures and condemnations, and have [illegible] audience on Tuesday.

While I expected Mr. Monroe, an[illegible] that, in treating respecting Florida, [illegible] could have been proposed which mig[illegible] duced this Government to include our [illegible] French spoliations and condemnations.

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* It seems probable that this date, and the [illegible] are advanced, and that this letter was writ[illegible]

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g I had, in pursuance of your instructions, t them forward, I forbore to push them, lest t injure the other and more important parts negotiation; but the moment I received information from Mr. Monroe and Mr. ston that Louisiana was ceded, and that onsidered the cession as including West ı, and that Mr. Monroe was not coming, I ished the new propositions respecting our in that positive and decided manner which cumstances of Europe, and the particular on of Spain, seemed to me to warrant. In er (No. 1) you will perceive the manner ch the new propositions were submitted, copy of the new convention; these went last despatches. After waiting for some o see whether Mr. Monroe would arrive ie extraordinary commission, and finding it il, I wrote the letter (No. 2); and imme- on being informed that Mr. Monroe would ne, I demanded an audience of Mr. Ceval- Secretary of the Foreign Department, in I went over the whole ground of our dif- in opinion, and repeated to him, at length, y all the arguments used in my letters, but hers as occurred in the course of conversa- as I thought the particular and doubtful n of Spain at present warranted.

ered fully into the impropriety of Spain's suffered her ports to be used for the pur- equipping privateers to cruise upon our and bringing them in as prizes, and per- the Consuls of France to condemn them; ch means her territorial sovereignty was y violated, but her ports, which we ought considered not only as the ports of a neu- l a friend, but of a nation in treaty with e, by that means, converted into those of ny. For what could France do more with ts against us than equip and man priva- ı them, and bring in and condemn our ves- Spain did not permit us to do so; and if l offered it, she well knew the offer was of sequence to us, because the distance from ıited States, and the contiguity of the coasts created a difference in the exercise of the permission, which made it extreme- ortant to the one, and of very little conse- to the other. That there can be no doubt y nation which lends the aid of its ports for rpose of arming privateers, aids in annoy- commerce of those against which these ers are intended to cruise; that, further, tion which vests within its dominions a tribunal, with the power of condemning ling the property of a neutral nation, as- depriving the citizens of that nation by their property. Hence, it would seem, a sion to arm privateers and sell prizes, grant- ne belligerent Power, is inconsistent with partiality due to both by a nation which es to be neutral; that it would not destroy ument to say the same privileges might be to both; that, in our late differences with , it could not, for the United States never l their public or private vessels to capture the merchant ships of France, and, it is believed, in no instance could the privilege operate equally in favor of two nations; from their maritime strength, local situation, or other cause, the one must always benefit by it more than the other; hence, one of them must be materially injured, if it was granted to both. For example: suppose Spain and Russia were engaged in war; would the United States do them equal justice by opening her ports for the arming of their privateers, and the sale of their prizes? Nobody would suppose she did, when he recollected that all, or nearly all, the rich commerce of Spain passes before the ports of the United States, and that Russia has no commerce in that quarter of the world. Again: if unfortunately there was a war between the United States and Spain, would England do equal justice to both, if she opened the port of Gibraltar to both, for the purpose of arming privateers and selling prizes? Certainly not; for, by doing so, she would give to the United States the most advantageous position from whence to annoy the commerce of Spain; and to Spain she would give the use of a port three thousand miles distant from the United States, and not more useful to her than her own on the Mediterranean.

From these and other examples, I endeavored to convince him how peculiarly Spain is situated, and how important it is to her to put an end to a practice so contrary to the principles of justice and strict neutrality. I repeated to him that these observations, together with those which have been, from time to time, during the last four years, offered by my predecessor and myself to the consideration of His Majesty, are believed to be sufficient to entitle us to demand compensation from His Majesty for the property wrested from us by those whose actions he had a right, and most certainly the power, to control; that the respect which the Government of the United States had for His Majesty had induced them to urge the point, which they considered as a point of national honor, with the greatest moderation, as was proved by their offering to refer the question to arbitration, although they were perfectly conscious of their right to demand payment without a reference, of which they had given a proof before they had become interested themselves. But that if Spain will not agree to the principle of neutral right, and chooses to adopt as a part of her public law the practice of opening her ports for the arming of privateers and selling of prizes, I am sure the United States would, in point of mere interest, be benefitted by following the example, after obtaining compensation for the losses they have already sustained.

In order to meet the observations he made before, that His Majesty was not, by the law of nations, liable for the condemnations by the French Consuls, I repeated to him the observations of *Vattel*, in his 3d book, and particularly in the paragraphs sect. 15, 95, 97, 102, and 104; and endeavored to show him how incompatible these aggressions were with the duties enjoined to neutrals; that, at the time *Vattel* and others had written on the laws of nations, no such case had occurred;

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no such new, extraordinary, or unwarrantable attempts had been made to erect, within any country, tribunals independent of its authority. I endeavored to impress upon him the manner in which our Government had defeated a similar attempt upon them at an earlier period of the war, well knowing that, to permit such an exercise of the rights of war within their cities, would be to make their coasts a station of hostility. To show him that we did not stand alone in our opinions on this licentious attempt to exercise the rights of war within neutral countries, where no rights have ever before been exercised, I read and explained to him the doctrines laid down in the English Court of Admiralty, by Sir William Scott, in the celebrated case of the Flad Oyen, Martensen, master; and which, as you have no doubt seen, I shall not trouble you with repeating. I concluded with informing him that our Government considered this as a point of national honor, which they could never relinquish; that, as war had again commenced between Great Britain and France, the decision of Spain on this subject was become now indispensable; that we knew not to what other parts its flames will soon extend; that our commerce must never again be exposed to similar depredations, and that our Government were determined, upon this occasion, to show how far they would protect it; that, having arranged all their differences with France and England, it now rested solely to do so with Spain; that, to do this, they had offered an equal and amicable arbitration, and that I had waited with great patience for their decision; that, however, being now instructed to transmit His Majesty's answer, so that it might be received by the meeting of Congress, the period had arrived when I could delay no longer applying to his Excellency for a prompt and decisive one, which I was hopeful he would give me in a few days, as I had two American gentlemen only waiting to take it to America.

In his answer, he went over the old ground, that Spain, not having authorized, but expressly forbidden, the exercise of this power by the French Consuls, was not, in his opinion, liable to make reparation; that the more he had considered the subject, the more he was convinced; and that, in his view of it, the quotations I had made from *Vattel* did not apply; that, since the last year, he had been informed, from the best sources, that many leading men in our (the American) Government were in sentiment with him that Spain was not liable; and that even some of our best informed lawyers had given the same opinion. I replied, it was incredible to me that any men of information, whether in our Government or among our gentlemen of the bar, could have given such an opinion; that, if they had, I had never heard of it; that it was always safest for his Excellency to take the sentiments and views of our Government, as they respected Spain, from me; that I could assure him every branch of our Government was not only decided in their opinion as to the liability of His Majesty to make compensation, but determined never to relinquish it, at least so far as to insist upon its being included in the arbitration; that the Senate not having ratified the convention, ought to be full proof of their determination upon this subject; that it was time our Government should know His Majesty's decision, and I must request to have it by the day Mr. Young sailed. He said that was impossible as the royal feasts, and other occupations of His Majesty, for this month, in which he was obliged to attend him, would put it entirely out of his power; but that he would give it as soon as he could. I then informed him that I considered it as my duty to write, and asked him, "whether I was to transmit to our Executive, as His Majesty's final decision, that he could not consent to include in the convention the captures and condemnations by the French and their Consuls." He hesitated, and said, no. The serious manner in which I put this question seemed to have affected him. He added, "The subject, with your representations, are now before His Majesty, and I will state what has passed further this evening;" at the same time assuring me I should have a very speedy answer. He then went on to converse with me on the subject of the cession of Louisiana by the French to us, in which he expressed an opinion so important and extraordinary, that I made a point of transmitting it to you by the post the next day, by the route of Lisbon, and which, I trust, you will soon receive. The substance was this: that, in the cession of Louisiana by Spain to France, there was a secret article that France should never part with Louisiana except to Spain; that if she (France) should ever wish to dispose of it, Spain should always have the right of pre-emption; from which he argued that France had not the right to make such cession without the consent of Spain, and that he was astonished our Commissioners had not applied to their Government to know the actual terms upon which France was to receive Louisiana, and, in fact, to examine their title. I answered him by saying, that he could not be more astonished at their not doing so than I was at his remark; that he well knew that Mr. Livingston and myself had been applying for upwards of a year incessantly, to the Governments of France and Spain, to know if Louisiana was ceded, and upon what terms; that, for more than a year, the most guarded silence was observed by both, and that at last, when Spain had answered and avowed the cession, not a word was mentioned in his (Mr. Cevallos's) letter to me of any secret article; that the letter only avowed the cession, and that it had been made subject to the conditions of our treaty; that I had transmitted this to Mr. Livingston and Mr. Monroe; and I asked him whether, after the sight of this letter from him acknowledging the cession, they could for a moment doubt the perfect right of France to sell. I then further asked him whether, if Spain still continued in possession, and our Government ratified the treaty, there would be any hesitation on the part of His Majesty to give us the possession? To which he made no positive reply, nor could I bring him to do so during the whole evening. I

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easily discover, in the course of it, that there at present much uneasiness on the part of ourt, with respect to the conduct of France sale of Louisiana, and particularly in the n held by our Commissioners, that it in- West Florida, which both Mr. Cevallos e Prince of Peace expressly deny, and on I write you a separate letter, containing nversation with them on this subject.

August 30.

receiving the answer of the Secretary as s I expected, and anxious to transmit you sult, I followed the Court to San Ildefonso, id another conference with him on the 24th t. In this he informed me he was sorry so delay had been occasioned in his reply; was owing to the removal of the Court, e particular urgency of the moment, allu- suppose, to the state of things occasioned war; that, however, the answer was pre- and would be transmitted the following hat I would perceive in it the two grounds which His Majesty conceived he was not to make compensation for the French con- tions; and that several very respectable arned gentlemen in the law in the United had expressed the same opinion, a copy of he would send me enclosed in his reply. rounds were: the inability of Spain to pre- t, and the general relinquishment of our to France for everything done by French- so far as respects the seizure of our vessels ir condemnation; and that he was con- l, when our Government came to see these ns, and to reconsider the question, they think, with His Majesty and his Ministers, Spain was only liable for the acts of her ubjects, except, indeed, in the violation of erritory by foreign cruisers, which, he said, l no objection to admit, considering it as a t question from that of the condemnations. him I believed our Government would be little surprised to find Spain resorting to the hat she was not able to prevent it; that, if essed this argument, if he contended she ot then a free agent, and, of course, not a nsible one, and could prove it to be so, it emained for me to transmit this reply to or your future directions; that the relin- ment he spoke of to France has nothing to th our claims on Spain: that we never con- d ourselves as having any right to demand ensation from France for these violations of erritory and sovereignty of Spain by the rs and consuls of France; that they were means included in the claims relinquished, ere as distinct and separate as claims could hat we had received from France a very ble compensation, in her consent to dissolve reaties of Commerce and Alliance previ- existing between the two nations—an alli- by which we were bound to guaranty her ls in the West Indies, and to be liberated which was inestimable to the United States; from Spain we had hitherto received no compensation, and that it would be found a great part of these claims had originated since the date of the French Convention; that I still hoped he would consent to include them in some way, convinced that, if they were not provided for, our Government would remain extremely dissatisfied; that, merely from motives of conciliation, I would consent to insert them, with the addition of the words he offered the last year, "segun los principios que constituyen la moralidad de las acciones." He said he was rather of opinion, from the intelligence he had received from the United States, that the thing would now be viewed in a different light, and that our Government would not insist on so hard terms, even if they had the right, as to call upon them for condemnations which they could not prevent, and not one shilling of the proceeds of which went into the pockets of His Majesty or his subjects; that he never meant, the last year, in what he said respecting the arbitration, subject to the limitation of "segun los principios, &c.," to apply it to the condemnations of the French consuls, or to have left it to the Commissioners to decide upon them, but only to the violations of territory; and that, had I admitted the limitation, he would have expressly excepted the condemnations; that for the acts of his own subjects and the violations of territory by foreign cruisers, His Majesty had always been ready to arbitrate, as appeared by his letters to me of the last year; that he wished me to transmit the reply he would send me, with the opinions of the American lawyers on the subject; and that he did not doubt their future instructions to me would be such as would tend to promote the harmony and good understanding of the two Governments.

On the morning following, he sent me the enclosed answer to my several verbal and written applications, accompanied by an opinion, which I also enclose, given by Messrs. Ingersoll, Rawle, McKean, Duponceau, and Livingston, on an abstract question submitted to them, as I suppose, by the order of this Government. I considered it proper to transmit Mr. Cevallos an answer, in which you will find most of the arguments insisted upon which had been before used, and in which I object to the statement submitted to our lawyers, as not expressing either fully or truly the state of facts; that, in relinquishing our claims on France, we had done so for a valuable consideration, and that, in so doing, we had by no means relinquished our claims on Spain, as they were separate and distinct; that, for the truth of this, we referred him to the letters of my predecessor, by which it appears the Government of Spain were continually warned of the illegality of the captures and condemnations, and informed that His Majesty would be held liable to make compensation; that, in resorting to the plea that Spain could not prevent it, it was incumbent on her to show that she really could not, either by force or influence, do so, and that she had exerted herself, as far as she was able, to effect it; that, after all, if it was true she could not prevent it, but to avoid a war, or a re-

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newal of the war with France, was under the necessity of submitting to it, and of sacrificing to the preservation of peace the commerce and property of the citizens of the United States, on every principle of justice and national honor she ought now to make a compensation; that the tacit sacrifice of the property of our citizens was the price she paid for a peace, inestimable to her in every respect; and that. in my judgment, she ought now most cheerfully and gratefully to submit to our proposition for an arbitration, rejoicing that we have been so moderate as to acquiesce in this mode, and not to demand, not only immediate compensation for the losses, but satisfaction for the injury to our national honor; that it should be recollected the opinions of gentlemen of the law, however respectable as professional men, were not to direct our Government; that they were supposed to be the best judges of our public rights, and had alone the authority to treat respecting them, and, when necessary, to devise the means of asserting and protecting them; and that even the opinions he produced could easily be proved to be in our favor.

As I cannot now expect that Spain will agree to include the claims for the condemnations by the French Consuls, it will remain for you to direct what is best to be done. You will consider how far her plea that she could not prevent it entitles her to consideration, and whether it appears, in any of our applications to the French Government previously to the signing of the Convention of 1800, we applied to them for compensation for the captures and condemnations by the French privateers and Consuls within the territory of Spain, or included them in those claims which were afterwards relinquished. In determining this, much will depend upon the correspondence of our Envoys or Commissioners who made the Convention with the French Envoys, and I will thank you for the necessary information, and copies of such of his letters respecting the claims as may be proper.

From the above you will see the state of the negotiation, and with what anxiety this Government wish to avoid inserting the claims for the condemnations by the French. I have no doubt Mr. Yrujo has been very industrious on this subject in the United States, and Mr. Azzara in Paris, in endeavoring to collect all the intelligence they can, to prove that we considered these as claims *on France;* that our commissioners had urged them as such; and that they are included in the general relinquishment to that nation. As I do not believe this to have been the case, I have continued to urge them as separate claims, which could be alone made on this Government; and you will perceive, by my letter to Mr. Cevallos, that I do not by any means agree with him, or acquiesce in his doctrines. Upon the whole of this business, it appears to me, that, in the present state of Europe, it would be politic in us to endeavor to arrange all the claims on Spain, by conditionally ratifying the convention already sent, striking out the sixth article, and inserting one including such of the claims for French captures and condemnations as you are determined to insist upon, and accompanying it with a specific offer to Spain to purchase Florida or such part of it as now remains to her; for, on the subject of the limits of Louisiana and Florida I am otherwise apprehensive we may have some difficulties. Mr. Livingston and Mr. Monroe officially informed me they considered West Florida as included in the cession. This the Prince of Peace and Mr. Cevallos strongly deny; and, unless we can come to some agreement with Spain for the cession of all their claims on Florida, we may, as I have observed, have some difficulties with them. This appears to me, also, to be the best time; for Spain must eventually be involved in the war; and, cut off from her resources in South America, her trade destroyed, and her people without bread, a sum of money would go a great way in tempting her to sell. We are now, also, sure of the influence and assistance of France in persuading them to do so; for General Bournonville, the French Ambassador, told me lately he had received orders from his Government to promote, as far as he could, a disposition in this Court to sell Florida to the United States. Notwithstanding Mr. Monroe has not come on, I am continually conversing with the leading men here on this subject, and keeping it constantly in their view; but, not conceiving myself now authorized to make any explicit offer, and not knowing exactly what proportion of West Florida you will insist upon as ceded to the United States by France, I wait your further instructions, which I request may be as particular and as explicit as possible; not wishing, in affairs of so great pecuniary importance, to have too much left to my discretion. I take the liberty to recommend the bearer, Mr. Young, to the President and yourself, as an excellent and deserving public officer. Please present me in the most respectful and affectionate manner to the President, and believe me, with sincere regard and affectionate respect, dear sir, yours truly.

CHARLES PINCKNEY.

Mr. Pinckney to Mr. Cevallos.

MADRID, *May* 23, 1803.

I have the honor to inform your Excellency, that, after the most mature reflection and deliberation, the Government of the United States are of opinion they cannot, consistently with the honor of their Government, or those interests of its citizens which it is their duty to support, consent to any convention with His Majesty for the arbitration in settlement of their respective claims, which shall not include the arbitration of all the claims arising, as well from the acts of Spanish subjects, as those of aliens or foreigners within the Spanish territory, contrary to the laws of nations or the treaty existing between His Majesty and the United States, and that, in order to allow time for including this class of claims, they have postponed coming to any decision on the convention formed between your Excellency and me, until the next session of the Senate, in November. In consequence, therefore, of their precise and

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e instructions, I now submit a new conven-
hich they expect His Majesty will consent
Excellency should sign, for the following
s: That your Excellency has already agreed
trate all the acts of Spanish subjects, con-
o the treaty and the law of nations, and all
fractions of the Spanish territory by foreign
eers; and, in your Excellency's letter of the
June, did positively agree to insert all the
claims arising from the acts of aliens, if I
consent to insert after the words "*ó de*
the words "*cuyos excesos puedan imputar-*
Gobierno Español segun los principios que
tuyen la moralidad de las acciones y su res-
bilidad."

t was unusual to insert expressions of this
and I did not conceive my instructions as
nting it, I objected at that time to the in-
, and preferred trying the opinion of our
nment on a Convention confined solely to
cts of Spanish subjects, and leaving the
on respecting those of aliens to future ne-
ion. It is, however, the opinion of our
nment that, when the two Governments go
expense and trouble of constituting this
, it ought at once to be authorized to con-
ind decide upon all their mutual claims.

m the dispositions, or rather assent, at first
ested by your Excellency, and on perusal of
etters, a more favorable as well as speedy
was expected to this negotiation by our
nment, and it is still hoped and expected
nodifications may be devised that will make
ntested article satisfactory to Spain, with-
ing unjust to the United States.

e true object is to give to the board a power
will reach every description of cases. Ac-
ng to information received from time to
it appears that losses have been sustained by
ns of the United States: first, on the high
secondly, within the territorial jurisdiction
ain herself; thirdly, within the jurisdiction
r colonies: that they have proceeded, first,
e Treaty of 1795; or, secondly, to the law
tions; or, thirdly, to substantial justice. It
irable, therefore, that a stipulated provision
pairing these injuries should be so expressed
be commensurate with this view of the cases;
this extent cannot be explicitly given to the
sion, that it should be as little narrowed as
ble.

e objection made to giving the board cogni-
of the wrongs committed by aliens within
urisdiction, and, consequently, within the
orary allegiance of the King of Spain, is
ly open to the reply I made to it. The au-
ty which every Sovereign has over the con-
of aliens within his territorial jurisdiction,
s him responsible to others for their conduct,
ich, and for the same reason, as he is responsi-
r the conduct of permanent citizens or sub-
. This is a doctrine too well established,
by reason and by public law, to be ques-
d. The United States have pursued it in
ice, as well as in discussion; and may, there
with the more energy, claim the benefit of
it. The remark of your Excellency, that the stipulation on this subject, in our Treaty of 1794 with Great Britain implies that, without such a stipulation, the law of nations would not have imposed on the United States the responsibility assumed, admits of a double answer. The United States acquiesced in the doctrine before the Treaty was made; and the stipulation in the Treaty, like numerous stipulations in other treaties, was not meant to supersede the rule of public law, but to acknowledge and explain it.

It is not denied that there are certain exceptions to the authority over those within a temporary, which do not apply to the authority over those within a permanent allegiance; and so far there may be exceptions to the responsibility of the Sovereign also. But none of these exceptions belong to the cases in question. In the equipment of privateers, and the condemnation of prizes in Spanish ports, the King of Spain had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and, failing in this duty, he made himself answerable to those injured by the failure.

The losses sustained by Americans from aliens, and for which Spain is held answerable, have proceeded, first, from condemnations within her jurisdiction known to be against the American trade; thirdly, from equipments ostensibly made against the enemies of Spain, but turned against the United States; fourthly, from captures only within the limits of Spanish jurisdiction.

With respect to the first two cases, it is clear that the Spanish Government had not only the right but the power to interpose effectually; and is, consequently, bound to repair the consequences of her omission. With respect to the fourth case, the violations of her territory might be less under her control, where the prizes were not carried into her ports. Still, however, with the right accruing to her against the aggressors, accrues, at the same time, the right against her to the sufferer.

It is my duty to inform your Excellency, and my instructions direct me to do so, that the course pursued by the Senate of the United States, in postponing the decision on the convention until the next session, in order that His Majesty should have time to consent to incorporate and include the arbitration of the claims arising from acts of aliens within the Spanish territories, while it maintains a cautious regard for our own rights, exhibits, at the same time great respect for the Spanish Government. Every branch of our Government is of opinion that the arbitration of these claims ought to be included, and that, by the law of nations, Spain is clearly answerable for the acts of aliens within her territory and jurisdiction; and, notwithstanding the time which has already been spent, and the ruinous delays which have taken place, they still rely on the well known honor of His Majesty, to remodel the convention, so as to do ample justice.

But, in order to remove all doubt on the sub-

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ject, and to show how well founded is the right the United States have to expect that this class of claims will be admitted at least to arbitration, I am also directed to refer your Excellency to the enclosed copy of a royal order, issued by the Spanish Government in 1799, which must remind your Excellency of the view of your Government, and of their opinions at that time on this subject. In this document it is expressly declared, that the French Consular jurisdiction was not admitted in Spain, and that French Consuls in Spanish ports were, and always have been, in the same condition only with those of every other nation.

After such a declaration against the authority of French Consuls, the Spanish Government never can say, nor have they ever said, they were not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. A document which I also take the liberty to add, will explain the just sentiments entertained by the Batavian Government during the same period in relation to a case turning on the same principle.

This subject has been so often and so long before your Excellency, that it is not necessary for me to go again into the other arguments heretofore used to prove to your Excellency the policy and justice of the measure. Our Government relies confidently on the justice and honor of His Majesty, and on the promise contained in your letters, and particularly that of the 26th June last, in which you say you consent to the inclusion of the words "*de otros*," and in the arbitration of claims for damages arising from the acts of aliens, with the addition of this comment, for its clear signification: "*ò de otros cuyos excesos puedan imputarse al Gobierno Español segun los principios que constituyen la moralidad de las acciones y su responsibilidad.*" The present convention is drawn in conformity with that limitation, with some few alterations of no moment, which our Government wishes for the more convenient caption, in which, instead of the words "excesses," &c., I have substituted "in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others within the territory of either nation." An alteration in the mode of filling up vacancies in the commission, should a vacancy occur after formation of the Board, as it would prevent their going on, and be extremely inconvenient and expensive to wait the nomination from the United States of an American commissioner to fill a vacancy, which would now be the case. An article also is added to equalise the payment of the commissioners, and to provide for the payment of the expenses of the Board. We wish, also, the Board to be vested with power to extend the time, if they think proper, in special cases, six months longer, so as not to exceed, in the whole, two years.

Your Excellency will find the whole substantially the same as the last, except with the addition to the claims for the acts of aliens, and I am particularly enjoined by my Government to request as early a decision as possible. Should your Excellency not approve the form exactly as it is now sent, I will then thank your Excellency to be so obliging as to favor me with one when you will sign; it being, however, necessary for me to state to your Excellency that I do not consider myself as now at liberty to assent to any that shall not include the arbitration of the claims arising from the acts of aliens in the territories of each.

I repeat to your Excellency my earnest request that you will be pleased to furnish me with your definitive answer for the information of my Government as early as possible, as I am particularly directed by them to endeavor to obtain and transmit it, with all the despatch in my power,

With sentimens of the most profound respect, I have the honor to be your Excellency's obedient, humble servant. CHAS. PINCKNEY

Don Pedro Cevallos.

[Draught of the proposed convention referred to in Mr. Pinckney's letter to Mr. Cevallos, of May 23, 1803.]

A Convention between His Catholic Majesty and the United States of America, for the indemnification of those who have sustained losses, damages, or injuries, in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others, within the territory of either nation, during the late war, contrary to the existing treaty or the laws of nations.

His Catholic Majesty and the Government of the United States of America, wishing amicably to adjust the claims which have arisen in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others within the territory of either nation, during the late war, contrary to the existing treaty or the law of nations; His Catholic Majesty has given, for this purpose, full powers to his Excellency Don Pedro Cevallos Councillor of State, Gentleman of the Bedchamber in employment, First Secretary of State and Universal Despatch, Grand Cross of the Royal and Distinguished Order of Charles the Third, and Superintendent General of the Posts and Post Offices in Spain and the Indies; and the Government of the United States of America to Charles Pinckney, a citizen of the said States, and their Minister Plenipotentiary near His Catholic Majesty; who have agreed as follows:

1. A Board of Commissioners shall be formed, composed of five commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the Government of the United States and the fifth by common consent. And in case they should not be able to agree on a person for the fifth commissioner, each party shall name one and leave the decision to lot. And, hereafter, in case of death, sickness, or necessary absence of any of those already appointed, the remaining commissioner or commissioners of the nation to which the commissioner so dead, sick, or necessarily absent belonged, shall be authorized to proceed to the appointment of another to replace him; and

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:w commissioner shall take the same oath rmation, and do the same duties. And it is | that the commissioners shall be respect- paid in such manner as shall be agreed be- the two parties—such agreement being to tled at the time of the ratifications of this ation. And all other expenses attending the ommissioners shall be defrayed jointly by o parties—the same being previously ascer- and allowed by the majority of the com- ners.

'he appointment of the commissioners being ıade, each one of them shall take an oath to ne, discuss, and decide on the claims which re to judge, according to the law of nations e existing treaty, and with the impartiality may dictate, and not to act directly or indi- in any case in which they are directly or :tly interested.

'he commissioners shall meet and hold their s in Madrid, where, within the term of eigh- ıonths, or in special cases, at the discretion board, two years, (to be reckoned from the ı which they may assemble,) they shall : all claims which in consequence of this ıtion may be made, as well by the subjects Catholic Majesty as by citizens of the Uni- ıtes of America, who may have a right to d compensation for the losses, damages, or s sustained by them in consequence of the ; committed by the subjects or citizens of nation, or under color of authority from it, ıthers, within the territory of either nation, the late war, contrary to the existing treaty law of nations.

'he commissioners are authorized by the said cting parties to hear and examine, on oath, question relative to the said demands, and ive as worthy of credit all testimony or evi- the authenticity of which cannot reasona- doubted.

rom the decisions of the commissioners there e no appeal; and the agreement of three of hall give full force and effect to their deci- as well with respect to the justice of the as to the amount of indemnification which e adjudged to the claimants—the said con- g parties obliging to satisfy the said awards cie, without deduction, at the times and pointed out, and under the conditions which : expressed by the Board of Commissioners.

'he present convention shall have no force ct until it be ratified by the contracting .

ıith whereof, we, the underwritten Pleni- aries, have signed this convention, and have thereunto our respective seals.

e at Madrid, this —— day of ——.

Mr. Pinckney to Mr. Cevallos.

ve waited for some considerable time, to ıe favor of your Excellency's reply to the ntations I had the honor to make, in con- ; to the orders of my Government, on the of the claims for captures and condemna- I was hopeful the respectful manner in which our Government had treated the subject, by postponing their final decision until His Majesty could have time to decide on the propriety of admitting the arbitration of the claims for captures of our vessels by the French, within the territory of Spain, and condemnations in their ports, and the arguments adduced in support of the justice and equity of the arbitration proposed, would have long since convinced your Excellency of the propriety of acceding to our proposition; and I am induced to flatter myself your Excellency will still do so. In referring to the arguments which have been already so often and so much at length adduced in support of our claims, I shall now only say that our Government, on a candid and deliberate review of the subject, are convinced that they never can, in honor to their nation, or in justice to its citizens, totally relinquish these claims; that they have again charged me, in the most positive terms, to request a definite and speedy answer from His Majesty. They well know that, according to substantial justice and the law of nations, they are warranted in demanding payment for all the vessels so illegally captured or condemned by the French; but, in that spirit of friendship and forbearance which has always governed their councils, and particularly as they respect His Catholic Majesty, they have forborne to make the demand for payment in the first instance, and have only asked for an equal and fair arbitration, which it appears to me, on maturely considering the subject, his Majesty will not refuse.

When two nations differ on a point like this—each equally entitled to form its own opinion, and sufficiently powerful to assert its honor and protect its rights, *and each seriously determined not to relinquish them*—there are no modes of terminating the difference but those of war or arbitration. Our Government, while seriously determined never to relinquish their claims, have long and amicably proposed the latter. They have again charged me to call for a definitive answer, in order that His Majesty's determination may be known before the next meeting of the Congress. I do, therefore, again most earnestly request of your Excellency to favor me with a reply to the propositions I made for a new convention, and with the form of such a one as your Excellency will approve, and of the terms on which you will consent to arbitrate the French captures and condemnations.

It is now uncertain whether Mr. Monroe will come on with the new commission extraordinary from our Government directed to him and myself at all, or if he should bring it, when; but if he does, its objects are entirely distinct from these claims—the urging the definitive answer to which my Government has again pressed on me in so serious a manner, that I am confident your Excellency will have the goodness to favor me with as early a reply as possible.

I avail myself, with pleasure, on this occasion, to offer to your Excellency the homage of the high respect and perfect consideration with which I have the honor to be your Excellency's most obedient humble servant. C PINCKNEY.

Don Pedro Cevallos.

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Mr. Pinckney to Mr. Cevallos.

MADRID, *July* 15, 1803.

Before your Excellency gives the definitive answer to the propositions made to you by order of my Government—that answer which is probably to determine the relation hereafter to subsist between the two countries—I once more take the liberty of requesting you to reconsider the arguments that have been before used, and the extremely mild and moderate terms I have offered of only arbitrating claims which the laws of nature and nations, as well as those of honor and justice, give us a right to demand compensation for, and that without reference.

Your Excellency having fully conceded the point, that the French Consuls had no right to exercise the power of condemning vessels in Spanish ports, I shall not trouble you with arguments on that subject; but when your Excellency goes on to say that His Majesty, in having forbidden the exercise of this power by them, had done all that could be expected from him, and that he was not liable by the law of nations for the condemnations and sales made by the said Consuls of American vessels and cargoes, either before or after his prohibition, I not only differ with your Excellency, but assert that, by the law of nations, His Majesty is expressly liable for every condemnation and sale which the Consuls were permitted to make in his dominions.

I presume your Excellency will not deny that the authority which His Majesty has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reasons, that he is responsible for the conduct of permanent citizens or subjects.

Your Excellency will also allow that, unless otherwise specially provided for by treaty, according to the law of nations, the French Consuls could only exercise the powers therein defined, and that the moment they stepped beyond them, and particularly to the injury of innocent aliens, trading under the sanction of a solemn treaty, it became a duty on His Majesty, not only to forbid the exercise of this unwarrantable and injurious power, but to see that his order was fully carried into effect. To merely issue an order to prohibit it, and not to see it carried into execution, is to do nothing: it operates as a delusion, because, by issuing the prohibition, you hold out an opinion to foreigners that no such authority exists, while in fact it is suffered to be executed to an extent and with a rigor never before heard of. Your Excellency will not say Spain had not the power to prevent its exercise, because we well know she had, and the honor of her Government will not permit her for a moment to resort to this argument. She received the French Consuls only on the footing of other Consuls, and with the same privileges and powers, as she has expressly declared. If they exceeded these, to the injury of innocent neutrals, and, after being forbidden by His Majesty still continued to do so, I presume the necessary means should have been used to prevent them. As these means were not used, and as Spain permitted them to continue the exercise of this unheard-of authority while she had the power to prevent it, it ought to have done so, according to that principle of the law of nations which declares that "*qui non prohibet quando prohibere possit jubet*." His Majesty is to be considered as much liable, in every respect, for these condemnations and violations of territory, as if they had been done by his own subjects or by his own express authority.

In the equipment of privateers, and the condemnation of prizes in Spanish ports, His Majesty most surely had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and, failing in this duty, I am charged by my Government to repeat it to your Excellency, as their decided opinion, that His Majesty has made himself liable to make reparation.

I beg leave to refer your Excellency to the general representation made by my predecessor on this subject, on the 24th of January, 1800, and to those made by myself since my arrival, and to the rules established by *Vattel*, b. 3, §15, 95, 97, 102, and 104, which show how incompatible these aggressions are with the regulations prescribed by the law of nations for the government of neutral countries. I shall only add, that the United States consider this question as a point of national honor which it is impossible for them to relinquish; and I can assure your Excellency, with great truth, and I am charged to do so, that it is one on which every branch of our Government is decided and unanimous; that having before refused to relinquish points of national honor, either to Great Britain or to France, they are determined not to do so to Spain; convinced that, if they did, they would have soon to meet similar questions with other countries; but that, having proved, as it is their duty to do now, that our rights must be respected, we shall then have some reason to hope they will remain in future unassailed.

The arbitration of the claims for illegal captures and condemnations by the French and their Consuls, however interesting before, has become now, not only extremely important, but absolutely indispensable. War has again commenced between Great Britain and France; we know not to what other parts of Europe its flames will extend; the American commerce must never again be exposed to similar depredations, and their Government must, upon this occasion, show how far they are determined to protect it. Having arranged all their differences with Great Britain and France, it now rests solely to do so with Spain; to effect this, they have offered an equal and amicable arbitration. Your Excellency will do me the justice to say, I have proposed and endeavored to accomplish this with all the calmness and moderation in my power, and perhaps, with more patience than the nature and circumstances of the case warranted. It arose from the friendship I knew my Government had for Spain,

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ıy earnest wish to preserve the peace of the ɔuntries. The period has now arrived when structions require me to delay no longer, apply to your Excellency for a prompt and ve answer. I made this application to your lency verbally yesterday, and I now repeat riting, and I earnestly hope it may be such as it will give me pleasure to transmit.

our Excellency could send me such defini- ıswer by the 20th instant, I will be obliged, American Consul for Madrid leaves this 22d for the United States.

h sentiments of the most profound respect ırfect consideration, I have the honor, &c.

CHARLES PINCKNEY.

PEDRO CEVALLOS.
First Sec'ry of State, &c.

Mr. Cevallos to Mr. Pinckney.

ST. ILDEFONSO, *Aug.* 23, 1803.

: In the project of a convention or treaty e to indemnities, which I transmitted to order of the King, His Majesty yielded to condescensions with which he was in- by his constant desire to maintain the best tanding and the most perfect harmony with ıited States; but you have, nevertheless, t it your duty to claim and insist that ought to acknowledge herself responsible the injuries which the French privateers ɔccasioned to the citizens of the United by violating the Spanish territory.

, however, very easy for me to evince, and rove, that such a claim is incompatible with w of nations; that the examples which e cited in support of it, having been pro- by political circumstances of the moment, not to be considered as serving for a rule, less can they alter the invariable principles ıral law; and that as little is such a preten- nformable with the particular relations and which the two nations are bound, in vir- the Treaty of 1795. But I think it useless r into a detailed discussion upon these as well because nothing which can be said be unknown to you, as because, on various ıns, we have sufficiently discussed them, o because Spain can impugn this preten- ı principles which are special, and pecu- elative to the case in question.

r the captures which the French cruisers ıade of American vessels and cargoes, by ıg the Spanish territory, any obligation to lemnities could have fallen upon Spain, it ɔould have been more than an accessary ıditional obligation, and of the same nature ail, a mortgage, or pledge, whose force is ed as soon as the principal debtor complies is obligation, or is released by the creditor; er renouncing his right. This being indu- it is not less so that the United States, renounced, by the solemnity of a conven- favor of France, the principal debtor, the which they had to claim indemnities for ses referred to, the obligation of Spain, who, at most, could only be considered as hypothetically responsible, must be dissolved.

That the United States have renounced, in favor of France, the right which they might have to demand indemnities for the losses which they have sustained from the French cruisers, is a fact beyond all doubt, since the convention concluded between the two Powers on the 7th Vendemiaire, ninth year, the second article of which is as follows: "The Ministers Plenipotentiary of the two parties not being able at present to agree relative to the Treaty of Alliance of the 6th February, 1778, to the Treaty of Amity and Commerce of the same date, and to the convention of the 14th November, 1778, nor relative to the indemnities mutually due and claimed, the parties will hereafter negotiate upon these subjects at a convenient time; and, until they shall be agreed upon this point, the said treaties and convention shall have no effect." Secondly, the said convention was presented to the Senate of the United States for their ratification. The Senate, perhaps, with a view to shut the door against France, in order that the treaties cited in the second article might not be renewed, was not pleased to ratify it without the total suppression of the second article; and, this suppression being made, it ratified it. The French Government, being informed of this, ratified it, on their part, in the following terms: "The Consuls of the Republic, having seen and examined the convention concluded, agreed upon, and signed at Paris, on the 8th Vendemiaire, ninth year of the Republic, approve it in all and every of the articles therein contained, declare that it is accepted, &c. The Government of the United States having added in its ratification that the convention shall be in force during the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition which declares that the convention shall be in force during the space of eight years, and with the retrenchment of the second article: *Provided*, That, by this retrenchment, the two States renounce the respective pretensions which are the object of the said article." This stipulation having been agreed to by the Government of the United States, it results, as a consequence, that it has renounced forever the right to claim indemnities from the French Government for the aforesaid damages; and thus it was reported, in the present year, to the House of Representatives of the United States, by the committee appointed to consider the petitions presented to Congress by sundry merchants who suffered by the depredations of the French.

In our last conference, you seemed sensible of the weight of this reply; but (doubtless in order that, from your zeal for the defence of the interests confided to you, the smallest scruple might not remain of your not having attempted all the means suggested by your political skill,) you endeavored to impugn it, by striving to lay upon Spain the principal obligation and responsibility for the losses which, near her coasts, or in her ports, the French privateers and tribunals have

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occasioned to citizens of the United States. But to satisfy this reply, and to evince that the principal obligation can remain only with France, it will be sufficient merely to examine the course which the citizens injured have pursued in their claims, and in the application they have made to Congress, whereby they acknowledged that, by the renunciation which their Government made to France, they were deprived of the right of making a claim anywhere but at home; but I will, nevertheless, add another reflection, which is, that, whether France is alone responsible for the injuries done by privateers, or Spain and France jointly, if you choose to suppose it, the obligation is one, sole, and indivisible, and dissolved by the renunciation of the United States in favor of France; and thus fails the supposition necessary for their claim against Spain.

Although what I have remarked to you is of such intrinsic force that it needs no other support to arrest conviction, I cannot omit adding to you, in confirmation of the same, that the most esteemed lawyers of the United States, some of whom hold offices under the Federal Government, having had the same question which we are discussing presented to them, with only a concealment of the names of the three Powers, Spain, France, and the United States, and a substitution in their place of the first three letters of the alphabet to indicate them, have given their opinion uniformly that Spain is under no obligation to satisfy the indemnities referred to, on the supposition of the renunciation in favor of France. Annexed, I enclose to you literal copies of the question proposed to the said lawyers, who are among the most esteemed of Philadelphia and New York, and of their answers, the original of which is in my hands. By them you will see that the Government of Spain, in judging that it is not responsible for the said indemnities, judges as do the learned in highest repute in the United States; and that, in having endeavored to consult their opinion, it cannot be argued that they procured opinions partial to the interests of Spain. It has rather obtained, from the rectitude of the said learned, a sincere confession of the slender foundation on which the claims of their own country on this subject rest.

I conclude, by assuring you I should be glad if the request of the United States were of such a nature that my Government could accede to it, in order to manifest to you equally on this occasion that the cabinet of Spain does not depart from the system of generosity and condescension with which she has always acted in whatever relates to the United States; and I improve, with pleasure, this occasion to repeat to you my desires to please you, and that our Lord would guard you many years, &c.

PEDRO CEVALLOS.

CHARLES PINCKNEY, Esq.

Abstract Questions.

The Power A lives in perfect harmony and friendship with Power B. The Power C, either with reason or without, commits hostilities against the subjects of the Power B, takes some of their vessels, carries them into the ports of A, friend of both, where they are condemned and sold by the official agents of Power C, without Power A being able to prevent it. At last a treaty is entered into, by which the Powers B and C adjust their differences, and in this treaty the Power B, renounces and abandons to Power C, the right to any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C.

Quere. Has the Power B, any right to call upon Power A for indemnities for the losses occasioned in its ports and coasts to its subjects by those of Power C, after the Power B has abandoned or relinquished, by its treaty with C, its rights for the damages which could be claimed for the injuries sustained from the hostile conduct of Power C?

Answer. We have considered the above case, and are of opinion that, on the general principles of the law of nations, the Power A is not liable to the Power B for acts done upon the vessels belonging to the subjects of Power B, by the Power C, within the ports of A, the latter not being able to prevent it. Nations are not, any more than individuals, bound to perform impossibilities.

But even leaving impossibilities out the question, and admitting that the Power A could have prevented the injury which was committed by the Power C, but refused or neglected to do it, we are of opinion that, if the Power B has relinquished the same injury to Power C, in that case the Power A is no longer liable to any responsibility in damages on account of its acquiescence.

1st. Because it appears to us that, in the present case, the Power C is to be considered as the principal party, and the Power A merely as an accessory, and that it is in that relation to each other that their several acts and their respective liability to the injured party is to be considered: now, it is in the nature of all accessory things that they cannot subsist without the principal thing; and the principal trespass being done away by the release to C, the accessory offence of A must be done away likewise, according to the well known maxim of the law *accessorium sequitur principale.*

2d. Because a release or relinquishment of a right implies in law the receipt of satisfaction, and it is contrary to every principle of jurisprudence for a party to receive a double satisfaction for the same injury; and here the injury received by B from C and from A is essentially the same: the act of those two Powers were indeed different, but the effect which they produced was the same, and that effect only can be the object of compensation in damages.

3d. Because if the Power A could be compelled to make satisfaction to Power B for the injury which the latter has released or relinquished to C, that release or relinquishment would be defeated to every useful purpose, as the Power C would be liable to the Power A for the same damages from which it was intended to be discharged by the release of B. Now a release, as well as every

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other contract or engagement, implies that nothing shall be done by the grantor directly or indirectly to defeat its *bona fide* intent or effect. If, therefore, the claim preferred by B upon A will, if admitted, indirectly defeat the release granted to C, such claim must be pronounced to be illegal.

Upon the whole, we are of opinion that the release granted by the Power B to the Power C operates also a release to the Power A, for its participation in the injury which was the object of that release.

JARED INGERSOLL,
WILLIAM RAWLE,
J. B. McKEAN,
P. S. DUPONCEAU.

PHILADELPHIA, *Nov.* 15, 1802.

Answer of the Attorney General of the District of New York to the same question.

According to the above statement, I should have no doubt that B, having abandoned its rights to indemnity against C, would have no claim whatever against A, more especially as the case supposes it out of the power of A to have prevented the transaction.

EDW. LIVINGSTON.

NEW YORK, *Nov.* 3, 1802.

Mr. Pinckney to Mr. Cevallos.

MADRID, *August* 28, 1803.

I feel it my duty to reply to your Excellency's etter of the 23d instant, which was handed to me few days ago at the Royal Sitio of San Ildefonso, he more especially as your Excellency seems ow somewhat to have changed the grounds of our defence. Formerly, I thought that the question between us rested upon the law of nations, nd to that point I directed my arguments; but ow, your Excellency says, 1st, That we have eceived compensation; and 2d, (if I understand ne application of the abstract question,) That pain was not able to prevent the injuries we iffered in her ports, from the citizens or subjects f a foreign nation. Before I enter into the discuson of these new topics, I must be permitted to bserve, that they appear to me somewhat inconstent with the first position taken by your Exellency; for, if we have received compensation, is a simple matter of fact, and at once does way the necessity of resorting to general prinples, which are, unfortunately, but too apt to be isunderstood or misapplied even by those whose tentions are perfectly upright; on the contrary, these were so evidently against us, as your Exllency is pleased to say they are, I am surprised at a resort should be had to the confession that pain was not the mistress of her ports. The tenncy of these observations, and of others which ight be drawn from the same source, (but that lo not wish to dilate upon the subject,) is to proice a conviction in my mind, either that your xcellency apprehends that our claims cannot be sisted upon the general principles of the laws nations, or that it will, on some future occasion, injurious to Spain to admit this doctrine. If I am mistaken, your Excellency will, I hope, do me the honor to favor me with arguments to show the application of general principles against us. Until then I shall look upon this ground as abandoned, and endeavor to prove to your Excellency that we did not, by rejecting the second article of the convention with France, relinquish our claim against Spain. It is admitted that, by this rejection, "the two States renounce the respective pretensions which are the object of the said article." Now these were (so far as relates to the present discussion) the indemnities mutually due and claimed. The question, then is, what were the indemnities mutually due and claimed? To decide upon this, we are again brought back to the general principles; and until it is shown, by the application of these, that our claim upon Spain is unfounded, it cannot be said that we have received compensation from France. The abstract question submitted to the learned gentlemen from Philadelphia and New York does not fit the present case, as, in the statement made to them, it is affirmed that the Power B renounces and abandons to Power C the right of any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C. Now this is taking for granted the very thing to be proved, and consequently, any deductions drawn from such premises are inadmissible: the question ought to have been, did the Power A violate the laws of nations, by suffering the Power C to make free use of her ports in arming privateers to cruise against the vessels of Power B, and also, by suffering her to establish in the same courts for condemning and selling the said vessels when brought in as prizes? And if this is a violation of the law of nations, whether is the Power B to seek redress from Power C or the Power A? Your Excellency must admit that this is the simple question stripped of any extraneous matter; and if it is determined that the Power B has its resource against the Power A, then no subsequent arrangement with the Power C can affect this claim, unless it expressly includes it. Does, then, the arrangement between France and the United States express the relinquishment of any claims which the latter may have upon Spain? It certainly does not, for Spain is not mentioned in this arrangement. Hence it follows, that if our claim against Spain is supported by the law of nations, or the principles of justice, it cannot be vitiated by our convention with France. Your Excellency well knows that the practice of our Government, and the reclamations of my predecessor, show that we held Spain liable for the injuries we received in her ports; and this clearly proves that, by ratifying the convention with France, we meant not to relinquish our claims upon Spain; and I must suppose that your Excellency did not, until very lately, think we had done it, as I do not remember that you ever before advanced the opinion; and certainly, if it was well founded, there could not be a stronger argument against us, and I am sure it is one which would not have escaped the enlightened mind of your Excellency

There is another inaccuracy, as it applies to

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the present case, in the abstract question alluded to above, for it turns principally upon the inability of the Power A to prevent, within its ports, the aggressions of the Power C. This I presume could not have been the case with Spain, and the circumstance of an Algerine vessel being delivered up in Cadiz proves that it was not; but at all events, whatever might have been the inability of Spain, it was incumbent on her to make an effort proportionate to the object, and, if she then failed, her moral obligation ceased; but if, for wise and prudential considerations best known to herself, she chose not to make this effort, but rather to suffer the property of her friends to be sacrificed in her ports, this was the price which she paid for peace, and to those at whose expense the payment was made, she is certainly bound in honor to make compensation. We admitted this reasoning when it operated against ourselves; for we paid the British for their vessels sold in our ports by the French, because we did not, at the time, think it prudent to use all our efforts to procure the restoration of them. This is precisely a case in point, and, having paid then, we have a better right to receive now.

I have thus endeavored to answer the objections of your Excellency, and to show that nothing has been done on either side to impair that claim which accrues to us against His Majesty, from the general principles of justice, as sanctioned by the laws and usages of nations. I have so repeatedly urged the force of these principles in our favor, without receiving from your Excellency more than a simple denial of my conclusions, that I cannot suppose it would be useful to say anything more as to that point. It now only remains for me to inform your Excellency, that I shall forward to the United States the letters which have passed between us, and also a detail of our conversations, that my Government may have this subject before them, as fully as it is in my power to place it. They will then determine what it is proper for them to do: but I cannot close this letter without reminding your Excellency of the unpleasant situation in which they will be placed. Convinced that it can neither be the interest nor the intention of His Majesty to injure them, they will yet see with regret that, for some years past, the conduct of Spain has not been altogether as friendly towards them as they could have wished. I will not probe too deeply into this subject; but I feel it my duty to tell your Excellency, that, in my opinion, something must be done on the part of His Catholic Majesty to adjust our well founded claims in an equal and honorable manner, or I fear he will lessen the friendship of the people and Government of the United States, which has hitherto been sincere and respectful; and I do hope that His Majesty will direct his Minister in the United States to make to our Government some conciliatory propositions, which may tend to preserve a friendly and harmonious intercourse between our two nations; or, if it is more agreeable to His Majesty to make me the organ of these communications I beg your Excellency to believe that it would not be possible to impose on me a more pleasing task, for it is my most anxious wish to prevent a misunderstanding between our two countries, connected together by mutual wants, and freed from the jealousies of a rival commerce, or interfering or rival productions.

With sentiments of the most profound respect and perfect consideration, I have the honor to be your Excellency's most obedient, humble servant.

Don Pedro Cevallos,
First Secretary of State, &c.

GREAT BRITAIN AND FRANCE

[Communicated to the Senate, Feb. 1, 1805.]

To the Senate of the United States:

According to the desire expressed in your resolution of the 28th instant, I now communicate a report of the Secretary of State, with documents relative to complaints against arming the merchant ships and vessels of the United States, and the conduct of the captains and crews of such as have been armed.

Jan. 31, 1805. TH. JEFFERSON.

Department of State.
January 31, 1805.

The Secretary of State, to whom the President of the United States has been pleased to refer the resolution of the Senate of the 28th instant, requesting that there may be laid before the Senate such documents and papers, or other information, as the President should judge proper, relative to complaints against arming the merchant ships or vessels of the United States, or the conduct of the captains and crews of such as have been armed, has the honor to annex *hereto:*

1st. A copy of a letter addressed to the Secretary of State by the Envoy of Great Britain, dated on the 31st of August last.

2d. An extract of a letter to the same, from the late Chargé d'Affaires of France, dated May 6, last, which was preceded and followed by other letters and conversations of the same gentleman, urging the subject upon the attention of the Government. It has been also urged, by the present Minister of France, in his interviews with the Secretary of State.

Of the enclosures alluded to in the aforesaid letter and extract, the only authenticated statement, relative to the conduct of American private armed vessels, which has been received at this Department, is contained in the annexed letter from Mr. George Barnewall, of New York, and the document accompanying it.

All which is respectfully submitted.

JAMES MADISON.

No. 1.

Mr. Merry to the Secretary of State.

Philadelphia, *Aug.* 31, 1804.

Sir: I have received information respecting several vessels which have of late been armed in

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ıave sailed from, the different ports of the d States: some loaded with articles contra- of war, (gunpowder is said to be the general e,) others with cargoes of innocent goods, ıthers again in ballast. After the diligent :y which it has been my duty to make on so tant a subject, I think that I can have the of stating to you, with certainty, that sev- essels of the above description, which are oned to be schooner rigged, have sailed from the port of Baltimore, while others, of er size, even ships of considerable burden, :ompletely equipped for war, have sailed the port of Philadelphia, bound to the pos- ns of His Majesty's enemies in the East ll as the West Indies. It is said, that the of some of these equipments is to force a with the blacks in the island of St. Domin- n which attempt, the public prints have so circumstantially, as to leave no doubt e subject, that two American vessels have captured by French cruisers, after making nce; but I have strong reason to believe he destination of others, particularly from rt of Philadelphia, has been with cargoes of band articles to the enemy's possessions in ıst and West Indies. Let their destinations, er, be what they may, it cannot, I conceive, justly considered, that such armaments, on rt of the citizens of a neutral State, must ended with consequences prejudicial to a erent Power, and may, therefore, be deemed r as offensive; for which reason, the law of s has stated one of the first obligations of lity to be, that of abstaining from all parti- ın in warlike expeditions. The armed ves- luded to may become the property of the s enemies, either by capture at sea, or by ıse in the ports to which they are destined, e thus in readiness to be converted imme- r into instruments of hostility against His ty; while, in another point of view, they lculated to protect the vessels, when they ıded with contraband articles, against the search and detention of a lawfully commis- cruiser, when the latter shall happen to be erior force. Indeed, I conceive that it may giving too great an extent to the principle law of nations, without attending to the of the cargo, to consider the very arms, nition, and other implements of war, with such vessels are furnished, as contraband s, when the vessels have been thus equip- ithout the authority of the nation to which elong.

derstand, sir, that the arguments in question n fact, taken place under no commission or ity whatever from the Government of the l States. I have, therefore, thought it my have the honor of making you acquainted he information that has reached me on this t; and if the observations which I have taken erty to make upon it should happily be con- ıle to the sentiments of the American Gov- ıt, I can safely trust to their justice, as well heir jealousy of observing the most strict neutrality in the present war, to take such measures as shall appear to them the most proper for suppressing the illegal proceedings complained of, on the part of those individual citizens of the United States who shall appear to be concerned in them.

I have the honor to be, with high respect and consideration, sir, your most obedient, humble servant, ANT. MERRY.

Hon. James Madison, *Secretary of State.*

No. 2.

Extract of a letter from the Chargé des Affaires of France, dated May 7, 1804, and addressed to the Secretary of State.

The undersigned is informed, in a manner which leaves him no room to doubt it, that the American merchants who pursue this commerce, [meaning the commerce with St. Domingo,] publicly arm, in the ports of the United States, vessels which are intended to support, by force, a traffic contrary to the law of nations, and to repel the efforts which the cruisers of the French Republic are authorized to make, in order to prevent it. These armaments have also for their object to cover the conveyance of munitions to the revolted of that colony. The Government of the United States cannot be ignorant of these facts, which are public: the consequences thereof have already been manifested in the West Indies, where the public papers advise that there have been actions between the French cruisers and American vessels carrying on this commerce.

In considering the matter merely under the view of the law of nations, it is manifest that American citizens, under the very eyes of their Government, carry on a private and piratical war against a Power with which the United States are at peace. The undersigned would be wanting in his duty if he did not vindicate, under such circumstances, the rights and the dignity of his Government, which are openly injured; and if he did not call the attention of Mr. Madison to the disagreeable reflections which the French Government would have a right to make, if the silence of the local authorities respecting acts of this nature should be imitated by the Government of the United States.

The French Government certainly could not see, without a profound regret, that, after having given to the United States the most marked proofs of the desire to place the good understanding of the two nations upon the most immoveable foundations, by abandoning national interests, which might have eventually produced collisions, individual interests should now be permitted to compromit this good understanding. Its regret would be still much greater if, when the dignity and the safety of France are openly injured in the United States, by their citizens, the American Government should preserve, respecting these violations, a silence, which would appear to offer an excuse, and even a sort of encouragement, to all the excesses which cupidity may attempt. Besides that, the peace of the two nations cannot but be seriously compromitted by the proceedings of the

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individuals, and by the reprisals to which they must necessarily lead; this state of things would infallibly tend to diminish the amicable dispositions which the two Governments wish to cultivate.

No. 3.

NEW YORK, *Sept.* 6, 1804.

SIR: The sufferings of innocent individuals induce me to the liberty I now take of submitting the following statement to your consideration:

In the month of June last, I despatched the ship Hopewell, Preserved Sisson, master, and the brig Rockland, —— Akens, master, with suitable cargoes, destined for Aux Cayes, in the Island of Hispaniola: the former armed for defence with twelve six-pound cannon and two twelve-pounders, with small arms, &c., a crew of thirty-five in number, besides passengers; the latter, with eight six-pounders, small arms, &c., and a crew of twenty in number, besides passengers. Both these vessels were regularly cleared at the custom-house of this district, and sailed on their intended voyage on the 17th of June. In the prosecution of which, they were met with and captured by a privateer belonging to individuals in the island of Guadaloupe, whither they were carried and their crews put into close confinement. I beg leave to refer you to the document enclosed for the particulars of the situation in which those unfortunate men are placed; and have the honor to be, &c.,

GEO. BARNEWALL.

JAMES MADISON, Esq., &c. &c.

GUADALOUPE, POINT PETRE, *July* 26, 1804.

SIR: No doubt, ere this, you have heard of the capture of the Hopewell and brig Rockland. Owing to S. W. and S. S. W. winds, was obliged to go to the eastward of Bermuda, in lat. 27 deg. 38 min., long. 61, 57 min., on the 30th of June, at 3, A. M. Saw a brig which appeared to be dogging us, and at daylight she bore down on us, hoisted an English ensign, and fired a gun to leeward: we were then under all the sail we could set; but finding she came up with us very fast, we hoisted American colors, and fired a gun to leeward, and shortened sail. I hailed the Rockland, and desired Captain Akens to keep on our lee bow, and near us, as I wished to speak the privateer first, and know what he was, before we attempted anything. She was then on our weather quarter; the Rockland not keeping in her station, dropping more to leeward, and nearly on our lee quarter; the privateer was then almost within hail of us, but immediately up helm and run alongside the Rockland, and commenced firing under English colors, which was returned from the brig. The privateer being between us and the brig, prevented my firing until I got in a situation to fire clear of the Rockland, which was in less than a moment, when we commenced firing to the best advantage we could; the Rockland fired only one broadside and some musketry, when she was boarded; they only left three men on board, sheered off, and gave us a broadside, and attempted to board us, but was repulsed by our quarter gun pikes and musketry; they then kept clear of our pikes, and played continually with all their men, with nothing but musketry. Our men seeing their shipmates falling, most of the landmen quit their quarters: the privateer seeing this attempted the second time to board us, by cutting our nettings, and overpowered us by numbers; was obliged to haul down our colors, and quit the deck, otherwise be cut in pieces; we had three killed, four badly wounded, and two slightly wounded; the first who fell was poor Mr. Bird; he was standing near me; he received one ball through his body, and one through his head, and never after spoke a word. I begged him some time before to go below, and prepare his papers: he said they were already prepared, and would not quit the deck; in consequence of which all his papers were found. It was not my intention to engage the privateer, unless I thought we were sure of getting clear; but the Rockland commencing so quick, I could not then avoid it; but even had we suffered them to board us, they would have made a prize of us; the passengers on board were sufficient to condemn us; upward of one hundred letters were found with them directed to different parts of St. Domingo, and, among the passengers, there were two noted generals who were well known by the Frenchmen; and among Mr. Bird's papers were found instructions from Mr. Lapierre pointing out the whole plan of the voyage. Many other letters were found with Mr. Bird's papers, all of which tended to condemn the ship, which they showed me at Point Petre when I was examined.

When they boarded us, nothing saved our lives but their thinking we were English, and asked us how we dare engage under American colors; and did not believe we were Americans even after we arrived. After the Rockland was boarded we engaged the privateer close on board for forty minutes. When the black General, a passenger, found we were captured, he ran below with a pistol, with an intention to blow the ship up, and with much difficulty we prevented it. He set the cartridges on fire in the cabin and steerage, which was in pouch tubs, and my laying the magazine scuttle over, saved the ship and our lives. When he found he could not blow the ship up, he put the pistol to his head, and blew his brains out. The privateer took out all the passengers, officers, and men, except myself, carpenter, two boys, and one of our men, badly wounded. The privateer continued with us until we arrived in this port, which was on the 17th July, and was immediately put altogether in a most miserable prison with nothing to eat but stinking beef and coarse bread, and very short even of that. They will not suffer me to see any Americans, nor have any communication with anybody. There is a schooner called the Snake in the Grass, bought in New York and fitted out at Salem with five guns taken and brought here a few days before me: one of the mates is allowed to go out at times,

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and this was the only opportunity I had to write. They say that orders have gone to America, that every vessel bound to St. Domingo, if taken, shall be treated as pirates. God only knows what they mean to do with us. I beg you will do all in your power to get our Government to claim us, otherwise I do not know what they may do: they seem to be inveterate against the Americans, and even told me every ship and captain's name that was armed from New York.

Captain Akens had his mate killed, and one man, and several wounded. himself wounded, and died at this place on the 22d instant.

The schooner Snake in the Grass was commanded by James Mansfield, who is also in prison, with all his men. The vessel will be condemned, although they did not fire a shot. As no protest can be made here, I thought it best to let the officers sign this letter with me. Several large privateers are getting ready to go down in the bite after the Americans. The privateer that took us was the brig Ferbriskey, Captain Antwan, with ten long French sixes, two twelve-pound carronades, one long eighteen-pounder, and one hundred and fifty men. The French seem to be very inveterate against the Americans, and insult us as they pass the prison. All that I can say more is to request you to do what you can with our Government, to claim us as Americans. I think the manner in which the French privateer engaged us, under English colors, will be a sufficient reason for them to claim us. All that I can say more is, that your ship and property were defended with spirit, until overpowered by numbers.

I am, sir, with respect, your most obedient servant,

P. SISSON,
MAHLON BENNET,
JAMES ROSS, jun.

GEORGE BARNEWALL, Esq.

N. B. You will please to excuse any fault in this letter, as I am so closely watched.

UNITED STATES OF AMERICA,
State of New York, ss:

I, William Popham, Notary Public, duly admitted and sworn, dwelling in the city of New York, and having power by commission, under the great seal of the State of New York, to attest deeds, wills, and other writings, and also to administer oaths, and grant certificates thereof, do hereby certify, declare, and make known unto all persons to whom these presents shall come, or may in any wise concern, that the foregoing is a true, true, and perfect copy of an original letter (whereof it purports to be a copy) this day handed to me by George Barnewall, of the city of New York, merchant, in order to have a notarial copy made thereof; I, the said notary, having carefully compared and examined the said copy with the said original letter, and found the same to agree therewith word for word and figure for figure; and I, the said notary, do hereby further certify and declare, that, upon the day of the date hereof, before me personally came and appeared Dominick Purcell, of the said city of New York, gentleman, who being by me duly sworn, did solemnly depose and declare, that he was well acquainted with the handwritings and signatures of Preserved Sisson, the master, and Mahlon Bennet, the first mate, of the ship Hopewell, of this port, and that he verily believes the names "P. Sisson and Mahlon Bennet," set and subscribed to the said original letter, are of the respective handwritings and signatures of the said Preserved Sisson and Mahlon Bennet; and he further deposeth and sayeth, that James Ross, jr., who hath also signed the said original letter, sailed from this port in the capacity of second mate of the said ship Hopewell; and further sayeth not.

DOMINICK PURCELL.

Of all which, I, the said notary, do now make this public act, that the same may serve, and be of full force and value, as of right it shall appertain.

In testimony whereof, the said Dominick Purcell hath subscribed the foregoing deposition, and I, the said notary, have hereto subscribed my name and affixed my seal of office, at the city of New York, the twenty-first day of August, in the year of our Lord, one thousand eight hundred and four, and of the independence of the United States of America the twenty-ninth.

WILLIAM POPHAM,
Notary Public.

SPAIN.

[Communicated to Congress, December 9, 1805, and February 18, 1813.*]

To the Senate and House of Representatives of the United States:

The depredations which had been committed on the commerce of the United States during a preceding war, by persons under the authority of Spain, are sufficiently known to all: these made it a duty to require from that Government indemnifications for our injured citizens. A convention was accordingly entered into between the Minister of the United States at Madrid, and the Minister of that Government for Foreign Affairs, by which it was agreed that spoliations committed by Spanish subjects, and carried into ports of Spain, should be paid for by that nation; and that those committed by French subjects and carried into Spanish ports should remain for further discussion. Before this convention was returned to Spain with our ratification, the transfer of Louisiana by France to the United States took place; an event as unexpected as disagreeable to Spain. From that moment she seemed to change her conduct and disposition towards us. It was first manifested by her protest against the right of France to alienate Louisiana to us, which, how-

* Although these Messages are of different dates, the papers transmitted exhibit the posture of affairs with Spain at the date of the first Message, and, in many cases, were only duplicate copies of the same paper.

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ever, was soon retracted, and the right confirmed. Then high offence was manifested at the act of Congress establishing a collection district on the Mobile, although, by an authentic declaration, immediately made, it was expressly confined to our acknowledged limits, and she now refused to ratify the convention signed by her own Minister under the eye of his Sovereign, unless we would consent to alterations of its terms, which would have affected our claims against her for the spoliations by French subjects carried into Spanish ports.

To obtain justice, as well as to restore friendship, I thought a special mission advisable; and accordingly appointed James Monroe Minister Extraordinary and Plenipotentiary, to Madrid, and, in conjunction with our Minister Resident there, to endeavor to procure a ratification of the former convention, and to come to an understanding with Spain as to the boundaries of Louisiana. It appeared at once that her policy was to reserve herself for events, and, in the mean time, to keep our differences in an undetermined state: this will be evident from the papers now communicated to you. After nearly five months of fruitless endeavor to bring them to some definite and satisfactory result, our Ministers ended the conferences without having been able to obtain indemnity for the spoliations of any description, or any satisfaction as to the boundaries of Louisiana, other than a declaration that we had no rights eastward of the Iberville, and that our line to the west was one which would have left us but a string of land on that bank of the river Mississippi. Our injured citizens were thus left without any prospect of retribution from the wrong-doer; and, as to boundary, each party was to take its own course. That which they have chosen to pursue will appear from the documents now communicated. They authorize the inference, that it is their intention to advance on our possessions, unless they shall be repressed by an opposing force. Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions, to protect our citizens from violence, to patrol within the borders actually delivered to us, and not to go out of them but when necessary to repel an inroad, or to rescue a citizen, or his property; and the Spanish officers remaining at New Orleans are required to depart without further delay. It ought to be noted here, that, since the late change in the state of affairs in Europe, Spain has ordered her cruisers and courts to respect our treaty with her.

The conduct of France, and the part she may take in the misunderstandings between the United States and Spain, are too important to be unconsidered. She was prompt and decided in her declarations that our demands on Spain for French spoliations carried into Spanish ports, were included in the settlement between the United States and France. She took at once the ground, that she acquired no right from Spain, and had meant to deliver us none to the eastward of Iberville; her silence as to the western boundary leaving us to infer her opinion might be against Spain in that quarter. Whatever direction she might mean to give to these differences, it does not appear that she has contemplated their proceeding to actual rupture, or that, at the date of our last advices from Paris, her Government had any suspicion of the hostile attitude Spain had taken here. On the contrary, we have reason to believe that she was disposed to effect a settlement on a plan analogous to what our Ministers had proposed, and so comprehensive, as to remove, as far as possible, the grounds of future collision and controversy on the eastern as well as western side of the Mississippi.

The present crisis in Europe is favorable for pressing such a settlement, and not a moment should be lost in availing ourselves of it. Should it pass unimproved, our situation would become much more difficult; formal war is not necessary, it is not probable it will follow, but the protection of our citizens, the spirit and honor of our country, require that force should be interposed to a certain degree. It will probably contribute to advance the object of peace.

But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny. To them I communicate every fact material for their information, and the documents necessary to enable them to judge for themselves. To their wisdom, then, I look for the course I am to pursue, and will pursue with sincere zeal that which they shall approve. TH. JEFFERSON.

DECEMBER 6, 1805.

No. 2.

DECEMBER 6, 1805.

SIR: In order to give to Congress the details necessary for their full information of the state of things between Spain and the United States, I send them the communication and documents now enclosed. Although stated to be confidential, that term is not meant to be extended to all the documents, the greater part of which are proper for the public eye: it is applied only to the Message itself, and to the letters from our own and foreign Ministers, which, if disclosed, might throw additional difficulties in the way of accommodation. These alone, therefore, are delivered to the Legislature in confidence that they will be kept secret.

TH. JEFFERSON.

The PRESIDENT *of the Senate.*

No. 3.

To the Senate of the United States:

I transmit to the Senate a report of the Secretary of State, complying with the resolution of the 18th January, 1813.

JAMES MADISON.

FEBRUARY 18, 1813.

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No. 4.

DEPARTMENT OF STATE, *Feb.* 17, 1813.

The Secretary of State, to whom was referred the confidential resolution of the Senate of the 18th instant, has the honor, in compliance therewith, to submit to the President the following papers:

1st. Instructions given by the Secretary of State to Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, under date of the 6th February, and 10th April, 1804; and to Robert R. Livingston, of the 31st January, 1804.

2d. The Correspondence between Charles Pinckney, Esq., and the Spanish Government relative to the ratification of the Convention of 1802.

3d. Correspondence between the Secretary of State and the Marquis de Casa Yrujo, on the same subject.

4th. Instructions given by the Secretary of State to Messrs. Monroe and Pinckney, under date of the 15th April, 8th July, 26th October, 1804; 4th May, and 23d May, 1805.

5th. A letter from Mr. Monroe to M. Talleyrand, of 8th November, 1804; and a letter from M. Talleyrand to General Armstrong, of 21st December, 1804, in reply thereto.

6th. The correspondence between Messrs. Monroe and Pinckney, and the Spanish Government.

These papers communicate all that passed between the dates specified in the resolution, on the subject-matter thereof; no negotiation was ever entered into with Spain, under the instructions to Messrs. Armstrong and Bowdoin, nor was there ever any negotiation with France, either for the cession of East Florida, or for indemnities for French seizures, and condemnations in the ports of Spain, during the late war with France.

All which is respectfully submitted:

JAMES MONROE.

1.—*Instructions from the Secretary of State to Mr. Pinckney and to Mr. Livingston.*

Mr. Madison, Secretary of State, to Mr. Pinckney, Minister to Spain.

DEPARTMENT OF STATE, *July* 29, 1803.

SIR: You will have learned, doubtless, from Paris, that a treaty has been signed there, by which New Orleans and the rest of Louisiana is conveyed to the United States. The Floridas are not included in the treaty, being, it appears, still held by Spain. The enclosed copy of a communication, from the Spanish Minister here, contains a refusal of His Catholic Majesty to alienate any part of his colonial possessions. A copy of the answer to it is also enclosed.

At the date of this refusal, it was probably unknown that the cession by France to the United States had been, or would be made. This consideration, with the kind of reasons given for the refusal, and the situation of Spain, resulting from the war between Great Britain and France, lead to a calculation that, at present, there may be less repugnance to our views. The letter, herewith addressed to Mr. Monroe, gives the instructions under which the negotiations are to be pursued. Being for your use, as well as his, it is left unsealed, and in your cipher; a copy in his having been forwarded to Paris.

In case Mr. Monroe should not have arrived, but be expected at Madrid, you will forbear to enter into negotiations on this subject, unless they should be brought on by the Spanish Government, and the moment should be critical for securing the object on favorable terms. The maximum of price, contemplated by the President, will be found in the instructions. At this price the bargain cannot be a bad one. But, considering the motives which Spain ought now to feel for making the arrangements easy and satisfactory; the certainty that the Floridas must, at no distant period, find a way into our hands; and the tax on our finances, resulting from the purchase of Louisiana, which makes a further purchase immediately less convenient; it may be hoped, as it is to be wished, that the bargain will be considerably cheapened. Under such circumstances, it would not be proper to accede to the terms which, under others, might have been admissible.

In case Mr. Monroe should be obliged to decline or postpone his visit to Spain, I have requested him to give you his ideas on the expediency of your proceeding or not in the negotiation. The advantage given him by his opportunity of scanning the policy of Great Britain and France, in relation to Spain, and of estimating the course of the war, will render his opinion on that point worthy of your confidence.

You will observe, in the answer to the Marquis de Yrujo's communication, a merited animadversion on the motives assigned for the restoration of the deposit. The United States can never admit that this was of favor, not of right; nor receive as a favor what they demand as a right.

As the indemnifications claimed from Spain are to be incorporated in the overtures for the Floridas, it will be advisable to leave them, although within your ordinary functions, for the joint negotiations of yourself and Mr. Monroe. In these, as proceeding from an extraordinary mission, the subject can be pressed with greater force and more probable effect. Should Mr. Monroe, however, not be likely soon to join you, and there be a prospect of extending the convention, not accepted here, to the claims admitted in it, you will continue to urge them on the justice of the Spanish Government; and in terms, and a tone, that will make it sensible of the impolicy of disappointing the reasonable expectations of the United States.

I have the honor to be, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

Extract of a letter from the Secretary of State of the United States to Robert R. Livingston, then their Minister Plenipotentiary in France.

DEPARTMENT OF STATE, *Jan.* 31, 1804.

The convention with Spain, which was not agreed to at the last session of Congress, has been resumed and ratified during the present. The ob-

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jection to it was, that it did not provide, in sufficient extent, for repairing the injuries done to our commerce, particularly in omitting the case of captures and condemnations by French cruisers and Consuls, within Spanish responsibility. As the convention does not abandon the omitted cases, but merely leaves them for further negotiation, it was judged best, on the whole, not longer to deprive that class of our citizens, who are comprehended in the convention, of the benefit of its provisions. The claims of the others will be pursued with due attention; and may, perhaps, be advantageously brought into the negotiation with which Mr. Monroe and Mr. Pinckney will be jointly charged. Such of them as Spain refused to submit to arbitration, as proceeding from French citizens, and not from Spanish subjects, are clearly supported by strict justice, and by the soundest principles of public law. French citizens, within the jurisdiction of Spain, were, for the time, subjects of Spain. Spain had a right to their allegiance, and was responsible for their conduct. As well might she say that a murder or robbery committed by a Frenchman on an American, in the streets of Madrid, was to be punished or redressed by France alone, not by her, as pretend that the illegal proceedings of Frenchmen, within Spanish jurisdiction, in the case of spoliations on our commerce, are to depend on France, not on her, for indemnification. Supposing France to be liable eventually, Spain is liable in the first resort, and can be relieved from it only by showing that she exerted all the reasonable means in her power for preventing and correcting the wrong, without being able to succeed in either. At first she seemed sensible of this. Her plea was, in substance, that circumstances did not permit her to control the conduct of French agents and citizens within her jurisdiction. This plea being not very honorable to her sovereignty, or sufficiently established by proof; and being not very consistent with the satisfaction which she may find it expedient to yield to other nations, particularly to Great Britain, whose commerce is, at this time, suffering like injuries from French cruisers and Consuls; it has given place to the plea that the erasure of the second article of our convention with France, in 1800, releases Spain as well as France; because France being liable, in justice, to Spain, for the indemnities paid by the latter to the United States, would indirectly be deprived of the benefit of that release to her. To this the reply is given by the remarks already made. The injury proceeded from Spain. To Spain we look for reparation. Her claim for reimbursement on France is a question between her and France. It may be just, or not just, according to circumstances unknown to the United States. Spain may have found, for anything we know, an equivalent for this use of her ports, and her permission in advantages yielded by, or expected from France. To this the fact may be added, that the indemnification has throughout been claimed from Spain and not from France; or, if from France, the application has been neither patronized, nor authorized by the Government of the United States. Applications of this sort may have been made by individual sufferers: but, it is believed, that they have in no instance, received the countenance of the American legation at Paris. It is maintained, however, on the part of Spain, that a resort in form has been had to the French Government, in such cases. Will you make the inquiry and communicate the result? It will not be amiss to know the truth, as it may the more effectually silence the sophistry of Spain. But, should the result justify the assertion on her side, it will not vary the merits of the question. The resort of individuals to the French Government could not be pretended to have that effect. If made under the voluntary auspices of an American Minister it might have been unknown to, or disapproved by the Government here. Nay, if made by order of the Government itself, it would not preclude a just resort to Spain, unless accompanied by a positive or clearly implied discharge of the latter from her responsibility.

"It has been thought proper to give you this view of the subject that it may guide the communications thereon, which it may be expedient for you, at any time, to hold with the French Government."

Extract of a letter from the Secretary of State to Chas. Pinckney, Esq., then Minister Plenipotentiary of the United States at Madrid.

DEPARTMENT OF STATE, *Feb.* 6, 1804.

The Senate having resumed at the present session the convention with Spain, postponed at the last, have thought proper to ratify it, and the President has completed the act on the part of the United States. The instrument is now returned to you with these sanctions, in order to be exchanged for the ratification of His Catholic Majesty. You will hasten this formality as much as possible, and forward the result to the Government here, that no time may be lost in procuring to our citizens the benefits stipulated to them. To favor despatch, as well as to guard against casualties, duplicates and even triplicates will be proper.

In concurring in this partial provision for the indemnities due from Spain, it is to be particularly understood that it proceeds from no other considerations than a wish to shorten the delay of relief to that portion of the claimants who are included in the provision, and a determination to avail the residue of the reserve, expressly made in behalf of their claims, by the act of the convention. When the decision of the Senate was postponed at the last session, it was justly hoped that, before the succeeding one, the Spanish Government would have yielded to the reasonableness and justice of giving to the provision the extent required by the United States; in which case, the arrangements would have been simplified and a foundation laid at once for closing all controversies on the subject. The final refusal of Spain to concur in these views, has been thought to give a preference to the course now adopted.

None of the pleas urged by the Spanish Gov-

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nt, can in the least invalidate the justice of ıims for injuries committed by French citi- r agents within her jurisdiction.

Iis Catholic Majesty be sovereign in his ominions, aliens within them are answera- him for their conduct, and he, of course, is rable for it to others. This is a principle d too evidently in reason and usage to be verted. As well might Spain say that a theft bery, committed in the streets of Madrid, Frenchman on an American, is to be re- l by France, and not by her, as pretend that is to be sought for spoliations committed isers from, or condemnations within, Span- ts. Nor is there any room for the distinc- etween the injuries proceeding from the ı cruisers and French consuls. With re- o the consuls, their acts were either author- not authorized by Spain; if authorized by Spain is answerable for giving them the ity; if not authorized by Spain, they could authorized at all; the law of nations giv- m no such authority, and France having no give it; and being acts without authority, e not to be regarded as consular acts, but as he acts of private individuals as the cruises other irregularities committed or institu- French citizens within the jurisdiction of To say that the consuls derived their au from the sanction given by Spain to the ty derived from France, (without which n, positive, or permissive, it is clear that thority of France, within the jurisdiction n, would be a nullity,) is still to rest the ination by the consuls on the authority of and to leave her responsible for them.

er every aspect, therefore, Spain is bound ıstice in this case to the citizens of the States, unless she not only pleads a du- spending her free agency, and prostrating ional honor, but proves the reality of this and not only proves this duress, but moreover, first, that she did everything power to prevent the evil; next, that she rything in her power to obtain reparation and, lastly, that, in tolerating the evil, she deliberately and wilfully surrender the rights under her protection to advantages, or negative, obtained or expected by her- France.

suggestion, that France was resorted to ress was unfounded. It does not appear y such resort was authorized by the Gov- t of the United States, whilst the claims Spain have been uniform and pressing; it believed that any interpositions have ed from the American legation at Paris. deed, such interpositions taken place, they in no respect, lessen the obligations of Individuals may have made their appli- to the French Government, but it will not nded that the merits of the question can ted by that circumstance.

plea on which it seems that the Spanish ment now principally relies is, the erasure of the second article from our late convention with France, by which France was released from the indemnities due for spoliations committed under her immediate responsibility to the United States. This plea did not appear in the early objections of Spain to our claims. It was an after thought, resulting from the insufficiency of every other plea, and is certainly as little valid as any other. The injuries for which indemnities are claimed from Spain, though committed by Frenchmen, took place under Spanish authority. Spain, therefore, is answerable for them; to her we have looked, and continue to look, for redress. If the injuries done to us by her resulted in any manner from injuries done to her by France, she may, if she pleases, resort to France, as we resort to her. But whether her resort to France would be just or unjust, is a question between her and France, not between either her and us, or us and France. We claim against her, not against France. In releasing France, therefore, we have not released her.

The claims, again, from which France was released, were admitted by France, and the release was for a valuable consideration in a correspondent release of the United Ssates from certain claims on them. The claims we make on Spain were never admitted by France, nor made on France by the United States; they made, therefore, no part of the bargain with her, and could not be included in the release. The only supposition on which Spain could turn us over to France would be, that of her being in a state of absolute duress, of her being merely the staff by which the blow was given by France. But even on this supposition, the injuries done by France, through Spain, could not, by any fair interpretation, be confounded with the injuries released to France, by which could be meant such injuries only as proceeded from her own individual responsibility, and as were, in the ordinary course of things, chargeable on her.

The last plea, under which refuge has been sought by Spain against the justice of our claims, is, the opinion of four or five American lawyers, given on a case stated, without doubt, by some one of her own agents. An argument of this sort does not call for refutation, but for regret that the Spanish Government did not see how little such an appeal from the ordinary and dignified discussions of the two Governments, by their regular functionaries, to the authority of private opinions, and of private opinions so obtained, was consistent either with the respect it owed to itself, or with that which it owed to the Government of the United States; that it did not even reflect on the reply so obvious, that four or five private opinions, however respectable as such, could have no weight against the probability that other lawyers had been consulted, whose opinions were not quoted, because they were not the same; and that, if the Government here could descend to the experiment, little difficulty could be found in selecting more numerous authorities of the same kind, not only in the United States, but among the jurists of Spain.

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Extract.—The Secretary of State to Charles Pinckney, Esq.

DEPARTMENT OF STATE, *April* 10, 1804.

SIR: The footing on which your last communications with Mr. Cevallos left the subject of the South American claims of our citizens, requires little to be added to what has heretofore been said in relation to them. I shall observe only, that there is a difference between your statement and construction of the Spanish ordinances and those of Mr. Cevallos; on which I cannot undertake to decide, without a fuller view of the question than I have the means of taking. On the arrival of Mr. Monroe, he will join you in the discussion, and the provision due to our citizens may, perhaps, be incorporated with the principal negotiations which will then be undertaken. In the meantime, you will be under no restraint from taking advantage of any favorable change in the disposition of the Spanish Government, for obtaining justice from it. This is the more to be desired, as it will simplify the transaction, committed jointly to yourself and Mr. Monroe, and leave, applicable to other contested cases, any sum that may be stipulated by the United States in that transaction, and which will probably be inadequate to the aggregate of the cases.

According to information already received, many vessels, belonging to citizens of the United States, have suffered from irregularities in the West Indies, in which Spanish authorities have, in some way or other, participated, and for which, of course, redress will lie against the Spanish Government; and new cases are daily added. As soon as the requisite statements can be made of them, they will form a ground for claiming just reparation. In the meantime, you will represent, generally, to that Government, the illegal and unfriendly practice which exists, and the right which the United States have to expect from the justice of His Catholic Majesty, and his regard to the friendship and harmony of the two nations, immediate instructions to his officers in the West Indies which may put an end to the practice.

II.—*Correspondence between Mr. Pinckney and the Spanish Government, relative to the ratification of the Convention of* 1803.

Mr. Pinckney to Mr. Cevallos.

MADRID, *January* 11, 1804.

SIR: I had the honor lately to inform your Excellency of the ratification and exchange of ratifications of the treaty and convention, respecting the cession of Louisiana; I have now the honor to inform your Excellency, that I have since received another despatch from the Secretary of State, informing me that Congress have passed an act authorizing and enabling the President to take possession of and occupy the said Territory, as ceded by France to us; and have provided for the temporary government thereof, by means calculated to maintain and protect the inhabitants of Louisiana in the free enjoyment of their liberty, properties, and religion. They have also passed another law, for furnishing the means to pay the sums which they have given to the French Republic for the same.

In consequence of this, the President of the United States has issued a joint commission to General Wilkinson, the General commanding the forces of the United States, and Governor Claiborne, of the Mississippi State, to receive from the Prefect of Louisiana, or person authorized, the territory in question, and to possess and occupy the same in the name of the United States.

I should have contented myself with barely making the official communication of these events, if the late communication of your Excellency and your letter did not impress me with a *belief* that there was something in the observations of your Excellency, and the apparent unwillingness of the Spanish Government, either to arrange our pre-existing differences and claims, or to cordially acquiesce in the cession of Louisiana, which required an answer, and such a one as should still go to prove the justice, the moderation, and the friendship of our Government for Spain.

As I do believe things are growing to a serious height between the two Governments, such as may, possibly, produce war; while we can, with honor, and with something like equal and honorable terms, and before any event occurs, or at least before we know, officially, of any, which may prevent all discussion, and drive things to extremities, I am to request the serious and early attention of you Excellency to the following observations. There are three subjects of discussion between the Spanish and American Governments:

1. The actual cession of Louisiana;
2. The proposed cession of Florida:
3. The claims of American citizens.

As to the first, it may be said, on the part of the United States, that they long ago foresaw the difficulties which would arise from any other nation but themselves possessing the mouth of the Mississippi, and endeavored, by every friendly means, to do them away. They made various propositions to Spain, which were rejected; and, in the interim, the Spanish officer at New Orleans deprived the citizens of the United States of the deposit stipulated for in the Treaty of 1795; this roused the feelings of the whole nation, and their Government, true to their professions of respect and friendship for Spain, and, at the same time, convinced of the necessity of applying some effectual remedy to the evil, sent to Europe an extraordinary mission to treat on the subject. At this time, the Spanish Government officially announced that they had ceded Louisiana to France, and that we must direct ourselves to that Government for any acquisition of territory which might be convenient to us. Our Ministers at Paris made this acquisition; hence accrues to us a right founded on justice.

On the part of Spain, it is said, that Louisiana was ceded to France, under a promise from that Power not to part with it. I presume that the French Government will be able to show that this promise could not be supposed to bind them under the circumstances in which they found themselves last spring; but be this as it may, the

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promise was neither an equitable nor a legal obligation on the United States, because it had not been made known to them. Repeatedly and earnestly did I ask your Excellency upon what terms Louisiana was ceded to France; for twelve months I could get no answer; at last I was told by your Excellency, on the 31st March, that Louisiana was ceded to France, "avec la même étendue qu'elle a actuellement entre les mains de l'Espagne, et qu'elle avoit lorsque la France la possédoit, et telle qu'elle doit être après les traités passés subséquemment entre l'Espagne et d'autres États;" and as no mention was made of any restriction, when it was known that we wished to purchase, we had a right to suppose that there was none. But, even if there could be any doubt, it is cleared up by your Excellency's letter to me on the 4th of May; for your Excellency there tells me, in express terms, that my Government "podrá dirigirse al Gobierno Francés para negociar la adquisicion de territorios (en Luisiana) que convengan á su interes."

From these letters, which were remitted to our Ministers Extraordinary at Paris, and to our Government, it is clear the United States were in possesion of official intelligence that the country was ceded; nor did the least hint drop from Spain of any secret article. She had sold, or exchanged, and conveyed the territory to France; it was a fact known to all Europe, and officially announced to us; it was equally known that we wished that country, and the reasons of our doing so, are such as the world must approve. We have fairly bought and furnished the means of paying for it; and if, after all this, Spain should refuse her acquiescence, and, to possess it, war should be the consequence, I leave it to the enlightened mind of your Excellency to judge who are in the right, and what must be the opinion of every impartial nation as to the procedure. But why should Spain refuse her acquiescence? She has shown already that she did not consider the keeping of Louisiana as indispensable or necessary to her; it was originally a French colony, and never came into the possession of Spain until 1763; it therefore, cannot claim that sort of affection which old countries sometimes entertain for colonies originally established by themselves, and considered as parts of their family. Nor can Spain give that as a reason, as she has always seemed to consider Louisiana and Florida as temporary possessions little valuable to her; nor has she ever hesitated to part with them, when she found it her interest to do so; and, if she has no objection to part with them to other Powers, why should she not wish to see them in our hands? Is she more jealous of us than of others? Have we more power, more ambition, or are we more capable of doing her injury, than Great Britain or France? If she thinks so, she mistakes most egregiously the character of our people, the nature of our Government, or the true interests of a country devoted only to peaceful and honorable pursuits. Does she suppose we have less affection for Spain than the Governments I have mentioned, which have each, in their turn, possessed Florida and Louisiana? This question is at once answered, by saying, that, while we benefit, we cannot rival or interfere with each other; that our commerce is extensive, and mutually advantageous; and that these are the situations which are generally the parents of a sincere and lasting affection between nations; there is but one possible mode of our differing or interfering, and that is by the collision of unsettled boundaries. Let us now forever remove the possibility of this collision. We offer to come forward honorably and openly on this subject: I am hopeful Spain will do the same, and that I shall soon receive such propositions from your Excellency as I shall be authorized to accept.

As to the second subject of discussion, it has been urged, on the part of the United States, that Florida was desirable to them from its local situation; that, by getting it, they should avoid the necessity of submitting to similar evils to those they had suffered in Louisiana; that this country was of little or no use to Spain; that it cost her much money to maintain it; that it greatly increased the probability of her being engaged in war, and lessened her means of supporting it; and that the Spanish capital and industry employed in the trade of that country might be much more advantageously employed in carrying on the commerce of the more fertile provinces of South America. These reasons, it was supposed, would have much weight; yet, the Government of the United States were willing to pay a fair price for it. They had turned their attention to the subject, and saw that misunderstandings must sooner or later arise, and they proposed, with honest intentions, the means they thought most likely to prevent it.

On the part of Spain it is said, that, the system adopted by His Majesty, not to part with any portion of his dominions, prevents him from acceding to the wishes of the American Government; and that, moreover, he is bound, by treaties, not to dismember his American empire. It is not recollected that any other reason is assigned, and to these it may be answered—

1st. That it is unwise to adhere to any general system contrary to the dictates of sound policy; and

2d. That no opposition will or can, with propriety, be made by any foreign Power, to the cession of Florida to the United States; for that country has changed masters so often since the Treaty of Utrecht, that it, at least, is exempted from the general restriction of that treaty; nor, until lately, has been much value annexed to it by Spain. Other arguments might be adduced; but, as it is known that neither the interest of France or England will be injured by this cession, there are reasonable grounds to suppose that neither of them will object to it; and, if they do not, it is presumed that no other Power will. These reasons, then, lose their strength, and leave the naked question of expediency. This, in fact, is the only point for His Majesty's Ministers to inquire into; and if they, in their wisdom, determine that it would be for the interest of Spain to part with this province, no

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foreign nation would have the unkindness to oppose it, nor should any general system be suffered to do it. The reasons before mentioned, and which were detailed on a former occasion, prove the actual value of this country to Spain is small; and if it is supposed that it acts as a protection or frontier to any other of her dominions, it is a mistake; it may be the means of bringing about a rupture, which might endanger the others, but it can never be the means of protecting them. It may, and but too probably will, happen, that the seeds of dissension sown in that country will spread to others, where dissension, but for this, would never have been known. If it is believed (and it is hoped it will be) that ambition does not direct the views of the American Government, then no suspicion can be entertained of the sincerity of their declarations, and its proper weight will, of course, be given to their opinions. But even if it was supposed for a moment, that they were guided by ambition, would it not be wise and prudent in Spain to deprive them of all pretext for the further gratification of this passion, by giving up to them, upon reasonable terms, (and upon no other is it asked,) a province which is of no use to her, and one which must fall into the hands of her neighbor if she chooses to attack it? This is an idea but little connected with the real question; for the conduct of the Government of the United States leaves no room to suppose that they are guided by ambition. The wish to purchase a barren and almost uninhabited country could not arise from such a passion; it has its source in the wisdom and prudence of those who view this purchase as the best and readiest means of settling present disputes, and of establishing, upon a solid basis, future peace and friendship between Spain and the United States.

On the 3d topic, viz. the claims of American citizens, little remains to be said, for the subject has been discussed in all its various forms; and the result is, a difference of opinion between the two Governments. One or the other must be wrong; and, as it is presumed that it is equally the interest and the wish of both that the difference should be amicably arranged, it becomes expedient to refer it to the same impartial tribunal, as the only means of accomplishing this desirable end. To this the Government of the United States will agree, although they themselves have paid those who had similar claims upon them without a reference, and might, therefore, with some degree of propriety, insist upon receiving payment in the same way.

The importance of the foregoing subjects call for the serious attention of both Governments, and it is believed that, if they are properly investigated, no material difference of opinion can exist. Peace, harmony, and friendship, it is presumed, are equally the interest and the object of both, and justice and friendly acts are the only means by which to obtain and perpetuate them. Spain certainly ought not to feel a disposition to treat us unjustly or unkindly, and we ask nothing but what we are willing to pay for, or have a right to insist on.

Your Excellency well knows how much and how anxiously I have always desired to accommodate every difference between the two countries; fearing that these are increasing, and that things are rushing to a point from which it will be difficult to recede, in the amicable and honorable manner in which an accommodation may yet take place, as the friend of peace and harmony of the two countries, I seize the present moment still to offer to receive any amicable and reasonable propositions that may have a tendency to produce the arrangements and cession which we have so long and ardently wished.

Having reason to suppose your Excellency has received, by a packet, the same late and important intelligence I have of the critical *state of things* between the two countries, you *will at once perceive* the reason of my renewing *my application* at this time, and of my so earnestly requesting an answer. Your Excellency will, I am sure, be convinced that it flows from that ardent desire for the peace and friendship of the two countries, which has always governed the numerous endeavors I have made to preserve them, and which have been such as I trust will impress your Excellency with the conviction of their having been open, sincere, and always with the best intentions.

I have the honor to be, &c.

CHARLES PINCKNEY.

Don Pedro Cevallos,
First Secretary of State, &c.

Mr. Pinckney to Mr. Cevallos.

Madrid, *June* 1, 1804.

Sir: Since I had the honor to see your Excellency, I have received your letter (31st May) on the subject of an act of Congress, passed by that body, relative to the collection of duties in a district near the Mobile, which you say is a violation of the territory and sovereignty of *His* Majesty, and which you request me to transmit *to my* Government. It being their practice *to send all the* acts of the session at the end of *it*, there has not yet been time for me to receive these acts, nor have I any information or instructions relative to this particular business; all, therefore, I can do at present is to comply with your request, and transmit your letter by the first safe conveyance. Permit me, on this subject, to remind your Excellency, that, on the first intelligence being received of the cession of Louisiana, I communicated verbally to your Excellency and the Prince of Peace the contents of an official letter I had received from Mr. Livingston and Mr. Monroe, informing me that they considered a great part of West Florida, as so called by the English, to be included. Such letter could not have been written to me officially by them, without their having been so informed by the French Plenipotentiary and Government. The price paid is a proof of the territory being considered as extremely extensive, and if, as must most probably be the case, these were the bounds detailed by the French, it becomes undoubtedly a question between the French and Spanish Governments, and our own; and for this reason, I shall immediately send a copy of your letter to me to Mr. Livingston, our Minister at

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Paris, for his information and that of the French Government. It not being the interest of either France, Spain, or the United States to differ about this or any other questions, I am sure that a little examination and moderation will soon accommodate it. Apprehending, however, that your Excellency may, from the tenor of your letter to me, make this a reason for not ratifying the convention, or of adding such clauses to it as may defeat or delay its ratification, and depending very much upon your Excellency's friendship for the United States, and strong sense of the great importance it is to both our countries to be on the most cordial and friendly terms, I again take the liberty of recommending to your Excellency to have the convention ratified as it is, and without addition: this will be to the United States so strong a demonstration of the sincere friendship of His Majesty, that I am sure it will be attended with the best effects; whereas, should it now be refused or delayed, or clogged with additions, it will serve to increase the irritation and animosity of the two countries, and only widen a breach which may now easily be closed.

The great point for the consideration of our two nations, is simply this: Is it the interest of both to be at peace and friendship with each other? or can a slip of territory, nearly barren, or the refusal of the ratifications of the convention, be an equivalent for the expense and consequences of embroiling two nations which ought so strongly and affectionately to be united? Your Excellency, I know, thinks with me on this subject, that it is better to conciliate than irritate. Let, therefore, the different questions between our Governments be kept separate. On the subject of the claims and conventions for their arbitration, we have long since agreed to suffer that to be ratified as it is. This will be a strong proof to our Government that Spain wishes peace and friendship, and relies confidently on the well known good faith, honor, and moderation of the United States, for an amicable and just arrangement of the limits. On this subject a new negotiation can take place; it will then be the negotiation of neighbors having extensive concerns with each other, and among whom questions must sometimes arise; but let them be the questions not only of neighbors, but of friends, and unattended by any circumstances to irritate. Do not show the United States that you have no confidence either in their honor or justice—qualities on which they value themselves more than on power or wealth; but show to them that Spain, having the most perfect confidence in both, will rigidly and honorably adhere to what she has promised, and has no doubt the United States will do the same. This is the conduct I wish your Excellency to pursue, and I think I know the United States sufficiently to be convinced they will meet it with sincerity and cordiality.

Your Excellency sees by this letter the strong reliance I have on your Excellency's being, upon all occasions, the promoter of the peace and friendship of the two countries; and on this confidence I have the honor to subscribe myself

Your Excellency's most obedient and very humble servant, CHAS. PINCKNEY.

Don Pedro Cevallos,
First Secretary of State, &c.

Mr. Pinckney to Mr. Cevallos.

Madrid, *June* 22, 1804.

Sir: Believing it not to be agreeable to your Excellency, I probably should not have again troubled you either with personal or written applications on the subject of the exchange of ratifications of the convention, after having done all I could to persuade your Excellency of the policy and propriety of so doing. I should have contented myself with having done my duty, and in requesting and urging upon you the necessity of an early and definitive answer to send to my Government; transmitting which, I should then have left to them to decide, as the rights and interests of our citizens, and the sacred honor and character of our nation, may require. I have, however, just received accounts of such a nature, as render it necessary or proper I should make one appeal more to your Excellency's love of justice, and to your wish to preserve the harmony of the two countries; and, should this fail, I will then give up the idea of our remaining long in friendship and peace, and consider it as almost an impossible thing. I think your Excellency, in reading this letter, and recollecting circumstances, must view it in the same light, and will at least appreciate the motives which have given rise to it. Be assured that nothing but the pressing importance of the subject, and the difficulty of amicably receding from the point, to which the refusal or delay to ratify as it now is will bring us, would induce me to do so.

To show your Excellency that this opinion is too well founded, we have nothing to do but to go back and examine the conduct of Spain for six years, and we shall find that, during that time, there has been such a series of treatment to the vessels, cargoes, and in many instances persons of our citizens, as no man could believe, who has not an opportunity to examine the archives of our mission to this Court. The individual sufferings have been incredible, and the property lost of immense value. There is scarcely a part or a port of His Catholic Majesty's dominions in Europe and America, that has not been the scene and witness of their sufferings: Sufferings, such as I believe no people ever before endured from a nation to whose coasts they went under the solemn protection of treaties, the laws of nations, and, in many instances, express royal orders or permissions from the King. Nor was the unfriendly treatment of Spain confined only to the acts of her own subjects while we were in difference with France; contrary to the treaty and every principle of the law of nations, she permitted the French cruisers to carry in hundreds of our vessels, and proceed to their condemnation and sale in Spanish ports. If your Excellency will only throw your eye over the vast and melancholy pile of reclamations on these subjects now in your office, I have no doubt you will readily confess that there perhaps never existed

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such a collection of wrongs, sufferings, and damages, permitted by one nation toward another, with which she professed to be in peace and friendship. I will venture to say that it is such as no nation, having the same power to assert their rights and protect their citizens as we have, would have so long suffered without some kind of redress.

And yet, under all these accumulated injuries and sufferings of our citizens, under the breach of solemn treaties, of the laws of nations, and in many instances, violations of the honor of our flag, what has been the conduct of the United States? Always mild and moderate, in every step of these oppressions and injuries, we have applied for redress in the most respectful terms; we have relied on the justice and magnanimity of His Majesty and his Government for nearly eight years, until our citizens who were concerned were nearly all ruined, such as have been for years personally attending to their claims, exhausted in their resources and fatigued with the useless attendance and absence from their families, have nearly all returned to their homes, abandoning to their Government their rights and claims, and are now incessantly applying to her to see them redressed. Such too, has been the serious and formal appeal of the great commercial cities on this occasion, so solemnly have they pressed it, that it has now become my duty to apply in the most urgent manner for a definite answer, His Majesty will ratify the convention as it was made or not? considering any alteration at this time as amounting to a refusal. On His Majesty's love of justice alone I rely for such an answer as will be agreeable to our Government. I entreat your Excellency to reperuse some of the letters I have written to you on this subject. In these, I intimated to your Excellency the astonishment of the people of the United States at the apparent determination of Spain to consider them as enemies. Although many of their acts from 1796 to 1802 were oppressive and unfriendly, our citizens were hopeful they were occasioned by the war, and that at a proper time they would be redressed; they still, therefore, continued to view the friendship of the two nations as a certain thing, because they were neighbors; their commerce was extensive and mutually valuable; and it was impossible for them to be rivals. These generally being the solid foundations of friendship between Governments, our citizens had a well founded right to expect a firm and increasing one with the subjects of Spain. It was, therefore, with great surprise they viewed their losses and sufferings, the neglect of their claims, and their general treatment for the last six or eight years. Your Excellency will be astonished when I inform you that, on an accurate survey by persons who have examined them, not one case of seizure or damages in thirty has been redressed by Spain. I am sure that, out of the applications made on other subjects, the proportion of refusals has been as great. It has now become almost a regular thing for us to ask and to receive refusals to every application. These, added to the impression made on our citizens by the conduct of Spain as it respected Louisiana, have led to the opinion that Spain really has no wish to remain long on friendly terms with us; or else why did she so quietly consent to restore Louisiana to France, and appear so content that the French should have it, and the moment she found it was to come to the United States show such displeasure, and do everything in her power to prevent it? There can be but one answer, which is, that Spain considered Louisiana, while in the hands of France, as in the hands of her friends, and as about to be delivered to those whom she did not view as such. I can assure your Excellency that the whole of our situation and concerns, taken together, have led to a point sufficiently important for your Excellency's interference, because with difficulty I shall think your Excellency is not a friend to the United States, or that you wish to see any serious difference with us. At the same time, I do believe that on the present moment it depends to prevent these differences; for I am sure, if this convention is returned without being ratified as it is made, and ratified by our Government, that it will, perhaps, afterwards be too late for us to benefit by your Excellency's friendship and interference. I wish to speak with candor and friendship to your Excellency, because I well know the temper and disposition of our country and its Government, and the manner in which they have received the losses and injuries they have sustained from Spain for the last six or eight years. I am certain they will consider the refusal to ratify, or to give an answer, or the throwing of obstructions in the way so as to postpone it, as such evidence of hostility on the part of Spain as to put an end to all further amicable discussion.

The questions of our claims on Spain, and the convention to arbitrate them, are of an old date; they existed long before any question respecting Louisiana arose. In point of priority, they ought to be the first attended to and settled. It is for that purpose, therefore, I have so earnestly solicited your Excellency to use your powerful and well merited influence to have the convention ratified as it is, as that will open the way to the peaceable and friendly arrangement of the other question respecting the limits of Louisiana—a question totally separate and distinct, and which, having originated from our purchase from France, becomes a question which France must arrange between Spain and us; she is bound in honor and justice, no less than in interest, to do so. For this purpose, I have officially applied to the French Ambassador here, and, have sent a copy of your letter to Paris, to be laid before the French Government. But I again entreat your Excellency not to let this be given as a reason for refusing to ratify the convention. It is because I believe that this will be the sole mode of amicably arranging all our other differences, that I so earnestly press it upon your Excellency, and because I also believe that, in the present state of things, the refusal or delay to answer will be the means of putting a close to all further amicable discussion.

With sentiments of the most profound respect, I have the honor to be, &c.,

CHARLES PINCKNEY.

Don Pedro Cevallos.

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Mr. Cevallos to Mr. Pinckney.

MADRID, *July* 2, 1804.

SIR: I have received your letter of the 22d ultimo, in which you have thought proper again to urge the immediate ratification of the convention concluded on the 11th August, 1802, for indemnification of the losses, damages, and injuries sustained during the last war, in consequence of the excesses committed by individuals of both nations against the law of nations or the existing treaty. In answer, I can do no less than begin by stating to you that it appears extraordinary enough that you should consider any delay in the ratification of said convention, on the part of the Spanish Government, as a wrong done to your Government, when that of the United States had taken up almost two years in the examination before the ratification on her part; during which time, if any injuries have resulted to the interested, either Spanish or Americans, they are certainly not to be attributed to the Government of Spain. On her part, there always has existed the greatest desire to terminate, in a friendly manner, the question of indemnities, which are the object of the said convention; and His Majesty is disposed to ratify it, but under certain limitations or conditions, which will in no wise alter the material part of the convention, and which cannot be displeasing to the United States, since they emanate from the sacred principles of the justice, peace, and friendship, of the Governments on which it is founded.

The first of the said conditions is, that a time should be designated within which notice may be given to the subjects of His Majesty, who have reclamations to make to the Commissioners who are to be appointed, and to enable them to prepare the documents necessary for establishing their claims. The reason of this condition is very obvious, and its necessity proceeds from the slowness of the American Government in ratifying the convention, for it is evident that the reclamations of the Spaniards and Americans respectively cannot be made, unless each Government should notify the persons respectively interested to bring forward their demands; and the Spanish Government has not been able, nor ought it to have circulated such notices, being in doubt whether the American Government would or would not ratify the convention—a doubt which, in the session before the last of Congress, had increased to such a degree, as almost to make it evident that it would not be ratified; the general report being that the Senate of the United States had rejected it, which prevented the anticipation of any notice to the government of the Spaniards interested.

The second limitation or condition, founded on the most rigorous justice, is, that the sixth article of the said convention, which relates to the injuries done by French cruisers to American vessels, on the coast and in the harbors of Spain, should be suppressed. This article was inserted, because it was made a question whether Spain was or was not responsible for the said injuries and damages. You sustained the affirmative, and I the negative, with arguments which I have not seen combated, except by actions which do not invalidate them. Subsequently, in my letters under date of the 23d August and 5th October last, to which I refer, I proved to you, in the most solid manner, supported by the opinions of the most eminent jurists in the United States, that, according to the convention concluded between France and the United States the 8th Vendemiaire, year 9, it could no longer be doubted that the United States had not the smallest right to exact indemnities from the Government of Spain for the injuries done by the French privateers on her coasts and in her harbors. To these incontrovertible reasons may be added that which results from the ninth article of the Treaty of 30th April, 1803, between the United States and France, relative to the cession of Louisiana; from which article, it evidently results that the French have satisfied the Americans for the injuries in question. There is no reason, then, why there should be retained in the convention which is to be ratified an article by which the United States reserve a right which they certainly have not, inasmuch as they have already received competent satisfaction from France. Under these circumstances, the suppression of the beforementioned article takes nothing from the essence of the convention; nor, in reality, can it be called a suppression which removes an article that has become notoriously and absolutely null from its own nature.

The third condition, entirely conformable to the pacific desires of the United States, is that which requires the revocation of the part of the act of the Congress of the said States, approved on the 24th February last, which has manifestly violated the rights of the sovereignty of His Majesty, by empowering the President to exercise authority and establishing custom-houses within a territory which belongs to the Crown of Spain. His Majesty being, as he is, persuaded, that through a mistake only could there have been introduced into the said act the expressions which assail the rights of his sovereignty, does not doubt that the United States will give, in relation to the said act, those explanations which may be most conformable to the justice he claims, and the most conciliating and respectful to the rights of his Crown.

Under these three conditions, His Majesty is disposed to ratify the convention of the 11th August, 1802; conditions which, as I said before, do not alter either the nature or the essence of it; for the first of them is nothing more than that a certain time should be allowed for His Majesty's subjects to receive notice that the convention was agreed on, and that he was prepared to support their claims; the second relates only to the suppression of an article which is null in itself; and the third emanates from the necessity of preserving that respect which Sovereigns reciprocally owe to each other.

Besides what relates to the ratification of the convention of the 11th August, you go on in your beforementioned note to accumulate complaints which, although they have no connexion with the

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present affair, I have not been able to pass unnoticed. You say that Spain having opposed herself to the alienation of Louisiana, proves little attachment or friendship on our part towards the United States; but if you had made the proper use of your logic and policy, (*politica*,) you would have drawn from this action, the certainty of which I do not dispute, very different conclusions. It is not uncommon that the Governments, the most united by system and by interest, suffer discordances arising from the vicinity of their territories; nor is it uncommon that those which know the importance of peace, and the facilities there unfortunately are by which it may be disturbed, should avoid an approximation of their territories. The views of Spain have been sound and political, and decently manifested; and if you had drawn your deductions from this view of the subject, you would have honored not less the talents than the just and friendly intentions of the King my master.

As to the rest, it does not appear to be in conformity to a conciliating spirit, which is that which you say animates you, to recapitulate old complaints for wrongs which Spain did not commit, and complaints for wrongs which are completely done away; France having given satisfaction for the damages occasioned by them.

I renew to you the testimonies of my constant esteem and consideration, and pray God to preserve your life many years.

PEDRO CEVALLOS.

Mr. Pinckney to Mr. Cevallos.

MADRID, *July* 5, 1804.

SIR: I shall proceed without delay to give your Excellency that decisive answer to yours of the 2d, and to take those definitive measures which my instructions and duty now make necessary; but before I do so, and in order to be correct, I wish your Excellency to say whether I am to understand your letter in this sense; that if the second condition, which respects the suppression of the claims for French spoliations, within the Spanish territory, and the third, the repeal of the law passed by Congress in February, are not agreed to, His Majesty will not ratify the convention. I request your Excellency merely to answer me this question; and if you answer me affirmatively, that is, that His Majesty will not ratify without those conditions, then to return me the ratifications and papers prepared and sent you some time since to Aranjuez.

I wish to have your Excellency's answer as quickly as possible, as on Tuesday I send a courier with circular letters to all our Consuls in the ports of Spain, stating to them the critical situation of things between Spain and the United States, the probability of a speedy and serious misunderstanding, and directing them to give notice thereof to all our citizens, advising them so to arrange and prepare their affairs as to be able to move off within the time limited by the treaty, should things end as I now expect. I am also preparing the same information for the commander of our squadron in the Mediterranean, for his own notice and government, and that of all the American merchant vessels he may meet.

I confess, after the style of your Excellency's letter of the 31st May, on the subject of the late law of Congress, and the manner in which you annex to the ratification of a convention you yourself had signed, the humiliating conditions of our Government previously suppressing a claim of great magnitude, and which they consider as a point of national honor, and also of repealing an act lately passed with all the deliberation and solemnities prescribed by our Constitution, I see little hope of an amicable accommodation, particularly when I tell you that, *in my two last despatches*, lately received, I am charged by my Government to repeat to your Excellency, that not one shilling of the property claimed by the citizens of the United States from Spain for French spoliations, within the ports and territories, or on the coasts of Spain, has ever been relinquished to, or paid, or provided for, by France, in any mode, or even claimed from her; her provisions having been all for other claims arising elsewhere, and totally distinct from these; and further, that the United States are determined, at every risk, never to abandon this claim.

I earnestly repeat my request to have your Excellency's answer as soon as possible; and am, with much respect, your Excellency's obedient and very humble servant,

CHARLES PINCKNEY.

DON PEDRO CEVALLOS,
First Secretary of State, &c.

Mr. Cevallos to Mr. Pinckney.

JULY 8, 1805.

SIR: I have received your letter *of the* 5th instant, in answer to mine of the 2d, *respecting* the ratification of the convention *concluded on the* 11th August, 1802, and having *given* an account to His Majesty of the terms in which it was conceived, it could not but appear to him little conformable to the friendly relations between the two Governments, which you have it in charge to promote on the part of the United States, and which His Majesty takes every occasion on his part to encourage.

In the midst of a discussion which is itself a proof of the sincerity and real disposition with which it is wished to terminate the question of reclamations which are the object of the said convention, when I presented to you *the motives* there were for desiring to add in the ratification two or three circumstances which do not alter the substance of the convention, nor take anything from its object, it is not possible to comprehend the motive for your breaking out in the decisions, not to say threats, contained in your said letter, nor why you should proceed, as you say you will, to instruct the Consuls and commandants of the vessels of your nation to *give* notice of the critical situation of affairs between Spain and the United States, with an anticipation certainly not called for by the spirit of conciliation

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which you say animates you. It is not easy to conceive how your instructions can authorize you to proceed to these extremes, which are incompatible with the present state of a negotiation hitherto conducted in terms the most conciliating. If, in the year 1803, during the session of Congress, when it was notorious that the Senate of the United States had suspended the ratification of the convention which now occupies us, the Minister of His Majesty should have proceeded in the manner you have now done, what opinion would the Government of the United States have formed? They ought to have believed, and they surely would have believed, that the Minister of His Majesty had exceeded his instructions, and that his Government could not have authorized a proceeding so extraordinary. Almost two years the Government of the United States deliberated whether they ought, or ought not, to ratify the convention, and you pretend to find it extraordinary, and not only extraordinary but disrespectful to the United States, that the Government of Spain should manifest the difficulties which occur, supporting itself on the principles of the most rigorous justice, and promising itself that the American Government would do no less than to take them into consideration. In the meantime, you, without entering into an examination of them, without transmitting them to your Government, consider them as a sufficient reason for terminating all discussion respecting the ratification, and to designate Monday as a time for a final answer, to be conceived in the precise terms, yes or no; as if such a peremptory answer could be demanded on controverted points, and respecting some of which I have not yet had the honor of seeing a single reply from you. The King cannot persuade himself that such language is conformable to the moderation which he appreciates in the American Government.

The peace of two nations, whose reciprocal interests require a good understanding, is an object too important to be committed so lightly; and it is not to be believed that the Government of the United States will think differently, who, without doubt, have not forgotten the repeated proofs of friendship which the Government of Spain has given them from the commencement of their independence, that it distrusts the integrity of a Government which it has so often found ready to hear with impartiality, and to decide with justice and with generosity, on all kinds of reclamations.

The convention, whose ratification now occupies us, originated in the desire of both Governments to terminate speedily the question of the claims of individuals of both nations, for the reciprocal injuries which are mentioned in it. These claims always could have been, and can now, by the nature of them, be brought forward in the corresponding tribunals of each country, respectively, and be decided according to the law of nations and the existing treaties, as being the law of both countries; but it was wished, by means of the convention, to give the greater facility and promptitude, by forming a commission which should decide upon them in the manner therein stated. After the conclusion of the convention, which, however, left both Governments at liberty to ratify it or not, and, consequently, although an effort should be made on the part of one of them to suspend the ratification, it could not give place to well founded complaints on the part of the other, on the ground that it prevented their subjects from establishing their claims, because a recourse was always to be had to the tribunals, which was what was rigorouly due to them, and the prevention of which could alone give cause for such complaints. But leaving this apart, as it is not the point in question, let us examine what are the motives which could have given rise to your proceedings: having seen my letter of the 3d instant, none other is perceived but what arises from the second and third limitations under which I told you His Majesty was disposed immediately to ratify the convention. But if you examine them as they ought to be examined, you will see that the suppression of the sixth article does not alter the essence of the convention, since, as that article neither grants nor denies the right which may belong to the Americans, by reason of the injuries occasioned on the coasts, and in the ports of Spain, by French privateers, but leaves it such as it is; it is clear, that by its insertion in the convention, that right does not require greater force than it has itself, if it has any. We have discussed this right both before and since the formation of the convention. I have demonstrated to you that such a right does not exist, by arguments which I have not yet seen combated. I have shown you that if there had been any, it ceased to exist after the convention between France and the United States, concluded on the —— Vendemiaire, 9th year; France having giving satisfaction for it, not by paying money as you seemed to suppose I had said, when you replied to me that the United States had not received a cent from France on account of these injuries, but by way of compensation and of conciliation, which is as legitimate a mode of dissolving obligations as payment itself. I have sent you the opinions of the most eminent jurists of the United States, conforming entirely to my mode of thinking, I have told you of the positive answer of the Ambassador of France, (Bonaparte,) that satisfaction was given for the injuries for which the United claimed compensation from Spain; and my last letter of the 5th of October, in which I stated all this to you, has had no reply or answer. There is then a well founded reason for believing that the American Government is persuaded that such a right does not belong to it, and it is not proper to leave in a treaty which is to be ratified clauses relative to rights, satisfied or renounced, especially when, by their insertion in a treaty or convention, they do not acquire, as I have said to you before, either force or validity.

The second condition, which you consider indecorous and humiliating for the United States, appears to me to be quite the contrary. His Majesty is persuaded that the intention of Congress has not been to usurp the rights of his sovereignty. He has not, nor does he, demand the revocation

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of the act nor of its provisions, which relate to the internal regulation of the country, but a satisfactory explanation of the clauses of the eleventh section, which impinge the rights of the Crown of Spain. You say that this is irrelevant to the question, and relates to pretensions which the United States separately establish. I do not know what these pretensions can be respecting territories which indubitably belong to His Majesty; but I know that, although it should be supposed there might be such pretensions, the wrong would still exist, it having disturbed the pacific possession in which His Majesty finds himself, to legislate and exercise authority over the said territories: and, from its nature, demands that a corresponding and satisfactory explanation, preliminary to all discussion whatever, should be required. Be pleased to recollect the arguments and the vigor with which the members of your Government exclaimed when they saw themselves deprived of the deposit at New Orleans by the act of a Spanish agent; and you will see how a Government which values its honor, must resent being despoiled of its rights. Recollect, also, that the United States had immediate recourse to the King, my master, desiring that, in the first place, the deposit at New Orleans should be restored, and that, afterwards, any difference or transaction which might exist between the two Governments should be discussed. His Majesty acceded to it with that justice which characterizes him, and, in the same manner, now hopes and confides that the United States will desire to give the most satisfactory explanation respecting the offensive expressions which are founded in the said act.

Reflections of this kind ought, in my opinion, to have appeared to you worthy of the attention of your Government, and ought to have induced you to have transmitted them to it without proceeding to the extremes of which your said letter treats, which, in truth, do not correspond with the pacific desires of which you have always spoken.

Under these circumstances, the King, acquainted with your determination of terminating every ulterior explanation relative to the convention, and not being able to persuade himself that the Government of the United States has authorized the part which you have thought proper to take, has resolved to despatch an extraordinary courier to the United States, and by this means to make that Government acquainted with the state of the negotiation, renewing the observations made in the discussion, manifesting the moderation, the conviction, and the conciliating manner with which this Government has proceeded, and leaving that of the United States, on seeing your letters, to judge of the said affair. If they have reciprocated the friendly disposition of the Government of Spain, His Majesty flatters himself to terminate, by this means, the actual difference which is, from its nature, very far from arriving to the extremes which you suppose it has arrived at. I reiterate, &c.

PEDRO CEVALLOS.

CHARLES PINCKNEY, Esq.

Mr. Pinckney to Mr. Cevallos.

JULY 14, 1594.

Your Excellency asked me if I would put under my signature the request to have the original ratification and forms of exchange, which I sent prepared to you, returned to me, as your Excellency has refused to ratify except on conditions totally inadmissible; and also the notice I gave you that I was, in consequence thereof, preparing to leave Madrid and return to the President and Congress of the United States; and that, when I had prepared and arranged my affairs, and could fix a day, I would send for my passports. Your Excellency will please to consider this letter as complying with your desire. And as I shall leave Madrid shortly, the respect I owe my Government, and the opinion of others, make it necessary for me to state with moderation the reasons which compel me to do so.

I must refer your Excellency to the letters which I have written to you, for the last two years, on all the various subjects of complaint we had against the conduct of many of His Majesty's official servants in his dominions both in Europe and America, and on the claims arising therefrom; and they will show, not only with what justice, but with what mildness and real friendship these claims and complaints have been urged. After the signing the convention, one made entirely in favor of Spain, by postponing, for the present, the arbitration of the French claims, and the point of holding the session of the commissioners in Madrid, instead of any part of the United States, as I wished, supposing it would be the means of laying the foundation for an amicable arrangement of all our differences, the tenor of my letters was ever peculiarly mild and friendly. I heard, during this time, of many acts of the Spanish Government with surprise, but forebore to express it under the idea that they would soon see their true interest in cordially meeting our friendly advances. I rejoiced when circumstances permitted the Government of the United States to ratify the convention, partial as it was, because in that I thought I perceived the hope of permanent peace; it was therefore, with pleasure I hastened to communicate the event to your Excellency, not doubting that my communication would have been met with equal cordiality. On presenting, however, the ratification for exchange, my concern was equal to my surprise at finding not only a hesitation, but what appeared to me a determination, by some means, to avoid it. In consequence of this, I have used every exertion in my power to produce the ratification; no proper means by personal application to those whose influence I thought ought to have been exerted in its favor, or by letter, were left untried. My letter of the 1st June will always remain an unanswerable proof of the amicable spirit with which I urged the measure, and of my conciliatory efforts to prevent your making the limits of Louisiana a condition to the ratification. It was written in consequence of your letter of the 31st May, which plainly discovered to me that it was in vain to hope either

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for a ratification, or for anything like friendship, or scarcely peace, from Spain. I saw at once, that, if she could bring herself to speak in a style so authoritative and improper (not to say more of it) of the act of a Government as much distinguished for its justice and honor as for its moderation, she must be averse to every approach which could lead to an accommodation. In this letter you plainly call the act of Congress of which you speak an outrage and an insult to His Majesty's sovereignty, endeavoring to smooth it over by saying you hoped the President and Congress were not aware of what they did; adding, thereby, the reproach of precipitancy as well as ignorance of their rights and duties; and concluding with saying, in very direct terms, that such a law lessens their good name—language that a monarch may hold to his vassals, or a country to one which she has humbled, but which, to the unbroken spirit of the United States, will not certainly be very pleasing.

As much as this extraordinary letter of yours astonished me, and will, I am sure, my Government, and notwithstanding its style and manner were alone sufficient to justify my present measures, I again attempted to produce a reconciliation. From the long standing of most of our claims, and the multiplicity of your Excellency's avocations, I supposed it not impossible you might have forgotten a number of them, and that the really dangerous and critical state of things did not strike you, or, (to speak plainly,) unless your aim was war, you would not take the irreparable step of rejecting the only means which appeared likely to prevent it; in which rejection, whilst it added unspeakably to our wrongs, our Government could see nothing but determined enmity on the part of Spain. With a view, therefore, to prevent your Excellency from taking this step, I made another conciliatory effort, and wrote my letter of the 22d June, in which I gave you a summary view of our situation, urging, in the most friendly terms, the necessity of ratifying the convention, and leaving the other questions to future amicable arrangements. Extraordinary and unexpected as was the language and tenor of your letter of 21st May, this of 2d July still more astonished me. In answer to the application of our Government, merely to exchange the ratification, you have ventured to dictate two previous and degrading conditions; the former desiring the total suppression of our claim for French captures and spoliations within the territory and on the coast of Spain, and condemnations by the French Consuls within the ports of this kingdom—a claim as great, or greater than that provided for by the convention; one equally just and binding, and which I have repeatedly had it in charge from my Government to say to you never was relinquished to France in any manner, or for any consideration, nor provided for by her, nor included or spoken of in any settlement with that Power, but, on the contrary, always was, and is still, considered by the United States as a point of national honor which they never will abandon without an arbitration or an equivalent; and your Excellency must know that, by our agreeing to the suspension of this article in the convention, we should abandon the claim, for certainly this is what you meant and repeatedly called for. To the degrading and humiliating condition of our previously abandoning and suppressing this claim, you have added another still more so if possible. Instead of mildly and amicably applying for some equal and friendly mode to ascertain the limits of Louisiana, you have at once proceeded to determine them yourself; and without leaving to the American Government either the time or a mode to show, or to endeavor to show, that they are right, you have undertaken to decide in your own case; and have not only authoritatively called upon them, in your letter of the 31st May, immediately to revoke a part of a solemn act of their Legislature (your words being "que revoque la parte del acto,") but have in that of the 2d of July, ventured to make it another condition, on which alone you will consent to ratify a convention signed by yourself, and which you had always acknowledged that His Majesty was bound in honor and justice to consent to.

I have repeatedly told your Excellency that, as to the two questions of abandoning the French claims, or consenting to anything to affect the limits of Louisiana, my instructions are as positive as possible never to abandon the one, or enter into any contract, or even negotiation, respecting the other. The measure, therefore, of my sending these conditions to the United States, which you mention, and waiting for their reply, was not only wholly improper, but would have been contrary to my instructions, which were by every possible means to expedite the ratification.

I well know that it is utterly impossible for your Excellency, without having been there for some time, to be acquainted with the sentiments, character, or feelings of the American people, and being so, that you may doubt the correctness of the opinions I give; but, be assured, there is not a man in the United States, or its Government, who will not consider the refusal to ratify except on such conditions as you proposed, and the very proposing them as a national indignity, and expect from me, the depositary of their views and public honor here, the measure I mean to take. It is as much the duty of a Minister to assert the rights of his nation, and to refuse to receive or discuss degrading or affrontive propositions, as it is to promote mutual harmony and good understanding. Your Excellency says that the measures I now pursue are not consistent with my usual and former friendly professions; to which I reply, that it is with much concern I have observed that your Excellency's conduct, for the last twelve months, and since the cession of Louisiana, has been very little conformable to the amicable sentiments you now wish me to believe you possess; whilst mine, you well know, have always been sincere and active in endeavoring to conciliate and preserve peace. My Government is informed of all that has passed, and will be of all that is now doing, and are the best judges. Your Excellency had it, however, in your power to show whether your

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professions were sincere, by never making these propositions, because you were long told, before you did make them, how extremely inadmissible and improper they would be considered, or after they were made, and you found the humiliating light in which they were viewed, by withdrawing them, and consenting to ratify the convention, extending the time for receiving the claims to six or eight months, or to twelve months, as I told you you might, and I even proposed it to you.

In speaking of striking out the sixth article, your Excellency does not appear to me to be aware of the nature of the proposition you have made; in remarking on this subject you say, "que la supresion del articulo 6, de la convencion en nada altera la esencia de esta, pues como en dicho articulo no se concede ni se niega el derecho que puede competir á los Americanos por razon de las perjuicios ocasionados en las costas y puertos de España, por los corsarios Franceses, serio que se dexa subsistir tal qual es para lo sucesivo: es claro que por su insercion en la convencion no adquiere mayor fuerza que la que puede tener por si solo si tiene." Your Excellency certainly knows that it is an established principle of the law of nations that, in framing treaties or conventions, which have for their object the continuance of peace, or the accommodation of differences, all points or claims for injuries or damages, which are intended to be reserved, must be mentioned, or otherwise they will be considered as relinquished; and this was my reason for inserting it in the convention. Our object in framing that instrument was, the amicable settlement of all differences arising from spoliations on our trade, contrary to treaties and the law of nations, and for which we hold Spain liable. Had we, therefore, said nothing about the French captures or condemnations within her territories or ports, or should we now agree to strike out the sixth article, there is not a man who knows anything of the law of nations, who will not instantly say that we had abandoned them; and if your Excellency was not convinced of this, why have you so perseveringly endeavored to suppress it?

By the law of nations, "a monarch cannot, in honor, refuse to ratify a convention made by a Minister with full powers, unless it can be proved that the Minister had remarkably and openly deviated from his instructions, or the monarch has some other very strong reasons for so doing, but they must be very strong." Now, according to this principle, I deny positively, from your own statement of the conditions, that His Majesty has any sufficiently strong reasons to justify the not ratifying this convention: it cannot be because you made it contrary to your instructions; for you are now, and were then, his first Secretary of State, and signed it under his own eye, and in his own palace: neither can it be on account of the suppression of the sixth article; for all that can now be known about it was known then, and the relinquishment to France of other and totally distinct claims, of which you speak so much, and without the least weight, was as much in existence as it is now: for that convention was made in 1800, two years before the present; nor would it be considered, by the law of nations, a very honorable thing to refuse the ratification on the ground of a small part of one of the Floridas, which, you say, Congress have encroached upon, when it is well known that the whole value of both the Floridas would not cover the claims which this convention is intended to provide for. To endeavor, therefore, to get rid of the ratification, on account of a dispute about a small slip of those colonies, will not, I suppose, be viewed by our Government, or any neutral or impartial one, as that honorable right which, according to the law of nations, can alone justify a *Power* in refusing to ratify a convention formed *by a Minister* fully authorized. Having *high respect for* His Majesty's honor and justice, I am very unwilling to believe he could have authorized you to refuse to ratify the convention on these grounds, or to hold such language, or make such demands of the United States, as they have, upon all occasions, manifested great respect for his person and Government. Be assured that our own would have regarded the refusal alone with great seriousness; but coupled with these degrading conditions of totally abandoning the French claims, by the suppression of the sixth article, and, as it were, commanding the repeal of a law of Congress without allowing us time to consult and examine or defend it, are so high an indignity, that I am convinced, had I not determined to refuse all discussions upon the subject of admitting them as conditions of the ratification, as well as to be the instrument of transmitting them to my Government, and, finding you insisted on it, had I not also immediately determined to leave Madrid, and put an end to all discussions on the conditions proposed here until the President's pleasure be known, I should not only have met with his disapprobation, but that of every man *in a country* where every individual feels *himself personally* interested in the honor and character of his Government.

The case your Excellency quotes of the Intendant of New Orleans does not apply; that was a flagrant breach of a solemn treaty, and deprivation of a right secured by that treaty, and daily used, and indispensable to a numerous portion of our citizens, which, as your Excellency well knows, was the reason why the Senate did not ratify the convention during that session, and was the cause of the inevitable delay that took place, and for which a Spanish agent was blameable, whom your Minister declared instantly *to our* Executive had no authority to do so: while the law you complain of is the act of a Government, so constructed as that it is impossible for them to proceed without that due examination which is necessary to prevent precipitate, and generally leads to just, decisions of a Government, as remarkable for its attention to the rights of foreigners as to those of their own citizens; and which, no doubt, will be able to maintain the propriety of any law it has passed, by strong and unanswerable arguments. And here let me remark to your Excellency, that it was not on account of the

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time you may have taken to answer my first application to ratify, that I objected, and wrote my letter of the 5th of July; for if you had taken much more, although I should not have considered it as worthy of Spain to think of a revenge of that kind, for the unavoidable delay the convention met with in the Senate, on account of the shutting the deposit of New Orleans, yet I should have waited some time longer; but it was to the answer itself of the 2d of July, when made, and to the refusal to ratify, except upon the degrading conditions you annexed, which I objected to; and it is upon this answer, and this alone, that I grounded my proceedings.

Believing, as I solemnly do, that when the refusal to ratify, except on these degrading conditions, be made known in the United States, this affair cannot be amicably arranged without such sacrifices or concessions, on the one part or the other, as no people having a national character to support will be ready to make; and as I am sure we shall not, there appears to me a great probability of a misunderstanding; and, so believing, it is my indispensable duty not to conceal it from the citizens of the United States in the ports of Spain, who are, or may be, interested, and indeed are always applying to me on the subject of the convention, well knowing it was the only mode to preserve friendship or peace between the two countries. The same duty required of me a similar communication to the commander of our ships in the Mediterranean, for his notice, and of that of our merchant vessels, that they should, using their own discretion, avoid making too free with the Spanish ports or coasts, during the state of uneasiness and uncertainty which now exists. This indispensable part of my duty your Excellency seems, improperly, to feel as a menace, when a moment's reflection should have convinced you it was a duty I could not avoid. How, indeed, was it possible to neglect it? or what other opinion can we form, but that, when the United States see the convention returned, and with conditions so humiliating and inadmissible, they will give up all hope of payment here, and, however unwillingly, still be inevitably compelled to seek some mode of paying themselves? Having this view, therefore, of the business, how unpardonable would it have been in me not to warn our citizens of it, and prevent their being lulled into security, and surprised at a moment when they least suspected it.

Your Excellency complains of my fixing a short day, and requiring a positive answer. The reasons are obvious; you were to leave Madrid with the Court in a short time. It was at least three months since you knew that the convention was ratified, for I have a right to believe you knew it before I did; you had, therefore, full time to consider it; and as my former experience had convinced me, that, on a question not agreeable to you, it would be difficult for me to obtain an answer for a long time, the proposing of these conditions, and my public duty, made it necessary for me immediately to know, and that in the shortest time possible, if you would ratify or not without them; and, certainly, after the manner in which you treated our Government, in your letter of the 31st of May, and that of the 2d of July, your Excellency could not expect any other conduct on my part. There was another reason which gave me a right to consider all discussions on the conditions as out of the question, which was, that my two letters in June, copies of which I send here annexed, had anticipated the question of the conditions proposed, and had shown you the impossibility of my suffering them to be incorporated into the ratification; and this was done before you formally proposed them, as I had received notice you intended it, and endeavored to prevent your doing so.

In all the differences between Great Britain and France, the United States have uniformly maintained their rights with a firmness that has done them honor, in the opinion of every nation; and, as I have often told your Excellency, it is not now to Spain, or any other country, they will yield them. My letter of the 22d of June, and the previous friendly one of the 1st of June, (both of which I annex, and desire your Excellency, in any use you may make of them, to consider as a part of this,) while they state the sufferings of our citizens, and the wrongs the convention is intended to remedy, will, at the same time, show my unwearied exertions, and the mildness with which I attempted to persuade your Excellency to ratify it.

In speaking, as your Excellency does, that it is general in all countries, on questions of this kind, to resort to the ordinary tribunals, I only remark, that your Excellency well knows how painful it has been to be continually representing the sufferings and losses of our citizens, and the delays attending their applications to the tribunals here; delays of such an extent, as to impress them with the opinion that a recourse to the tribunals of Spain can seldom be viewed as the proper means to obtain the rights of American citizens; that the years and means necessary to pursue their claims, through those channels, were infinitely more ruinous than the first loss; and that it was essential for our Government decidedly to interfere; and, for the truth and justice of this remark, I appeal to every unfortunate American citizen who has had business here for the last six years.

How far the conduct of your Excellency, in refusing to ratify, and bring into effect the only mode that remained of arranging them peaceably, will go to strengthen the opinion just given, is left for you to decide. After what has happened, our citizens will very much doubt whether there was ever any serious intention here to ratify the convention as it was made; and, if it is now ratified, I shall always believe it was entirely owing to the measures my duty made it necessary for me to pursue. I form this opinion by reading your Excellency's letter of the 9th, in which I am pleased to see you begin, at last, to have some value for the friendship and peace of the United States; and to find there is a point of indignity or neglect, beyond which even their moderation

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will not go. I am, therefore, led to hope that the messenger, who you say is to sail for the United States, will carry out the convention fully ratified, without limitation or condition, and with orders to arrange it agreeably to the United States.

This I advise your Excellency most sincerely to do. I have always done so, until your letter of the 2d of July, in the most mild and friendly terms, and with the greatest deference and respect to Spain; and, had your Excellency proceeded in the same way, it would have been no less honorable to your talents than to the justice and friendly intentions of His Majesty, which you so often mention.

Your Excellency must perceive that the measures I have adopted were rendered indispensable by the respect I owe my Government; it being my duty to defend them from the charge of having lightly or inconsiderately legislated upon important subjects, and thereby outraged and usurped the rights of others. It was equally my duty to defend, and preserve inviolate, the well-founded claims of a numerous and deserving class of our citizens, whose legal and meritorious exertions, while they contribute to increase the enterprise, and extend the commerce of the United States, have the fullest right to demand, and will always be sure to receive, the cordial and unceasing support of their Government.

With this explanation of the reasons which will compel me to leave Madrid, and with the determination and orders to keep our citizens in Spain constantly warned against being lulled into security by any notification or information which they may receive, except from their Government or its officers, I end this letter. It has become my duty to return to the President and Congress of the United States, in order to give them, and, through them, to my fellow-citizens, such statements and opinions as can alone be properly done in person. To them I shall refer the question, well knowing that, in their hands, the rights, the character, and the sacred honor of a free people are always safe.

III.—*Correspondence between the Secretary of State and the Marquis de Casa Yrujo, on the ratification of the Convention of* 1802.

The Marquis de Casa Yrujo to the Secretary of State.

OCTOBER 13, 1804.

SIR: By the communications I have made to this Government, and the translation of the correspondence between His Excellency Don Pedro Cevallos and Mr. Pinckney, Minister of the United States to His Catholic Majesty, you are informed of the just motives His Catholic Majesty has for not ratifying the convention pending between our two Governments, except on certain conditions, founded on the most rigorous justice, and necessary, as well to the honor of his sovereignty as to the protection of the interests of his subjects. That His Majesty has the right to propose the alteration which he may judge proper for these objects, before the ratification, is indisputable, not only from the expression which is found in the seventh article of the said convention, which says, "the present convention shall have no force or effect until it be ratified by the contracting parties," but from many other antecedent examples, as that which occurred at the exchange of ratifications at Paris at the Treaty of Peace of 1763, of which I verbally informed you and, lately, in the Treaty of Limits between England and the United States; the latter, as is understood, having refused to ratify a part of it in consequence of the acquisition of Louisiana.

By order of the King, my master, I have renewed here the opposition made by His Majesty to the ratification of the said convention, except under the conditions which were proposed in Madrid to the beforementioned Minister of the United States, one of which was the entire suppression of the sixth article of the convention; but, having recollected that, from insisting on this point, the consequence might be the complete annulment of a convention by which the King, my master, animated by the sentiments of justice which characterize him, desired to do justice to the citizens of the United States who might have suffered during the last war by the excesses of his commanders or subaltern officers, contrary to the existing treaty and the laws of nations, and more and more to prove that the King, my master, proceeds in this affair with the liberality and frankness which always mark his conduct towards the United States, I am authorized to say to you that His Catholic Majesty will accede to the ratification of the said convention, under the following conditions:

1st. The Government of the United States will suppress or modify, as I proposed to you in one of my letters in the month of March past, the eleventh section of the act of Congress of the 24th of February last, and on which His Excellency Don Pedro Cevallos has made like complaints to the American Minister in Madrid; or, if it should be more agreeable to this Government, it will declare to me in writing, through you, that, by the said eleventh section of the beforementioned act, it had not intended to offer any insult to His Catholic Majesty, nor any aggression upon the rights of his sovereignty, and that the Executive, as the true interpreter of the said law, shall declare that the object or intention of what is contained in the said section is and ought to be only applicable to the territory of the United States, and not to the country belonging to and in the actual possession of His Catholic Majesty; it being well understood that, until the commission destined to the demarcation of limits shall have decided, by common consent, that the territory claimed by the United States did not belong to His Majesty, but to the said States, they, nor the President authorized by them, shall make no change in it, nor publish laws, nor establish custom-houses, nor any other species of regulations in said territory; but, on the contrary, that they should leave things *in statu quo*, as they were before the resolution of Congress complained of. Moreover, there shall be given the corresponding notoriety to this act of ratification on the part of the United States, in a mode that, without in any manner compro-

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mitting its dignity, may prove that satisfactory explanations were given on this point to His Catholic Majesty.

2d. His Catholic Majesty being informed that the mercantile operations of the citizens of the United States, out of some of which, without doubt, their reclamations will grow, have extended to the most distant possessions of His Majesty, as well in America as in the Philippine islands, and, from the great distance of these points, and the interruption to which the navigation to them is subjected during a great part of the year, the term of eighteen months prescribed to the Commissioners by the thirtieth article to receive all the reclamations must be short, it becomes necessary that the term should have a reasonable extension; and this is requisite, to the end that the subjects of the King, living at so great a distance, may draw the advantage which is due to them from the beforementioned convention.

3d. Although, as has been made apparent, by reasons which His Majesty has not as yet seen combated, that the complete suppression of the sixth article would be conformable to entire justice; nevertheless, thinking that my master will not oppose himself to the retention of the said article, if an alteration is made in its phraseology, which, without diminishing the right of the United States, should give more clearness to the intentions of His Majesty, contained in the said article, the sixth article should be expressed in terms nearly as follows:

"The beforementioned Plenipotentiaries, not having been able to agree on the principle of the claims originating in the excesses of the foreign privateers, agents, consuls, or tribunals, in their respective territories—Spain considering herself not responsible for these, as appears both from the circumstances and the time of the offence, as well as from the character of the measures afterwards taken by the United States with France—and the United States, on the contrary, claiming from Spain the amount of the damages and injuries arising from that source, both Governments have expressly agreed that each Government reserve to itself, (as is done by this convention,) not only for itself, but also for its subjects and citizens, respectively, all the rights which they may now have, it being well understood that the ratification by His Catholic Majesty of the present convention ought not, nor shall not, be considered as an acknowledgment on his part of any right, or that of the United States, to such reclamations and pretensions, nor as a renunciation by His Majesty of the exceptions which result from the conventions between France and the United States"

Under these conditions, which the King flatters himself will appear just to the American Government, His Majesty is ready to ratify the beforementioned convention: and from the moderation, and even liberality, so clearly manifested in these, it will remain apparent, that if the said convention should not take effect, it ought not to be attributed to the want of frank and friendly dispositions on the part of the King my master.

God preserve you many years.

Mr. Madison, Secretary of State, to the Marquis de Casa Yrujo, Minister of His Catholic Majesty.

DEPARTMENT OF STATE,
October 15, 1804.

SIR: Your letter of the 13th instant, communicating certain conditions which His Catholic Majesty considers as proper to be annexed to his ratification of the convention of August 11, 1802, now depending between the two Governments, has been laid before the President. One of these conditions refers to a section in an act of Congress passed on the 24th day of February last, regarded by His Catholic Majesty as disrespectful to his sovereignty, and requires, as a reasonable preliminary to the ratification of the depending instrument, that the said act should be freed, by authentic exposition, from the apparent import at which umbrage has been taken. It could not be learned by the President without some surprise, that the law in question should have given rise to complaint, and much more that it should be made a reason for suspending the final sanction of His Catholic Majesty to an instrument deliberately formed, and awaiting that single formality only for its completion. The President had certainly a right to expect that a legislative act, depending essentially for its effect in the particular case on his discretion, would have been left to the regular exposition and execution, before it should become the object of criticism and complaint from any foreign Government. He had a right, consequently, to prescribe this answer, when the act above cited was first made a subject of representation; and he might even now be justified in resting on this sound principle the reply to the representation which is repeated in the communication just received from you. Yielding, nevertheless, to the disposition of the United States to maintain the most friendly understanding with Spain, and to that frankness which is dictated by the integrity of his views, he charged me with the candid explanations which were contained in my letter of March the 19th last. These explanations, when received by His Catholic Majesty, cannot fail to satisfy him that the United States, not less careful to forbear than ready to resent real insults, could not have meditated, by the act complained of, the slightest disrespect to his rights or his sovereignty; and as the most definite proof of the sentiments entertained for His Catholic Majesty, I am now charged to enclose for his information the executive act of the President, founded on, and of a nature equally public with, the act of Congress aforesaid; by which it will be seen that, in expounding and applying the latter, there is the most exact conformity to the assurance given in the letter of March the 19th; that the operation of the 11th section would take place within the acknowledged limits of the United States, and would not be extended beyond them, until it should be rendered expedient by friendly elucidation, and adjustments with the Spanish Government. In order to hasten those, a special mission to Madrid was sometime since provided for; and if the destined Minister Extraordinary has not already repaired thither, the in-

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structions, which will now be repeated, if no unfavorable considerations present themselves, may be expected soon to have that effect. In the meantime, the President concurs with the Spanish Government in the expediency of leaving things precisely *in statu quo*. And he persuades himself that it will be deemed equally expedient on both sides to give to this precaution its full effect, by a mutual forbearance to increase unnecessarily either within or on the borders of territories, the limits of which remain to be adjusted, military provisions of any kind, which, by exciting jealousies on one side or the other, may have tendencies equally disagreeable to both.

The other condition proposes to remodel the terms of the sixth article of the convention, which leaves for subsequent discussion the particular class of claims therein described. The President does not conceal his regret at seeing the ratification of the convention clogged with a condition which, if persisted in, could not easily be reconciled with that delicacy in such transactions which he has always felt a pleasure in ascribing to His Catholic Majesty, or with that desire which His Catholic Majesty has so often professed, to multiply proofs of his friendly sentiments towards the United States. If the preceding condition had not been the result of misconception, which can now no longer exist, it might have had a natural source in the sensibility, not unbecoming a magnanimous Government, and might have been urged by the considerations, it had reference to an event subsequent to the first assent given by His Catholic Majesty, and which, although distinct from the intrinsic merits of the convention, might raise a question how far the completion of it was permitted by a new state of things. The condition relating to the sixth article is of a character altogether different. The article, as it now stands, was negotiated under the eye and with the approbation of the Spanish Government. All the principles, all the facts, all the authorities of public law, were at that time the same as at present. And there can be the less reason for attempting to unsettle what was then decided, as the period of negotiation was sufficiently protracted for the most minute examination and the maturest reflection. If it be said that the alteration proposed would be in words only, and not in the meaning of the article, may it not with greater propriety be answered that, on that supposition, it cannot be of such importance as to be pressed as a condition which would require all the delay, and all the forms of a new stipulation, and which might have the effect of frustrating the convention altogether? For, without entering into a comparison of the article in its present terms with the substitute proposed, it is obvious that the difficulty of adjusting a form of expression—a difficulty not inconsiderable originally—would be much increased by the necessity of seeking in the relation of the new to the old article, as well as in the terms of the new, the precise construction which ought to be given to it.

Were it necessary to enforce these observations by an inquiry into the right of His Catholic Majesty to withhold his ratification in this case, it would not be difficult to show that it [illegible] supported by the principles of public [illegible] countenanced by the examples which [illegible] cited. According to the former, such a [illegible] ought to be founded either on a departure [illegible] negotiating Minister from his instructions [illegible] intervening occurrences, or on some surprise [illegible] deception. Neither of these can be alleged. [illegible] Spanish Government itself was privy to the [illegible] gotiation, leaving, consequently, its final [illegible] ratification the merest ceremony. No new [illegible] connected with the subject have come [illegible] The negotiation was so long on foot, and [illegible] conducted, that neither surprise nor [illegible] can possibly be pretended. In every [illegible] besides, the motive for refusal ought to [illegible] and evident importance. In the present [illegible] very argument for the change destroys [illegible] portance of it, since the change is alleged [illegible] the words, and not in the meaning, of the [illegible] As to the examples cited, they bear no [illegible] the case to which they are applied. [illegible] the Treaty of Peace at Paris of 1763 [illegible] the British side, is understood to have been [illegible] ter deeply interesting, which was discovered [illegible] declared by the negotiator himself on the very day of his signing the instrument. The [illegible] example of the conditional ratification [illegible] late convention with Great Britain is [illegible] dissimilar; being occasioned by an [illegible] event—the acquisition of Louisiana by [illegible] ted States—which might have given to [illegible] articles a scope contemplated by the [illegible] of neither party, nor within the knowledge [illegible] tention of either when signed by the [illegible] Another distinction absolutely decisive [illegible] the conditional ratification proceeded [illegible] Senate, who, sharing in treaties on the final [illegible] fication only, and not till then even [illegible] instructions pursued in them, cannot [illegible] by the negotiation like a sovereign, who [illegible] entire authority in his own hands. [illegible] liarities of this sort in the structure of a Government are sufficiently known to other Governments, they have no right to take exception [illegible] the inevitable effect of them.

With respect to the enlargement of the [illegible] the assembling of the Commissioners, [illegible] be done without any remodification of the [illegible] vention, the President's respect for the [illegible] His Catholic Majesty will not permit him [illegible] fuse his concurrence; although he does [illegible] self perceive the necessity or advantage [illegible] The Commissioners who may be appointed [illegible] part of the United States will according [illegible] prized that their proceedings are not [illegible] menced till the month of May next, [illegible] ther inquiry shall satisfy His Catholic [illegible] that an earlier day will not be inconvenient.

On a view of the whole subject, as it now [illegible] sents itself, the President infers, with confidence, that His Catholic Majesty, recollecting [illegible] claims to be adjusted under the convention [illegible] the most incontestable character, and finally [illegible] a disappearance of every other obstacle [illegible]

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ification leaves to him the sole decision between adhering to or relinquishing a condition, for which there cannot be a reason now which did not exist, and was not known at first, and which, as represented on his part, would otherwise be of too little importance to be turned against the act of his own Plenipotentiary, entered into with his own privity, will pursue the course which is prescribed not less by his delicacy, or rather his good faith, than by his love of justice, and the friendship subsisting between Spain and the United States.

In pressing thus the consummation of the suspended instrument, the President cannot be influenced by any peculiar advantage given by the terms of it to the United States. He well knows, as has been just noticed, that the claims therein provided for cannot ultimately be disallowed; and that the convention, if carried into effect in its present form, will still leave for subsequent accommodation several questions deeply interesting to the subsisting relations. If he indulges a solicitude on the occasion, it is because the state of the transaction has justly led the claimants into preparations and expectations, which would involve many in useless expense, and all in disappointment and disgust; because he regards the convention as a step towards a satisfactory adjustment of other depending and accruing questions; because a completion of it will dissipate appearances, which have already begotten inquietudes on both sides, and may embarrass an intercourse desirable and valuable to both; because in a word, it will be a pledge of future justice, at the same time that it guaranties the present harmony between the two nations. These are considerations which cannot surely be entitled to less weight with the Spanish Government than is allowed to them by that of the United States.

It will be added only, that, considering the disadvantages of every kind incident to the present state of uncertainty, and particularly that the arrangements here, preparatory to the execution of the convention, must be regulated by something more positive than an inference, however reasonable, that the instrument will receive from His Catholic Majesty an unqualified ratification, I need not remind you of the utility which would result from such assurances as your knowledge of the views of your Government may enable you to express to this, that the event may be now relied on. On this point, I shall hope for the favor of as early an answer as you can make it convenient to transmit for the information of the President.

I have the honor to be, &c.

JAMES MADISON.

IV.—*Instructions given by the Secretary of State to Mr. Monroe, and to Messrs. Monroe and Pinckney.*

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE, *July* 29, 1803.

SIR: The communications by Mr. Hughes, including the treaty and conventions signed with the French Government, were safely delivered on the 14th instant. Enclosed is a copy of a letter written in consequence of them to Mr. Livingston and yourself.

On the presumption which accords with the information given by Mr. Hughes, that you will have proceeded to Madrid, in pursuance of the instructions of the 17th February last, it is thought proper to observe to you, that although Louisiana may, in some respects, be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it.

You will be at no loss for the arguments most likely to have weight in prevailing on Spain to yield to our wishes. These colonies, separated from her other territories on this continent by New Orleans, the Mississippi, and the whole of Western Louisiana, are now of less value to her than ever; whilst to the United States they retain the peculiar importance derived from their position, and their relations to us through the navigable rivers, running from the United States into the Gulf of Mexico. In the hands of Spain they must ever be a dead expense in time of peace; indefensible in time of war, and at all times a source of irritation and ill blood with the United States. The Spanish Government must understand, in fact, that the United States can never consider the amicable relations between Spain and them as definitively and permanently secured, with an arrangement on this subject, which will substitute the manifest indications of nature for the artificial and inconvenient state of things now existing.

The advantage to be derived to your negotiations from the war that has just commenced will certainly not escape you. Powerful, and it might be presumed effectual, use may be made of the fact that Great Britain meant to seize New Orleans with a view to the anxiety of the United States to obtain it; and of the inference from that fact, that the same policy will be pursued with respect to the Floridas. Should Spain be engaged in the war, it cannot be doubted that they will be quickly occupied by a British force, and held out on some condition or other to the United States. Should Spain be still at peace, and wish not to lose her neutrality, she should reflect that the facility and policy of seizing the Floridas must strengthen the temptations of Great Britain to force her into the war. In every view it will be better for Spain that the Floridas should be in the hands of the United States than of Great Britain; and equally so that they should be ceded on beneficial terms by herself, than that they should find their way to us through the hands of Great Britain.

The Spanish Government may be assured of the sincere and continued desire of the United States to live in harmony with Spain; that this motive enters deeply into the solicitude of their Government for a removal of the danger to it which is inseparable from such a neighbourhood as that of the Floridas; and that, having by a late convention with Great Britain adjusted every territorial question and interest with that nation, and the treaty with France concerning Louisiana

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having just done the same with her, it only remains that the example be copied into an arrangement with Spain, who is evidently not less interested in it than we are.

By the enclosed note of the Spanish Minister here, you will see the refusal of Spain to listen to our past overtures, with the reasons for the refusal. The answer to that communication is also enclosed. The reply to such reasons will be very easy. Neither the reputation nor the duty of His Catholic Majesty can suffer from any measure founded in wisdom and the true interests of Spain. There is as little ground for supposing that the maritime Powers of Europe will complain of, or be dissatisfied, with a cession of the two Floridas to the United States, more than with the late cession of Louisiana by Spain to France, or more than with the former cessions through which the Floridas themselves have passed. What the treaties are subsequent to that of Utrecht, which are alleged to preclude Spain from the proposed alienation, have not been examined. Admitting them to exist in the sense put upon them, there is probably no maritime Power who would not readily acquiesce in our acquisition of the Floridas as more advantageous to itself, than the retention of them by Spain. Shut up against all foreign commerce, and liable at every moment to be thrown into the preponderant scale of Great Britain, Great Britain herself would unquestionably have no objection to their being transferred to us, unless it should be drawn from her intention to conquer them for herself, or from the use she might expect to make of them in a negotiation with the United States. And with respect to France, silence at least is imposed on her by the cession to the United States of the province ceded to her by Spain, not to mention that she must wish to see the Floridas, like Louisiana, kept out of the hands of Great Britain; and has, doubtless, felt that motive in promising her good offices with Spain for obtaining these possessions for the United States. Of this promise, you will, of course, make the proper use in your negotiations. For the price to be given for the Floridas, you are referred, generally, to the original instructions on this point. Although the change of circumstances lessens the anxiety for acquiring immediately a territory which now, more certainly than ever, must drop into our hands, and, notwithstanding the pressure of the bargain with France on our treasury, yet, for the sake of a peaceable and fair completion of a great object, you are permitted by the President, in case a less sum will not be accepted, to give two millions and a quarter of dollars, the sum heretofore apportioned to this purchase. It will be expected, however, that the whole of it, if necessary, be made applicable to the discharge of debts and damages claimed from Spain, as well those not yet admitted by the Spanish Government as those covered by the convention signed with it by Mr. Pinckney, on the 11th day of August, 1802, and which was not ratified by the Senate, becase it embraced no more of the just responsibilities of Spain. On the subject of these claims, you will hold a strong language. The Spanish Government may be told plainly they will not be abandoned any further [illegible] impartial tribunal may make exceptions [illegible] Energy in the appeal to its feelings will [illegible] tend to justice for past wrongs, but to prevent repetition of them in case Spain should become party to the present war.

In arranging the mode, the times, and the [illegible] orities, of paying the assumed debts the [illegible] the Treasury is to be consulted as much as possible: less is not to be done with that view [illegible] was enjoined in the case of the French debts [illegible] our citizens. The stock to be engaged in [illegible] transaction is not to be made irredeemable without a necessity not likely to arise; and the interest, as well as the principal, should be payable at the Treasury of the United States. The only admissible limitation, on the redemption of the stock, is, that the holder shall not be paid off in less than about one-fifth or one-fourth of the amount in one year.

Indemnifications for the violation of our rights at New Orleans have been constantly [illegible] view in our remonstrances and demands [illegible] subject. It will be desirable to compress [illegible] in the arrangement. A distinction, however, [illegible] to be made between the positive and specific damages sustained by individuals, and the general injuries accruing from the breach of treaty. The latter could be provided for by a gross and [illegible] estimate only, and need not be pressed in a [illegible] dispensable condition. The claim, however, may be represented as strictly just, and a fair [illegible] to insist on it as an item in the valuable considerations for which the cession is made. [illegible] stress may be laid on the positive and [illegible] damages capable of being formally [illegible] individuals; but there is a point beyond which [illegible] may be prudent not to insist even here; especially as the incalculable advantage [illegible] from the acquisition of New Orleans [illegible] a joy throughout the Western country [illegible] drown the sense of these little sacrifices. Should no bargain be made on the subject of the Floridas our claims of every sort are to be kept in [illegible]

If it be not possible to bring Spain to a [illegible] the whole of the two Floridas, a trial [illegible] made for obtaining either, or any improvement of either. The part of West Florida adjoining the territories now ours, and including the principal rivers falling into the Gulf, will be particularly important and convenient.

It is not improbable that Spain, in treating a cession of the Floridas, may propose an exchange of them for Louisiana beyond the Mississippi, or may make a serious point of some particular boundary to that territory. Such an exchange is inadmissible. In intrinsic value there is no equality; besides the advantage given to the western bank of the entire jurisdiction of the river. We are the less disposed also to make sacrifices to obtain the Floridas, because the position and the manifest course of events [illegible] an early and desirable acquisition of them. In respect to the adjustment of a boundary between Louisiana and the Spanish territories, the right

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be no objection to combining it with a cession of the Floridas, if our knowledge of the extent and character of Louisiana were less imperfect. At present, any arrangement would be a step too much in the dark to be hazarded; and this will be a proper answer to the Spanish Government. Perhaps the intercommunications with the Spanish Government on this subject, with other opportunities at Madrid, may enable you to collect useful information and proofs of the fixed limits, or of the want of fixed limits, to Western Louisiana. Your inquiries may also be directed to the question, whether any, and how much, of what passes for West Florida, be fairly included in the territory ceded to us by France? The treaties and transactions between Spain and France will claim particular attention in this inquiry.

Should no cession whatever be attainable, it will remain only for the present to provide for the free use of the rivers running from the United States into the Gulf. A convenient deposit is to be pressed as equally reasonable there as on the Mississippi; and the inconveniency experienced on the latter, from the want of a jurisdiction over the deposit, will be an argument for such an improvement of the stipulation. The free use of those rivers for our external commerce is to be insisted on as an important right, without which the United States can never be satisfied; and without an admission of which, by Spain, they can never confide either in her justice or her disposition to cultivate harmony and good neighborhood with them. It will not be advisable to commit the United States into the alternative of war, or a compliance on the part of Spain; but no representation short of that can be stronger than the case merits.

The instruction to urge on Spain some provision for preventing, or rectifying by a delegated authority here, aggressions and abuses committed by her colonial officers, is to be regarded as of high importance. Nothing else may be able to save the United States from the necessity of doing themselves summary justice. It cannot be expected that they will long continue to wait the delays and the difficulties of negotiating, on every emergency, beyond the Atlantic. It is more easy, and infinitely more just, that Spain and other European nations should establish a remedy on this side of the Atlantic, where the source of the wrongs is established, than that the complaints of the United States should be carried to the other side, and, perhaps, wait till the Atlantic has moreover been twice crossed in procuring information for the other party, with which a decision may be refused.

The navigation of the bay of St. Mary's is common to Spain and the United States; but a lighthouse, and the customary water marks, can be established within the Spanish jurisdiction only. Hitherto, the Spanish officers have refused every proper accommodation on this subject. The case may be stated to the Government of Spain, with our just expectation that we may be permitted either to provide the requisite establishments ourselves, or to make use of those provided by Spain.

This letter will be addressed to Madrid; but as it is possible that you may not have left Paris, or may have proceeded to London, a copy will be forwarded to Paris, to be thence, if necessary, sent on to London. In case it should find you either at Paris or London, it must be left to your own decision how far the call for you at either of those places ought to suspend these instructions. Should you decide to go to Madrid, it may be proper first to present your credence to the French or British Government, as the case may be; and to charge a fit person with the public business during your absence. Should you even be at Paris, and your commission filled up for London, it may be best to proceed first to London, if the call to Madrid be not very urgent.

I shall write to Mr. Pinckney, and inform him that this letter is intended for his use jointly with yours; though addressed to you alone, because in part not applicable to him. Should you suspend, or have suspended, your visit to Madrid, you will please to write to him also, giving him your ideas as to the expediency of prosecuting the object of the joint instructions or not until you can be with him.

I have the honor to be, &c.,

JAMES MADISON.

The Secretary of State to James Monroe, Esq., their Minister Extraordinary, jointly with Charles Pinckney, Esq., to the Court of Spain, dated

DEPARTMENT OF STATE, *April* 15, 1804.

SIR: It being presumed that, by the time of your receiving this communication, the negotiation, with which you were charged by my letter of the 5th January last, will no longer require your presence in London, the President thinks it proper that you should now proceed to Madrid, and, in conjunction with Mr. Pinckney, open a negotiation on the important subjects remaining to be adjusted with the Spanish Government. You will understand, however, that besides the consideration how far your immediate departure may be permitted by the state of our affairs with the British Government, or by events unknown at this distance, you are at liberty to make it depend in a due degree on the prospect of active co-operation or favorable dispositions from quarters most likely to influence the councils of Spain. It will be of peculiar importance to ascertain the views of the French Government. From the interest which France has in the removal of all sources of discord between Spain and the United States, and the indications given by her present Government of a disposition to favor arrangements for that purpose, particularly in relation to the territory remaining to Spain on the eastern side of the Mississippi, and from the ascendancy which the French Government has over that of Spain, of which a recent and striking proof has been given in the prompt accession of the latter on the summons of the former, to the transfer of Louisiana to the United States, notwithstanding the orders which had been transmitted to the Spanish Envoy here to protest against the right to

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make the transfer, much will depend on, and much is expected from, the interposition of that Government, in aid of your negotiations. Mr. Livingston has been instructed to cherish the motives to such an interposition, as you will find by the extract from my letter to him herewith enclosed; and if you should take Paris in your way to Madrid, as it is probable, you will not only be able to avail yourself of all his information, but will have an opportunity of renewing the personal communications which took place during your joint negotiations.

The objects to be pursued are, 1st, an acknowledgment by Spain that Louisiana, as ceded to the United States, extends to the river Perdido; 2d, a cession of all her remaining territory eastward of that river, including East Florida; 3d, a provision for arbitrating and paying all the claims of citizens of the United States not provided for by the late convention, consisting of those for wrongs done prior to the last peace, by other than Spanish subjects, within Spanish responsibility, for wrongs done to the Spanish Colonies by Spanish subjects or officers, and for wrongs of every kind for which Spain is justly responsible, committed since the last peace. On the part of the United States, it be may stipulated that the territory on the western side of the Mississippi shall not be settled for a given term of years, beyond a limit not very distant from that river, leaving a spacious interval between our settlements and those of Spain, and that a sum of —— dollars shall be paid by the United States in discharge of so much of the awards to their citizens. It may also be stipulated, or rather may be understood, that no charge shall be brought by the United States against Spain, for losses sustained from the interruption of the deposit at New Orleans.

The subjoined draught puts into form and into detail the arrangement to which the President authorizes you to accede; relying on your best efforts to obtain better terms, and leaving to your discretion such modifications as may be found necessary, and will not materially affect the proportion between the gains and the concessions by the United States.

Art. 1. § 1. Spain acknowledging and confirming to the United States the cession of Louisiana, in an extent eastwardly to the river Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the Gulf of Mexico, together with all the islands annexed thereto, either whilst the Floridas belonged to Great Britain, or after they became provinces of Spain.

Or, if the article be unattainable in that form, Spain cedes to the United States forever all the territory, together with all the islands belonging thereto, which remain to her between the Mississippi, the Atlantic, and the Gulf of Mexico.

§ 2. Possession of the said territory shall be delivered to a person or persons authorized by the United States to receive the same, within —— days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property, excepting ships and military stores, as also all public archives belonging to the provinces comprehending the said territory.

§ 3. Within ninety days after the delivery of possession, or sooner, if possible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any part of the territory ceded by France to the United States, all such troops shall, without delay, be withdrawn.

§ 4. Spanish subjects within the ceded territory, who do not choose to become citizens of the United States, shall be allowed eighteen months to dispose of their real property, and to remove or dispose of their property.

§ 5. The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties, and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the Treaty of the 30th April, 1803, with the French Republic.

Art. 2. § 1. It is agreed that, for the term of —— years, no lands shall be granted, nor shall persons who may have settled since October 1, 1800, on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit: by a limit consisting on one side of the river Sabine, or Mexicano, from the sea to its source; thence, a straight line to the confluence of the rivers Osages and Missouri; and by a limit on the other side, consisting of the river Colorado, (or some other river emptying into the bay of St. Bernard,) from its mouth to its source; thence a straight line, to the most southwestwardly source of the Red river, with such deflections, belonging to the Missouri and the Mississippi from those belonging to the Rio Bravo, to the latitude of the northernmost source of that river; and thence, a meridian to the northern boundary of Louisiana.

§ 2. Such of the settlements within the foregoing limits, not prohibited by article 2, section 1, as were not under the authority of the Government of Louisiana, shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will respectively offer reasonable inducements, without being obliged to use force, to all such settlers to retire from the space above limited, and establish themselves elsewhere.

§ 3. The Indian tribes within the said limits shall not be considered as subject to, or exclusively connected with, either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them, as far as may be necessary for that purpose; and each of the parties agrees to restrain, by all proper and requisite means, its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions of any sort on the subjects or citizens of the other party. The parties agree, moreover, each of them, in all public transactions and communications with the

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Indians, to promote in them a disposition to live in peace and friendship with the other party.

§ 4. It shall be free for Indians now within the territories of either of the parties to remove to, and settle within, the said limits, within its territories; taking due care not to make it an occasion of war among the Indians, or of animosities in any of them against the other party.

§ 5. The United States may establish garrisons sufficient, as security against the Indians, and all trading-houses, at any places within the said limits, where garrisons existed at any time under the Spanish Government of Louisiana. And Spain may continue garrisons, for the like purpose, at any places where she had them at the date of her cession to France, and establish trading-houses thereat. Either party may also cause or permit any part of the country within the said limits to be explored and surveyed, with a view to commerce or science.

§ 6. It shall be free for either of these parties to march troops within the said limits against Indians at war with them, and for the purpose of driving or keeping out invaders or intruders.

Art. 3. It is agreed that, within —— years previous to the expiration of the aforesaid term of —— years, due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States westward of the Mississippi, and the territories of His Catholic Majesty; which boundary shall then be established according to the true extent of Louisiana, as ceded by Spain to France, and by France to the United States; uninflenced, in the smallest degree, or in any manner whatever, by the delay, or by any arrangement or circumstance contained in or resulting from this convention.

Art. 4. Whereas, by the sixth article of the convention signed at Madrid, on the 11th day of August, 1802, it is provided, that, as it had not been possible for the Plenipotentiaries of the two Powers to agree upon a mode by which the Board of Commissioners to be organized in virtue of the same should arbitrate the claims originating from the excesses of foreign cruisers, agents, consuls, or tribunals, in their respective territories, which might be imputable to their two Governments &c; and whereas, such explanations have been had upon the subject of the article aforesaid, as have led to an accord; it is, therefore, agreed that the Board of Commissioners to be organized, as aforesaid, shall have power for the space of eighteen months, from the exchange of ratifications hereof, to hear and determine, in the manner provided as to the other claims in the said convention, all manner of claims of the citizens and subjects of either party, for excesses committed, by foreign cruisers, agents, consuls, or tribunals, in their respective territories, which may be imputable to either Government, according to the principles of justice, the law of nations, or the treaties between the two Powers; and also all other excesses committed, or to be committed, by officers or individuals of either nation, contrary to justice, equity, the law of nations, or the existing treaties, and for which the claimants may have a right to demand compensation.

Art. 5. It is further agreed, that the respective Governments will pay the sums awarded by the said Commissioners under this convention, and also those which have been or may be awarded under that of the 11th of August, 1803, in manner following:

The Government of the United States will pay all such sums, not exceeding in all, —— dollars, which may be awarded as compensation to citizens of the United States, from His Catholic Majesty, in three annual instalments, at the City of Washington; the first instalment to be paid in eighteen months after the exchange of ratifications hereof, or, in case they shall not be so paid, they shall bear an interest of six per cent. per annum, from the time when they became due, until they are actually discharged; and in case the aggregate of the said sums should not amount to the said sum of —— dollars, the United States will pay to His Catholic Majesty, within one year after the final liquidation of the claims cognizable by the said board, at the City of Washington, so much as the said aggregate may fall short of the sum above-mentioned; but, on the other hand, if the whole amount of the sums awarded to citizens of the United States should exceed the sum of —— dollars, His Catholic Majesty shall pay the surplus, without deduction, to such of the claimants, and at such times and places, as the said Commissioners shall appoint.

The Government of the United States will also pay, without deduction, at the City of Washington, all such sums as may be awarded against them by the said Commissioners for compensation due to Spanish subjects, at such times as shall be appointed in the awards respectively.

This convention shall be ratified within —— days after the signing thereof, and the ratifications shall be exchanged within —— days after the ratification by the United States, at the City of Washington.

OBSERVATIONS.

The first form of article 1, section 1, is preferred, because it explicitly recognises the right of the United States under the Treaty of St. Ildefonso, and of April 30, 1803, to the river Perdido, which is constructively provided for only in the second form. It is indispensable that the United States be not precluded from such a construction, first, because they consider the right as well founded; secondly, and principally, because it is known that a great proportion of the most valuable lands between the Mississippi and the Perdido have been granted by Spanish officers since the cession was made by Spain. These illicit speculations cannot otherwise be frustrated than by considering the territory as included in the cession made by Spain, and thereby making void all Spanish grants of subsequent date.

It is represented that these grants have been extended, not only to citizens of the United States, but to others whose interest now lies in supporting the claim of Spain to that part of Louisiana,

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in opposition to that of the United States. It is conjectured that M. Laussat himself has entered into these speculations, and that he felt their influence in the declaration made confidently to our Commissioners at New Orleans, that no part of West Florida was included in Louisiana.

In supporting the extent of Louisiana to the Perdido, you will find materials for your use in the extract above referred to, and the other documents annexed, to which you will add the result of your own reflections and researches. The secret treaty between France and Spain, ceding Louisiana west of the Mississippi to Spain, and which has never been printed, may doubtless be obtained at Paris, if not at Madrid, and may be of use in the discussion. From the references in the French Orders of 1764, for the delivery of the Province, it is presumed to be among the archives at New Orleans; and Governor Claiborne has been requested to send a copy of it: but it may not be received in time to be forwarded for your use. In an English work. "the Life of Chatham," printed in 1793, for J. S. Gordon, London, No. 166, Fleet street, I find a memorial referred to, but not there printed, with the other negotiations preceding the Peace of 1762–'63, expressly on the subjects of the limits of Louisiana, and, as sufficiently appears, with a view to give the Province its extent to the Perdido. You will, perhaps, be able to procure in London or Paris a sight of this document: it probably contains most of the proofs applicable to the question, and will be the more important as proceeding from France; it will strengthen our lien on her seconding our construction of the treaty. The memorial will be the more important still, if it should be found to trace the western limits also of Louisiana, and to give it a corresponding extent on that side. In page 416 and sequel of volume 1, you will see the fact established that the Floridas, including the French part, were ceded to Great Britain as the price for the restoration of Cuba, and that, consequently, the French part now claimed by the United States was a cession purely for the benefit of Spain.

The reasons, beyond the advantages held out in the arrangement itself, which may be addressed to Spain, as prompting a cession of her remaining territory, eastward of the Perdido, will be found in the remarks in the extract aforesaid, in the instructions to Mr. Pinckney and yourself of ths 17th day of February last, and in those which have, from time to time, been given to Mr. Pinckney. The Spanish Government cannot but be sensible that the expense of retaining any part of that territory must now more than ever exceed any returns of profit; that, being now more than ever indefensible, it must the more invite hostile expeditions against it from European enemies; and that, whilst in her hands, it must be a constant source of danger to harmony with the United States.

The arrangement made in article second supposes that Louisiana has a very great extent westwardly, and that the policy of Spain will set much value on an interval of desert between her settlements and those of the Uni[illegible] In one of the papers now transmitted [illegible] see the grounds on which our claim [illegible] tended even to the Rio Bravo. By wh[illegible] emptying into the Gulf eastward of th[illegible] may with any plausibility commence [illegible] boundary of Louisiana, or however [illegible] thence to its northern limit, she cann[illegible] arrangement in any other light than a [illegible] cession on the part of the United State[illegible] anced by an equivalent concession on [illegible] The limit to the interval on our side [illegible] sidered as the ultimatum, and, conseq[illegible] to be yielded without due efforts to [illegible] more distant from the Mississippi. [illegible] important, also, or rather indispensab[illegible] limit on the Spanish side should not [illegible] any manner that will open for Spanish [illegible] any part of the waters connected wi[illegible] souri or Mississippi. The range of hi[illegible] arating these waters from those of the [illegible] and other waters running westw[illegible] itself so naturally for the occasion, th[illegible] be able to press it with peculiar force.

To enable you the better to understa[illegible] lineations contained in this article, an[illegible] which may be brought into discussion, [illegible] herewith copies of two maps, a[illegible] two others, viz: that of Danville [illegible] find either at London or Paris, [illegible] else, in Postlewait's Directory, and [illegible] ——, in 1768, referred to in one [illegible] warded. The latter you will doubtl[illegible] procure at Madrid. The blank for [illegible] years is not to be filled with more than [illegible] nor with that number, if a shorter [illegible] substituted.

The fourth and fifth articles relate [illegible] against Spain, not provided for by the [illegible] already entered into, and the payment [illegible] sured by the United States. For the [illegible] in support of the claims founded on [illegible] ceeding from other than Spanish subjects [illegible] you to the letters and instructions to M[illegible] ney; your communications with him [illegible] furnish the grounds on which the claims [illegible] from injuries done to our citizens in the S[illegible] colonies are to be maintained. The [illegible] ness of a residuary provision for all just [illegible] implied by the concurrence of Spain in [illegible] ing a Board of Commissioners for the case [illegible] dy submitted to it.

You will not fail to urge on the Spanish [illegible] ernment the sixth article of the Treaty [illegible] as particularly applicable to cases wh[illegible] than Spanish subjects have committed [illegible] on our vessels and effects within the [illegible] Spanish jurisdiction, by sea or by land. [illegible] tice and the law of nations, this adds the [illegible] a positive stipulation, which cannot be [illegible] without proving, what cannot be proved, [illegible] Spanish Government used all the mea[illegible] power to protect and defend the rights of [illegible] zens; and which cannot be resisted [illegible] pleading, what self-respect ought not to [illegible] be pleaded, that the sovereignty of His [illegible]

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Majesty was under duress from a foreign Power within his own dominions.

The sum of money to be paid by the United States, is, in no event, to exceed two millions of dollars in cash, at the Treasury of the United States, not in public stock, and is to be applied toward the discharge of awards to our citizens; and it is hoped that a much smaller sum will be found sufficient.

If Spain should inflexibly refuse to cede the territory east of the Perdido, no money is to be stipulated. If she should refuse also to relinquish the territory westward of that river, no arrangement is to be made with respect to the territory westward of the Mississippi; and you will limit your negotiations to the claim of redress for the cases of spoliation above described.

If Spain should yield on the subject of the territory westward of the Perdido, and particularly if a comprehensive provision for the claims should be combined therewith, you may admit an arrangement westward of the Mississippi, on the principle of that proposed, with modifications, however, if attainable, varying the degree of concession, on the part of the United States, according to the degree in which Spain may concur in a satisfactory provision for the cases of the territory westward of the Perdido, and of the claims of indemnification.

The United States having sustained a very expensive though indefinite loss, by the unlawful suspension of their right of deposit at New Orleans, and the Spanish Government having admitted the injury by restoring the deposit, it will be fair to avail yourself of this claim in your negotiations, and to let Spain understand that, if no accommodation should result from them, it will remain in force against her.

The term of years, during which the interval between the settlements of the United States and Spain are to be prohibited, is a consideration of great importance. A term which may appear a moment to a nation stationary, or slowly advancing in its population, will appear an age to a people doubling its population in little more than twenty years, and, consequently, capable in that time of covering with an equal settlement double the territory actually settled. This reflection will suggest the expediency of abridging the continuance of the prohibition as much as the main objects in view will permit. Twenty years are a limit not to be exceeded. Fifteen, or even ten, if the space between the Mississippi and the interval territory be not enlarged, seem to be as much as Spain can reasonably expect. She cannot but be reasible, and you will make use of the idea if you find it prudent so to do, that, before a very long time will elapse, the pressure of our growing population, with events which time does not fail to produce, but are not foreseen, will supersede any arrangements which may now be stipulated, and, consequently, that it will be most prudent to limit them to a period susceptible of some certain calculations.

No final cession is to be made to Spain of any part of the territory on this side of the Rio Bravo, but in the event of a cession to the United States of the territory east of the Perdido; and, in that event, in case of absolute necessity only, and to an extent that will not deprive the United States of any of the waters running into the Missouri or the Mississippi, or the other waters emptying into the Gulf of Mexico between the Mississippi and the river Colorado, emptying into the bay of St. Bernard.

No guaranty of the Spanish possessions is to be admissible.

This letter is intended for Mr. Pinckney as well as yourself, and as containing the instructions by which the execution of your commission is to be guided.

APRIL 18.

The President being absent, and it being most proper to wait his return, which may be shortly expected, before any final instructions be given as to your immediate destination, after closing your mission to Spain, which may be shortened or spun out, according to circumstances, I recommend that you do not actually leave London until you hear again from me. The moment the President arrives I will communicate to you his views by multiplied conveyances, that you may receive them with as little delay as possible. In the meantime, you will make such preparations as will enable you to depart at a short notice.

Mr. Madison to Messrs. Monroe and Pinckney.

DEPARTMENT OF STATE,
July 8, 1804.

GENTLEMEN: Since the instructions given you on the 15th of April last, further views have been obtained with respect to the interior of Louisiana, and the value which Spain will probably put on such a limitation of our settlements beyond the Mississippi as will keep them for some time at a distance from hers. The President has accordingly become the more anxious that, in the adjustment authorized by those instructions, the terms may be made favorable to the United States. He does not, indeed, absolutely restrain you from yielding to the ultimatum therein fixed, in case it be required by the inflexibility of the Spanish Government, and particularly by the posture and prospect of affairs in Europe; but he is not a little averse to the occlusion, for a very long period, of a very wide space of territory westward of the Mississippi, and equally so to a perpetual relinquishment of any territory whatever eastward of the Rio Bravo. If this river could be made the limit to the Spanish settlements, and the Rio Colorado the limit to which those of the United States may be extended; and if a line northwest or west from the source of whatever river may be taken for the limit of our settlements could be substituted for the ultimatum line running from the source of the Sabine to the junction of the Osages with the Missouri, and thence, northward, parallel with the Mississippi, the interval to be unsettled for a term of years would be defined in a manner peculiarly satisfactory. The degree, however, in which you are to insist on these me-

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liorations of the arrangement, must be regulated by your discretion, and by the effect which the probable course of events will have on the temper and policy of Spain. Should she be engaged in the war, or manifestly threatened with that situation, she cannot fail to be the more anxious for a solid accommodation on all points with the United States; and the more willing to yield, for that purpose, to terms, which, however proper in themselves, might otherwise be rejected by her pride and misapplied jealousy. According to the latest accounts from Great Britain, a revolution in the Ministry, if not a change on the throne, was daily expected; and, from either of those events, an extension of the war to Spain, if not precluded by the less probable event of a speedy peace with France, would be a very natural consequence. It is to be understood that a perpetual relinquishment of the territory between the Rio Bravo and Colorado is not to be made, nor the sum of —— dollars paid without the entire cession of the Floridas; nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido. But a proportional sum out of the —— dollars, may be stipulated for a partial cession of territory eastward of the Perdido. If neither the whole nor part of East Florida can be obtained, it is of importance that the United States should own the territory as far as the Appalachicola, and have a common, if not exclusive right to navigate that stream. I must repeat that great care is to be taken that the relinquishment by Spain of the territories westward of the Perdido be so expressed as to give to the relinquishment of the Spanish title the date of the Treaty of St. Ildefonso. The reason for this was before explained, and is strengthened by recent information, as you will find by the annexed extract of a letter from Governor Claiborne. Other proofs might be added. In any further cession of territory, it may be well so to define it, as to guard as much as possible against grants irregular or incomplete, or made by Spanish officers in contemplation of such a cession.

On entering into conferences with the Spanish Ministry, you will propose and press, in the strongest manner, an agreement that neither Spain nor the United States shall, during the negotiation, strengthen their situation in the territory between the Iberville and the Perdido, and that the navigation of the Mobile shall not be interrupted. An immediate order from the Spanish Government to this effect may be represented as of the greatest importance to the good understanding between the two countries; and that the forbearance of the United States thus long is a striking proof of their sincere desire to maintain it. If such an order should be declined, you will not fail to transmit the earliest information of it, as well as to keep up such representations to that Government on the subject, as will impress it with the tendency of so unreasonable and unfriendly a proceeding to drive the United States into arrangements for balancing the military force of Spain in that quarter, and for exerting their right of navigation through the Mobile. This navigation has become important, or rather essential; and a refusal of Spain to acquiesce in it must commit the peace of the two nations to the greatest hazard. The posture of things there is already extremely delicate, and calls for the most exemplary moderation and liberality in both the Governments. As a proof of it, I enclose a correspondence between Governor Claiborne and the Spanish Government at Pensacola, on the same subject as that on mine with the Marquis de Yrujo, already transmitted to you.

I have the honor, &c.

JAMES MADISON.

J. MONROE and C. PINCKNEY, Esqs.

The Secretary of State to Mr. Monroe.

DEPARTMENT OF STATE, Oct. 26, 1804.

SIR: The turn which our affairs have taken at Madrid renders it expedient, in the judgment of the President, that you should proceed thither without delay, in execution of the instructions heretofore given, with such alterations and additions as are contained in this letter. You will, of course, make such communications to the British Government on your departure as will guard your mission against injurious misconstructions; and at Paris, on your route, you will avail yourself of all the opportunities there for ascertaining and turning to just account the dispositions of the French Government with respect to the questions depending between the United States and Spain.

As Mr. Pinckney may have left Madrid, and, if not, is on a footing unfavorable for cordial negotiations with the Spanish Ministry, I enclose herewith a new letter of credence and commission, enabling you singly to execute the trust. Should a successor to Mr. Pinckney be appointed and arrive in time, it will be decided by the President how far he will be associated in the business.

For a view of the circumstances which call for your presence at Madrid, I refer you to the late correspondence here with the Marquis de Yrujo, of which a copy is annexed, and to that with Mr. Pinckney, and to his with Mr. Cevallos, which his files will furnish you. I add also a letter of this date from the Department of State to Mr. Pinckney.

Notwithstanding the rumor which appears to have spread in Europe of an impending rupture between Spain and the United States, there is nothing in the avowed sentiments of the Spanish Government, and certainly nothing in the sound policy of Spain, to justify an inference that she wishes to be no longer at peace with us. It may reasonably be expected, therefore, that you will meet with a friendly reception. In return, you are authorized by the President to give every proper assurance of the desire of the United States to maintain the harmony and to improve the confidence between the two nations; and, with this view, to hasten, by frank elucidations and equitable accommodations, a removal of every source from which discord might arise. You will not

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fail, at the same time, to recollect, in conveying these amicable sentiments, the propriety of leaving the Spanish Government under an impression that they flow neither from a fear of the Spanish Power, nor a belief that Spain sets little value on a continuance of peace with us. If the United States have a deep interest in avoiding war, they know that Spain cannot feel less of interest in avoiding it, and is in no condition, therefore, to extort sacrifices, or to risk the consequences of such an experiment.

If no exchange of ratifications of the convention of August 11, 1802, should have preceded your arrival at Madrid, the President has authorized you to make the exchange; but it is on the expectation that the Spanish ratification will be absolutely unqualified. It must be not only without conditions, but without *protestandos* or declarations of any sort. Rather than admit them, it is thought better to let the convention drop altogether, and to incorporate its provisions with those of a similar kind, making part of the general accommodation with which you are charged. Indeed, if there be a prospect of effecting this accommodation without delay, there may be an advantage in laying aside the convention of 1802, as there will be an opportunity of giving to some of its articles both more precision and more comprehension. You will find some hints on this subject in the letters heretofore written to Mr. Pinckney, and may derive others from similar provisions in former conventions.

The spoliations by French citizens chargeable on Spanish responsibility will be an important topic in your negotiations, whether the convention of 1802 be separately carried into effect, or be consolidated with a new one.

It is clear, as has been distinctly and repeatedly stated in the instructions given to Mr. Pinckney, that where the capturing vessels were equipped in Spanish ports, or the prizes made or condemned within Spanish jurisdiction, Spain is answerable for them to the United States. This, as a general principle, has not been denied. But two pleas are offered, as rendering the principle inapplicable to the claims of our citizens. One is, that the circumstances in which Spain was placed disabled her from controlling the wrongs done by French citizens; the other, that the convention between the United States and France having relinquished the claim of indemnities against the latter, Spain became thereby absolved also; inasmuch as the relinquishment to France would otherwise be so far frustrated by her obligation to satisfy Spain for the indemnities paid by her to the United States.

The first plea alone was advanced in the early stages of the discussion. The second was pretty certainly suggested by the Spanish Minister here, who, for that reason, may be the more anxious to see it prevail; and it has been abetted by the rescripts of several American lawyers, obtained, doubtless, by the same Minister, on a hypothetical case, so stated as to educe the desired opinion.

With respect to the first plea, it is too little consistent with the honor of Spain to be persevered in, and has been but feebly urged since the second occurred. It would require, besides, from Spain satisfactory proof that she made every reasonable effort to maintain her own authority against the coercive intrusion of that of France. No such proof has been offered or attempted. In truth, no serious effort appears to have been made; and it may fairly be presumed that the pliability of Spain was either the result of a positive understanding with France, or a compliance offered as a price for some equivalent advantage.

With respect to the second plea, so far as it respects the opinion of the lawyers, I refer, for the light in which it ought to be regarded, to the observations made in my letter of ——— to Mr. Pinckney.

In its merits, the plea is equally unsustainable. In the first place, some of the French citizens, whose irregularities are charged on Spain, were private citizens, having no commissions from France, in whose proceedings France cannot be supposed to have taken any interest, and for which, therefore, she might justly refuse to be answerable. In the next place, others of the wrongdoers, though once commissioned by France, may at the time have been without commissions, or have retained dead commissions only. For these, also, as in fact private citizens, France may refuse to be answerable. Again, in cases where the captures are stated to have been numerous, being made within the territorial jurisdiction of Spain, were controllable by Spain, and probably not patronised by France, no sufficient ground appears on which France could be made chargeable.

The responsibility of Spain in this last case is the more direct and positive, as she is bound, by the sixth article of the treaty of October, 1795, to use all her efforts to recover and restore to the right owners their vessels and effects, which may have been taken within the extent of her jurisdiction by sea or land, whether they are at war or not with the Power whose subjects have taken possession of the said effects.

Lastly, therefore, the cases for which France is eventually liable, because presumably a party to them, are those only in which her commissioned cruisers on the high seas were the captors, and her agents in the Spanish ports the instruments of condemnation; the several other cases, with such as may have happened between the convention with France of September 30, 1801, and that with Spain of August 11, 1802, being as unsustainable against France, without the principle on which the Spanish plea is founded.

As to this last class of cases, proceeding from French officers and French agents, as well as every other which can be traced to the sanction and support of France, it is certain that eventual resort may be had to France for indemnification.

But it is no less clear that this eventual remedy does not interfere with the right of the United States to resort in the first instance to Spain, as in the first instance, and in the ordinary course, responsible for the injuries committed. French citizens, like all other aliens within Spanish ju-

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risdiction, are, for the time and place, Spanish subjects. As such they are regarded by Spain herself; as such they are regarded by other nations, and as such Spain is answerable for their conduct to other nations in the same manner as she is answerable for that of her permanent subjects.

Could it be shown, therefore, that France had been released from her responsibility, it would not follow that the release of Spain was involved in that of France. France would only have been released from her eventual responsibility, (where it even existed,) whilst Spain would have remained under her immediate responsibility. Both may be considered as bound to indemnify the United States; Spain as the primary, France as the secondary debtor; Spain as the principal, France as a surety; and the release of France, consequently, is no more releasing Spain, than the release of a surety would release the principal debtor. This view of the subject derives force from the consideration that the United States have, from the beginning, addressed their claims to Spain as primarily and principally bound to satisfy them.

But to cut up this plea by the roots, it may be affirmed that no such release has been given by the United States to France. The convention, from which the plea is derived, expressly binds France, in the third article, to indemnification for all captures which might be subsequent to the date of the instrument, and also in cases where no definitive condemnation had, at that date, taken place. Now, the condemnations by French agents in Spanish ports are neither definitive condemnations, nor any legal condemnations at all. The degree of authority and forms of proceeding meant by France to be intrusted to her commercial agents in foreign countries, appear to have been different at different times; and it may deserve inquiry what they were at the respective dates of the cases in question. By a law of the Republic of October, 1795, it would seem that the authority was first granted, and in an unconditional form. By a law of their Consular Government, however, of 8 Germinal, year 8, the same authority was granted, with the following modification: "Et dans le cas où le présent règlement pourra recevoir son exécution, ils rempliront toutes les fonctions dont il charge l'officier d'administration des parts de la république, en se faisant assister de deux assesseurs, choisis, s'il est possible, parmi les citoyens François immatriculés et établis dans le lieu de la résidence de ces commissaires." The proviso implied by the expression "et dans le cas où le présent règlement pourra recevoir son exécution," combined with the preceding reference to treaties, &c., will show that the authority was not to be exercised without the consent of the foreign country where the trial was to be had. And by a Spanish regulation in 1799, referred to, and enclosed in my letter to Mr. Pinckney of 8th of March, 1803, it is expressly declared, that the jurisdiction of the French agents in Spanish ports was not admitted by the Spanish Government. It will deserve inquiry, also, in what light France herself may view the condemnations assumed by her agents in Spanish ports. From some information lately received from Mr. Skipwith, it may be inferred that they are not classed with those relinquished to her by the United States, and, if not mere nullities, are at least within the exceptions to the relinquishment stated in the third article of the convention of 1801; and, consequently, were it possible for Spain to prove the duress she alleges, would be eventually chargeable on France, according to her own view of the subject, so far as her judicial regulations may have been pursued by the individual sufferers.

In fine, the proceedings in question were either valid or not valid. If not valid, the release of France cannot be applicable to them, and the plea of Spain falls. If valid, the validity must proceed from the sanction given to them by Spain herself, since, without that sanction, the French authority could not operate within the sovereignty of Spain; and with that sanction, the proceedings would be virtually the acts of Spain, and the more undeniably chargeable to her account.

Thus, in every view of the subject, Spain will find it impossible to evade the obligation to include, in a just and honorable settlement with the United States, the French spoliations charged on her, as well as those committed by Spanish subjects.

Still her pride may adhere to objections which have been so pertinaciously, though with such little reason, urged by her. To spare this, her retreat may be covered by general expressions confounding the French with the other spoliations; or it may, if necessary, be still more effectually spared by a tacit relinquishment, at the same time, on the part of the United States, of the indemnities for the interruption of the deposit at New Orleans, which, being an express violation of treaty, forms a claim against Spain which she cannot controvert, and of which the Government of the United States has never lost sight. In such a relinquishment, it will be desirable, if practicable, to except such of the few claims for losses sustained by individuals, as can be properly specified and verified; limiting, thereby, the relinquishment to the general injury done to the body of the people by the unlawful obstruction of their commerce. A reparation for this injury is clearly due to the American nation, and Spain has no reason to expect that it will be abandoned without a valuable consideration of some kind or other.

For your guide in your general negotiations, you will take the instructions heretofore addressed jointly to Mr. Pinckney and yourself, with one alteration, however, which is authorized by the President. In case the Spanish Government still refuse to cede the territory eastward of the Perdido, and shall require, as indispensable to an acknowledgment of our title to the territory westward of that river, an acknowledgment on our part that, in ultimately establishing the western boundary of Louisiana, the pretensions of the United States shall not go beyond the proposed

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western limit to the interval of desert, to wit: the river Colorado, a line thence to the source of Red river, thence, along the highlands, &c., you are authorized, after reasonable endeavors otherwise to effect your object, to acquiesce in the acknowledgment so required.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE, *May* 4, 1805.

SIR: I have just received your letter of the 2d of February, and one of the same date, signed by Mr. Pinckney also, with the communications attached to them. Those of the preceding dates, of the 27th of November, 16th of December, and 19th of January, had been previously received.

Observing that, in the project delivered to the Spanish Government, you have omitted the provision contained in the plan for a general accommodation, transmitted in my letter of April 15, 1804, for claims subsequent to the date of the convention of August, 1802, I lose no time in referring you to that letter, and to another of the 26th of October following, in which the course to be pursued is marked out, and in reminding you of the great importance of not losing sight of that class of claims which are of great amount, are daily increasing, and which ought to be embraced to as late a date as possible. Should your negotiation, therefore, be still open, I recommend this subject to your particular attention. Should the negotiations have been successfully closed, it will be proper for you to procure, if it can be done, a supplemental article for the purpose. If this cannot be done, or if the negotiations should have failed, the instructions adapted to that state of things will be given to Mr. Bowdoin, as soon as it shall be known here.

I recommend, in like manner, to your attention the remarks contained in my letter of March 22, 1803, to Mr. Pinckney, on the modifications proper to be given to the text of a convention; and the remark in my letter of October 26, 1804, relative to the Spanish garrison, which alone may be permitted to continue.

With high consideration, &c.,

JAMES MADISON.

JAMES MONROE, Esq., *Madrid.*

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,
May 23, 1805.

SIR: I have duly received the several communications transmitted by Mr. Pinckney and yourself, under date of the 1st March last. I have also received from General Armstrong copies of his letters to you of the 12th and 18th of March. The passages in this last, in cipher, having not been copied into that used by this Department with General Armstrong, remain locked up, but probably do not affect the general tenor of this letter.

From these communications, it appears that France has arranged herself on the side of Spain in such a manner that Spain will neither be disposed nor be permitted to bend to our claims, either with respect to West Florida or the French spoliations. What part France may take in relation to the western boundary of Louisiana seems not to have been disclosed. From the silence on that point, in Talleyrand's note of November 8th, in answer to yours, in which the claim of the United States to the Rio Bravo is expressly asserted, and from the confidential acknowledgment of that boundary by M. Laussat to Governor Claiborne and General Wilkinson, it might be expected that, on this important point, France would side with us against Spain. Should this be the case, it is hoped, notwithstanding the unfavorable posture of the negotiation, that there will be room to give it some such result as was contemplated. But there is so little reliance to be placed on the temper and views of France, as lately developed, that a failure of your efforts ought to be anticipated. The alternative presented by this event is that of war, or a state of things guarding against war for the present and leaving in vigor our claims to be hereafter effectuated. Against war, if to be safely and honorably avoided, the considerations are obvious and powerful. As it is a question which belongs to Congress, not to the Executive, that consideration alone forbids any step, on the part of the latter, which would commit the nation, and so far take from the Legislature the free exercise of its power. And it may be fairly presumed, considering the daily increase of our faculties for a successful assertion of our rights by force, that neither the nation nor its representatives would prefer a resort to arms to a state of things which would avoid it, without hazarding our rights or our reputation. The two essential articles in such a state of things are, 1st. A forbearance on the part of Spain, as well as of the United States, to augment their settlements, or to strengthen in any manner their military establishments within the controverted limits; 2dly. Not to obstruct the free communication from our territories through the Mobile and other rivers mouthing in the Gulf of Mexico, or through the Mobile at least.

In the first of these articles must be included a forbearance on the part of Spain to introduce slaves, as well as free persons, not only as in one sense augmenting her settlements, but as facilitating a clandestine introduction of them, already complained of, into the territories of the United States. It can hardly be supposed that Spain will object to this article, even with such an explanation of it; and if the language of the French Minister here be any test of the sentiments of his Government, it may be expected that France will favor the arrangement. This Minister has repeatedly and strongly declared that, until all questions concerning the boundary of Louisiana should be adjusted, a *statu quo* was the natural and just policy to be observed.

The second article is, perhaps, not less essential as a precaution for maintaining peace. Every moment of delay threatens collisions which lead to war. The necessity of that channel for the exports and imports of the increasing settlements on the Mobile, above the Florida limit, and for

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conveying our public stores to the military stations in that quarter, prove at once the reasonableness of this demand and its close connexion with the maintenance of peace. You will find by the enclosed correspondence between Governor Claiborne and the Marquis de Casa Calvo, that the attention of the latter has been drawn to the subject, and that it will have been thence transmitted to the Spanish Government. It is proper for you to know that the existing regulations of the United States permit the settlements in the district of Baton Rouge, on the Mississippi, to navigate this river, with the exception. only, as to the intoduction of slaves and armed vessels; exceptions having reference to the very objects of the regulations now in question.

I forbear to repeat the grounds on which the right of the United States to the use of those rivers is to be placed. They are already in the archives of the Legation at Madrid. More effect, however, is to be expected from the necessity which a refusal of the navigation will impose on the United States to enforce their claim, than from any appeal to the principles which support it; and this necessity must be permitted to impress itself fully on the Spanish Councils. The influence which France will have in this instance, as in all others, will make it worth while to learn the doctrine she has maintained with respect to the navigation of waters flowing through different jurisdictions. It is pretty certain that she has been led to assert ours, in relation to the Scheldt, and probably to the Rhine, and perhaps other rivers.

The silence of your communications with respect to the instructions in my letter of July 8th, 1804, to make the subject of the present a part of your conference with the Spanish Government, leaves it uncertain what particular disposition may have been manifested, and whether any orders, such as were required, have been transmitted. The inference that we draw is, that you were either induced to decline pressing them, or that the requisition did not succeed. Whatever may have been the case, you will consider it as a charge from the President, in the event pre-supposed, of a failure in your general negotiation, to pursue, without delay, the course herein prescribed. Should you fail in this also, you will lose no time in transmitting the result, taking care not to commit the Government of the United States in any respect, nor to alarm Spain into hostile measures or preparations further than may be inevitable. Should you succeed in what is here proposed, you will, in that case, also give the earliest notice, without precluding the United States from any course not inconsistent with the temporary arrangement formed, and leaving Spain under the impression that the arrangement will probably guaranty a continuance of peace.

In the instructions of October 26th, 1804, it was left discretionary to accept a ratification of the convention of August, 1802, or to incorporate it with the general one committed to your negotiation, with an intimation that it might be best to do the latter, in case but little delay in giving effect to the Convention of 1802 should be [illegible] curred. The delay actually incurred [illegible] led you to take the first course, if left [illegible] tion by Spain. From the spirit, however [illegible] Cevallos's observations in his letter of— [illegible] is little probability that a ratification [illegible] given, unshackled by conditions, which [illegible] instructed to reject. It only remains [illegible] fore, to observe to you, that these conditions [illegible] tinue to be regarded by the President as [illegible] inadmissible. The ratification, as already [illegible] to you, is not to be accepted with any condition [illegible] qualification whatever, beyond such as [illegible] ment as is explained in the letter of [illegible] 1804, of which an abstract is repeated [illegible] Department of State to the Marquis [illegible] affording a moderate time to Spanish [illegible] produce their claims. If a ratification [illegible] shackled, be within your option, the [illegible] deems it proper that you should accept [illegible] it, although none of the other objects [illegible] you should have been attained. Besides [illegible] which a partial accommodation may [illegible] more comprehensive adjustment, it [illegible] sidered that the provision therein may [illegible] siderable portion of our citizens who are [illegible] is due both to their interests and to the [illegible] given to it by the Senate, and that the [illegible] which the sixth article describes the [illegible] claims, is favorable to the principle on which [illegible] are founded.

This letter will be so addressed, that [illegible] opened by Mr. Bowdoin, in case of your [illegible] previous to his arrival, or by Mr. Eve[illegible] of his reaching Madrid before Mr. Bow[illegible] either of these gentlemen is hereby au[illegible] pursuance of the instructions here given [illegible] to the Convention of August, 1802, to accept its ratification. I have the honor [illegible]

JAMES MA[illegible]

JAMES MONROE, Esq.

V.—*Letter from Mr. Monroe to Mr. Talleyrand, [illegible] letter from M. Talleyrand to Mr. Armstrong, [illegible] a letter from Mr. Armstrong to Mr. Monroe.*

Mr. Monroe to M. Talleyrand.

PARIS, *November* [illegible]

SIR: Before the conclusion of the [illegible] between the United States and France [illegible] cellency will recollect that it was an [illegible] President, to acquire of Spain, by an [illegible] rangement, Florida; it being that portion [illegible] territory which she held eastward of the [illegible] sippi. It was also his object, after the [illegible] of that treaty, not that it was pressed [illegible] perious considerations as before, but [illegible] would contribute to remove all cause [illegible] ness and jealousy between the two Powers [illegible] might adopt and harmonize in future [illegible] system of policy as might secure to them [illegible] and give additional protection to their [illegible] in that quarter, especially to those of Spain [illegible] the conferences which produced the treaty [illegible] mentioned, the good offices of His Imperial [illegible] esty were engaged to the United States [illegible]

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negotiation which the President might commence with the Catholic King, for the acquisition of Florida. The same assurance was renewed after the conclusion of the treaty, though it was intimated that that was not a suitable time for the commencement of such a negotiation. It was, on that intimation, as your Excellency will also recollect, at a moment when I was about to set out for Spain in pursuit of the object, (the then recent orders of the President permitting it,) that I postponed my journey thither, and took a different position. The proposed negotiation with Spain was, in consequence, and has since remained, suspended; and it is in obedience to late orders from my Government that I am now so far on my way to Madrid on that subject, and that Mr. Livingston has requested the good offices of the Emperor in support of it. It is proper here to remark, that, since the epoch here referred to, the treaty then just concluded between the United States and France has been carried into effect, in its great points, with that scrupulous attention to good faith which does to both parties the highest honor. Their conduct in that transaction gives to each a pledge for the integrity which is to prevail in their future intercourse. I may be permitted to add, that, as I declined my visit to Spain at that epoch, the more readily to give an opportunity for the complete execution of that treaty, so, now that is carried into effect, I undertake it with the greater pleasure, since it confirms me in the confidence before entertained, of the support which would be given to it by His Imperial Majesty.

The President has been induced to adopt this measure at this time, by considerations the most urgent. As these are inseparably connected with the proposed negotiation, indeed, form, in part, the object of it, it is due to the friendship subsisting between our Governments, and to the candor which the President will never fail to observe in his transactions with the Emperor, to give you a distinct idea of them. They will, I doubt not, satisfy you that the President has heretofore shown a sincere desire to cultivate the friendship of the Catholic King, and that the attempt which he now makes to preserve that relation is a new and signal proof of that disposition.

Since the treaty between the United States and France, whereby Louisiana was ceded to the former, a question has arisen between those States and Spain, relative to the boundaries of the ceded territory. It is understood that the Government of Spain entertains an idea that that cession comprises only that portion of Louisiana which was ceded to it by France in 1762; that it does not comprise that portion also which was ceded by her, at the same time, to Great Britain, distinguished, while in her possession, by the name of West Florida. This pretension of the Court of Spain cannot, it is presumed, be supported by even the color of an argument. Had that been the intention of the parties in the Treaty of St. Ildefonso, it would have been easy to have provided for it. The idea was a simple one, which a few plain words would have expressed. But, the language of the article referred to conveys a very different sentiment. We find in it nothing which countenances a presumption that the Emperor meant to retake from Spain only a portion of Louisiana, or to refer to it in a dismembered state. It was natural to suppose, in accepting a retrocession of that province from a Power possessed of the whole, that he would take it entire, such as it was when France possessed it. Accordingly, we find that the terms of the article making the cession are as full and explicit to that object as it was possible to use. It is not stipulated that Spain should cede to France that portion of Louisiana only which she had received from France, or that West Florida should be excepted from the cession.

It is, on the contrary, stipulated that she shall cede it as it was when France possessed it; that is, such as it was before it was dismembered by the cessions afterwards made to Spain by Great Britain; that she should cede it with the same extent that it now has in the hands of Spain; that is, entire, which it became by the treaty of 1783, whereby West Florida was ceded by Great Britain to Spain; such as it is according to subsequent treaties between Spain and other Powers: a stipulation which does honor to His Catholic Majesty, since it proves that, in making the cession to France, he intended to cede only what he had a right to cede; that he recollected the treaty which he had concluded with the United States in 1795, knew the extent of its obligations, and was resolved to execute them with good faith. Your Excellency will receive, within, a paper containing an examination of the boundaries of Louisiana, which, it is presumed, proves incontestably the doctrine above advanced, as also that the river Perdido is the ancient, and, of course, present boundary of that province to the east and the Rio Bravo to the west.

The United States have other causes of complaint against Spain, of a serious import. In the course of the last war many aggressions were committed, under the authority of Spain, but, as it is presumed, without its sanction, on the commerce of the United States. Her ships of war and privaters took many of their vessels in Europe and America, carried them into her ports, detained and condemned them, under pretexts which cannot be justified. The injury sustained by this proceeding was great and extensive, for which it is the duty of the President to obtain for the sufferers an adequate reparation. A convention was entered into at Madrid, about two years since, between the two Powers, which provided a partial remedy for these injuries. The greatest object, however, was left open for future arrangement. It was owing to that consideration, and to a knowledge that the principal cause of variance was unprovided for, that the negotiation was, in truth, unfinished; that neither Government took any interest in ratifying or executing that convention. The whole subject, therefore, now lies open for discussion, and it is very much desired to conclude it on such fair principles as may be satisfactory to His Catholic Majesty, while it enables the President to vindicate the character of his Administration, in obtaining

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for American claimants the justice to which they are entitled.

The occlusion of the river Mississippi, about two years ago, contrary not only to the spirit but to the express stipulation of the Treaty of 1795 between the United States and Spain, was an act which exposed to essential injury the interest of the Western inhabitants of those States, while it could not be considered otherwise than as a high indignity to their Government. His Catholic Majesty did not hesitate to disavow the act, when complained of by the American Minister at Madrid. This disavowal made some atonement to the violated honor of the Government, but no reparation for the injury which has been sustained by individuals. A reasonable, but adequate, reparation is still due on that account, and it is expected that His Catholic Majesty will see the justice and propriety of making it.

These circumstances have produced an interesting crisis in the political relation of the United States and Spain, which it is the sincere desire of the President to remove by fair and amicable arrangement. If the negotiation which is about to be commenced by his order does not terminate in that result, it will be owing altogether to the Government of Spain. The measure which is now adopted, the negotiation which is invited, is a convincing proof of the sincerity and good faith with which the President seeks to preserve the relations of friendship between the two Powers. In the pursuit of its objects, no unreasonable pretension is entertained, no unjust demand will be made. On the subject of boundaries, although Congress, on a thorough conviction of its rights, authorized the taking immediate possession of Louisiana, according to its ancient limits, and, of course, to the river Perdido, to the East, yet the President, from motives of respect to the Catholic King, postponed the execution of the measure, to give time for amicable explanation with his Government, in full confidence that they will produce their desired effect. In respect to aggressions on our commerce, and other injuries, it cannot be doubted that a suitable indemnity will be made for them, The cession of Florida is a question which rests on different ground. The policy of that measure, and the conditions of it, in case the policy is admitted, are points to be decided by each Government for itself, from a view of its interest and other circumstances. Should the cession be made, and the other points be adjusted, there is no reason why the peace and harmony of the two nations should not be perpetual: there would remain no cause of jealousy between them—no point of collision. Possessed of ample territory to satisfy their growing population for ages to come, the United States would be left at liberty to pursue their interior arrangements without apprehending the interference of, or having the disposition to interfere with, their neighbors. Such a system of policy on their part would contribute in a very eminent degree to the security of the vast dominions of Spain to the south of us. To Spain, it is presumed that the territory is of but little importance: in itself it is of none, as it is a barren tract. If she retains it, it must be as a port for troops, to be pla[illegible] in opposition to us—a measure which ten[illegible] voke hostility and lead to war. The Ha[illegible] port which answers more effectually ev[illegible] which she could contemplate from this, w[illegible] free from all the objections that are app[illegible] the latter. Being an island, it is less assai[illegible] a foreign Power. Situated in the Gulf of Me[illegible] it furnishes the means of giving all the po[illegible] to her other possessions that she could des[illegible] by uniting her whole force at one poin[illegible] ing her means of defence against attack [illegible] annoying her enemies in time of war. I [illegible] estly hoped that the Catholic King w[illegible] dispassionate view of these circumstance[illegible] the relative situation of the two Powe[illegible] the President in a suitable provision for [illegible] friendship. Should he, however, be [illegible] pursue a different policy, on him will th[illegible] sibility rest for the consequences.

The relation which has subsisted in[illegible] tween His Imperial Majesty and the G[illegible] which I have the honor to represent h[illegible] the most friendly character. It is o[illegible] edge of that fact, and the satisfacto[illegible] which it furnishes, that the Emperor [illegible] terest in the welfare of the United Sta[illegible] the promise above adverted to, made o[illegible] to support with his good offices any negoti[illegible] which the President might commence wi[illegible] Court of Spain for the acquisition of Fl[illegible] also on the firm belief that the attainme[illegible] object, with the amicable adjustment [illegible] sisting differences between the United St[illegible] Spain, must be advantageous to France [illegible] good offices have been and are now req[illegible] support of that negotiation.

My mission to Spain being extraord[illegible] also temporary. As soon as its objects a[illegible] plished, it is my duty to return to Lond[illegible] I shall do through this metropolis, whe[illegible] have the honor and pleasure of being [illegible] again to His Imperial Majesty, and [illegible] edging in person his friendly offices to [illegible] ernment and country in a transaction o[illegible] portance to its interests, which the Pres[illegible] thought fit to commit in part to my agen[illegible]

I beg your Excellency to accept the [illegible] of my high consideration.

M. Talleyrand to General Armstrong.

PARIS, *December* 21.

SIR: I had the honor, in Brumaire [illegible] form Mr. Livingston that I would sub[illegible] inspection of His Imperial Majesty the [illegible] addressed to me relative to the motives of Mr. Monroe's journey to Spain, and some discussions between the Court of Madrid and the United States.

Among the observations made on this s[illegible] by Messrs. Livingston and Monroe, His Imp[illegible] Majesty has been obliged to give particula[illegible] tion to those bearing on the discussions, [illegible] the object is peculiarly interesting to the [illegible] Government. He has perceived that he [illegible] have been a stranger to the examination [illegible]

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liscussions, since they grew out of the treaty by which France has ceded Louisiana to the United States; and His Majesty has thought that an explanation, made with that fidelity which characterizes him, on the eastern boundaries of the ceded territory, would put an end to the differences to which this cession has given rise.

France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish to cede any other; and, that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the Treaty of St. Ildefonso, by which she had acquired that colony two years before.

Now it was stipulated, in her treaty of the year 1801, that the acquisition of Louisiana by France was a retrocession; that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day France ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and, could, therefore, give none back to France.

All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the 32d degree of north latitude, bears the name of Florida. It has been constantly designated in that way during the time that Spain held it; it bears the same in the treaties of limits between Spain and the United States; and, in different notes of Mr. Livingston of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida to that on the east of it.

According to the designation, thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi, and the sea, this country ought, in good faith and justice, to be distinguished from Louisiana.

Your Excellency knows that, before the preliminaries of 1762, confirmed by the Treaty of 1763, the French possessions, situated near the Mississippi, extended as far from the east of this river, towards the Ohio and the Illinois, as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name of Louisiana to the district of Mobile, as to the territory more to the north on the same bank of the river, which formerly belonged to France.

These observations, sir, will be sufficient to dispel every kind of doubt, with regard to the extent of the retrocession made by Spain to France, in the month of Vendemiaire, year 9. It was under this impression that the French and Spanish plenipotentiaries negotiated, and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before His Imperial Majesty the negotiations of Madrid which preceded the Treaty of 1801, and His Majesty is convinced that, during the whole of these negotiations, the Spanish Government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.

His Imperial Majesty has, moreover, authorized me to declare to you, that, at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired, by the treaty retroceding Louisiana, the country east of the Mississippi.

The candor of those observations proves to you, sir, how much value His Majesty attaches to the maintenance of a good understanding between two Powers, to whom France is united by connexions so intimate and so numerous. His Majesty, called upon to give explanatious on a question which interested France directly, persuades himself that they will leave no ground of misunderstanding between the United States and Spain; and that these two Powers, animated, as they ought to be, by the sentiments of friendship which their vicinity and their position render so necessary, will be able to agree with the same facility on the other subjects of their discussion.

This result His Imperial Majesty will learn with real interest. He saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves towards the Floridas by acts of violence, which not being founded in right, could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to His Majesty, because the United States seemed in this measure, to avail themselves of their treaty with France as an authority for their proceedings, and because he could scarcely reconcile, with the just opinion which he entertains of the wisdom and fidelity of the Federal Government, a course of proceedings, which nothing can authorize, towards a Power which has long occupied, and still occupies, one of the first ranks in Europe.

But the Federal Government having entered the path of negotiation, and the question which divided the two Powers being cleared up, there is reason to hope they will easily agree on the other points; and this His Majesty, from the sincere interest which he feels for the equal prosperity of the two nations, ardently desires.

Accept, sir, the assurance of my high consideration, C. M. TALLEYRAND.

Extract of a letter from General Armstrong, Minister Plenipotentiary of the United States at Paris, to Mr. Monroe, Minister Extraordinary and Plenipotentiary of the same, dated

PARIS, *March* 12, 1804.

The moment I received your letters of the 15th and 26th February, I took measures to sound this Government on the present posture of things at Madrid, which, on the authority of your communication, I represented as strongly indicating a rupture between the United States and Spain.

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Their manner of receiving this information, with the sentiments which they made no scruple to avow in relation to the subject generally, decided me at once against either submitting your correspondence with Cevallos, or submitting anything of my own for it—perceiving clearly that the effect of such communication would be to draw from them some new declaration friendly to the pretensions of Spain, and calculated merely to keep up the tone of her councils. The following sketch of what passed will enable you to judge how far this conclusion was correct, or otherwise.

On the subject of indemnity for the suspended right of deposit, (professing to know nothing of the ground on which the interruption had been given,) they would offer no opinion. On that of reparation for spoliations committed on our commerce by Frenchmen within the territory of His Catholic Majesty, they are equally prompt and decisive, declaring that our claim, having nothing of solidity in it, must be abandoned.

With regard to boundary, we have, they said, already given an opinion, and see no cause to change it. To the question, What would be the course of this Government in the event of a rupture between us and Spain? they answered, We can neither doubt nor hesitate—we must take part with Spain; and our note of the 30th Frimaire was intended to communicate and impress this idea.

Extract of a letter from the same to the same, dated

PARIS, *March* 18, 1805.

I received your favor of the first instant by the Preble. Another experiment has been made, but without producing any result propitious to our objects. Nay, the more this subject is discussed, the more determined are they in maintaining the doctrines and pursuing the conduct indicated in my letter of the 12th. In this explanation, three points were fully and distinctly, but cautiously, urged: 1st. The probability of an immediate rupture between Spain and the United States; 2d. The ill consequences of such an event to Spain directly, and to France indirectly, as her ally; and, 3d. Its tendency to promote the general views of Great Britain, though no closer political connexion between her and us were induced by it.

Extract of a letter from the same to the same, dated

PARIS, *April* 1, 1805.

Your letter of the 12th reached me yesterday. No material change of opinion or conduct has taken place here with regard to your business. A long and querulous note has been put in by the Spanish Chargé d'Affaires, (Santivanes,) stating the claims made by you, and the arguments employed in support of them, and soliciting from this Government its exposition of the Treaties of 1801 and 1803 on the several points in controversy. This note had not been answered on the 30th ult., and, from some circumstances, I suspect that there is no intention of answering it promptly.

VI.—*Correspondence between Messrs. Monroe and Pinckney and the Spanish Government.*

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *Jan.* 28, 1805.

SIR: It is the sincere desire of the President to establish the relations between the United States and Spain on a footing of permanent friendship. As a signal proof of that disposition, he has sent an extraordinary mission to His Catholic Majesty, with full power, in conjunction with their Minister Plenipotentiary at Madrid, to enter into such arrangements, on just and equal principles, as may be best adapted to the object. The situation of the two countries, at this time, required such an effort on his part, and it is our wish, as it is our duty, to do everything in our power to carry it into effect.

It is proper to examine, impartially, the several points which are depending between our Governments. To make their friendship perpetual, every cause of complaint and inquietude should be brought into view, and amicably settled. For this purpose, it is necessary to ascertain their respective rights in each case, since thereby an unerring rule will be established, by which this adjustment may be made, and their future harmony secured. No just Government will ever demand anything which will not bear the test of that rule: no just Government will ever refuse to discharge an obligation which it imposes. We will proceed to this inquiry, in full confidence that both our Governments are animated with the same zeal to do justice, with the same desire to cherish the friendly relations which have heretofore subsisted between them.

In the course of the last war, many aggressions were committed on the peaceful, and, as it is presumed, lawful commerce of the United States, to the great injury of their citizens, within the territory and jurisdiction of Spain, for which they are entitled to compensation. It cannot be doubted but that Spain is responsible for the injuries, in all cases where the condemnation was contrary to the law of nations, the subsisting treaty between the two Powers, and those principles of justice which are recognised and respected by other nations. It is to be regretted that a perfect accord has not yet taken place between our Governments on the mode of adjusting all the claims proceeding from this cause. It is, however, matter of much satisfaction to observe, that they have gone so far in the establishment of just principles, and approached so near in sentiments, as to justify the expectation that all difficulties will now be removed. The discussions which have already taken place on this subject have too fully illustrated its merits to require anything to be added on that point at present. We observe, with pleasure, that the President reposes too much confidence in the high character of His Majesty, which is distinguished by a sacred regard to justice, to doubt his agreement to whatever it dictates. The proposition which we have the honor to make to your Excellency on this point rests on that basis, and will, therefore, we flatter ourselves, receive his

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anction. Your Excellency will find that, in the erms of payment of such sums as may be awarded, a new accommodation is proposed, which is equally a proof of the disposition of our Government to conciliate the views and interests of His Catholic Majesty in this transaction.

The suppression of the right of deposit at New Orleans, by the Intendant of His Majesty, in the Winter of 1802–'3, contrary to the Treaty of 1795, to the great injury of citizens of the United States who inhabit the territory which is bounded by the Mississippi, and the waters emptying into it, is also an act for which they are entitled to reparation. By restoring the deposit, on the complaint of the President, His Majesty gave a satisfactory proof of his strict regard to the obligations of treaties, and the principles of justice; but, by so doing, the injuries which had been sustained by individuals had not been redressed, nor were the just views of His Majesty in that respect completely fulfilled. It is presumed that His Majesty will not hesitate to allow an adequate indemnity for the losses which were sustained by this act of his Intendant. It is one of the objects of the enclosed project to ptovide for them.

The above are the injuries which have been received by citizens of the United States, for which it is proposed to provide a suitable compensation. In seeking justice, however, it is equally the duty of their Government to render it. It is possible that His Majesty's subjects may have received injuries within the territory or jurisdiction of the United States, or by their officers elsewhere, for which those States are also responsible. It has been the invariable effort of their Government to preserve the best understanding with His Catholic Majesty, by the fathful observance of every duty imposed by the law of nations and the subsisting treaty between them, in their political and social intercourse. If such injuries have been rendered, it is the earnest wish of the President that just reparation should be made for them.

For the fair and amicable adjustment of all such claims on both sides, it is proposed to establish a Board of Commissioners, impartial and independent, which shall be vested with full power to hear and determine and grant awards for all such as shall appear to be well founded. This mode has proved adequate, in similar cases, between the United States and other Powers. It is not doubted but that it would prove equally so between the United States and Spain.

There is another question, which it is equally proper to adjust at this time. By the cession of Louisiana by His Majesty the Emperor of France to the United States, it becomes necessary to settle its boundary with the territories of His Catholic Majesty in that quarter. It is presumed that this subject is capable of such clear and satisfactory illustration, as to leave no cause for difference of opinion between the parties. By the treaty of April 30, 1803, between the United States and France, the latter ceded to the former the said province, in full sovereignty, in the same extent, and with all the rights which belonged to it, under the Treaty of 1800, by which she had acquired it of Spain. That the nature and extent of the acquisition might be precisely known, the article of the Treaty of St. Ildefonso, making the cession, is inserted in that of Paris. To a fair and just construction, therefore, of that article, the United States are referred for the extent of their rights under the Treaty of 1803. There is nothing to oppugn its force or detract from the import of its very clear and explicit terms. We have the honor to present to your Excellency a paper on this subject, which, we presume, proves, in the most satisfactory manner, that the boundaries of that province, as established by the treaties referred to, are the river Perdido to the east, and the Rio Bravo to the west. The facts and principles which justify this conclusion are so satisfactory to our Government, as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory which is above described. Aware, however, that the question of boundary was one in which His Catholic Majesty was also interested, the President was not unmindful of what was due to that consideration. In pursuing and supporting the just rights of the United States, he is far from wishing to interfere with, or encroach on, those of Spain. As neighbors, he was also sensible of what was due to that interesting relation; and as a Power which claims respect in its intercourse with other nations, he was resolved to give a distinguished proof of that of the United States for His Catholic Majesty in the present case. Thus, no step has been taken since the territory was surrendered to those States by France, otherwise than a strong expression by the Congress of its sense of their rights; no portion of it has been garrisoned, or even possessed by their troops, which could involve any question of the kind adverted to, or manifested a disposition incompatible with these just and friendly sentiments. His definitive arrangements are yet to be taken. He seeks to adopt them in harmony with the sentiments and interests of His Catholic Majesty—a motive which induced the measure of an extraordinary mission, and inspires this communication.

So far, we have treated of the boundary which of right ought to be established between the two nations. It is proper, however, to examine and treat the subject in another view.

By the acquisition of Louisiana, the United States and Spain have assumed, in some respects, a new relation to each other. It is in its nature a very interesting one. It is practicable, at this time, to place it on such a footing, by suitable arrangements, as to preserve their friendship for ages. The importance of the subject merits their very dispassionate consideration, since a failure to adopt such may be productive of much harm. Happily, it is an unquestionable truth, that in consideration of the permanent and substantial interest of the two Powers, there does not exist at present a single point of collision, an opposing interest between them. There are only some topics of uneasiness and jealousy easy to be removed, but which, if suffered to remain, may engen-

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der animosities, embitter their intercourse, and finally prove the cause of much trouble, and even misfortune, to both nations. To remove them requires no sacrifice; on the contrary, much will be gained, since, by so doing, their harmony, and with it their permanent interests, will be secured.

What effect does the acquisition of Louisiana by the United States produce on the interest of the Powers in reference to each other? and what ought it to produce in their policy? These questions admit a ready answer. That province is bounded by Florida to the east, and Mexico to the west; hence, Florida is surrounded on every side, that of the ocean excepted, by the territory of the United States. It is, of course, an object with those States to possess it. And as Louisiana extends westward to Mexico, it is presumed to be an object with Spain to retard the progress of their settlements in that quarter. Here, then, is the obvious ground of an accord between the two nations, in an arrangement which seems to be well adapted to accomplish an object which each deems of importance. The object which we have the honor to present to your Excellency is intended to conciliate and provide for those interests. It is believed that its adoption will effectually do so. Your Excellency must be sensible, under existing circumstances, and especially since the acquisition of Louisiana, that that of Florida has become an object of much less importance to the United States. It is not from the want of territory, because it is known not to be fertile, and without it they have enough to satisfy their growing population for ages to come. It is, in truth, suggested more by a desire to remove all cause of a future variance between them and Spain, than of any immediate advantage to be derived from it in other respects. While that province remains to Spain, it must be, in some degree, a cause of jealousy to the United States. Situated in their interior, and detached from the other dominions of His Catholic Majesty, it is probable, to render it secure, that he would be compelled to put a strong force there. Hence, the United States would be compelled to do the same. Thus the attitude of hostilities would be taken, which a thousand causes would tend to promote. The jealousy of Governments so contiguously situated, the rivalry of Governors and Generals, and the conflict of commercial regulations, could not fail to produce that effect. In addition to which, it cannot be doubted that other Powers would take a pleasure in seeing a rupture between the United States and Spain. It is presumed that they are interested in it. Remove, however, this obstacle, and establish on just principles their western boundary, and all cause of inquietude and misunderstanding will be at an end. Their territories and police will be distinct, and their military stations at some distance from each other. Each Power will regulate its own concerns as it thinks best: neither will be interested in disturbing those of the other. Their Governments, on the contrary, will find themselves bound by their interests, their faith, and their character, to keep their citizens within their own limits, which it will take ages to fill. Should Spain [illegible] strong force in Florida, it will not es[illegible] Excellency's attention, that it will be [illegible] posed to the danger of being taken pos[illegible] by some other Power who might wish to [illegible] with very different views towards Sp[illegible] those which animate the Governme[illegible] United States. Without a strong force [illegible] might even become an asylum for adve[illegible] and freebooters, to the great annoyance [illegible] nations. In this light, however, we forbe[illegible] press it.

It is proposed, by the enclosed projec[illegible] lish a district of neutral territory betwee[illegible] Powers, on which neither party shall [illegible] and, with a view to accommodation, th[illegible] be, for a given term, within the suppo[illegible] of Louisiana. We are willing tha[illegible] should amount to twenty years, to gi[illegible] ulterior arrangements relative to tha[illegible] the establishment of a permanent bou[illegible] tween them in that quarter. If the b[illegible] Louisiana are, as our Government [illegible] to be, and as, we presume, is suffic[illegible] by the enclosed paper, this arrange[illegible] be considered otherwise than in the [illegible] tended. This proposition, however, [illegible] as an equivalent for the cession of Fl[illegible] proposed to make a pecuniary compens[illegible] the cession to an amount which is deem[illegible] to its value. To fix that value, in case [illegible] olic Majesty is disposed to make the ce[illegible] not, it is presumed, be difficult, since, w[illegible] garding other considerations, the sum [illegible] the whole province of Louisiana furn[illegible] and suitable standard. By comparing [illegible] of the Territory of Louisiana with tha[illegible] da, and taking into consideration the [illegible] advantages derived to the United States [illegible] entire command of the Mississippi a[illegible] waters emptying into it, which follow[illegible] sion of Louisiana, we are promptly a[illegible] result. On this point we wish to ca[illegible] son, when it may suit your Excellen[illegible] nience. The sum which may thus be [illegible] it is wished to appropriate in the man[illegible] tioned in the proposed convention.

In seeking to terminate amicably all [illegible] differences between the two Powers, an[illegible] their future relations on a basis of p[illegible] friendship, it is thought that a formal [illegible] in behalf of each, not only to observe [illegible] which may be agreed on, but to cause [illegible] observed by their respective citizens an[illegible] may have a very salutary effect. If [illegible] ulation is regarded only as proof of th[illegible] which the convention is formed, it w[illegible] have weight with both Governments t[illegible] compliance with it. But it merits to be [illegible] in a stronger light, since it makes it th[illegible] each Government to be attentive to, and [illegible] it on their citizens and subjects, resp[illegible] strictly to observe the same. As the c[illegible] of the 11th of August, 1802, has not be[illegible] into effect, it is thought best to suffer [illegible] and incorporate its contents into the pr[illegible]

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on that principle the project is formed. There seems to be a propriety in accommodating all subsisting differences, and providing for the respective interests of the two Powers, to comprise the stipulations which are necessary for the purpose, in the same instrument. To this mode, however, we have no preference, and only submit the idea to your Excellency's consideration.

To facilitate the communication, and promote despatch in an object of so much importance to our Government, we have the honor to annex a translation into French of this note, and the papers which accompany it, to your Excellency. They are as correct as they could be made by those attached to the legation, to whom alone we could confide their contents. We beg leave, however, to observe, that we consider ourselves responsible only for the originals, which are in English.

We beg your Excellency to accept the assurance of our distinguished consideration, &c.

CHARLES PINCKNEY.
JAMES MONROE.

Project of a Convention between the United States and Spain.

ARTICLE 1. Spain, acknowledging and confirming to the United States the cession of Louisiana, in an extent eastward to the river Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the Gulf of Mexico, together with all the islands thereunto annexed, either while the Floridas belonged to Great Britain, or after they became provinces of Spain.

Possession of the said territory shall be delivered to a person authorized by the United States to receive the same, in —— days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property, except ships and military stores, as also all public archives belonging to the same.

Within —— days after the delivery of possession, or sooner, if posssible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any part of the territory ceded by France to the United States, all such troops shall, without delay, be withdrawn.

Spanish subjects, within the ceded territory, who do not choose to become citizens of the United States, shall be allowed eighteen months to dispose of their real, and to dispose of or remove their other property.

The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties, and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the treaty of April 30, 1803, between those States and France.

ART. 2. It is agreed that, for the term of —— years, no land shall be granted; nor persons who may have settled since the 1st of October, 1800, on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit: by a limit consisting of the river Colorado on the one side, from its mouth to its source; thence, a straight line to the most southwestwardly source of the Red river, with such deflections, however, as will head all the waters of that river; thence, along the ridge of high land which divides the waters belonging to the Mississippi and Missouri from those belonging to the Rio Bravo; and thence, a meridian to the northern boundary of Louisiana: and by a limit, on the other side of the Rio Bravo, from its mouth to its source: and thence, a meridian to the northern boundary of Louisiana.

Such of the settlements within the foregoing limits, not prohibited by the preceding clause, as were not under the authority of the government of Louisiana, shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will, respectively, offer reasonable inducements, without being obliged to use force, to all such settlers to return from the space above limited, and establish themselves elsewhere.

The Indian tribes within the said limits shall not be considered as subject to, or exclusively connected with, either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them, as may be necessary for that purpose; and each of the parties agreeing to restrain, by all proper and requisite means, its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions on the subjects or citizens of the other party. The parties agree, moreover, each of them, in all public transactions and communications with the Indians, to promote in them a disposition to live in peace and friendship with the other party.

It shall be free for Indians now within the territory of either of the parties to remove to and settle the said limits, without restraint from the other party; and either party may promote such a change of settlement by Indians within its territory, taking due care not to make it occasion of war amongst the Indians, or of animosities in any of them against the other party.

The United States may establish garrisons sufficient, as security against the Indians, and all trading-houses, at any places within the said limits, where garrisons existed at any time under the Spanish government of Louisiana. And Spain may continue garrisons, for the like purpose, at any places where she now has them, and establish trading-houses thereat. Either party may also cause or permit any part of the country within the said limits to be explored and surveyed, with a view to commerce or science.

It shall be free for either party to march troops within the said limits against Indians at war with them, and for the purpose of driving or keeping out invaders or intruders.

ART. 3. It is agreed, that, within —— years pre-

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vious to the expiration of the aforesaid term of —— years, due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States westward of the Mississippi, and the territories of His Catholic Majesty; which boundary shall then be established according to the true and just extent of Louisiana as ceded by Spain to France, and by France to the United States, uninfluenced, in the smallest degree, or in any manner whatever, by the delay, or by any arrangement or circumstance contained in or resulting from this convention. It is also expressly stipulated by the parties, that they will cause the limits which are hereby defined, between them, to be faithfully observed, by restraining their respective citizens and subjects, by suitable arrangements, from violating them in any manner whatever.

Art. 4. His Majesty and the United States, wishing, in the same spirit of conciliation, amicably to adjust the claims which have arisen from the wrongs and excesses committed during the late war by individuals of either nation, or by others, within the territory or jurisdiction of either, contrary to the law of nations, the treaty existing between the two countries, or the principles of justice, have determined that the same shall be adjusted in the following manner: A Board of Commissioners shall be formed, consisting of five Commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the President of the United States, with the advice and consent of the Senate, and the fifth by common consent of the four Commissioners; and, in case they should not be able to agree on a person for the fifth, the Commissioners of each Power shall name one, and leave the decision to lot; and hereafter, in the case of death, sickness, or necessary absence, of any of those already appointed, the remaining Commissioner or Commissioners of the Power whose Commissioner is dead or unable to attend, shall fill the vacancy. When thus appointed, each one of them shall take an oath to examine, discuss, and decide, impartially on the claims which they are to judge according to the law of nations, the existing treaty, and the principles of justice. The Commissioners shall meet and hold their session in Madrid, where, within the term of eighteen months, to be reckoned from the day on which they assemble, they shall receive all claims which, in consequence of this convention, may be made as well by the subjects of His Catholic Majesty, as by the citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries, sustained by them in consequence of the wrongs and excesses committed by Spanish subjects, American citizens, or others, within the territory or jurisdiction of either of the contracting parties. The Commissioners are to hear and examine, on oath, every question relative to the said demands, and receive as worthy of credit all testimony and evidence the authenticity of which cannot be doubted. The said Commissioners shall grant awards for the sums which may be due to the several claimants, with interest on the same, at the rate of six per cent. per a[illegible] commence from such dates, respecti[illegible] them shall appear to be just. From t[illegible] of the Commissioners there shall be [illegible] and the agreement of three of them sh[illegible] force and effect to their decisions, as [illegible] respect to the justice of the claims, as [illegible] nifications which may be adjudged to [illegible] the said contracting parties obliging th[illegible] satisfy the said awards in specie, in [illegible] stipulated by the sixth article of this [illegible]

Art. 5. The said Commissioners [illegible] take cognizance of and estimate a[illegible] which were sustained by the citizens [illegible] ted States, by the suppression of the [illegible] posit at New Orleans by the Inten[illegible] Catholic Majesty, in the year 1802 [illegible] the Treaty of 1795; for which the s[illegible] sioners shall grant a certificate to t[illegible] ment of the United States, the amou[illegible] shall be paid to it by the Governme[illegible] in the same manner as it is stipulate[illegible] other claims in the preceding article [illegible] ernment of the United States shall p[illegible] thus received to the individuals who [illegible] by the suppression of the said depos[illegible]

Art. 6. It is further agreed that the [illegible] Governments will pay the sums awar[illegible] said Commissioners, under this conve[illegible] manner following:

The Government of the United Sta[illegible] all such sums, not exceeding —— do[illegible] may be awarded as compensation to t[illegible] of the United States from his Cathol[illegible] in three equal annual instalments, a[illegible] Washington: the first instalments t[illegible] eighteen months after the exchange o[illegible] cations hereof; or, in case they shall not [illegible] they shall bear an interest of six pe[illegible] annum, from the time they become du[illegible] are actually discharged; and, in case th[illegible] of the said sums should not amount to [illegible] of —— dollars, the United States w[illegible] Catholic Majesty, within one year a[illegible] liquidation of the claims cognizable [illegible] Board, at the city of Washington, so [illegible] said aggregate may fall short of the s[illegible] mentioned: but, on the other hand, if [illegible] amount of the sums awarded to citize[illegible] United States should exceed the sum [illegible] lars, His Catholic Majesty shall pay th[illegible] without deduction, to such claimants, [illegible] year after their claims shall be respecti[illegible] dated. The said claims shall, nevertheless [illegible] an interest of six per cent. from the t[illegible] liquidation until they are discharged.

The Government of the United Sta[illegible] also pay, without deduction, at the cit[illegible] ington, all such sums as may be awar[illegible] them by the said commissioners, for com[illegible] due to Spanish subjects, within one year a[illegible] claims shall be liquidated; and, from the [illegible] their liquidation, the said claims sha[illegible] interest of six per cent. per annum, until [illegible] discharged.

Art. 7. This convention shall be ratifi[illegible]

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—— after the signing thereof, or sooner, if possible, and the ratifications shall be exchanged within —— days after the ratification by the United States, at the city of Washington.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *January* 31, 1805.

GENTLEMEN: The King, my master, having, on all occasions, given such repeated proofs of his friendship towards the United States, and of his desire to live with them in peace and harmony, could not but hear with pleasure what you have been pleased to manifest in your esteemed note of the 28th instant, relative to the sincere desire of the President of the United States to see the friendly relations of the two countries in a manner the most solid and permanent, and that, for this purpose, the American Government had named an extraordinary mission to this Court, to commence such negotiations as might be best adapted to complete an object of so much importance, and founding them on just and impartial principles. His Catholic Majesty, on his part, desires nothing more ardently than that those just and equal principles, so conformable to the rectitude of his Royal mind, may direct the discussions and negotiations depending between the two Governments. For this end nothing appears better adapted than the mode proposed by your Excellencies in the first part of your note:

"It is proper to examine impartially the several points which are depending between our Governments. To make their friendship perpetual, every cause of complaint and inquietude should be brought into view, and amicably settled. For this purpose it is necessary to ascertain their respective rights, in each case; since, thereby, an unerring rule will be established, by which this adjustment may be made, and their future harmony secured. No just Government will ever demand anything which will not bear the test of that rule: no just Government will ever refuse to discharge an obligation which it imposes."

According to this principle proposed by your Excellencies, and which certainly is well worthy the good faith of both Governments, it appears the more proper that, before we proceed to examine projects of a convention, which ought to result from discussion of all the different points in dispute, we should first examine each point separately, and in this form determine the respective rights of each country; and then proceed to such negotiations as the interest of each country may require. Under this idea, and following the tenor of your note, it appears that the points depending may be reduced to the following:

First. The damages occasioned during the last war, by the excesses committed by individuals of both countries, contrary to the law of nations and the existing treaty. This point is nearly decided by the convention of 1802, which has been ratified by the American Government; and His Majesty, on his part, is disposed to ratify the same, after the obstacles which occasioned its postponement, shall be removed. Thus there is but little to regulate on this point, considering how far it is already advanced, and that the sincere desire of both Governments is to proceed with candor and good faith.

The second point mentioned in your Excellencies' note, relative to the indemnification of injuries supposed to have been received by American citizens, in consequence of the suppression of the deposit at New Orleans by order of the Intendant at that city, is a point of discussion which has not as yet been commenced, and it is one on which the Spanish Government is convinced that the United States have neither any motive nor right to found a reclamation.

Third. This point, which is relative to the demarcation of the limits of Louisiana, retroceded by Spain to France, and by her transferred to the United States, by its nature, subdivides itself into two parts, to wit: the demarcation of the limits of Louisiana on the east, or side of the Floridas, and that on the side of the interior provinces of New Spain. As a testimony of the desire with which His Majesty is actuated, that these demarcations may be executed with the skill and and justice requisite, and at the same time with all possible despatch, I have to inform you, what is already known to your Government, that, at the commencement of the last year, the King named for his Commissioner for these demarcations and limits, Brigadier Marquis of Casa Calvo, who is now at New Orleans with the engineer Don Joseph Martinez. Not having yet agreed upon others of the said points mentioned in your Excellencies' note, and they being in their nature unconnected, it appears that it would only be confounding them and multiplying their confusion to treat upon the whole at once; and proceed immediately to form for either party projects of a convention from the mass. Analyze these incorporated points of discussion, and a discussion will become much more plain and simple, and, with this new light, it will afterwards be easy to embrace the whole at one view.

This method is clear and simple, and, according to my idea, is what you indicate in the first part of your note. This being the case, it appears to me that we may occupy ourselves, in the first place, in determining the point relative to reclamation; for which purpose, we may take up the convention of August, 1802, by reason of its almost finished state; fix the rights of each country upon each point, and the means will be plain and easy to negotiate them, with that equal utility which both countries may find convenient. I have no doubt but you will find this method of proceeding conformable to reason, and, waiting your reply, I am, &c.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *February* 5, 1805.

SIR: We have received your Excellency's letter of the 31st ultimo, in answer to that which we had the honor to write to you on the 28th, and

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beg you to be persuaded that we are highly gratified with the assurance it contains, that His Catholic Majesty is disposed to meet the President of the United States in such arrangements, on just and equal principles, as may be necessary to accommodate subsisting differences, and place the relations of the two countries on a basis of permanent friendship. Since our Governments are animated with such honorable views, it cannot be doubted that their object will be accomplished.

Your Excellency observes that it will be proper to examine previously, and separately, each point depending between our Governments, to establish their respective rights in each, and then proceed to the adoption of such a project of a convention as may provide for the whole. In this idea we perfectly agree. It was on that principle, as you justly observe, that our note of the 28th was conceived; by it every topic of complaint, every question of interest is presented to your Excellency's view. It remains only to decide these several points, and, with them, the fortune of the present negotiation.

The case of claims for injuries done to the citizens and subjects of either party, within the limits and jurisdiction of the other, being first in order of time, ought to be first determined. As we presumed that this subject had been already sufficiently discussed, we thought it sufficient in our former note to submit such arrangement respecting it as we were authorized to propose. Since, however, it seems to be your Excellency's desire, we shall not hesitate to communicate more fully the views and sentiments of our Government on this point, and the principles on which they are founded. It is the more necessary so to do, to free it from the complexity in which it may be otherwise involved.

It is known to your Excellency, that, by the convention of August 11, 1802, an immediate provision was not made for satisfying the claims of their respective citizens and subjects for all the injuries which they had received in the course of the last war, within the jurisdiction of each Power, and for which they were responsible; that it was not then possible for the Plenipotentiaries charged with that subject to agree on a mode of arbitrating the claims originating from the excesses of foreign cruisers, agents, consuls or tribunals, in their respective territories, which might be imputable to their two Governments; and that, in consequence thereof, it was agreed between them to provide then for the adjustment and satisfaction of such as were committed by their respective citizens and subjects only, reserving to each Government, its citizens, and subjects, their respective rights, with liberty to bring forward their claims at such times as might be convenient to them. Had that convention been carried into effect at any time before the present, we should have now to provide for the claims which were then postponed, whose just title to reparation seems to be sufficiently sanctioned by that instrument. But as that convention has not been carried into effect, and, of course, no satisfaction made for that portion of the injuries complained of, it is proper that the whole subject should now be taken into view and definitively settled. It would badly comport with the spirit of the present negotiation, whose object is to adjust every difference, and remove every cause of inquietude, to leave anything unfinished. Our Government considers its citizens entitled to compensation for every injury which they did receive within the jurisdiction of His Catholic Majesty, contrary to the treaty between the United States and Spain, the law of nations, and the principles of justice sanctioned by them, whether they were committed by His Majesty's subjects and tribunals, or those of any other nation. For all such acts, the Government within whose limits they are committed is alone responsible; for over them has it the exclusive jurisdiction. A contrary opinion cannot be advanced without derogating from the established doctrine of the law of nations, or rights of sovereignty incident to each. It is a well established doctrine, that no two nations can, by their accord, or any arrangement between them, change a law adopted by the whole. Such a change, if agreed on by any two nations, can only operate as a special compact between them, which finds an equivalent by the reciprocity of the stipulation, or some other article of the treaty, but can never change the relation of either with other Powers, or the rights and claims of such other Powers on each of those nations. It is equally well established, that protection is due by every Government to foreigners within its limits, in return for which they are entitled to their allegiance while they remain with them, as it is that such protection cannot be withdrawn, or the jurisdiction of a foreign Power be permitted within its limits, to the injury of a third Power. A contrary doctrine supposes separate and independent jurisdictions and Governments within the same limits, and altogether confounds the nature of sovereignty, which is complete, absolute, and exclusive, wherever it exists. It is proper to add that this doctrine of the law of nations, so clear and explicit, is still further enforced by the stipulation of the sixth article of the treaty of 1795 between the United States and Spain.

In the project which we had the honor to present to your Excellency, you will find it is intended to provide for the whole of these claims, whether the convention of August 11th, 1802, is carried into effect or suffered to expire. In the former case, we should expect that an article be inserted in the proposed one, to provide for those cases which were unprovided for in that. We consider it our duty to inform your Excellency that we cannot consent to any arrangement which does not provide for the whole subject, having received orders to that effect by a courier who has just arrived with despatches as late as the 3d December last. We owe it to the spirit of candor which is to prevail in this negotiation, to state to your Excellency this fact; and we ask of you to inform us, in the same spirit, whether we are to expect the accord of your Government to such an arrangement as will be effectual to this object.

That our Government is entitled to expect an

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adequate compensation for the injuries which our citizens received by the suppression of the right of deposit at New Orleans, is a point on which we did presume there could be no doubt. The right to such a deposit is stipulated forever to the United States, by the twenty-second article of their Treaty with Spain, either at New Orleans, or on some other part of the banks of the Mississippi equally convenient to the parties. It is the obvious import of that article, that there never should be a moment's interruption in the enjoyment of that right; a right which was so necessary to the interest of those dependent on it, and, of course, to the peace and friendship of the two countries. In exercising the right reserved to His Catholic Majesty to change the place of deposit, and assign some other equivalent establishment, it is equally the import of that article, that the whole arrangement should be made at the same time; that the same act which suppressed the existing deposit should open another; and that the Government of the United States should be apprized of that intention in due time to prevent their citizens being injured by the measure, and also to be consulted on the place which it was proposed to substitute to the existing one. In the proceeding which took place at New Orleans, none of those rules were observed; all respect for our Government and the rights of our citizens was lost sight of. In short, had that act been imputable to His Majesty's Government, the President could have seen in it nothing short of a commencement of hostilities, as much so as if his troops had invaded their territory, or his fleets entered in hostile array any of their ports. But the President never considered that act as imputable to His Majesty's Government; he entertained too high a respect for the good faith of the Catholic King to believe that it proceeded from him; he always considered it as the act of the Intendant, and was happy in the result to find that such was the case. Nevertheless, being the act of His Majesty's officer, his Government is responsible for the injuries resulting from it. Your Excellency will find that, as early as March 25, 1803, the Minister of the United States accredited with His Majesty, claimed, by order of the President, an indemnity for these injuries, which was repeated in subsequent notes of the 12th and 23d of April of the same year. It has not since been pressed, because by like order, the subject was reserved with others for final arrangement at this present occasion.

On the subject of limits, we have little to add to what we have already stated in our former note. By it a full view is given of what our Government conceives to be its rights in that respect. The Commissioners appointed by His Majesty for the demarcation thereof can do nothing till some agreement takes place between the two Governments to fix the principle which is to guide them. They must remain inactive until it be known by what course, latitude, meridian, or natural boundary, the demarcation is to be made. It is an important object of the present negotiation to fix that principle. We take the liberty also to refer your Excellency to our former note, and the pieces which accompanied it, for the views of our Government on the other topics of a territorial nature. It is not in our power to add anything on those points to what we have therein stated.

The President, being very desirous, with a view to the permanent harmony and welfare of the two nations, to adjust and arrange every question and interest depending between them, and having given us full power for the like purpose, waits with anxiety the result. Having had the honor to submit to your Excellency, as was agreed in our first interview, our propositions, for the attainment of that desirable end, by which the subject is presented equally in detail as in a general view, and, having now given the further explanations, which were desired by your esteemed note of the 31st ultimo, we have only to request that you will give us your answer to the same. As every point has been long under the consideration of His Majesty's Government, we do not doubt that its mind is made up as to the course the business is to take. It is in His Majesty's power, by the answer which you give, to fix at once the relations which are to subsist in future between the two nations. The United States have done everything in their power, which a regard to justice and the rights of their citizens will permit, to place and preserve them on a most friendly footing; and we flatter ourselves that His Catholic Majesty, who is distinguished, among Sovereigns, by his regard for justice and good faith, will meet them in such arrangements as may be effectual to the object.

We beg your Excellency to accept the assurance of our distinguished consideration and esteem.

CHARLES PINCKNEY.
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *Feb.* 10, 1805.

SIRS: I see by the tenor of your esteemed favor of the 5th instant, in reply to my note of the 31st ultimo, that we are of the same opinion, as it relates to the principle established, that, to regulate amicably all the points depending between the two Governments, it is necessary, first, to establish the rights of each nation upon each one of the points in dispute, and then to bring forward such negotiations as the reciprocal interests of each country may require; and, in consequence of the point relative to indemnification for damages, occasioned during the last war, by individuals of each nation, being already so far advanced, that ought undoubtedly first to occupy our attention: we will, therefore, in this letter, discuss the points relative to indemnification, leaving for another opportunity the discussion on the limits, which is so different in its nature.

It is just that the losses sustained by the citizens or subjects of either nation, during the last war, contrary to the law of nations, or the existing treaty, should be satisfied; and to this effect the convention of the 11th of August, 1802, between the Plenipotentiaries of the two Governments, was concluded, that the individual sufferers might find a quiet and convenient redress.

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The intention of the King, my master, always unchangeable, and always conformable to the accredited honor and justice which characterize him, is now the same that it was at the time that the convention was concluded.

However, some circumstances have taken place between the time it was concluded and its ratification, which will make several explanations necessary. In the first place, it appears that various subjects of Spain, who had reclamations to make, having been injured by citizens of the United States, in consequence of this convention, came to Madrid from South America, hearing that it was adjusted, but were obliged to return home upon the report that the Senate of the United States had refused to ratify it during the session of 1803. It was but reasonable, then, that these vassals of His Majesty should be informed that the convention was ratified, that they might come forward to establish their claims; and for this, it was necessary to give them a certain space of time. His Majesty proposed that this space of time should be agreed on between the two Governments, that the ratification might be known to all those interested.

It having come to the knowledge of His Majesty that Congress had, on the 27th of February, approved an act, by which it appears that the President was authorized to establish custom-houses in the Territory of West Florida, and as this province belongs to His Majesty, he having conquered it by the valor of his arms, not having received it from France, of course could not *retrocede* it to her; and as he was in quiet possession of the same, and still remaining possessed, His Majesty could not but be offended at this account. Even should it be supposed that the United States have pretensions to this territory, it certainly was not the way to bring them forward to proceed to acts of possession, and disturb a friendly nation in her rights, by a solemn legislative act; such conduct must, consequently, appear to His Majesty very little conformable to the friendly relations of the two countries; and, under such circumstances, it did not correspond with the respect due to his royal person, or to the nation which he governs, to ratify conventions, which are acts of political friendship, with those who had violated, in a solemn manner, the rights of his sovereignty, until they should give satisfaction, or corresponding explanation. Thus it was just that he should ask this satisfaction, which was done accordingly.

It having also reached the King's notice that the French Government had satisfied the United States for the damages sustained during the last war by her privateers, it appeared not only unnecessary, but capable of producing confusion, to let the sixth article of the Convention of August, 1802, exist; by which, as His Majesty did not confess himself responsible for the damages occasioned by French privateers, on the coast and in the ports of Spain, the United States did not strengthen their right which they thought they possessed; and to let it exist would but expose the business to confusion. A desire, therefore, was manifested, that the sixth article should be suppressed. For the purpose of making these circumstances known to the American Government, His Majesty thought proper to suspend the ratification of the Treaty, and to send off a courier to the United States, with letters to this effect, to his Minister resident there.

Your Excellencies are acquainted that your Government, being instructed relative to the observations which were made to them by His Majesty's Minister upon the subject, agreed to fix a term, in which His Majesty's subjects interested in the convention might have notice of its ratification, and come forward with their claims before the Commissioners; and that each Government should give orders to their respective citizens and subjects, not to commence their operations until a convenient term should expire. Thus, upon this article, there remains nothing to do but to fix this term, in order that the ratification of the convention may take place.

In respect to the second particular, the reply of the American Government was not so decisive and clear, as His Majesty had a right to expect from a Government so friendly. The act of Congress of the 24th of February, 1804, in its obvious and literal sense, disturbed the peaceable possession which his Majesty had, and still has, of West Florida; and the explanations of the President of the United States, contained in his proclamation of the 3d of May, saying that it was to be carried into effect within the United States, could not be considered but as equivocal and susceptible of a double meaning, although the explanation of the Secretary of State of the United States is somewhat more explicit, promising to leave everything *in statu quo*, until an amicable arrangement should take place with Spain; and that the port of entry mentioned in the act should be established at Fort Stoddert, within the present territory of the United States. As His Majesty desires to live in harmony with the United States, he wishes to persuade himself that this explanation, although it does not give that satisfaction which he had so just a right to expect, is in some measure satisfactory, so far as it respects his quiet possession of West Florida. But could not His Majesty complain that satisfaction has not been given in explicit and solemn terms, for the publicity of a solemn act, whose obvious and literal sense went to disturb his quiet possession? On the other hand, it is said, in a plausible manner, that the port of entry shall be at Fort Stoddert: but how is it possible to arrive at Fort Stoddert, or go from thence to the sea, without navigating the rivers of West Florida, traversing its territory, and disturbing the peaceable possession of His Majesty? Thus, his well founded motives of complaint, in respect to that act, still exist; and His Majesty intends to keep them in mind, that satisfaction may be given by the United States; but, as it relates to ratifying the Convention of August, 1802, His Majesty agrees, from this time, to be satisfied in this respect; and thinks, in so doing, that he gives an unequivocal testimony of his friendship towards the United States.

Two obstacles to the ratification of the conven-

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tion being removed, we should only now treat of what relates to the sixth article of said convention. His Majesty expressed a desire that this article should be suppressed, under the idea that its insertion would neither add to nor diminish the rights of the United States or of His Majesty; the clear and obvious sense of that article is, that the two contracting parties, not having been able to agree relative to the indemnities reclaimed by the United States for damages occasioned by French privateers and tribunals, on the coast and in the ports of Spain, reserved to themselves, for a future day, the rights they might have; the United States to reclaim, and His Majesty to show that he was not in any manner bound to satisfy them. In this particular, therefore, no right is given to the citizens of the United States, or taken away from them, by this article; and during the long space of time that has passed between the adjusting the convention and its ratification, His Majesty thinks he has demonstrated, in a most evident and decisive manner, that he is not responsible for the said indemnification. It appears superfluous to permit the existence of an article that can neither give nor take away any right, and which can only serve to produce confusion.

It never was the intention of His Majesty, nor is it now, that the suppression of the said article should imply a renunciation, by the United States, of the right they think they have to reclaim the said indemnification, but, on the contrary, only that they should not believe that His Majesty renounces, on his part, the right he thinks he has to resist the payment of it.

But should the American Government have any objection to the suppression of the said article, His Majesty will not oppose its continuance, provided it be understood in the ratification that, by the insertion of the sixth article, it is not in anywise to be inferred that His Majesty renounces the exceptions which are occasioned by the convention concluded between the United States and France, the 8th Vendemiaire, year 9; the context of the treaty of the sale of Louisiana concluded between the same Powers; the affirmation of the French Government, through the medium of Lucien Bonaparte, its Ambassador, that the damages sustained by the United States during the last war were satisfied by France; and other strong reasons by which this pretension is opposed.

The American Government cannot be surprised that His Majesty wishes to make this explanation in his ratification, if it is recollected that such an explanation is undoubtedly contained in the sixth article. It mentions that His Majesty reserves to himself the rights which His Majesty believes to belong to him; and, at present, to avoid ambiguity, he thinks it necessary to explain in the ratification what these rights are, which are reserved by the sixth article, and to make mention of them.

If the United States, on their part, wish to vindicate the rights which they think they have to exact indemnifications, and also to reserve them in the same article, it will then be beginning a separate pretension, which in no wise ought to embarrass the regular course of the convention of 1802. It should be reduced to this question: whether Spain is responsible or not for the damages and losses occasioned by French privateers and tribunals within her jurisdiction, during the last war? Spain believes that she is not responsible, and thinks that she can demonstrate it to a certainty.

But as this is the second point in order relative to the pretensions which your Excellencies have manifested, it appears to me convenient to treat it separately, also, after the plan proposed in my note of the 31st ultimo. In the mean time, referring you to what I have already written on this point, relative to indemnification for losses sustained by French privateers, &c., &c., to Mr. Pinckney, under date of 23d of August, and 5th of October, 1803, and to save your Excellencies the trouble of referring to the correspondence of that year, I take the liberty to enclose copies of them, and also of opinions of lawyers the most celebrated in the United States, who have been consulted upon this subject, and who unanimously declared that Spain was not responsible to satisfy said indemnities; and in which declaration these lawyers gave a proof of their rectitude, by their sincere confession of the slender foundation on which these reclamations of their country rested.

I conclude this letter by assuring your Excellencies that His Majesty is disposed to ratify the convention of the 11th of August, 1802, in the form which has been mentioned; and that, should your Excellency find no difficulty in so doing, as I hope will be the case, immediately after the ratification of the convention, we will proceed to the depending points, and finally to those negotiations which the reciprocal interests of both countries may require.

I renew to your Excellencies the sincere demonstrations of my distinguished considerations, &c. PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *Feb.* 12, 1805.

SIR: We have received your Excellency's letter of the 10th instant, and have considered it with the attention which was due to an interesting communication on a subject of great importance to the United States. By it we perceive, with regret, that an accord is not likely to take place between us on the point to which it refers, since it appears that His Catholic Majesty is not disposed to make any reparation to the Government of the United States for all the injuries which their citizens received under her jurisdiction, of the character described in our former notes, whether the same were committed by his subjects or those of any other Power. Having had the honor to inform your Excellency that we could accede to no arrangement which did not provide for every injury, it seems useless to prolong the discussion on that point. We submit it to your Excellency's consideration on what we have already said.

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Your Excellency having expressed a desire to leave the other points to be discussed afterwards, it is proper now to proceed to them; and as we have already submitted the claims of the United States for injuries arising from the suppression of the right of deposit at New Orleans, and as to boundaries, with our opinions thereon, and the wish of our Government that the same should be amicably adjusted, we take the liberty to request that your Excellency will have the goodness to state to us what are the views of His Majesty's Government on these points, particularly as to the eastern and western boundary of Louisiana; and how far His Majesty is content to cede all his claims to the territory lying eastward of the Mississippi; whether he is willing to adopt the plan of a neutral territory, and in what extent. By being possessed of His Majesty's sentiments and propositions on these points we may be enabled to take a view of the whole subject, and see whether it is yet possible to come to some accord by a general arrangement, which, while it keeps out of sight questions, on which, unfortunately, there has been so much difficulty and disagreement, may, in the end, do substantial justice to all parties. Believing this to be the most effectual and speedy mode of concluding the business, we shall wait with anxiety and impatience your Excellency's answer to this communication. We beg to repeat that we shall receive with consideration, and weigh with attention, whatever propositions by His Majesty's order, your Excellency will do us the honor to communicate, having in view the amicable adjustment of the whole business.

We have the honor to request that your Excellency will accept the assurance of our high consideration.

CHARLES PINCKNEY.
JAMES MONROE.

Don Pedro Cevallos,
First Secretary of State, &c.

Mr. Cevallos to Messrs. Monroe and Pinckney,
Aranjuez, *Feb.* 16, 1805.

Gentlemen: The contents of your esteemed note of the 12th instant, in answer to mine of the 10th, have caused me some surprise, as well on account of not having found in it, as I promised myself, that your opinions are for continuing the discussion relative to the reclamations of individuals of both nations, as of your determination to suspend the discussion upon the matter of this subject, unless the Spanish Government will make itself responsible for the losses occasioned by French privateers. It is my opinion that, as there are two species of reclamation, so different in their nature, they can easily be divided into two; and that, after the convention upon the first point is ratified, the discussion upon the second can take place without inconvenience; and I am persuaded, that, in justice to the individuals of both nations, who have received reciprocal injuries during the last war, we ought to terminate and satisfy, as soon as possible, those reclamations, on which both Governments are agreed, without prejudice to, or discontinuing the examination of the other points.

It appears, however, that your Excellencies wish to leave this point unsettled, and, moreover, refuse to enter into ulterior discussions on the point of indemnifications for losses occasioned by French privateers. In this state of the affair, and notwithstanding the manner in which your Excellencies have chosen to proceed, I cannot but repeat to you, what the accredited honor of my Government requires, to wit: that His Majesty is now, and ever will be, disposed to *do justice to* the citizens of the United States *injured by Spanish* subjects during the last war, *and to conclude* and ratify any convention relative thereto. But as it relates to injuries occasioned by French privateers on the coast and in the ports of Spain, His Majesty thinks he cannot accede in this point to the pretensions of the United States, because he believes that he has demonstrated, in the most convincing and evident manner, that Spain *is not* responsible for such indemnifications.

Although in my letters to Mr. Pinckney of the 23d August and 5th October, 1803, and in reply of the lawyers of Philadelphia and New York upon this point, of which I enclosed you *copies* in my note of the 10th instant, it is clearly demonstrated that the Spanish Government is not responsible for such indemnifications, I had nevertheless determined that, when (in the *order proposed*) we should have arrived at this second *point* of the pretensions of your Government, to have extended my observations thereon, so as to demonstrate the solid reasons by which the Spanish Government could refute such pretensions. But as your Excellencies believe that it is not necessary, or that it is incompatible with your instructions to lose time in such discussions, *I do* not wish to molest your attention, and *only again* refer you to the letters before-mentioned, and also to the reply of the American lawyers. But your Excellencies will permit me to make known to you how far the French Government is persuaded of the unfounded right which the American Government has to reclaim anything from Spain, *for* damages occasioned by French privateers *within* the jurisdiction of Spain, and of the surprise which the notice of such a demand from the United States has occasioned to France. For this purpose, I shall copy, for the information of your Excellencies, the expressions made use of *in the* latter part of a note under date of the 27*th of July*, 1804, written by the French Minister of *Foreign* Affairs to the Ambassador of His Catholic Majesty at that Court.

The French Government erroneously believed that Spain had gone so far in her condescensions to the United States, as to make herself responsible for the said indemnifications, and, in consequence, the French Minister of Foreign Affairs explained himself in the following manner:

"And, certainly, if I had been informed that the Ministers of His Catholic Majesty had carried their condescensions towards the United States so far as to engage Spain to be responsible to it

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for the indemnities for pretended violations made by France, I should most assuredly have received from my Government an order to manifest the discontent which France would have experienced by a condescension so improper; a discontent that would have been more strongly expressed towards the Government of the United States, than towards Spain. Besides the explanations which have already been given to your Court on this subject, (alluding to the communication of the Ambassador, Bonaparte,) and those which I have authorized to be again made to the Government of the United States, by the Chargé d'Affaires of His Imperial Majesty, ought to leave the presumption that, from the opinion which His Majesty has adopted on this question, that as it has already been the subject of a long negotiation, and of a formal convention between France and the United States, it cannot again become the subject of a new discussion."

The expressions of the French Minister are clear and pointed, and portray, in a convincing manner, not only that France has satisfied the United States for the damages which they pretend to claim from Spain, but also the just surprise which has been caused to his Government by the notice of such pretensions on the part of the United States, pretensions which are directed to obtain a double indemnity for one and the same debt.

Under this supposition, and continuing the order we proposed, to fix, in the first place, the rights of each nation upon each one of the points in controversy, I will proceed to that of indemnifications, which your Excellencies reclaim for the suspension of the right of deposit at New Orleans. To determine whether Spain is or is not responsible for the damages which your Excellencies suppose to have been sustained by the citizens of the United States, by the suppression of the deposit at New Orleans, in consequence of the edict of the Intendant of that city, it is necessary to examine what are those damages, and from whence they have arisen. The edict of the Intendant of New Orleans, suspending the deposit of American produce in that city, did not interrupt, nor was it the intention to interrupt, the free navigation of the Mississippi; consequently, these pretended injuries are reduced to this small point, that, for a short time, the vessels loaded in the stream, instead of taking in their cargoes at the wharves. This obstruction will appear still less, when we consider that, during a great part of the time that the deposit was suspended, it was in the middle of Winter, when the exportation of produce from the western parts of the United States by the Mississippi is very inconsiderable. If the erroneous opinions which were formed in the United States upon the occurrences at New Orleans; if the complaints published in the papers of your country, as false as they were repeated, that the navigation of the Mississippi was interrupted; if the virulent writings by which the public mind was heated, and which led to compromit the American Government, and tarnish the good name of that of Spain, were causes that the inhabitants of the Western Territory of the United States could not form a correct idea of what passed at New Orleans; and if, in this uncertainty, they were disappointed in the extraction of their produce, or suffered other inconveniences, they ought to attribute the same to internal causes, which originated in their own country, such as the writings before-mentioned, filled with inflammatory falsehoods, the violence of enthusiastic partisans, and other occurrences, which, on those occasions, served to conceal the truth. The Government of Spain, so far from being responsible for the prejudices occasioned by these errors and erroneous ideas, ought, in justice, to complain of the irregular conduct pursued by various writers and other individuals of the United States, which was adapted to exasperate and mislead the public opinion, and went to divulge sentiments the most ignominious, and absurdities the most false, against the Government of His Majesty, and his accredited good faith.

Estimate the damages which may have arisen to the citizens of the United States by their erroneous conception of what took place at New Orleans, and they will be found to be no other than the trifling inconvenience before-mentioned, of their ships loading in a situation not so commodious—an inconvenience for which the Government of Spain is not responsible, (neither ought it to be,) and which does not, in any manner, merit to be mentioned, more especially when it is considered that those who experience it, had been enjoying the rights of deposit for four years more than was stipulated in the treaty, and this, notwithstanding the great prejudice it occasioned to His Majesty's revenue, by making New Orleans the centre of a most scandalous contraband trade, the profits of which it is not improbable but that some of those individuals have, in part, received, who now suppose themselves injured by said trifling inconvenience.

After four years more than the treaty expressed, to wit: three years, making in all seven years, the Intendant thought that it was his duty no longer to permit a deposit, which gave an opportunity for carrying on a fraudulent commerce, prejudicial to the interests of His Majesty, for which he was accountable; he thought it was necessary that New Orleans should no longer be the place of deposit, on account of those inconveniences, and, in consequence, prohibited the same.

Before proceeding to such a determination, the Intendant ought to have asked instructions from his Government; but, perhaps, he thought he might compromise, by delaying this measure. His Majesty, as soon as he was informed of the edict prohibiting the deposit, was pleased to revoke it, wishing thereby to give another testimony of his friendship for the United States. What, in strict justice, was the deposit at New Orleans? A generous and gratuitous concession of the King my master for three years. It is true that His Majesty agreed, in the twenty-second article of the treaty, to continue the favor of the deposit, if it should be found that no inconvenience resulted from it, and of this no person was a better judge than His Majesty, and his agent in that colony.

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If the United States desired, after the expiration of three years, to continue the deposit at New Orleans, in a less precarious manner, or to have obtained another place for the deposit, they ought to have solicited the same; for it is more natural that those who aspire to a favor should solicit it, than that those who have the possession of the same should propose the cession or continuance of it.

By this it is not intended to support the edict of the Intendant; His Majesty has disapproved the act; giving, therefore, a proof of his friendship for the United States. However, this subject ought not to be treated on in the light of exacting indemnifications resulting from it, but should be examined to see if, in strict justice, the Intendant, or the Spanish Government, could or could not prohibit the deposit at New Orleans; four years more than the three stipulated in the treaty having expired, and during which time the Royal Treasury experienced the most serious prejudice. Most certainly the Intendant had a right to prohibit the deposit, and, consequently, the Government of Spain cannot be responsible on this point; and this reflection acquires a double weight, if we consider the trifling inconvenience occasioned by the true effect of the said edict, of its short duration, and, on the other hand, the serious damages which the King's revenue has experienced by the continuance of the deposit for four years over and above the term stipulated in the treaty. I think your Excellencies will be convinced of the force of these arguments; and it is to be desired that, in consequence of what I have represented to your Excellences, and to Mr. Pinckney in particular, upon the various points of indemnifications reclaimed by your Government, we may now be of the same opinion, and proceed to fix the rights of each nation, on the other question, relative to the limits of Louisiana, which is in its nature different; because, to have the first points in dispute undecided on, and even without discussing their merits, cannot but augment the confusion of the business; for it is very difficult to settle, in an amicable manner, the whole of the points in dispute, there being an essential difference of opinion on some parts of them.

I am also disposed to enter into a discussion upon the limits of Louisiana, but in the manner proposed by your Excellencies, and adopted by me in my note of the 31st ultimo, to wit: to fix, in the first place, the rights of each country, and then proceed to such negotiations as may be convenient to both nations.

With demonstrations of my most distinguished consideration and respect, I remain, &c.,

PEDRO CEVALLOS.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *Feb.* 18, 1805.

Mr. Pinckney and Mr. Monroe have the honor to present their compliments to His Excellency Don Pedro Cevallos, and request that he will be so good as to honor them to-morrow with a conference, or at such other time as may [illegible] agreeable to him. They think proper [illegible] conference, in consequence of the note [illegible] cellency of the 16th instant, received [illegible] ing, which appearing calculated to put [illegible] end to the negotiation, and that not in a [illegible] ble manner, they are desirous of obtaining [illegible] fore they give an answer to that note in [illegible] ner which their recent instructions make [illegible] sary, to see if it is yet possible to arrange [illegible] the differences which subsist between [illegible] countries.

His Excellency Don Pedro Cevallos to Messrs. [illegible] and Pinckney.

ARANJUEZ, *Feb.* [illegible]

GENTLEMEN: In my note of the [illegible] informed your Excellencies that, after [illegible] amined the point relative to the indem[illegible] claimed by the United States, I should [illegible] disposed to enter into discussions upon [illegible] of Louisiana. In this mode of proceeding [illegible] low the plan laid down in your Excellencies' note, to wit: first, to fix the rights of [illegible] and then proceed to such negotiations [illegible] proper for both.

On my part, I continue to follow the [illegible] plan which is so conformable to the wishes [illegible] both Governments, and so well adapted [illegible] purpose of terminating amicably the [illegible] We will now begin the examination [illegible] of Louisiana, whose boundaries, by [illegible] are divided into parts essentially distinct [illegible] this reason, we will examine them [illegible] They are the limits of Louisiana on [illegible] side of the Floridas, and its boundaries [illegible] of the interior provinces of New Mexico [illegible] first shall be the object of this letter.

If the declaration of the act of Congress [illegible] 24th February of the last year had [illegible] the declaration of the pretensions of [illegible] States, to extend the limits of Louisiana [illegible] east as far as the river Perdido, including [illegible] them the greater part of West Florida [illegible] have been surprised to have seen this [illegible] manifested in the first note of your Excellencies. It appears as if the title alone of the treaty [illegible] His Majesty retroceded Louisiana to F[illegible] to whose title the United States have [illegible] was sufficient to banish even the most [illegible] that His Majesty had by it ceased to be [illegible] tor of West Florida, a province which [illegible] received from France; for the possession [illegible] she was only indebted to the valor [illegible] many years before the acquisition of [illegible] and, never having received it from France [illegible] not be included in a treaty founded on [illegible] principle of retrocession. But as, notwithstanding [illegible] this reflection, so obvious and clear [illegible] States pretend to stretch the limits of [illegible] to the river Perdido, I find myself under [illegible] cessity to manifest more fully the most [illegible] solid principles by which His Majesty [illegible] right to the possession of the province [illegible] Florida.

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By the treaty of sale of Louisiana, signed at Paris the 30th April, 1803, the United States have acquired the right which France held, in virtue of the retrocession of that province, made to her by His Catholic Majesty, at St. Ildefonso, October 1, 1800. The stipulation, which ought to serve to found the pretensions of the United States, cannot be any other than the third article of the Treaty of Retrocession, which is in these terms: "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein, relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States.

The first thing which calls our attention, in explaining the said article, is the expression retrocede, and which also serves to denominate the Treaty of St. Ildefonso, called the Treaty of Retrocession. The sense of this expression is obvious; it cannot be misinterpreted or confounded; its meaning is evidently this: that His Catholic Majesty returns to France the territory which he had received from her. Now let us examine if France put Spain into possession of the territory which occasions the present discussion. It is, without doubt, by the Treaty of 1763, it was agreed that the separation between France and England of their possessions in that quarter, should be by a line through the middle of the rivers Mississippi and Iberville, and the lakes Maurepas and Pontchartrain, to the sea; consequently, France ceded to England the river and port of Mobile, as well as all her possessions on the east of the Mississippi, the island and city of New Orleans excepted. From that time this territory formed a part of the possessions of the English, under the name of West Florida, and France lost all claim and title to it. Thus it became an English possession; and, during the war of 1779, Spain conquered from England all that the latter possessed by the title of West Florida; and, in the definitive Treaty of 1803, England ceded to Spain, under a guaranty, both Floridas. It is then seen, by this plain and simple exposition of facts, that the title by which Spain holds possession of the territory on the east of the Mississippi, called West Florida, was acquired to her by the right of conquest, at the expense of her treasures, and blood of her soldiers; and, also, by the cession made by England under the Treaty of 1783. From that time the title of Spain to that territory is entirely independent of France, and of the cession of Louisiana made by her; and, consequently, Spain could not give back to France what she did not receive from her. We will continue the discussion on the third article of the Treaty of St. Ildefonso.

In the first place, it is said that His Majesty retrocedes Louisiana, "with the same extent of territory which it now has in the hands of Spain." This expression confirms most explicitly the right which Spain preserves over the said territory to the east of the Mississippi; because it is well known that Spain possesses West Florida not as Louisiana but as Florida. This circumstance, so notorious, is confirmed by the title of the Governors of the Havana, who, in their character of Captain Generals, have always governed under the title of "Captain Generals of the two Floridas;" and by all the most authentic public acts, which have passed since His Majesty has been in possession of the said territory, this title has been preserved. It will be sufficient to mention the treaty concluded between His Catholic Majesty and the United States, in 1795, in the second article of which we read the following words: "that the southern limits of the United States, which separate them from the Spanish colonies of East and West Florida," &c. It is then proved, in the most authentic manner, the separation of West Florida from Louisiana, and their different appellations; and it is a thing generally understood, that names of countries, bartered, ceded, or retroceded by a treaty, should be considered according to the general acceptation existing at the time of making the treaty; it is clear that if, in that of St. Ildefonso, it had been wished to include West Florida, it would have been expressly mentioned by the name which authenticated it, and under which it is generally known: for it would have been ridiculous to have given the name of Louisiana to that territory, because it had once formed a part of that province, as much so, as it would be at present to call the State of Ohio Louisiana; consequently, no doubt remains that, as His Majesty was in possession of the said territory, under the name and quality of West Florida, it could not be included in Louisiana; because it was in the hands of Spain on the 1st October, 1800, the epoch of the Treaty of St. Ildefonso; and because the before-mentioned clause of the third article, in its natural and explicit sense, excludes France from a right to West Florida.

The second clause or expression of the same article, "and which it had when France possessed it," alludes only to the manner in which France possessed it in 1763, when she delivered it to Spain; for if any other sense is given to it, that expression cannot be consistent with the anterior, which says, "with the same extent which it now has in the hands of Spain:" for if in the second clause a greater extent should be given to Louisiana than that which it had in the hands of Spain, how could it be "with the same extent it had in the hands of Spain?" It is repugnant to common sense that the delivery had to be with *the same extent* and with *greater extent;* it being with *more*, it could not be with the *same*. It is then clear that the obvious sense of both clauses together, and the only one which is not absurd and contradictory, is the following: that Louisiana was retroceded with the same extent it had in the hands of Spain in 1800, and that which it had when France possessed it, and gave it up to Spain. The expression "when France possessed it," not marking any fixed time, it is clear that it ought to be determined by the clauses of the same article;

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since, if we should admit the expression "when France possessed it," in all its latitude, it would result that Spain had obligated herself by the third article to give France a part of the State of Kentucky, all the State of Ohio, and Territory of Indiana, and that France should hold a right, by the Treaty of St. Ildefonso, to resell the said States as a part of Louisiana "when France possessed it," and also to prohibit the navigation and deposit to the Americans, because that France had to receive Louisiana "as she possessed it. Absurd reasoning! which does not merit to be refuted, which arises in consequence of the undefined latitude which is pretended to be given to "when France possessed it." It is a principle incontrovertible of the law of nations, that treaties should not receive an odious or absurd interpretation, when they can admit of a clear and simple one. It would be both odious and absurd to suppose that Spain had ceded Louisiana to France, with all the extent with which she had possessed it at an epoch anterior to the treaty of 1763; for it would thence result that she had engaged to give France part of the United States, as before-mentioned; and it would be equally absurd in France, because she abandoned by the treaty of 1763, all her rights and pretensions to the country east of the Mississippi to Great Britain; and by her treaty of 1778, with the United States, she was bound in such a manner that she could not acquire a territory east of the Mississippi without the consent of the United States, and only by that of conquest. At the same time, it would do very little honor to the United States to maintain an interpretation, the consequence of which would make it appear that that part of the United States formed by the Ohio, a part of Kentucky and Tennessee might be comprehended, and become the object of stipulations and cessions between two foreign Powers, such as France and Spain, who have no right to meddle with them.

The third clause of the third article of the Treaty of St. Ildefonso is still more decisive, and offers other arguments in favor of Spain, since it says, "such as it ought to be according to subsequent treaties between Spain and other Powers." The treaties here alluded to, are not, nor can be, others than those of 1783, between Spain and England, and 1795, between Spain and the United States. By the first, His Majesty acquired the territory east of the Mississippi, under the name of West Florida; and, consequently, to be "as it ought to be," since the treaty of 1793, is with the exclusion of a territory acquired at that period, and with a name so different. By the second, His Majesty permitted the deposit, and fixed the limits between Louisiana, the Floridas, and the United States, to be "as they ought to be" after the treaty of 1795, is with the exclusion of France to the rights of the United States in this treaty. And thus, as the Treaty of St. Ildefonso could not affect the rights which the United States acquired by that of 1795, so neither did it affect, nor could it affect, the rights acquired by His Catholic Majesty, by the treaty of 1783 with England.

It would be unnecessary to accumulate more proofs in a case so clear in its nature: be[illegible] but mention to your Excellencies, in supp[illegible] unquestionable right which Spain has [illegible] ritory in question, the respectable and [illegible] ble opinion of the celebrated geograph[illegible] United States, Mr. Ellicot, whose knowl[illegible] talents occasioned his being named by the [illegible] ernment of the United States to run the [illegible] division between the said States, and the [illegible] provinces on the south of them, accordi[illegible] Treaty of 1795. This person, who, perha[illegible] more knowledge of what relates to the [illegible] in question than any other, in the prefa[illegible] work, published in 1803, under the tit[illegible] "Journal of Andrew Ellicot, late Co[illegible] in behalf of the United States," &c. [illegible] the sale of Louisiana, made by France [illegible] Lancaster, 22d July, 1802, "It does not [illegible] the cession of Louisiana to the United St[illegible] tain the whole of both sides of the Miss[illegible] by consulting No. 5, of the maps, it w[illegible] that the island of New Orleans, which [illegible] east side of the Mississippi, only exte[illegible] Manshak; from thence, northerly, a[illegible] side of the river, to the southern bou[illegible] United States, is still held by His Catholic [illegible] as a part of West Florida." He agai[illegible] important and safe harbors in both the F[illegible] still remain in the possession of His Catholic [illegible] jesty." The expressions, so notable, [illegible] and confirm, in the most positive man[illegible] contestable right of His Catholic Maje[illegible] the territories which are on the east [illegible] sissippi, under the line of the thirty-[illegible] excepting the island of New Orleans.

Besides what has been said, it cannot [illegible] that the treaty of retrocession of 180[illegible] tract between Spain and France; and [illegible] it was for France to have represented [illegible] had not received all the territories [illegible] that stipulation. And it is certain tha[illegible] Laussat, charged to carry the treaty [illegible] being perfectly instructed in it, and being [illegible] with the intentions of his Governme[illegible] pressed himself satisfied with the manne[illegible] it was carried into effect, without his [illegible] put into possession of the territory [illegible] Thus, the United States, having succeed[illegible] rights of France, have no ground to p[illegible] what France has thought did not belong [illegible]

I could, by an accumulation of ra[illegible] establish in different ways the incontest[illegible] of the King my master to West Flori[illegible] appears to me that what has already be[illegible] sufficient, so as not to leave a doubt i[illegible] of any one who will examine the quest[illegible] tially, not even in the mind of Mr. E[illegible] notwithstanding the love he bears to the [illegible] ment that employed him, and in whose [illegible] has wrought, could not do less than give [illegible] homage to truth and justice which they [illegible]

With assurances of my distinguished [illegible] ration, I remain, praying to God to pres[illegible] lives many years,

PEDRO CEVA[illegible]

Messrs. MONROE and PINCKNEY.

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Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *February* 26, 1805.

Mr. Pinckney and Mr. Monroe present their compliments to His Excellency Don Pedro Cevallos, and have the honor to enclose him their answer to his note of the 16th, which was prepared and intended to have been sent yesterday. They avail themselves of the opportunity to acknowledge the receipt of his Excellency's note of the 24th, received last night, respecting the eastern limits of Louisiana, to which they will pay immediate attention.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *February* 26, 1805.

SIR: We have the honor to acknowledge the receipt of your Excellency's letter of the 16th instant, whose contents and tone have equally surprised us. We should consider ourselves failing in the respect which we owe to our Government, if we did not express our sentiments on it, in both respects. In so doing it is necessary to review concisely what has passed between us.

Your Excellency will recollect that, in our interview which took place immediately after Mr. Monroe had the honor of being received by His Majesty, the objects of his mission were fully communicated, and that it was agreed that we should present to your Excellency a project for the adjustment of every point, to which you were so good as to promise an early and explicit answer. In compliance with that arrangement, we did present to your Excellency, on the 28th ultimo, the project which we had promised, in which we stated, fully, the views of our Government, with its opinion of the rights of the United States on each point, which we illustrated in those cases which had not been already exhausted, and, of course, where illustration could be necessary, or was even likely to be agreeable. We had a right to expect, and we did expect, an answer equally full and explicit to every point. In this, however, we were disappointed. On the claims to indemnity for injuries, your Excellency thought proper, it is true, to intimate, in respect to spoliations, that His Majesty was willing to ratify the convention of August 11, 1802, after the obstacle which occasioned its postponement should be removed; and, in respect to that arising from the suppression of the deposit at New Orleans, that Spain was not accountable for them, but without giving any reason for the assertion. On the great question of territorial rights and limits, as on the mode of providing for their security, and, with it, the peace and harmony of our Governments, on which we did ourselves the honor to make to your Excellency what we deemed liberal and salutary propositions, we received what could not be considered as an answer, since it neither rejected our propositions, offered others, nor expressed any sentiments respecting them. If it was proper to open the whole subject, as was admitted in our first interview, it was equally so to answer it. And that it was proper so to do, is not only proved by the agreement referred to, but by the situation of the two countries at the present time. The several points, are, it is true, in their nature distinct; yet it is obvious that the whole must be brought into view and settled together. We do not perceive the means, nor has your Excellency suggested them, of adjusting a part, and leaving the others unfinished.

Although we could not but be hurt at receiving an answer so vague and unsatisfactory to our letter, yet we deemed it inconsistent with the respect we owed to both our Governments, to your Excellency, and to ourselves, as with the spirit of concillation which we wish to preserve through the negotiation, to express that sentiment. We did more; we met the invitation which your Excellency seemed to give us, without, however, furnishing the example, by proceeding to explain further the views of our Government, and illustrate its rights on the two points, on which you had given any opinion. The claims to compensation for injuries arising from spoliations on our commerce, and the suppression of the right of deposit at New Orleans, had been long before our Governments, and their merits were well understood. That for spoliations, more especially, had been so fully and amply discussed, both here and in the United States, as to leave no doubt that such discussion was not necessary to enable either party to make up its mind on it. By entering into it, therefore, we gave your Excellency a convincing proof of our desire to accommodate with your wishes, in the hope that it will produce on your part a corresponding result.

We flattered ourselves, that, as the whole subject was again presented before you, in all its points, with the explanation which you had invited on the two first, we should have received a full answer from His Majesty's Government on each, and, of course, on the whole. In this, however, we were again disappointed. We received, in substance, only the same proposition which had been made to us before, which we had, as we presumed, clearly proved to be incompatible with the rights of the United States, and the principles of justice, and which, as we had taken the liberty to inform your Excellency, the repeated and recent orders of our Government prohibited us from accepting. Under these circumstances we considered it our duty to acquaint your Excellency, respectfully, that we deemed it useless and improper to prolong the discussion on that point; at the same time requesting you to be so good as to communicate the sentiments and propositions of His Majesty's Government on the whole subject, that we might see whether it would be possible, while we avoided discussions of an irritating tendency, to adopt some plan, which, by a general arrangement, might provide for this as well as the other objects, and thereby render justice in the most acceptable manner to all parties. To this proposal, the most respectful and friendly that we could make, one which is warranted by the uniform practice in similar transactions and cases of all Powers, especially the most friendly to each

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other, we received a letter which is addressed in a very different spirit. By it we are charged with refusing to discuss points which we had already discussed, and on which we had given to your Excellency our ulterior opinion; our Government is charged with the dishonorable attempt to obtain a double indemnity for the same object; many of our citizens are denounced as unprincipled contrabandists; and others, if not the whole nation, as enthusiastic partisans, calumniators, and disfigurers of truth, for, in respect to the suppression of the deposit at New Orleans, all America had but one opinion, and spoke with one voice. In the article of the press, the freedom of our internal institutions, which all nations have a right to regulate, and do regulate as suits themselves, is attacked; the right of the Intendant to suppress the deposit at New Orleans is justified; and the right itself, though stipulated and made permanent by a solemn treaty, a stipulation which had its equivalent in the other articles of the same instrument, and was otherwise prompted by the law of nature, of reason, and the interest of Spain, is represented as a gratuitous or charitable donation to the United States, which His Majesty had a right to suppress, and keep suppressed, until their Government should implore him to open it to them again. On this note, we think proper to observe that it was impossible for us to have received one which could have been more unexpected. It was the more so, because, in all our communications, we had been studious, in obedience to the orders of our Government—orders which we executed with pleasure—to manifest its high respect for His Catholic Majesty, and we were not conscious of having failed in that which we entertained for your Excellency.

We forbear to make any further comment on the tone of this last note at present, because it is probable it may convey sentiments which are not entertained. We are aware that, in the zeal of an important discussion, incidents of that kind often occur, and are often prompted by patriotic motives, even with those who are the most guarded. We trust that the character of the American Government and people, which is well known, and we flatter ourselves held in just estimation by other Powers, will not be injured by the spirit of conciliation and moderation which animates us on this occasion. On the presumption, therefore, that no premeditated outrage was intended, and with a sincere desire to adjust amicably the differences subsisting between our countries, we will proceed to answer the several objections urged in your Excellency's last note to what we consider to be the just claims of our Government.

Your Excellency insists that His Catholic Majesty is not answerable for the spoliations that were committed on the commerce of the United States, within the jurisdiction of Spain, in the course of the last war, by French cruisers and tribunals; and you urge, in support of the doctrine, first, that those claims were satisfied by the treaties which have taken place between the United States and France; second, that Spain was not in a situation to prevent those aggressions on our commerce. We will examine w[illegible] both these pretensions, which, we are [illegible] it will be easy to show are unfounded. T[illegible] ties have latterly taken place between [illegible] States and France; the first on the 30th [illegible] tember, 1800, the second on the 30th [illegible] 1803. Permit us to ask, by which of [illegible] such extinguishment made? If by the [illegible] not likely that the subject would [illegible] thought of in the second; if the second [illegible] on, it is an admission that it was not done [illegible] first. Your Excellency seems disposed [illegible] both, which cannot be considered other[illegible] as a proof that neither alone had done [illegible] equally obvious that it was not done [illegible] gether, since, whether we examine [illegible] rately or together, they expressly [illegible] idea.

By the second article of the convention between the United States and France [illegible] for certain considerations therein specified [illegible] pone their respective claims to indemnity [illegible] more convenient time; and, by the [illegible] that convention, those claims were [illegible] forever on both sides.

By the fifth article of the same [illegible] is agreed, that certain specified claims [illegible] should be recoverable in the same manner [illegible] no misunderstanding had taken place between the parties.

By the first and second articles of the [illegible] convention, entered into on the 30th [illegible] 1803, provision is made for the payment [illegible] debts which were comprised under [illegible] and fifth articles of that of 1800, which [illegible] it was expressly stipulated, should [illegible] twenty millions of livres.

These are the only articles in those [illegible] which have any reference to the [illegible] tion. If the claim of the United States [illegible] for French spoliations and condemnations [illegible] her jurisdiction was satisfied by the [illegible] conventions between the United States [illegible] France, it was by one of these articles [illegible] examine, first, that pretension, as found[illegible] second article of the Convention of 1[illegible] view of that article, and, indeed, of [illegible] instrument, we find that it regulates only [illegible] and interests that were depending between [illegible] United States and France. A misunderstanding had unhappily taken place between those [illegible] and it was the object of this convention [illegible] it. Not the most distant allusion is made [illegible] article of the convention, to Spain or her [illegible] Had Spain then been a party to that [illegible] standing, she could not have been [illegible] that convention. The reason is [illegible] why she could not, as she was not a [illegible] since there was no variance, and there [illegible] was none between the United States and [illegible] it is more evident that it could not have been [illegible] the contemplation of the parties to [illegible] did not exist. It may be added that, if [illegible] contemplated to release Spain from any [illegible] which she owed to the United States [illegible] just claims which they had on her, th[illegible]

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would have been complete; it would have extended to every object, especially of the same kind; and settled every ground of difference between them. The fact, however, is admitted by all parties to be otherwise. It has never been contended by Spain, that the spoliations which were committed by her own people, were satisfied by that convention. Hence it is clear that Spain was not discharged from the claim of the United States for French spoliations committed within her limits, by the second article of the Convention of 1800. It is equally clear that she was not discharged by the first and second articles of the Convention of 1803. It is evident, on a slight view of these last articles, and, indeed, of the whole instrument, that they had no other debts in contemplation but those which were made recoverable by the Convention of 1800; that, in truth, the Convention of 1803 did no more than provide funds for the payment of the debts that were due under that of 1800. Thus the claim of the United States on Spain for these spoliations was not discharged by this last Convention. Other circumstances prove clearly, not only that this claim was not discharged, but that a provision or discharge of it by those conventions was not even contemplated by the parties to them. It is very well known that the Government of the United States never made a demand on that of France for the payment of these spoliations; that it always claimed the payment of Spain, and her only, considering her only as responsible for them. It is not presumable that the parties should intend to provide for a claim not made, for a debt not supposed to be due. The conduct of Spain, through the whole of this epoch, corresponds with that of the other Powers in this respect. The Minister of the United States at Madrid pressed the Government of Spain for an indemnity for that and other claims. Had it been contemplated by Spain to obtain her discharge through the medium of France, her Ambassador at Paris would have been seen in both those negotiations, especially that of 1800; and, had he succeeded, a provision to that effect, in explicit terms, would have been introduced into that convention. But nothing of this kind took place. Indeed, the success of such an attempt was so improbable, that it is not presumable that the idea ever occurred. With the claims that were in the contemplation of the parties, and for which France was truly answerable, it was difficult to accomplish an amicable adjustment of their differences. Had these been swelled by the addition of those on Spain, it is probable that the negotiation would have proved abortive. It was not until some years afterward that this pretension on the part of Spain was heard of, and then it was founded on a pretext as singular as it was unexpected—that of her being released by a treaty between the United States and another Power, in which she was not even mentioned. With respect to these claims having been discharged by the Convention of 1803, it has already been shown that that convention could not, by any possible construction, be considered as having any reference to the subject; it may be added, that the funds provided by it were not only intended for other objects expressly stipulated, but that there is reason to think they are not commensurate with those objects.

As to the pretension that Spain was released from this claim, by the release made to France of other claims of a similar nature, it is easy to prove that it has not the slightest foundation. It has already been shown that France was not released from this claim, because it was never made on her. We shall proceed to show that it was properly made on Spain, and that she was, and is still, answerable for it.

It will not be controverted that it is the duty of every independent State to observe, that the citizens or subjects of every other independent State are secured, in their intercourse with it, in the enjoyment of all the rights and privileges to which they are entitled by the law of nations, and treaties with such Power. This principle forms the basis on which the whole system of public law rests. It is the standard by which every question between independent Powers must be examined, and their respective rights in all cases settled.

It is equally true that, for every violation of those rights on the citizens or subjects of one independent State within the jurisdiction of another, the Government of the latter is responsible, whether the same be committed by its own people, or those of another Power. The reason of this rule is obvious. Every Government being sovereign within its own limits, the subjects of every foreign Power are regarded there for the time as its own subjects, and, as such, it is responsible for their conduct. While such Government retains its independence, it cannot divest itself of this duty, or the obligation to discharge it. The principle is the same, whether such acts be performed by the private individuals of a foreign Power, or its public agents. In the latter case, indeed, the claim to an indemnity by the party injured, on the Government under whose jurisdiction it was received, is stronger, since, being done under color of public authority, and especially if persevered in, they become the acts of the Government itself. These principles are too well established by writers on the law of nations to require further illustration.

Hence it appears clearly that Spain was answerable for French spoliations committed under her jurisdiction, in the same manner as if they were committed by her own people. To her, then, the American Government was bound to look for reparation. Whether France was eventually liable or not, is not material to inquire. Where was the injury rendered? What Government had cognizance of the case? Whose laws were violated by the proceeding; or by whose laws was the injury permitted, or, what amounts to the same thing, suffered? By that Government is the reparation due, and by it ought it to be made. If France has actually paid any of those claims, such payment will, of course, be considered as a discharge. That the suffering individuals may have applied elsewhere and everywhere, to save

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themselves from ruin, or rather retrieve themselves from it, is possible; but neither will the course which their distresses may have compelled them to pursue, nor will the fortune of some particular applicants, in case any have succeeded, affect the merits of the present question. It is known that the sentiments and conduct of the American Government have invariably been the same on it. It has thought, in every stage, that Spain was responsible for those spoliations, and it has uniformly sought the indemnification of her, and of her alone.

If France was responsible for those claims, the injuries having proceeded from her officers and agents, it was only eventually in case satisfaction was not obtained of Spain; for, as already shown, having been committed under the jurisdiction of Spain, where she only had authority, the redress was strictly due by her. For injuries committed by a Spaniard to an American citizen at Paris, we should not think of making application for redress to the Government of Spain, nor for like injuries committed at Madrid by a Frenchman, to the Government of France. The application, in both cases, would be to the Government having jurisdiction of the territory where the offence was committed, and of course cognizance of the case, to the Government whose laws were offended, and who had the power of redress. If France was eventually answerable to us for those claims, which we deny, we admit that she was released from them by the Convention of 1800. But can Spain, who was answerable primarily, if not solely, to whom application had been made, to whom it was then, and has since, been made, claim an exemption from them, under a treaty to which she was not a party, and in which her name was not even mentioned? We are of opinion, by the uniform and well-established doctrine of the law of nations, by the clearest principles of justice, that she cannot.

With respect to the opinions which you have been pleased to communicate to us of the Minister of Foreign Relations, and the late Ambassador of France, on this subject, we have received them with the consideration which is due to every respectable authority from which they emanate. We are not willing to believe that they oppugn the principle above laid down, or apply to those cases which are justly chargeable on Spain, because our Government, for the reasons above stated, and by the clearest conviction, thinks otherwise. On all treaties between independent Powers, each party has a right to form its own opinion. Every nation is the guardian of its own honor and rights; and the Emperor is too sensible of what is due to his own glory, and entertains too high a respect for the United States, to wish them to abandon a just sense of what is due to their own. We do not believe that the view which our Government takes of this subject was ever presented to that of France, since we are not aware that there ever was an occasion for it. By those treaties with His Imperial Majesty, all differences between the United States and France were happily terminated, and the relations of the two countries placed on a footing of [illegible] friendship. In all questions growing [illegible] in which France and the United States [illegible] ested, their Governments are perfectly [illegible] We should regret much if they were not [illegible] present case, as, indeed, in all others [illegible] United States and Spain.

As to the doctrine held by certain [illegible] professional characters in the United States [illegible] opinions have been asked and given [illegible] that France and Spain were associate [illegible] the injuries complained of, the former [illegible] and the latter as accessory, we are sorry [illegible] ed on to make any remark on it. [illegible] those gentlemen makes this an unpleas[illegible] From that motive we will confine [illegible] to the doctrine itself. We will ad[illegible] have not made up our minds to a cens[illegible] conduct, since, if such an interference [illegible] ble under any Government, it certainly [illegible] that where it is their happy destiny to [illegible] noticing their opinion, we have to [illegible] they have evidently mistaken the case [illegible] ing to nations a maxim of local [illegible] which is applicable only to individu[illegible] nations it is believed that there is no [illegible] principal and accessory. All are [illegible] are to be regarded as such, in all the [illegible] In case of a war, to which there are several [illegible] ties, allies on each side, nothing is more [illegible] than for one to make its peace, and [illegible] from it. It was never contended [illegible] ment made by one party, in such a case [illegible] other, settled the differences of the [illegible] The doctrine of principal and accessory [illegible] lease or discharge to one Power, by [illegible] accommodation with another, was never [illegible] among them. Indeed, it would be strange [illegible] one nation should undertake to adjust [illegible] cerns of another, without its authority. [illegible] be more so if any adjustment between [illegible] should be so construed as to produce [illegible] ant benefit to a third, not only without [illegible] ity, but the knowledge of any one of the [illegible] pose that an adjustment made by [illegible] parties for a third one, should be [illegible] mental to it, would such a third party [illegible] by it? Had France, for example, stipulated [illegible] Spain should pay for all those spoliations [illegible] great proportion of her own, would Spain [illegible] allowed her right to do so? Ought she [illegible] has she a right to claim any advantage [illegible] transaction to which she was not a party [illegible] she could not be bound, and which, in [illegible] could not be reciprocal?

With respect to the plea on which [illegible] of those gentlemen is, in part, founded [illegible] was not in a situation to prevent those [illegible] of her territory by France, and is, therefore [illegible] accountable to the United States for the [illegible] resulting from them, we find ourselves [illegible] by the high respect which we entertain [illegible] Catholic Majesty, from dwelling on it. [illegible] be permitted, however, to observe, that we [illegible] deny the fact. Spain was never placed [illegible] dilemma. Having, from very remote [illegible]

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held a very distinguished rank among the Powers of Europe, she still enjoys it. In a late war with France, nothing occurred which placed her in the condition of a conquered nation. Her troops behaved with gallantry in the field, and her Government obtained an equal and honorable peace. If, then, she did not prevent those violations of her territory, it was not because she was not able to do it, but because they were sanctioned by some treaty which secured her, in other respects, an equivalent; or that she chose to permit them from some motive of policy at the time; in either of which cases she is responsible to the United States for the same.

We have thus answered fully the arguments urged by your Excellency against the claim of the United States on Spain, to an indemnity for the spoliations on their commerce by the cruisers and tribunals of France, within the territory of Spain, in the course of the last war, and we are persuaded, shown, in the clearest manner, that that claim is well founded. We should have gone more fully into this point on our former notes, had we not believed that it was already fully illustrated by the communications which had taken place on it between our Governments, in the United States and here, to which we beg leave to refer; a note of which latter is here annexed. We have, however, been happy, at your Excellency's suggestion, to review the subject, being very solicitous to prove, on all occasions, that our Government make no claim which is not founded in justice; and being likewise so to avail ourselves of every suitable opportunity to give new proofs of its respect for, and desire to preserve the most friendly relations with, His Catholic Majesty.

On the point respecting the suppression of the deposit at New Orleans, we regret that it is altogether impossible to assent to the doctrine which is insisted on by your Excellency. On a careful perusal of the treaty, we find in it nothing which justifies the idea that there ever was to have been a moment of interruption of the enjoyment of that right, either at New Orleans, or at some other suitable place on the banks of the Mississippi. It is not, it is true, stipulated that, in suppressing the existing deposit, and opening another, the Government of Spain should give notice of the design, and hold communication with that of the United States on the subject. On the other hand, it may also be said, with equal truth, that it is not stipulated, in taking that measure, that that friendly proceeding should not be observed, but that His Majesty may do it, and keep the deposit altogether suppressed until the Government of the United States should make application for the opening of it. In all such cases, the policy of the measure, the object of the treaty, and intention of the parties, are to govern in the interpretation of it; and, by these, it appears to us to be questionable, that another deposit ought to have been opened at the moment the existing one was closed. It is on that principle that the United States consider themselves entitled to an indemnity for the injury which was sustained by that measure. What the precise amount of that may be, it is not in our power to state; from what we have understood, however, it is by no means of the trifling nature your Excellency seems to suppose it. We have not sought, as an indemnity for it, any precise sum. We have only proposed that it should be referred to the judgment of impartial arbitrators, on such proof as might be presented before them, to estimate it—a proposition which we deemed too just and reasonable to admit of objection.

On the subject of limits, and others incident to it, having already stated to your Excellency the views of our Government, we deem it necessary only to refer again to our former communications. As neighbors, desirous of living together in peace and friendship, it is certainly an object of essential importance to adjust and arrange these very interesting points at this time, in a clear, definite, and satisfactory manner. At an epoch so extraordinary, and big with such important events, it may be productive of much harm to leave anything unfinished, and thereby exposed to casualty. In cases of unsettled boundary, especially, where the pretensions of the parties differ, and those of either may be carried, under colorable pretexts, to great height, there is always danger, by delay, of their becoming the cause of serious controversies, and even of destructive wars. Aware of this danger, the President of the United States is sincerely desirous of averting the evils incident to it, while it is practicable. It is with that view that he has sought, by the present negotiation, to settle amicably and finally all the points depending between the two nations.

The propositions which we have had the honor to make on this point are deemed reasonable and just, and we flatter ourselves that they will be so considered by His Majesty's Government.

We have now the honor to submit to your Excellency again the full view of our Government, on all the points depending between the United States and Spain, and, in so doing, consider it our duty to repeat what we stated in our former notes, that it is equally incompatible with justice, as it is with our instructions, to enter into any arrangement relative to claims for spoliations which does not provide, in some equitable and satisfactory mode, for the whole. To reserve a right, in respect to those which were committed by French cruisers and tribunals, without making provision for it, could at this stage be considered in no other light than an abandonment of it. We have forborne to state, in detail, the extent of these injuries, comprising, in the whole, two hundred and seventy-two vessels and cargoes, or the aggravated circumstances attending many of them, which have involved in ruin many of our most respectable and wealthy citizens, because it has been our object rather to heal than to open wounds. It is well known that, at the time these injuries were rendered to our citizens, there did not exist, on the part of Spain, the slightest cause of complaint against the United States, whose Government, peaceable and friendly, has borne them with a patience and moderation of which history furnishes

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no example in equal degree. Many years have elapsed since these injuries were received; during which time, the sufferers have looked to their Government for relief without effect. Their last hope is founded on this negotiation, and great would their astonishment and disappointment be, if they were told that more than one-half of them were to be abandoned. We repeat, however, what we took the liberty to state in our letter of the 12th instant, that, if it is possible, on being possessed of His Majesty's sentiments and propositions on the whole subject, to provide by a general arrangement for this and the other objects, in any mode consistent with our duty, which may be satisfactory to him, we shall be happy to do it.

We beg your Excellency to accept the assurance of our high consideration and respect.

CHARLES PINCKNEY,
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *Feb.* 28, 1805.

GENTLEMEN: I have received your esteemed note of the 26th instant, in which you reply to mine of the 16th; and before I make the observations necessary in answer to the same, it appears to me indispensable to satisfy, by a separate letter, the complaints of your Excellencies on the tone and expressions of my said note. The King, my master, being animated by the most sincere sentiments of friendship and distinguished consideration towards the United States, your Excellencies will be pleased to do justice to these sentiments of His Majesty and to mine, as being persuaded that I, who have the honor to be the interpreter of them, could have no design nor the most distant idea, I do not say to injure, but even to be wanting in those manifestations of consideration and respect for the United States, and their Government, to which they are so justly entitled. Commencing with this declaration, your Excellencies will permit me to examine the different expressions of my letter of the 16th, which have given rise to your complaints. Your Excellencies say, in the first place, that, on my part, I impute to you a refusal to discuss some of the controverted points; but if your Excellencies will take the trouble to read my note a second time, I hope you will acknowledge that I am far from imputing anything on that subject, and that I only wished to say on it, that, while your Excellencies believe it useless, or incompatible with your instructions, to continue the discussion upon the indemnifications reclaimed for injuries committed by the French privateers, as I understood by the expression of your Excellencies, "it seems useless to prolong the discussions on that point," I found myself obliged to treat the subject less extensively than I thought I could, not to molest your Excellencies too much on it. I am far from supposing that this could involve the smallest disrespect, as it is only reducing it to a difference of opinion, your Excellencies believing that the point was sufficiently discussed, and I, that it wanted to be a little more so. In the second place, your Excellencies show yourselves dissatisfied that I expressed that the claim of your Government satisfaction for French spoliations should demand two indemnities for the same debt. expression your Excellencies believe injurious your Government; but your Excellencies permit me to observe, that to demand two satisfactions for the same thing would be dishonorable to the American Government, knowing itself ready satisfied by France, should still demand satisfaction of Spain; but as your Government does not believe itself satisfied by France, it cannot dishonorable to pursue its demand of satisfaction from Spain, while it continues in the belief it has not received satisfaction from France. Spain, on her part, believes she has satisfied the United States have received satisfaction from France, and it is in this belief she may say the United States claim two satisfactions for same debt; more she cannot say, nor have I or thought to say, that they claim it with such designs, knowing they demand two satisfactions or that they believe they demand more than in which there is nothing dishonorable, if the United States might be mistaken, as she believes they are, in founding her belief on the sons which I have already explained to your Excellencies, and thinking, on this occasion, exactly in conformity with the opinion of the most enlightened jurists of your country.

In the third place, your Excellencies complain that, in my note, I have denounced many citizens of the United States as contrabandists; on which your Excellencies will permit me to observe, that I do not find anything of the kind in letter in positive terms, but in doubtful, as the expression denotes, "it will not be extraordinary;" a doubt which the representations employed in the royal revenue have given whose truth I do not pretend to guarantee; does the doubt fall upon many of the citizens of the United States, but upon some very small bers of them, as they very often use many sense, although there have been but few cases. I do not see the injury that can arise American nation in expressing a doubt that may have been some individuals concerned contraband business, or giving pretexts to iards to do so; nor have I either attempted criminate between the two.

In the fourth place, your Excellencies complain that I have said that some of the American ried away by party spirit, had calumniated on account of the deposit at New Orleans have disfigured what has happened in the and your Excellencies suppose that I intended likewise, in a manner, to attribute this American nation, the whole of whom, had but one opinion on the subject of the On this point I cannot do less than feel hurt at the construction which is given to pressions: in my letter I cannot find a single pression which can have the most remote on the subject, either to the American its Government; it treats only of some

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als; and so far from making the least reflection on the conduct of the American nation and its Government, during the suspension of the deposit, on the contrary, I have afforded many proofs of the satisfaction the conduct of the American Government has given on that occasion; notwithstanding it is not less certain what I have said; that there were some individuals, especially some writers, who published things on that subject injurious and calumniating to Spain, and the result of which was, that some of the inhabitants of the Western States, (as was not extraordinary,) not knowing the truth of the facts, suspended the shipping their produce to New Orleans, and suffered other injuries not imputable to Spain. In the first days of the suspension of the deposit, it was published by some North American, that the navigation of the Mississippi was obstructed; this was a falsehood, whose currency was injurious to the good faith of the Spanish Government, which had stipulated for the free navigation of the said river, and at the same time was prejudicial to the inhabitants of the Western States, who, remaining in this uncertainty, did not choose to undertake a voyage of such length, while there was danger of the outlet being interrupted. Afterwards, they said, and it was repeated in the writings and speeches of some individuals, that the suspension of the deposit, and what they might expect respecting the navigation, flowed from France having influenced Spain to take upon herself the odium of this measure, that France might receive Louisiana free from the obligations imposed by the Treaty of 1795, than which there could be no expressions more calumniating and unjust; it being an indubitable fact that, in the treaty of retrocession of Louisiana of the first of October, 1800, His Majesty had taken the most scrupulous care to secure the rights of the United States in the clause of the third article, which says, "telle qu'elle doit être après les traités passés subséquemment entre l'Espagne et d'autres Etats." As to what respected the "enthusiastic partisans," of which I spoke in my note, your Excellencies will permit me to remind you, that I alluded to the attempts of some of the inhabitants of the Western States, who (as the public papers then announced) showed a disposition and design to descend to Louisiana with an armed force, and, without other legitimate authority, to take justice into their own hands; on which occasion there now exists, in the office of the Secretary of State of the United States, the representations of His Majesty's Minister to have such attempts chastised and corrected. These are the attempts to which I allude in my note of the 16th, and on no account to the conduct of the American Government and nation, which was prudent and just. But can it be denied that the consequence of these errors thus published, and which were, that some or many of the peaceable inhabitants did not carry their produce to New Orleans, are not to be, or cannot be, attributed to the act of the Intendant, but to the occurrence which took place in the said country. There is nothing in my note which has reference to the liberty, or otherwise, of the press, nor with the institutions of the American Government, which, as your Excellencies observe, every Government is free to regulate as it pleases, but I only insinuated that the writings published with this motive, gave to the western inhabitants a wrong idea of what passed in New Orleans, and that this was not imputable to Spain, or the edict of the Intendant.

This, and this only, is all which I wished to say in my note of the 16th, in which I am extremely sensible that, contrary to my intention, your Excellencies have found motives for complaint; to remove which, it appears to me proper immediately to enter into this explanation, which, although somewhat diffuse, will, I hope, have answered the end I intended. It appeared to me proper to do this in a separate letter, reserving to myself to answer, with all possible despatch and brevity, the other points contained in your Excellencies' esteemed note of the 26th.

In the interim, I renew to your Excellencies the demonstrations of my distinguished consideration and esteem. I pray God to preserve your lives many years.

PEDRO CEVALLOS.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *March* 4, 1805.

GENTLEMEN: Immediately after I received your esteemed note of the 26th ultimo, I believed it my duty not to lose a moment in replying to the complaints you had been pleased to make on some of the expressions in my note of the 16th; it not being consistent with my sentiments to let your Excellencies remain for a moment in the suspicion that I was wanting, in any degree, in the respect due to the United States or its Government, or to persons so respectable as your Excellencies, not only in your individual capacities, but as representing the Government you do. I flatter myself I have removed, by my note of the 28th ultimo, all motives for those complaints; but if any doubt should still remain on that subject, I am equally ready to satisfy it, should your Excellencies be pleased to express it.

This done, I proceed to examine the other points contained in your note above mentioned of the 26th. It is certain that, in my first letter of the 31st January, I did not enter upon the points in dispute between the two Governments; but it appears to me that, in my belief, it was somewhat premature to begin to examine projects of a convention upon all the points, without analyzing them first, and fixing the right of each country as far as possible; because, as your Excellencies well know, before we can proceed to a convention upon the whole, it is necessary to know as distinctly as we can what are the rights and obligations of His Majesty and the United States. This knowledge of the detail ought to be the beginning of the negotiation; because it is clear that, according to the extent which they suppose the rights or obligation of each party ought to have, so ought the

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convention for the whole to be the more or less enlarged. This is what I believed your Excellencies wished to remark in your first note, by the following expression: "Each of the depending points between the two Governments ought to be examined impartially, and all motives of complaint and inquietude considered and terminated amicably, and to do which it is necessary to determine the respective rights," &c. Understanding it thus in my first note, I did nothing more than enumerate the points on which it appeared to me we had to fix our respective rights, and to request your Excellencies' opinion as to the order in which they should be treated. In my second of the 10th ultimo, I spoke of the reclamations for injuries committed by the individuals of both nations, and told your Excellencies that His Majesty was disposed then to terminate this point; and at the same time spoke, but not extensively, of the damages committed by the French privateers. In my third note of the 16th, not to molest your Excellencies too much, I touched shortly on the same subject, and treated of the damages occasioned by the suspension of the deposit; and, lastly, under date of the 24th, I commenced the examination of the limits of Louisiana, with those which relate to the eastern boundary.

In the context of all the letters together, and of that which I promise to tranamit, respecting the western limits of Louisiana, I hope your Excellencies will see I have not omitted entering upon all the points contained in your esteemed notes, only with the difference alluded to from the beginning, that it appeared to me most proper and clear to treat each point separately, according to its different nature.

It is true that, to the present time, I have not been able to say to your Excellencies, as you wish, what is the disposition of His Majesty upon the whole; but the reason is, as I have thought from the beginning, that it is not possible for His Majesty to determine what part he will adopt upon the whole, without being clear what are his rights or what his objections on each particular point. This examination being made, your Excellencies ought not to doubt that His Majesty will be ready to enter upon such a convention as shall be judged proper to conclude the claims and promote the interest of both parties. The King wishes to give proofs of his friendship and good neighborhood to the United States, and to fix them in the most permanent manner.

Having said this, and proceeding in the order of the notes which have passed between us, I must stop to remark a little on the reflections which your Excellencies have made, as to the assertion that Spain is persuaded that the United States are satisfied for the damages occasioned by French cruisers in her ports and on her coast. Your Excellencies wish to know by which of the conventions that have been made between France and the United States, Spain believes these damages to have been satisfied. I answer by that of 1800, and by the context of its ratification. In speaking of the second convention, it is only, as your Excellencies yourselves say on this subject, an explanation or compliance with the [illegible] to go to the point at once, one of [illegible] which convinces Spain and induces [illegible] lieve that she is not responsible for the [illegible] occasioned by French cruisers in her p[illegible] on her coasts, is, that it is notorious that [illegible] ted States have agreed with France to [illegible] themselves as satisfied for all the damages [illegible] have received from her (France) during [illegible] war.

It is true, in the convention no mention [illegible] made of Spain; because, in the manner [illegible] they treated, it was absolutely superflu[illegible] so, and the high contracting parties [illegible] it so, omitted without doubt to mention [illegible] which, by the nature of things, could [illegible] than a necessary and inevitable consequence [illegible] what they stipulated. Nothing is more [illegible] in law, than that an act between two parties [illegible] by its nature, and even independent of [illegible] the contracting parties, general to a third [illegible] ample, if a creditor releases a debtor [illegible] owes him, this act between the two [illegible] the security of the debtor, who, by the [illegible] things, remains released, although no [illegible] made of him, and, what is more, [illegible] creditor and debtor have wished the [illegible] not be released; because, by the nature [illegible] it is impossible the security should [illegible] the principal obligation has disappeared [illegible] same point of view ought to be considered [illegible] obligation of Spain, if ever there did [illegible] from the United States, with respect [illegible] ges committed within her jurisdiction [illegible] privateers. France was the offender, [illegible] sequence, the obligation, and the act of [illegible] which released France, extinguished [illegible] tion, which was one and indivisible [illegible] observe the learned gentlemen of P[illegible] The release of this claim supposes the [illegible] as the receipt of satisfaction, and [illegible] demanded without requiring two [illegible] the same offence, which are the [illegible] of the said learned gentlemen, (from [illegible] swer I took them, when I inserted [illegible] note of the 16th,) and as the same [illegible] serve, if the Power A (that is, Spain [illegible] responsible, and paid to B, (the United [illegible] Spain could then apply to France to [illegible] bursed, as she was the offender, and France [illegible] not gain anything by the release of the [illegible] States, which would become, by this [illegible] mode, null; and as it is very evident every [illegible] mate act ought to carry within itself every [illegible] that is necessary for its validity, it is [illegible] that the convention between the United [illegible] and France ought to be general to Spain [illegible] as is necessary for its validity, that is, [illegible] her from her responsibility, if she had [illegible] cause, on the contrary, by the United States [illegible] claiming against Spain, and Spain against [illegible] the latter would, by this indirect mode, [illegible] last to pay for the damages occasioned [illegible] privateers.

Your Excellencies, knowing well the [illegible] this reasoning, attempt now to establish that

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is the principal obliged for the said damages; that her obligation is not accessory, as presume the learned gentlemen of Philadelphia, who you say have confounded the case, applying the maxims of municipal law to nations, among which there is no such thing known as principal and accessory; and, finally, your Excellencies deny that France can be responsible for the damages committed by her privateers on the coast and in the ports of Spain, and admit that at the most, it can only be eventually so. But I cannot for my part conceive how these assertions can be supported. In the first place, I am persuaded that the principle of universal justice, on which the learned gentlemen have founded their opinion, is as applicable to nations as individuals: nations as well as individuals are bound by them; if an individual releases a debtor nothing can be demanded of the security; so, if a nation confesses itself satisfied for a claim it had against another, the same cannot be repeated against a third, although she bore a part in the responsibility; the reason of this is not a principle of municipal law, as you say, but an eternal and imprescriptible principle of universal justice, which is, that two satisfactions cannot be demanded for the same debt. Your Excellencies say, among nations, that they know nothing of such things as principal and accessorial obligations; but I do not agree to this. Among nations, as among individuals, they may have accessorial obligations, by mutual agreement, and also by the nature of things, since, if two nations agree in an act from which results responsibility, for example. an injury or spoliation, it is indispensable that the responsibility and the obligation shall be proportioned to the intervention each party had in it; that which committed the injury shall be first responsible; that which did not avoid it when she could and might, shall have less responsibility, having had less to do in committing the act, and this second responsibility may be called accessorial, or eventual, if your Excellencies prefer that term: in which I observe, that if your Excellencies acknowledge the possibility that there might be eventual obligations between nations, I do not know how you can refuse to admit the possibility of accessorial obligations; as, to my judgment, it is the same idea, but only expressed by different words. But, in the present case, if we were even to suppose that Spain and France, the first accessory, and the latter principal, associated, and both being principals, it will come to the same thing; the obligation having disappeared by the payment of France, Spain remains released, as the obligation was one and indivisible.

Your Excellencies will say that in the case on which we treat, Spain was the principal, and not only so, but the only one bound: but to me it is inconceivable how Spain can be considered, in any manner, as the only one bound; because it is not possible to imagine how France, who was not at war with the United States, could seize, condemn, and appropriate American property, without incurring some responsibility on her part; it would be a case never seen or heard of, and which combats all principles, and is contrary to common sense. We will see, at least, if Spain can be said to be the principal obliged.

It is evident that the obligation which an offender has to repair his offence, and the right the offended has to demand reparation, arise in the same moment that the offence is committed. Let us apply this principle to what has occurred with respect to French cruisers and American vessels. Spain was in alliance with France, and the two at war with Great Britain; of consequence, the French had a right to arm privateers, and the Government of Spain to permit them to arm in her ports. They armed against the subjects of Great Britain; but when they went out, they committed infractions, and violated the rights of other nations; and these are things which in reality the Government of Spain neither could foresee nor check. It results from this that these offences existed and might exist before Spain knew anything of it, and that, of consequence, the right of satisfaction existed before she had knowledge of the fact, and existed against the aggressor, which, without doubt, constitutes the principal obligation. When Spain might, if at all, with more propriety, be considered as accessory, was after her knowledge of the offence; but in reality she ought not even then to be considered as such, because the injury terminated and was completed by the definitive sentence which took place in the tribunals of France, in which they efficaciously and finally decided the sale of American vessels. In proof that the Americans who were injured considered this subject under this aspect, we find the tribunals of cassation full of the demands of those interested in vessels taken within the jurisdiction of Spain, and that these applications are supported, as I am informed, by the officers of the American agents in France; but, as when they pleased, it is evident that the United States, not being at war with France, always had the door open to commence their reclamations against her, this circumstance, in the present case, constitutes a most essential difference.

1st. Because the offender not being at war with the United States, could not be less than the first, if not the only one responsible for the illegitimate act.

2d. Because the United States had the door open to make the demand of the Government of France, and thus had direct communication with the offender, which could not be the case if war was declared.

3d. That Spain not considering the United States as in war with France, could not foresee the excess that cruisers armed in her ports against England might commit against American citizens, nor less avoid the definitive sentences of the tribunals of France which completed the offence. Besides, it is well known that, among civilized nations, it is customary to demand from privateers a bond or security that they shall not cruise except against the enemies of the State; and as this bond or security could not exist but in France, it is a proof that it is there they ought to go to seek the responsibility, that is, in France; and the United States having renounced this, or being satis-

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fied for these damages, nothing can be demanded of Spain. If upon this point there could remain any doubt, the positive affirmation of the Government of France, that they are satisfied, is sufficient to make it vanish. The Government of France ought to know without doubt, what were the offences she satisfied, by the convention of 1800; and it is not credible she would venture to say it was concluded, without a strong and intimate persuasion and conviction it was so, and which comes with great force from a third Power, who does not find herself immediately interested in the present discussion, as are Spain and the United States. On the other hand the information of France is of the greatest importance to establish the rights of Spain in this case: because if we suppose for a moment that Spain did pay to the United States the damages arising from the spoliations of the French privateers, there is not the least doubt she would immediately apply to France to be reimbursed; but she would, in reply, very justly refuse the reimbursement, saying that Spain had done wrong to make the payment, as France had previously communicated to her that the United States had been satisfied.

I have not attempted to avail myself of the argument, as your Excellencies seem to suppose, that Spain could not prevent the injuries committed against the American vessels, although it was in a great measure the case; because it was not possible to prevent injuries of which we had no knowledge, such as the French privateers committed, which were armed in our ports against the English: my defence is founded in the assertion that the said damages are already satisfied by France, and so did the learned gentlemen of Philadelphia understand it, when, in their argument, they say, "but even leaving impossibilities out of the question, and admitting that the Power A could have prevented the injury which was committed by the Power C, in that case the Power A is no longer liable to any responsibility in damages on account of its acquiescence."

I have insisted principally on this method of defence, because, founding it in an act clear and notorious, and of the most easy examination, it appeared to me to be the most convenient to repel a claim which Spain could oppose with many other reasons and arguments.

It is not demonstrable that a nation is obliged to satisfy the damages and injuries committed on her coasts by the subjects of other Powers, and cases without number might be cited to the contrary among civilized nations. Denmark had her ports open during the last war to the belligerent Powers, and condemnations of prizes were made in them without there being, on this account, any responsibility demanded of her; many other neutral Powers suffered, during the same war, various damages from the French cruisers on the coast and in the ports of Spain, without having demanded any other thing of Spain than to interpose her good offices, and co-operate in obtaining redress for the injury. Spain, when she has been injured, has not demanded such indemnifications, and has only demanded that the Government whose flag or coasts have been violated should pass efficacious offices for the reparation of the offence. This, and this only, is all to which Spain obliged herself by the sixth article of the treaty with the United States, in which, after offering defence and protection reciprocally for the vessels of both countries within the extent of their respective jurisdictions, it says, that, in case of offences of the nature of which we treat, each Power in whose jurisdiction it is committed, shall employ all its efforts to recover and have restored to the lawful owners, the vessels or effects which have been taken within the extent of its jurisdiction; from which it results, that *the only thing* which it can be pretended Spain *has obliged herself* to, is to employ all her efforts *to recover* and have restored the vessels and effects so taken; but in no degree exists any obligation in her to make reparation, should such efforts not produce the desired effect: because, if it had been the intention of the high contracting parties to do this, it would have been expressly stipulated. As, on account of this article, your Excellencies pretend to be persuaded that Spain is the only one responsible for the excesses of the French privateers, I could not omit observing that the obligation of the Power which has to restore could not but be greater and more principal than that whose obligation only is reduced to the making efforts that they might be restored; and that France being in the first case, and Spain in the second, it cannot but follow that the principal obligation rests on the first, and only that of accessory on the second.

Proceeding now to the damage occasioned by the suppression of the deposit at New Orleans, I will endeavor, also, to answer with the utmost brevity possible, your Excellencies' remarks in your esteemed note. In the first place, your Excellencies will permit me to declare, that I see with regret that, in what I said in mine of the 16th, as to the deposit at New Orleans, *being a generous* and gratuitous concession of His Majesty, and other parts of my letter, I did not explain myself as I wished. Your Excellencies understood that I wished to say that the deposit, not only in the capital, but on any other point on the bank of the Mississippi, was a charitable donation of His Majesty, revocable at pleasure, either before or after the three years fixed for its being at New Orleans; and that it might remain revoked until the United States implored His Majesty anew to restore it. It is not honorable to me that such assertions should be attributed to me; I said, and it was my intention to say, that, in its origin, the right of the deposit granted to the United States in New Orleans flowed from a wish in His Majesty to grant it generously, and oblige himself to maintain it there for three years, as a convenience to the United States. Nothing is more common than for a nation to impose on itself an obligation, gratuitously, in favor of another, without more interest than the satisfaction of having done it a useful service without injury to itself. After making the stipulations and conclusion of the treaty of 1795, there was, no doubt, an obligation to maintain and comply with it; but, in the case of the

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deposit, there are two things essentially distinct, which ought to be considered: the deposit at New Orleans, and the indefinite deposit in some other place on the banks of the Mississippi. The three years being over, and injury arising to the Royal revenue from the continuance of the deposit at New Orleans, to have continued it there, notwithstanding, cannot be considered less than as a favor of the King my master, because no obligation existed on his part to do so; and, if the United States had desired that the deposit at New Orleans should have continued in a manner not precarious, but established and obligatory, it was necessary to have a new stipulation, because His Majesty was not obliged to do so. At present, as to what regarded the right of deposit in the other place, the United States did not require a new stipulation, because they had it by the treaty; but, as the new place was not established by the treaty, it is clear the United States had to ask the fixing of it on the spot which they thought convenient, or the two Governments had to understand each other in the establishing it; for, as it was to be fixed to the satisfaction of the American Government, Spain could not do it alone, or without saying what were the qualities it ought to have to answer their ends. The difficulty is not in this, which is in itself simple, but, it is in examining its situation after the end of the three years in the capital, and the other four years in which His Majesty generously continued it there, being under no obligation to suffer the inconveniences which were encountered in the said four years. And the question now is, whether he could or not suspend the deposit in New Orleans before agreeing with the parties concerning the fixing another; or in other words, after the conclusion of the three years of the deposit at New Orleans, the King was obliged to suffer the inconveniences of its continuation, until they could enter into a convention or agreement respecting another place; or further, if the United States could in rigorous justice be made to suffer the intervening inconveniences of the suspension for the time necessary for the two Governments to agree upon the fixing it. The treaty says nothing of this; and I hope I have shown that good neighborhood or friendship should have permitted for a short time the inconvenience of the deposit at New Orleans before proceeding to suspend it, and for this reason His Majesty revoked the edict of the Intendant. But speaking of what, in rigorous justice, can be supposed to be due to the solicitude of being indemnified for the same, I am of opinion, that, as the treaty said nothing about it, His Majesty was not obliged to continue the deposit at New Orleans, nor to suffer its inconveniences; although he was bound to consent to its establishment in another place, on which His Majesty could not determine alone, it being necessary that it should be fixed equally to the satisfaction of the United States. I repeat, that it is not my intention to approve the conduct of the Intendent, nor to diminish the rights of the United States under the treaty, but to examine points unsettled in it, and to deduce from thence whether Spain was or was not liable for the indemnifications arising out of the suspension of the deposit at New Orleans—an examination which may in my opinion have been excused, from the short duration of the existence of the injuries which might be considered as really attributable to the edict of the Intendant.

I beg your Excellencies to accept the assurances of my respect, and hope that God will preserve your lives many years.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *March* 8, 1805.

SIR: We have now the honor to answer your Excellency's note, of the 24th ultimo, respecting the eastern limits of Louisiana, the receipt of which has been already acknowledged.

We are happy to find that we shall not differ as to the material facts on which the question depends—to wit: that France held Louisiana prior to the treaty of 1763, to an extent eastwardly to the Perdido, comprising in it the greater part of West Florida; that she ceded it by that treaty to Great Britain, who, in 1783, ceded it to Spain—Spain having possessed herself of it by her arms in the course of the war; that the treaties referred to in that of St. Ildefonso, whereby Spain ceded Louisiana to France, as having passed subsequently between Spain and the other Powers, are that of 1783 between Great Britain and France, whereby the former ceded to the latter that portion of Louisiana called by her West Florida, and that between the United States and Spain in 1795. None others were made by Spain relative to that object; therefore they only could be referred to. We admit also that they were referred to by a real and sufficient motive.

We are also happy to find that we shall not differ in opinion on the principles of the law of nations, or the rules by which treaties are to be construed under them, especially the following—to wit: that treaties must not have an odious or absurd construction, when it is possible to give them a plain and simple one; that the intention of the party to a treaty is to be collected from the whole article; that each clause is to be taken into view, and the import of the whole collected from that of each clause; and that no part is to be supposed superfluous to which a rational meaning can be given.

We should be happy if we could agree in the application of these facts and principles to the point in question. We draw however from them, by the clearest evidence and most satisfactory reasoning, a conclusion that under the treaty between the United States and France of 1803, which is founded on that of St. Ildefonso, between Spain and France in ——, West Florida was comprised in the cession of Louisiana to the United States. Your Excellency, it appears, is of a contrary opinion.

Before we proceed to the inquiry, and to answer your Excellency's note, we think proper to premise that it would have been more agreeable to the United States to have obtained the cession of that province of France, by a short definition of

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its boundaries; since, in that case, they would have known distinctly what they had acquired, and avoided the necessity of a discussion with Spain. But as these had not been traced between France and Spain, it was impossible to give such a definition. It was therefore agreed that France should cede to the United States precisely what she had acquired of Spain; and, that the extent of that cession might be known, that the third article of the Treaty of St. Ildefonso, between France and Spain, should be inserted in that of Paris between the United States and France. Thus, that article, and it alone, became the extent of the right which the United States had thus acquired. There is nothing in the treaty, nor did anything occur in the negotiation, to detract from its just and rational import. The United States were at liberty, as France would have been, had the cession not been made, to examine, under it, the extent of their rights, and, in so doing, to appeal to those facts and principles, which, in the estimation of the enlightened and impartial world, ought to govern in the case. It is by this investigation that the Government of the United States has formed its opinion of their rights; and it is from a regard to justice, and motives of respect to His Catholic Majesty, that they are now made the subject of amicable discussion with his Government. Having made these remarks, we proceed in the proposed inquiry.

We observe that your Exellency relies much in support of the pretensions of Spain, in the point in question, on the import of the term "retrocede," which is found in the treaty; that you consider it as going far to decide the question in her favor. We cannot but express our surprise that such reliance, or indeed that any, should be put on a term, vague and equivocal, at best, which, it is easy to show, neither has, nor was intended to have, any influence in the question. If it were of any importance to analyze that term, it might be contended, that, as France once possessed that province, a cession of it back to her, by any Power who had obtained it of a third, was a retrocession of it. By ceding it back to France, the former proprietor, it would, in respect to her, be a retrocession, although not one acre of it had been received of her by the Power making it; and it is very likely, under such circumstances, that such would have been the title of the treaty, or the phraseology of the article applicable to the subject. In the present case, all the territory which was ceded back to France had belonged to her before. Nineteen-twentieths of it, supposing West Florida to be a part, had been previously ceded by her to Spain, and that twentieth part had been ceded by her to another Power, to accommodate Spain, of whom Spain had obtained it. Was it not natural, then, when Spain ceded back this territory to France, that the term retrocession should be made use of? Had it been the object and studious endeavor of the parties to characterize in the treaty the former propositions and transaction respecting the territory, and no more could have been intended, it is not known how, even with the import annexed to the term by your Excellency, a more suitable or just one could have been adopted for the purpose. But, as already observed, this term is of no real importance in the case, nor was it intended to have any by the parties, in the sense alluded to, as is perfectly evident by the other parts of the article. We find in it three distinct members or clauses, which were introduced for the express purpose of explaining what was intended to be done. By these, is fully and accurately defined what proportion of that province should be transferred to France, and what other proportion of it should be exempted from the operation of the treaty. If it had been intended that the term "retrocede" should be understood in the sense insisted on by your Excellency, it is presumable that none others would have been used, since, not being necessary to illustrate, they could only serve to obscure and perplex. The introduction, there, of other clauses, plainly proves that that term was not to be relied on as expounding the object of the parties, but that those clauses were to do it. It will not be denied, that, although the title of the treaty might be what it is said to be, under the term, "retrocede," introduced in every page, and although Spain had never received one acre of the territory from France, she might, nevertheless, by suitable operative clauses, convey and transfer to France all that portion of Louisiana which she possessed, if she was so disposed. It is by the operative clauses of every article in each, that their meaning is expounded. It is to them that we must respectively refer, in the present instance, for the intention of the parties in that of St. Ildefonso, and the extent of the rights of the United States acquired under it.

By the first clause of the third article of the Treaty of St. Ildefonso, Spain cedes to France the Province of Louisiana—"such as it is in the hands of Spain." It is to be observed, that the reference here made to that Province was in its integral state—that is, while in the possession of France—and of course prior to the cession made of it by her in 1763, as will be more fully seen by the next clause. The simple question then on this clause is, What portion of Louisiana was in the hands of Spain when the Treaty of St. Ildefonso was formed? All that portion, be it what it might, was clearly and positively comprised in the cession, and transferred to France; all that portion, be it what it might, not in the hands of Spain, was as clearly and positively excluded from it. This is the plain and obvious import of the clause—indeed it admits of none other—by adhering to which, everything of an absurd and odious tendency is avoided, simplicity in the construction is preserved, and (what is of equal importance) the integrity and fair intentions of the parties are manifested. All that portion of Louisiana, according to its ancient limits, which lies eastward of the Mississippi, from the 31st degree of north latitude to the northern limits of the United States, had been ceded by the treaty of 1763 to Great Britain, to which France, Spain, and Portugal were parties, and afterwards confirmed by her to those States at the close of the war of their revolution in 1783, to which France by her treaty with those

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States in 1778 had already renewed her special sanction, as did Spain afterwards by her treaty in 1795, with the addition of the right of deposit at New Orleans. It would therefore have been highly improper in the parties to the Treaty of St. Ildefonso to have formed it in such manner as to have admitted the cession to have applied by any possible construction to any part of the territory or rights belonging to it. Accordingly we find, by the clear and obvious import of the article, that such a construction is altogether and absolutely precluded, and by terms the most suitable and judicious that could have been selected. We find, also, that the article is equally clear and explicit as to the position of the Province which it was intended to cede. By ceding that portion, and that only, which was in her hands, Spain did what she had a right to do, and no more, of which a very distinct idea was conveyed in both respects. She excepted from the cession all the territory above described, which of right ought to have been excepted. She comprised in it all that she had a right to cede, including of course (as being her property, and in her hands) West Florida.

In the second clause the cession is further explained and confirmed in the following terms: "Such as it was when France possessed it;" by which a clear and explicit reference is made to the Province, at a period preceding the treaty of 1763, when France possessed the whole. This clause would of course have been understood to have comprised the whole, had no part been specially excepted from the cession. But we have already seen that by the operation of the first clause all that portion of the Province, according to its ancient limits as known before the treaty of 1763, now belonging to the United States, was clearly excepted from it. In every other respect, however, its operation is uncontrolled. It certainly comprises all that part which was then in the possession of Spain, from whatever Power or by whatever means obtained. By referring to it at an epoch anterior to the treaty of 1763—that is, when France possessed it—it was obviously the intention of the parties to reject all idea of subsequent divisions, modifications, or applications, by either of the Powers who were since possessed of it. It was well known that Great Britain had called that portion which was ceded to her by the treaty of 1763, West Florida; and it was probable that Spain might have called some other portion of it adjoining Mexico by some other name. Hence it was possible, if by any construction an allusion to the Province had been admitted at any period after 1763, that these distinctions and terms might have created some embarrassment in the meaning. To avoid that danger, it was deemed advisable to go back to an anterior epoch, and thereby put them entirely out of the question. This clause, then, shows still more clearly that it was the intention of the parties to include West Florida in the cession, since, by taking them together, and giving to each and both their just construction, it is impossible to mistake their meaning. By the first, all that portion of Louisiana which was in the hands of Spain was transferred to France; but as it was possible, for reasons just mentioned, that doubts might arise whether West Florida was comprised in the cession, by this it is expressly declared that no part of the Province in the hands of Spain, which France had ever possessed, should be exempted from it.

By the third clause of the article, the cession of the province is declared to be in an extent "such as it ought to be after the treaties passed, subsequently, between Spain and other Powers." The treaties referred to here are, that between Great Britain and Spain, in 1783, whereby West Florida was ceded to the latter; and that between Spain and the United States, in 1795, whereby the boundary adopted in their treaty with Great Britain, with the right to the free navigation of the Mississippi, and of deposit at New Orleans, were established. What, then, is the effect of this third clause? To us, nothing can be more simple or intelligible. We will first examine it in reference to the first treaty, which alone creates the difficulty. By that, Spain became possessed of a portion of the province of Louisiana, which she had not acquired of France; by means whereof, such addition is brought within the scope of the two first clauses, already noticed, and is transferred by them to France. It is brought within the scope of the first, because "it is in the hands of Spain." It is brought within the scope of the second, because it is a part of the province, "such as it was when France possessed it;" and, by the terms of this last or third clause, it is expressly designated as a portion of the territory which it was intended to cede, by that treaty, to France. If we examine impartially the import of these terms, we shall find that it is impossible to give them any other rational interpretation in reference to this object. The terms are, "such as it ought to be after the treaties passed, subsequently, between Spain and other Powers." This portion having been a part of the province when France possessed it, and being now, by the Treaty of 1783, vested in the hands of the same Power, who held every other part, not expressly exempted from it as belonging to and secured to the United States, by many treaties, as already stated, ought to be considered as a part of it again. Had Spain possessed and ceded that portion of Louisiana to Great Britain by the Treaty of 1783, or at any time before that of St. Ildefonso, this clause would have exempted it from the cession, as would both the others. Being out of the possession of Spain, those clauses could not have operated on it; and, being ceded by Spain to another Power, in a treaty passed subsequently, that is, after 1763, the cession would have been sanctioned by this clause. But Spain did not cede that territory to Great Britain; on the contrary, she acquired it of her; and it is inconceivable to us, how that acquisition, which brought it into her possession, and subjected it to the control of the two first clauses, should be supposed to have exempted it from such control; how a treaty which enlarged the limits of the province in her hands, without producing any other effect, should be construed as lessening the extent of the cession. The reference made by

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this clause to the Treaty of 1783, must be considered as intended to produce an effect in the present one, correspondent with the spirit of that of 1783. It would be strange, indeed, if it counteracted that spirit, and produced an opposite effect. And in judging of the effect which it was thus intended to produce, not only the spirit of that treaty is to be regarded, but this clause must be construed in connexion with the preceding ones, so as to give them their just effect also. It is a well known rule in the construction of treaties, that "the interpretation ought to be made in such a manner that all the parts appear consonant with each other; that what follows agrees with what went before, at least, if it does not manifestly appear that, by the last clause, something was changed that went before." If we apply this rule to the present case, the conclusion is unavoidable, since, by the construction we contend for, all the clauses have their just import, are consonant to each other, unite in the same object, and produce the same effect; which is to show that it was the intention of the parties to comprise West Florida in the cession.

With respect to the effect of this clause on the other treaty referred to in it, to wit, that of 1795, between the United States and Spain, it is obvious that it was the intention of the parties to secure to those States, in the hands of the new proprietor, the rights which they had acquired on that territory by that treaty. It was, it is true, impossible for those parties, or any others, in any treaty between them, to destroy the rights of a third one. It was, nevertheless, very proper and honorable in them to insert a provision in this, for the security of those rights. Having thus examined carefully and impartially the third article of the Treaty of St. Ildefonso, under which France ceded to the United States the province of Louisiana, and, as we presume, proved incontestably, by a just construction of the several clauses, that West Florida was a part of the cession, we will now proceed to notice some of the other remarks of your Excellency which merit a more particular attention.

Your Excellency observes that, as the territory in question, to wit: that lying between the river Iberville and the Perdido, was called by Great Britain West Florida, after it was ceded to her by the treaty of 1763, and as that name had been preserved to it by His Catholic Majesty in the title to his Governor at the Havana, since it came into the hands of Spain, it cannot be considered as comprised in the cession to France by the Treaty of St. Ildefonso. But we have already shown, and we presume satisfactorily, that that objection is altogether unfounded, supposing the fact as thus stated to be correct in both cases; though it is proper to observe, that we had understood that the territory in question had been governed as a part of Louisiana after the treaty of 1783. Be that, however, as it may, it is proved, by referring to Louisiana at a period when it was possessed by France to characterize the cession made, that it was an essential object of the two first clauses to get rid of that objection, and that they have done so as effectually as if that division or name had never existed. It was also observed that any construction of those clauses which should comprise West Florida within the cession, might, with equal propriety, be considered as applicable to all that portion of Louisiana which lies within the limits of the United States. We cannot perceive on what principle this remark is founded, since, as the facts are different, there is certainly no analogy in the cases. To support the doctrine, it ought to be shown, that West Florida is not in the possession of Spain, but of the United States or some other Power. We have shown, by a fair construction of the clauses, that it is by virtue of that portion of the province being in the possession of Spain, that it was comprised in the cession; and by virtue of the other portion of it that is, what belongs to the United States, being out of the possession of Spain, that it was excluded from it.

Your Excellency observes, also, that if it had been the intention of the parties to include West Florida in the cession, it would have been easy to have expressed it. We do not know that it would have been possible to have expressed it in a more clear manner than is done; we are satisfied that other terms more comprehensive, and guarded in reference to all the objects which it was proper the parties should have in view, more intelligible, less free from objection, and, at the same time, so concise, could not have been found. With strict propriety may we say, that if it had been the intention of the parties to exclude West Florida from the cession, it was very easy to have done it, and that the means were obvious, since it was only necessary to have stated that Spain retroceded to France that portion of Louisiana only which she had received from her. Had that been done, there would have been no occasion for the subsequent clauses, especially the two first, to explain the meaning of the parties, and define the extent of the cession. We might add that, if the case admitted of any doubt, which, however, we deny; for, in our judgments, there never was a clearer one taken into consideration, from the nature of the transaction, that doubt ought to operate against Spain, since it is a well-established doctrine of the law of nations, in the construction of treaties, that in all cases of cessions or grants, "if the party making them fails to explain himself clearly and plainly, it is the worse for him; he cannot be allowed to introduce subsequent restrictions which he has not expressed." We do not, however, think that the present case admits of any doubt.

We cannot suppose that the French prefect, M. Laussat, had any instructions from his Government by what limits he was to receive the Province of Louisiana from the officers of Spain, or that he had its orders to surrender it to the United States by any of a definite nature. The opinion is founded on the treaty between the United States and France, by which the cession was made to those States, and in which no limits were defined, for the reasons stated in the commencement of this note. We entertain, as already ob-

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served, a very high respect for His Imperial Majesty, and we can never believe that he would, by any act of his, be willing to invalidate any of the rights which the United States had acquired under that treaty.

With respect to the opinion entertained by Mr. Ellicott on this point, we have only to observe, that, although we believe him to be a good astronomer and geographer, we are far from considering him in the light of an able civilian. It is presumed that he ran the line between the United States and Spain correctly, in the case alluded to, and that his charts may also be correct; but we doubt if he ever read with attention either of the treaties on which the present question depends, or would be an able expounder of them if he had. In making his book, which it appears he had completed before he was acquainted with the cession of Louisiana to the United States, or with the nature of that made by Spain to France, which was then for the first time known, it was natural that he should consult the old maps of the country, and regard the divisions that were made of it prior to that epoch, especially in conformity to the treaty of 1763. Under such circumstances, and in consideration that this question depends on treaties, your Excellency will, we presume, see the evident impropriety of paying that deference to Mr. Ellicot's opinion which you have been disposed to allow it.

We have read, with much attention, your Excellency's note of the 4th, on the subject of French spoliations committed within the limits of Spain, and are sorry to find, that the opinions which we respectively entertain on it are as remote from an accord as they were in the commencement. We have read with equal attention your remarks on that of the suppression of the deposit at New Orleans, in which you do not seem to assent to the ideas which we deemed justly applicable, and thought it our duty to express, relative to that interesting and unexpected occurrence. Having said all that we have to observe on those points in our former notes, and having communicated fully our sentiments in this, as in that first presented, respecting the eastern limits of Louisiana, it remains that we should now proceed to the last topic depending between us, to wit: the western limits of that province. Having already had the honor to present our view of the rights of the United States on that point also, we shall be happy to be favored with that of your Excellency on the same.

We avail ourselves of this occasion to observe, that we received with much pleasure your Excellency's note of the 28th ultimo, in reply to our remarks on that of the 16th, the purport of which was further confirmed in that of the 4th, since it gives us the very satisfactory assurance that it was not your intention, by any expressions in that note, to convey the unfavorable sentiments in regard to our Government and country, which we had supposed it did. It was with much reluctance that we communicated to your Excellency the impression which that note made on us, which we certainly should not have done had we not believed that it would have produced a similar one on our Government, on whom, we were persuaded, it was neither your wish nor intention to produce it. The frank and honorable explanation which you have given us in that respect, is a full confirmation of what we had anticipated on that head, and an ample assurance that, whatever may be the result of this business entrusted to us, we shall carry with us the sentiments of that high respect and consideration for your character which it justly merits.

We beg your Excellency to accept the assurance of our high consideration and respect.

CHARLES PINCKNEY,
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *March* 14, 1805.

GENTLEMEN: I have received your esteemed letter of the eighth, in which you are pleased to answer mine of the 24th ultimo, relative to the limits of Louisiana, and I cannot do less than immediately to reply to it.

I agree at once with your Excellencies, that treaties ought not to receive odious and absurd interpretations, which are capable of clear and simple ones, and that the intention of the parties ought to be collected from the whole context, and from each article: from these principles and mode of examination of the third article of the Treaty of St. Ildefonso, I deduce consequences from the same very different from those which your Excellencies have done.

Your Excellencies believe to be of very little importance to the decision of the present question the word "retrocede" or "retrocession," which is the title of the Treaty of St. Ildefonso, and is found in the said third article, and suppose it a term vague and equivocal, which has no influence on the question; and that, if it had been important to analyze it, it might be easily made to appear that with the expression "retrocede," it also intended to denote that West Florida, or a part of it, ought to return to France, although she had not ceded it to Spain. For my part, I cannot but be surprised that your Excellencies should consider vague and indeterminate an expression which serves to denominate the treaty, whose title literally copied is as follows: "Traité préliminaire et secret entre, la république Francaise et Sa Majeste Catholiqe, touchant l'agrandissement de Son Altesse Royale le Duc de Parma, en Italie, et la rétrocession de la Louisiane," and which governs the whole proceeding, and is conspicuous in all the clauses of the third article of the said treaty. On a single reading of this article, there is no one but must know that, according to grammatical order and the common use of language and words, the words "to engage to retrocede" is the principal action of it, and this principal intention is conspicuous through all the context and clauses of the article; and that, although the following expressions may modify it, they can in no degree contradict

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it without giving to the whole an absurd meaning, and as repugnant to common sense as to the most simple rules of grammar and art of writing; nor can it be said without discredit to the contracting parties, that they should avail themselves of an expression vague and equivocal, and use it exactly in the most important article, and upon one of the most interesting objects of the treaty; and that, with a view to find such vague expressions, they should select the word "retrocede," having at hand the word "cede," which, followed by other explicit clauses that might have been inserted, would have explained with facility and precision the return of Louisiana to its former owner, and the cession of West Florida, if such had been the intention. But it was no doubt the intention of the parties that the expression "retrocede," which has given the name to the treaty, and serves to express the principal design of the third article, should be marked with all the exactness and grammatical rigor possible; nor is it susceptible of doubt that the expression "retrocede," in its obvious and grammatical sense, means to cede to one what it has received from it. Your Excellencies ought not, therefore, to think it extraordinary that I have believed, and do believe, that this expression is of the greatest consequence to the decision of the present question.

The force it carries with it makes us see at once with what exactness and simplicity the other parts of the article quadrate with it. If we set out from the beginning to give to the expression "retrocede" a meaning which it has not, it will not be extraordinary if we find some embarrassment and difficulty to decipher the said article. It says, in the first place, that it retrocedes Louisiana "avec la même étendue qu'elle a entre les mains d'Espagne;" but this expression, in the mode in which your Excellencies contrive it, appears absurd and contradictory. It is indubitable that Spain possesses West Florida as Florida, not as Louisiana, and this act, founded on an authenticity the most notorious, is marked, in the Treaty of 1783 and 1795, in a manner which cannot be contradicted or admit of a doubt; consequently, Louisiana, "avec la même étendue" which it had in the hands of Spain, is without West Florida, and to suppose that the cession could have comprehended this province, it was impossible to suppose it could be Louisiana, with the same extent, without incurring a palpable contradiction. Your Excellencies know the force of this difficulty and wish to explain the first clause by the second, which says, "et qu'elle avoit lorsque la France la possédoit." But I ask, has the second clause a fixed epoch, which determines the time when France had it? Certainly not. Then the want of this fixed epoch alludes to the last time that France had it, that is, when she delivered it to Spain; an expression the more convenient, as in any other manner it will be contradictory with the first, which says, "avec la même étendue qu'elle a entre les mains d'Espagne." if it was with more, it could not be with the same. It is more natural that a clause which has a fixed epoch, as the first has, should serve to clear up the sense of the second, which has no epoch, or extent fixed, than that we shou[illegible] much force to the doubtful epoch of [illegible] clause, as to make it destroy the clear an[illegible] meaning of the expression "retrocede" [illegible] clause "avec la même étendue." Adm[illegible] explanation of your Excellencies, the se[illegible] is in contradiction with the first; admit[illegible] both explain and combine simply, and [illegible] Spain delivered Louisiana to France, [illegible] same extent that it had in her hands [illegible] as France possessed it when she delivered [illegible] Spain, but as neither in the one or other [illegible] West Florida made a part of Louisiana [illegible] clauses perfectly unite with each other [illegible] with the principal action "retrocede," [illegible] erns all the clauses of the article.

The third clause, which your Excellen[illegible] pose can also be brought as a proof [illegible] Florida is included in the retrocession [illegible] ana made to France, is, to my unde[illegible] new proof of the contrary; it say[illegible] qu'elle dût être après les traités passé[illegible] pagne et d'autres Puissances." It [illegible] to make anything clearer than that [illegible] not alter anything in the treaties [illegible] had made with other Powers or [illegible] There were two, one of 1795 wi[illegible] States, and one with England in [illegible] Spain had acquired the territori[illegible] of the Mississippi, not as Louisiana [illegible] ida, and, consequently, to be, as it [illegible] after this treaty, was with the exc[illegible] ritory possessed by England as We[illegible] conquered by Spain as West Florida an[illegible] irrevocably as West Florida by the [illegible] 1783, and received, in each of these [illegible] a new qualification of its total separ[illegible] Louisiana, and of the limits which separ[illegible] Your Excellencies contend that the [illegible] 1783 was a new incorporation of the [illegible] tory to Louisiana; but I do not see [illegible] treaty of 1783 anything but a confir[illegible] the right of conquest which His Maje[illegible] had made of an English province ca[illegible] Florida; the cession which France ha[illegible] England of the said territory had bee[illegible] ation, perfect, irrevocable, and perpe[illegible] territory became an English possess[illegible] terwards a Spanish one. That Sp[illegible] other side, and by other titles, should [illegible] quired Louisiana, and that the two [illegible] should return to be united in the one [illegible] which they were before united, does [illegible] nor could it import, a legal incorporat[illegible] because their titles and times of acqu[illegible] different. Spain had no Louisiana b[illegible] received from France, and it was [illegible] Florida she received from England.

It is not conceivable or imaginable [illegible] cession of a province or territory [illegible] without mentioning or naming it, or th[illegible] be made only by designating it with [illegible] which, by the consent and notice of a[illegible] tions concerned, and the most authen[illegible] acts, it had lost many years ago. Th[illegible] was called West Florida, and it was so [illegible]

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hentically, and by this name the contracting parties would have called it, had they imagined it was comprehended in the cession; as it is an acknowledged principle that the territories they change or cede ought to be designated by the names they then officially have; nor can it be said that, by its entrance into the possession of Spain, it returned to its ancient state and name, because all the public acts since its entrance into the possession of Spain, from the treaty of 1783, inclusive, have confirmed its separation from Louisiana, and its difference of name springing from the difference of its title of acquisition; after a separation so qualified, it was only an express and positive stipulation that could reunite it to Louisiana in its retrocession. Your Excellencies have attempted in your note to persuade me that the treaty of 1783 reunited West Florida to Louisiana anew, attributing it to the motive which made France cede to England, in 1763, the territory to the east of the Mississippi, and this motive, your Excellencies say, was to favor Spain. But, on my part, I cannot agree to this. France ceded this territory because she felt it her interest to do so, or was obliged to do so; but this is of no importance, for, be the motive what it may, the cession cannot be considered less than an effectual, irrevocable, and perpetual alienation, with all the consequences which were to make West Florida an English possession. Being so, Spain could conquer, acquire, and receive it from England, having this original and just title to it; and this alone is all she requires to make it her property in every sense of the word, and as independent of Louisiana as it was in the hands of England.

It results from this, that the contracting parties had no intention to include West Florida in the treaty of St. Ildefonso; this is the more confirmed, if we recollect that France could not do it, nor could she stipulate for the acquisition of any territory to the eastward of the Mississippi, without the consent of the United States, as she had obliged herself to this by an express stipulation contained in the sixth article of her treaty with the United States; which article says: "Le Roi très Chrétien renonce à posséder jamois les Bermudes, ni aucune des parties du continent de l'Amérique Septentrionale, qui, avant le traité, de Paris de 1763, ou en vertu de ce traité, ont été, reconnues appartenir à la couronne de la Grand Bretagne." It is to be seen from this, that France could not (if the United States did not consent, when she had bound herself by this treaty) acquire West Florida, which, by the treaty of 1763, belonged to the Crown of Great Britain. If in the treaty of St. Ildefonso, France had intended or proposed to acquire West Florida, it is clear she could not do so without the consent of the United States, and that this consent ought to precede all other stipulations; on the contrary, if France should have infringed the rights of the United States, which can in no manner be supposed, it would not be decorous in the United States to give to the treaty of St. Ildefonso an interpretation, from which it must result, as a necessary consequence, that France had violated their treaty with the United States, and that they founded their right to West Florida on this violation.

The opinion of the astronomer and geographer Ellicot, which is so exactly conformable to the ideas I have just stated, and whose concluding expressions I transmitted you in my letter of the 24th, is of very great weight and consideration on this subject. I do not suppose it, as your Excellencies do, a question for a lawyer or civilian; it is, in its whole extent, entirely geographical; it only treats of the question, whether the territory to the east of the Mississippi, at the time of the retrocession, was Louisiana or West Florida. What person more proper to give an opinion on this subject than the one who has merited to be employed by the United States, in fixing the limits of the very territory he treats about? It is dishonoring his talents to say that he had not with him the maps, both ancient and modern, of the said territory, and the most authentic documents respecting it; and using, as he does, the expressions I copied for your Excellencies in my letter of the 24th ultimo, after he knew of the acquisition of Louisiana by the United States, leaves no doubt that his love of truth and justice forced from him this sincere confession of the incontestable right of Spain to the territory of West Florida.

But all further reflections are unnecessary upon this subject, when it is considered that the Treaty of St. Ildefonso was a contract between France and Spain, and that, of consequence, on whatever point of it (however it might appear doubtful) on which France and Spain are agreed in their understanding and explanation of it, this uniformity of understanding has as much force as the most explicit and determinate stipulation, because no one can know as well as the contracting parties what the one was to cede, and the other to receive. The United States, who have succeeded to the right of France, can have no other right or claim than that which France supposed she had. France has been, and is now, persuaded that, by the treaty of retrocession, she neither did nor had any intention to acquire West Florida. The prefect Laussat, charged to carry the treaty into effect, instructed perfectly in its contents, and being depositary of the intention of his Government, was satisfied of the manner in which it was carried into execution, without being put into possession of West Florida; which act leaves no doubt of the manner in which France understood the Treaty of St. Ildefonso should be executed. But if your Excellencies should still consider this as insufficient proof, will you permit me to send you a copy of a declaration the most positive which can be imagined, in which the Government of France declares that it never thought of acquiring territory to the eastward of the Mississippi by the Treaty of St. Ildefonso, much less has ceded it, or could cede it to the United States. The Minister of Foreign Relations of France has written upon this subject, on the 30th August last, to His Majesty's Ambassador in Paris, and

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in his letter are the following remarkable expressions: "Les limites orientales de la Louisiane sont indiquées par le cours du Mississippi, et ensuite par la rivière d'Iberville, le lac Pontchartrain, et le las Maurepas. C'est à cette ligne de demarcation que se termina le territoire cédé par l'Espagne à la France, en vertu traité de 30 Ventose, an 9. La France n'auroit rien démandé à l'Espagne au delà de cette limite; et comme elle n'a fait que substituer les Etats Unis aux droits qu'elle avoit acquis, ils ne peuvent pas exiger de l'Espagne une cession de territoire plus étendue, à moins que cette concession ne soit négociée et stipulee entr'eux et l'Espagne par quelque convention ultérieure."

These expressions are so determinate and clear, as not to permit me to make any further reflections on them, persuaded that the simply reading them is sufficient for the conviction, that, as Spain did not think of ceding, nor France of acquiring, West Florida by the Treaty of St. Ildefonso, it is clear that the United States, who have succeeded to the right of France, could not acquire that which she supposed did not belong to her, and which she has declared she did not acquire, nor think of acquiring. This point appears to me so little susceptible of doubt after what I have said, and had the honor to say to your Excellencies in my note of the 24th ult., to whose contents I again refer you, that I am confident the justice and well established good faith of the United States will acknowledge that they cannot found any right to West Florida from the Treaty of St. Ildefonso.

In concluding this letter, I cannot but declare my satisfaction to your Excellencies, that I see, by yours of the 8th, you are persuaded of my unalterable sentiments of respect and consideration for the United States, and also of my constant esteem for and wish to please your Excellencies, which I now have the honor again to renew; praying God to guard your lives many years.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to His Excellency Don Pedro Cevallos.

ARANJUEZ, *March* 16, 1805.

SIR: We had the honor to receive yesterday your esteemed note of the 14th, and are sorry to find that we still continue so distant in our opinions upon the subject of it.

In our last, we gave your Excellency so fully the view which our Government entertains of the right of the United States to West Florida, and are still so firmly persuaded of their undoubted right to the same, that we think it unnecessary to remark further on that point.

All the questions in controversy between us having been discussed at length, and having been favored with your Excellency's opinion on each of them, except the western limits of Louisiana, we now take the liberty to request you to furnish us with the same, in answer to our communication on that subject.

We beg your Excellency to acce[illegible] ance of our profound consideration a[illegible]

CHARLES PI[illegible]
JAMES MONRO[illegible]

Messrs. Pinckney and Monroe to H[illegible]

ARANJUEZ, Marc[illegible]

The undersigned, Ministers Plen[illegible] Envoys Extraordinary of the U[illegible] America, have the honor to inf[illegible] lency Don Pedro Cevallos, that [illegible] time since their last note to his E[illegible] which no answer has been given. [illegible] to suspect that his silence is inten[illegible] mation of his desire that the ne[illegible] cease. They are sorry to add that [illegible] which the friendly advances and ore[illegible] Government have been received, w[illegible] doubt in their minds on this poin[illegible] lency had not given them reason [illegible] his note of the 4th instant, some p[illegible] his part, for the fair and equitable [illegible] the differences subsisting betwee[illegible] ments. Having completely fulfi[illegible] the President, in proving, by the [illegible] tions, and by the time they have [illegible] cellency's propositions, the just [illegible] tion of his views, as of his frien[illegible] high respect for His Catholic M[illegible] that they should not be unmind[illegible] owe to the Government and coun[illegible] have the honor to represent. It [illegible] with the object of the present m[illegible] ties, to continue the negotiation [illegible] furnishes a well founded expect[illegible] just and friendly policy which p[illegible] the part of the United States, is [illegible] the same views by His Catholic M[illegible] such circumstances, the undersigne[illegible] their duty to request of his Exce[illegible] tion whether it is his desire to ter[illegible] gotiation on the point it now rests [illegible] they think proper, in expressing the [illegible] result, to add, that they shall not he[illegible] to comply with it. But if it is [illegible] lency's desire to continue the ne[illegible] have to request that he will be s[illegible] give them the sentiments of His M[illegible] ernment respecting the western li[illegible] iana, and that he will also acco[illegible] such propositions as he may think p[illegible] for the adjustment of the very imp[illegible] teresting concerns between the tw[illegible]

The undersigned have the honor [illegible]

CHARLES PI[illegible]
JAMES MONR[illegible]

Mr. Cevallos to Messrs. Pinckney a[illegible]

ARANJUEZ, Marc[illegible]

GENTLEMEN: I have received y[illegible] favor of yesterday, in which you we[illegible] inform me that the delay of my ans[illegible] favor of the 15th has made you su[illegible] perhaps, the disposition of this Gove[illegible]

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n end to the negotiation in its present state. In nswer, it is my duty to inform your Excellenies that it has always been the disposition of this lovernment to continue, until concluded, a neotiation which has for its object a termination of ıe discussions that exist between the two coun-ies; examining, first, each controverted point, nd endeavoring to fix, as far as possible, the rights f each country; to begin, afterwards, the negoations that may be convenient to both; that, vith this view, and according to this plan, we ave examined and discussed the greatest part of ıe said points. There is now remaining to treat nly respecting the western limits of Louisiana, n which point I promised to transmit to your Excellencies the opinion of this Government with ıe greatest possible despatch, as I have already ssured you; being very sorry that my many inispensable avocations, and the attention which subject of this nature requires, have not yet perıitted me to execute it, and that your Excellenies should have interpreted my silence since as a vish to put an end unreasonably to the negotiation.

With demonstrations of my sincere respects, I enew to your Excellencies, &c.

PEDRO CEVALLOS.

Mr. Monroe to His Excellency Don Pedro Cevallos.

ARANJUEZ, *April* 3, 1805.

Mr. Monroe presents his compliments to His Excellency Don Pedro Cevallos, and requests that e will appoint some day and hour convenient to is Excellency, when he shall have the honor of conference.

Mr. Monroe repeats to his Excellency the asurance of his high consideration and esteem.

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *April* 9, 1805.

The undersigned, Ministers Plenipotentiary and Envoys Extraordinary of the United States of ımerica, have the honor to inform his Excellency Don Pedro Cevallos that they consider his omision to answer their notes relative to the western imits of Louisiana, for so long a term, with his efusal to accept their propositions of the 28th anuary, or to propose any others in their stead, or the amicable adjustment of the differences beween the United States and Spain, as having vinced the sentiments of His Majesty's Governnent on that interesting subject, in terms too trong to be misunderstood. By refusing to anwer propositions until a discussion was ended, n the mode which his Excellency thought proper o pursue, and declining to bring it to an end, even n that mode, within the term which naturally ıelonged to it, the indisposition of his Governnent to such an adjustment is as strongly delared as if it was announced to them in form. They think proper to add, that, by exacting of hem in the commencement a discussion in that ery dilatory mode, they had even then anticiıated unfavorably of the result. To their propoitions, which embraced every object in a frank and explicit manner, they had expected a correspondent answer. In discharge, however, of this great trust confided to them by their Government, they were resolved to keep in mind, and to fulfil, in the best manner they could, all its duties, among which they considered it an important one not to fail in any circumstance of respect which was due to His Majesty or his Ministry. On that principle they entered into the discussion in the manner proposed by his Excellency, although it was contrary to their inclination, to their judgment of what was proper in such a case, and to what was agreed between them in their first interview. They did so, in the presumption that the discussion would be of but short duration; that it would not consume more than a few weeks before they reached its object; and that a conclusion of the negotiation afterwards, in one mode or other, would require a still shorter time. They well knew that the subject had been long before His Majesty's Government; that every part had been acted on by it, and was, of course, well understood; they were aware, also, that the extraordinary mission, which the President had appointed to His Catholic Majesty, had been announced to him, and been sometime expected by his Ministry. Under these circumstances, the undersigned could not doubt that His Majesty's Government would be prepared to meet that mission on every point, and to terminate it with the utmost promptitude. What, however, has been the result, and how has their accommodating spirit been requited? If the first indications were unfavorable, they have been fully confirmed since. The United States will be astonished to learn in what manner the friendly advances and liberal overtures of their Government have been received; that, after exacting from their Ministers a form of discussion which tended unavoidably to delay, His Majesty's Ministers had ceased at length to discuss at all.

The undersigned have thought proper to communicate to his Excellency their sentiments of what has passed with that frankness which the nature of the subject requires, and which is due to the Government and country they have the honor to represent. In conformity with those sentiments of the conduct of His Majesty's Government towards the United States, at a period which, under existing circumstances, is made signal by the proof which the President has furnished of his strong desire to preserve the relations of friendship between the United States and Spain, it might be expected that, considering the negotiation as thereby terminated, as in truth it essentially is, they would take the step which is incident to that state of things, and that Mr. Monroe, retiring from Spain, would repair to his station at London. It is, perhaps, their duty to take that step at this time. They are, however, willing to make one further effort to accomplish the objects of the mission, and to add a new and solemn proof to those which already exist, that its failure, should such be the case, shall in no respect be attributable to their Government or themselves.

With this view, whose just and friendly charac-

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ter will, they presume, be duly appreciated, the undersigned have the honor to inform his Excellency that they shall still remain in Aranjuez a reasonable time, to receive from him such propositions, on the part of His Catholic Majesty, for the amicable adjustment of all subsisting differences, and other objects of interest depending between the United States and Spain, as he may think proper to propose. With such propositions, should any be made, they will be happy to receive any illustration of them, which his Excellency may be disposed to give. But it is proper to add, that they consider it incompatible with their duty to proceed in the discussion of the subject, or any part of it, until those propositions, which are again invited, are presented to them; that they cannot view his continuing to withhold them in any other light than as an explicit declaration that the further pursuit of the object of their mission is unacceptable to His Majesty. It may, indeed, be thought that, after having possessed his Excellency with the propositions of their Government, they compromitted its character, by proceeding in the discussion in any mode, before they received his in return. To that proceeding they were prompted by a spirit of conciliation, which may justify it to a certain stage. Should they, however, persist in it after what has passed, they would forfeit all claim to that apology.

In inviting again propositions of His Majesty for the amicable adjustment of the points depending between the two nations, the undersigned have the honor to repeat to his Excellency the assurance that they will receive them with the high consideration which is justly due to them. The sentiments of the Government of France have been communicated on two points, which grow out of the treaties between the United States and that Power. The sentiments of one party to a treaty, as is well known, cannot affect the rights of the other, in points which arise between the parties themselves, much less in those which have reference to a third Power unconnected with it; nor ought they to influence its judgment, if the other party is an independent Power, as the United States are. This principle, which is invariable, is more especially sound in the cases referred to, for the reasons which have been heretofore given. The sentiments, however, of His Majesty the Emperor of France, on those or any other points in which the United States are interested, especially such as grow out of their treaties, are entitled to much consideration on their part. The undersigned have not failed to bestow it on those, which have been communicated to them by his Excellency, as has been shown by their replies; they shall also be ready to show it in the treaty which they are desirous of forming with His Catholic Majesty, so far as a due regard to the rights of the United States and their indispensable duty will permit. The propositions which the undersigned had the honor to present to his Excellency on the 28th January last, which embrace the whole subject, are, in their judgment, founded, in every particular, in the strictest principles of justice; they are such as the President ordered them to propose; they are such as he expects that His Catholic Majesty, from his known regard to justice, will not hesitate to adopt. They think proper, however, to add, that, in receiving the propositions which His Majesty may make for the amicable adjustment of those important concerns between the two countries, should any be made, and a difference in opinion appear in any point, they are disposed to do everything to conciliate an agreement which their instructions will permit. It is the sincere desire of their Government to adjust amicably, at this time, with His Catholic Majesty, all these high concerns, in a firm belief that the interest of *both countries* would be essentially promoted by *that result*. To accomplish it, the undersigned will omit nothing on their part which it is in their power to do.

The undersigned have the honor to inform his Excellency that they expect an early answer to this communication, and that by it will their future conduct be governed. They consider the negotiation as essentially terminated by what has already occurred; and, if they pursue it, it will be only on the proof of such a disposition on the part of His Majesty's Government as shall convince them, that there is just cause to conclude that it will terminate to the satisfaction of the United States. Having acquitted themselves, in every particular, to what was due to the just, the pacific and friendly policy of their Government, it remains that they should not be unmindful of what they owe to its honor, its character, and its rights. If His Majesty is disposed to adjust these important concerns, by an amicable arrangement between the two nations, on fair and equal terms, it may be easily and speedily done. Each party knows its rights, its interests, and how much it ought to concede, in a spirit of conciliation, to accomplish the objects of the negotiation. The undersigned feel the force of that sentiment, and will not fail to respect it. Should *His Majesty's* Government, however, think proper to invite another issue, on it will the responsibility rest for the consequences. The United States are not unprepared for or unequal to any crisis which may occur. The energy which they have shown on former occasions, and the firmness of their past career, must prove that, in submitting with unexampled patience to the injuries of which they complain, and cherishing with sincerity the relations of friendship with His Catholic Majesty, no unmanly or unworthy motive has influenced their conduct.

The undersigned request, &c.

CHARLES PINCKNEY,
JAMES MONROE.

Mr. Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *April* 9, 1805.

GENTLEMEN: In my letters of the 21st February and 14th March, I had the honor to explain to your Excellencies the incontrovertible reasons on which His Majesty founded his right to West Florida. I showed to your Excellencies among other things, that the United States could not pre-

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more right, nor to more extent of territory, rance had acquired by the Treaty of St. io; and that, confessing as France con- that she had not acquired, or thought of ng by the said treaty, territory eastward of rville, neither could she transmit to the States any right over it.

es what I have said in the said notes, I r it as indispensable to hand to your Excel- the adjoined copy of a note which the r of Exterior Relations has addressed to rgé des Affaires of His Majesty at Paris, ate of the 26th ultimo, showing, in the sitive terms, that France neither acquired itory to the east of the river Iberville, nor ted any to the United States; which dec- ought, in my opinion, to remove the most idea of doubt upon the subject, as very y observes the Minister of Foreign Rela- France, "faire connoître les droits que la avoit acquiré, c'est indiquer l'étendue et es de ceux qu'elle a transmis au Gouv- t Federal."

being possible, in my opinion, to contra- evidence of this proof in favor of the His Majesty over West Florida, it will rmable to the good faith of both Govern- nd contribute very much to facilitate the f the present negotiation, that it should lered as established between us, and as ble that the United States have not ac- ny right to West Florida. Being about immediately into the examination of the limits of Louisiana, it cannot do less than is the course of discussion to leave behind depending a point which has been proved istration. The acknowledgment of the His Majesty over West Florida, by the n Government, which is not more than rigorous justice on their part, will facil- simplify very much the course of a ne- , which has for its foundation the good both Governments, and their wish to ter- heir differences.

v to your Excellencies the testimony of guished consideration, &c.

PEDRO CEVALLOS.

After writing and signing this, I received ned letter of your Excellencies of yes- which I will answer as soon as possible.

P. C.

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eyrand to M. le Chevalier de Santivanes.

PARIS, *5th Germinal, year* 13.

have received the letter which you did onor to address to me on the fourteenth , which particularly relates to the limits ana on the side of West Florida.

uestion cannot become the object of a se- cussion between Spain and the United a view is taken of the clauses of the f cession which have successively trans- uisiana to France and to the Americans. retroceded to France the territory only e had received from her. The rights of France have since been passed to the United States, and it was only with the same extent that she had acquired them.

This principle has been constantly pursued by His Imperial Majesty equally toward the Court of Spain and the Federal Government. His Majesty having no pretensions but to the territory situated to the west of the Mississippi and of the river Iberville, he had not authorized his Commissary at New Orleans to take possession of any other Province, and he did not cede any other to the United States.

His Imperial Majesty has repeatedly authorized me to make the declaration, and I have repeatedly addressed it in his name to the Ministers Plenipotentiary to the United States accredited near him by the Federal Government. His Majesty persuades himself that this frank exposition of facts ought to be sufficient to prevent any difference between Spain and the United States relative to the demarcation between the United States and the Floridas. To make known the rights which France had acquired, is to indicate the extent and the limits of those she transmitted to the Federal Government.

Accept, sir, the assurances, &c.

CH. MAU. TALLEYRAND.

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *April* 12, 1805.

SIR: We have the honor to acknowledge the receipt of your Excellency's note of the 9th, with an extract of one from the Minister of Foreign Relations of France to the Chargé des Affaires of Spain, relative to the eastern limits of Louisiana.

Having had the honor to inform your Excellency, in our note of the 9th, that we considered the negotiation as essentially terminated by the disposition which His Majesty had shown, and the part it had acted in it, and that we deemed it incompatible with our duty to proceed in the discussion of the subject, or any part thereof, until we were furnished with His Majesty's propositions for the adjustment of the whole business, we have only to refer, in reply to this communication of your Excellency, to what was stated in that note on the most solid reasons. As soon as your Excellency complies with that request, we shall endeavor, by all the means in our power, in the sentiments expressed in that note, to manifest the high respect of the United States for His Majesty the Emperor of France, and their disposition to conciliate, in the treaty they are desirous of forming with His Catholic Majesty, the mutual interest of both countries.

We repeat our desire to be furnished as soon as possible, with your Excellency's propositions, which have heretofore been so often requested in vain, for the adjustment of all the points that are depending between the two nations. If it is the disposition of His Majesty's Government to meet in this negotiation the friendly advances and overtures of the United States, there can be no motive for longer delay; but if the contrary continues to be shown, we shall hasten to withdraw from a

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situation, which, while it compromits the character of our Government, cannot be agreeable to ourselves.

We beg your Excellency to accept the assurance of our high consideration and esteem, &c.

CHARLES PINCKNEY,
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *April* 13, 1805.

GENTLEMEN: Complying with my promise, I proceed to examine, in this letter, the opinions of my Government on the western limits of Louisiana; following the plan established from the beginning, proposed by your Excellencies, and adopted by me, to examine each of the points depending between us, and determining, as far as possible, our respective rights on each. But before I proceed on the question, I should be wanting in the respect I owe to my own Government, to those considerations to which my public character will not permit me to be inattentive, and also to that of which I believe I have not been undeserving in my private one, if I did not state to your Excellencies my surprise at reading your esteemed letters of the 30th March, and 9th of the present month. It is only fifteen days since I had the honor to write to your Excellencies my last note relative to the eastern limits of Louisiana, to which your Excellencies did not find it convenient to answer, except in the general terms that we did not agree, and that we would pass to the other point of the western limits of Louisiana; and, on the 30th of March, notwithstanding my promise, and my word given, that I would treat the last depending point, as I had done the rest, your Excellencies supposed you ought to state to me, that my silence for those days had induced a belief in you that I intended it as an intimation of my wish to end the negotiation. On a view of a discussion, pursued with so much punctuality and activity on all the controverted points, it appears to me as more natural, not to say more just, that your Excellencies should have believed that the nature itself of the point I was about to treat on, or the indispensable occupations of my Ministry, might have occasioned the delay, than to suspect that I wished to put an end to the negotiation, thereby breaking my word which I had pledged. My delicacy not permitting me to suffer such a suspicion to remain in the breasts of your Excellencies, I stated, in my letter of the 31st ultimo, the sensibility which this had caused me; the motives which had prevented my writing more quickly upon the point of the western limits of Louisiana; and, lastly, I reiterated my promise to do so with all the despatch possible. Notwithstanding this your Excellencies have thought proper, in your note of the 9th, to insist upon what you call my omission, and say that the Ministry of His Majesty intend to cease the discussion entirely, with other assertions to the same effect, which cannot do less than make me feel very much, both as they respect my public and private character.

In answer to these, I shall confi[illegible] only stating to your Excellencies, tha[illegible] of the point itself of which I am [illegible] has been the cause of the small [illegible] have had the misfortune to have so [illegible] interpreted by your Excellencies.

The question upon the western [illegible] isiana is not a point which can be [illegible] discussed, upon viewing one or tw[illegible] or other pieces of that kind whic[illegible] sessed at the first view. To treat it [illegible] exactness, it is necessary to examine [illegible] of plans and documents and histori[illegible] which include a space of more than [illegible] and fifty years. These documents [illegible] found in the department under my c[illegible] them belong to the Department o[illegible] besides those which are in the Vic[illegible] Mexico. It has been necessary to se[illegible] amine those which are here, and t[illegible] certain classification. It was my int[illegible] a memoir, which should comprehe[illegible] important topics, accompanying [illegible] necessary maps and plans, and ha[illegible] your Excellencies, being anxious [illegible] opinions of my Government appear [illegible] exactness which the nature of the [illegible] permit; but the manner in which [illegible] cies express yourselves in your [illegible] sufficient excuse to me to alter [illegible] duce it to a few pages, that I may [illegible] en a delay which has given rise to [illegible] able suspicions.

The western limits of Louisiana [illegible] been fixed in the exact manner which [illegible] in territories sufficiently peopled and [illegible] tent, it ought necessarily, at the [illegible] them, to be the object of a negotia[illegible] both parties should be agreed as to [illegible] basis, and by a commission of limits [illegible] regulate themselves by that basis [illegible] demarcation. The principle which [illegible] as a rule for the establishment of [illegible] cannot be any other than the know[illegible] possession which each party had acq[illegible] territories, and the different establish[illegible] by each in the said places, by the Spa[illegible] province of New Spain, and also the[illegible] to Louisiana, drawing a line which [illegible] the one from the other side, and [illegible] by the most natural points of dema[illegible] sible.

It results from this principle, that the [illegible] tion into the above-named limits is [illegible] gree historical, as it treats of the fi[illegible] of many Spanish establishments, o[illegible] provinces, and of the French est[illegible] Louisiana.

If it had been proper to enter i[illegible] examination at present, I would ma[illegible] historical detail of the Spanish est[illegible] the interior provinces of New Spa[illegible] molest your Excellencies with dem[illegible] be inconvenient at present, I will co[illegible] to saying something on the provin[illegible] bounding on Louisiana, upon the dem[illegible]

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depends the present questions. The prov-
f Texas where the Spaniards have had set-
ıts from the seventeenth century, bounds by
st with Louisiana, and contains the exten-
ountry which lies between the river Medina,
ends the Government of Cohacula, to the
ıow abandoned, of Nuestra Señora del Pilar,
Adaes, which is distant a few leagues from
ırt of Natchitoches; twenty leagues from
ission of Ais; forty from that of Nacogdo-
one hundred and fifty from the abandoned
f Orequisaw; two hundred from the bay of
itu Santo; and forty from the post of St.
ıia de Bejar.
s beyond all doubt that in the year 1689, by
ımission from the Viceroy of Mexico, the
uis de Moncloa, Captain Alonzo de Lem,
vas then Governor of the province of Coha-
went to examine the bay of Espiritu Santo,
ıe river St. Mazers which empties into it, to
ı the Indian chief of Texas presented him-
ı the most friendly manner, and in 1690 he
possession of the territory, and founded the
ın of St. Francisco of Texas.
a royal order of His Catholic Majesty, No-
er 12, 1692, they ordered new discoveries to
ıde in the said province by land and sea,
ı was in consequence then executed, and
g other things they undertook the examina-
of the river Codachos. Twenty-two years
the Duke of Lenares, being then Viceroy of
co, introduced from Louisiana, as far as the
ish port of St. Juan Baptista, a Frenchman,
St. Denis, and other three Frenchmen
Louisiana, with passports from the Governor
ıuisiana to buy cattle in the Spanish Missions
exas: which Frenchmen were carried to
co; and then the fourth expedition was re-
d upon to Texas, naming as chief of it the
ez Don Domingo Ramon. The expedition
received with inexpressible friendship by the
ns; and the Captain Ramon named the
of the said Indian nations, and also son to
Governor of Texas, and he left there founded
our establishments and missions of St. Fran-
, La Purissiama Concepcion, St. Josef, and
ıtra Senora de Gaudalupe, situated seven
ıes from Natchitoches. By the royal order
'19, they made various alterations in the com-
d of the Spaniards employed in the province
exas, and a little after died the said Captain
ıon in the port of St. Juan de Baptista on the
Granada. War having broken out between
n and France during the regency of the Duke
leans, the French attacked the Spanish mission
daes, and its inhabitants were transferred for
noment to the post of St. Antonio de Bejar.
the Viceroy of New Spain, the Marquis de
ro, accepted the generous and honorable pro-
l which the Marquis St. Michael de Aguago
e, offering his purse and person to dislodge
French of what they had unjustly seized and
ıpied, and to make war upon them. On being
ed Governor General of the New Philippines,
rovince of Texas, and of New Estremadura,
Marquis of Aguago raised five hundred dragoons and two companies of cavalry, and undertook his march for the province of Texas in 1779, and without opposition arrived at the Adaes, the French having returned to Post Natchitoches. The King of Spain being informed of this expedition, and the recovery of the province of Texas, determined to fortify it, and that all hostilities should be suspended against the French.

The Marquis de Aguago re-established the other missions and founded the establishments, among them the posts of Nuestra Senora del Pilar de los Adaes; that of Loretto, on the bay of Espiritu Santo; that of Dolores, which is now known by the name of Ozquisau, and improved the situation of St. Antonio de Bejar by placing the establishment between the rivers of St. Antonio and St. Pedro.

The province of Texas being thus at peace, and re-established and increased, the Marquis of Aguago solicited the reunion there of two hundred Tlascalan families, and as many from Galicia, in Spain, or the Canaries; and with some of these families, the King having agreed that four hundred families should go from the Canaries, they peopled the village of St. Fernando, close to the post of Bejar.

At the end of the year 1730, the Spaniards undertook several expeditions from the post of Bejar to the north of said province, on account of a disagreement with the Indians; and, in 1758, the Indians made an attack from the northern part on the post of St. Saba, and killed some soldiers and priests; on which account a detachment was ordered against the said Indians, under the command of Colonel Don Diego Ortiz de Parilla.

A little after, it was determined to organize a general and uniform establishment of posts to cover the interior provinces of New Spain, and they ultimately gave a commission to the Marquis de Rubi to go and revisit and examine their state. And the result of this commission, which it appeared lasted some years, was, that on the 10th of September, 1772, the regulation of posts had so extended itself as to establish a cordon of them from the coast of Sonora to the bay of Mexico, where was situated the bay of Espiritu Santo, there being then in the province of Texas those of St. Antonio de Bejar, and that of the bay of Espiritu Santo, having neglected that of Arquisau and that of Nuestra Senora de los Adeas, which were no longer useful, as Spain was then the mistress of Louisiana.

From this simple and short explanation of those notorious and authentic facts, to prove the truth of which we find the most incontestable documents, supported by uninterrupted possession, results evidently the ancient and exclusive right which the Spaniards have to the province of Texas; that the possession of the province of Texas was acknowledged and respected by the French while they possessed Louisiana; and that the said province is belonging to, and has always belonged to, His Majesty.

That claim must be extremely illusory and unfounded which shall attempt to carry the western limits of Louisiana to the Rio Bravo, including

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therein great part of the interior provinces of New Spain, acquired and established at the cost of the treasures of Spain and the blood of her subjects, as has been proved to demonstration in the case of Texas, and can be strengthened more and more by a continued series of events and proofs relative to the said province of Texas and others of the interior provinces of New Spain, and also the acts and dates now existing respecting the subject. There are also many despatches, maps, and documents respecting this question, to be found in the Viceroyalty of Mexico, which is the principal centre of authority for all the provinces.

On my part, I have read with the greatest attention the memoir on the limits of Louisiana, which your Excellencies enclosed me in your note of the 28th of January, anxious to see if anything could be found to support or give a color to the claim of the United States to carry their limits to the Rio Bravo; but the said memoir goes principally to treat of the establishment of Louisiana. I only find that your Excellencies support the claim—first, in a gratuitous supposition that the coast belonged to France—a supposition that is contradicted by the most positive acts and dates abovementioned, by which it is proved that the province of Texas and its coast are belonging to the dominions of His Majesty. And, in the second place, in the general terms of the patent granted by Louis XIV. in September, 1712, in favor of Anthony Crozat, granting him the exclusive commerce of the country of Louisiana, whose extent was, as your Excellencies understand it, with all the waters which directly or indirectly discharge themselves into the Mississippi, and the countries which they water. It would be very easy to make it appear that the most exaggerated claims of France never had the extent which your Excellencies wish to give to Louisiana on this side. But even if they should have had such claims, or France positively should have tried to include, under the name of Louisiana, the territories which His Catholic Majesty possessed, what right or claim could be founded in a document which Spain never has recognised, nor does recognise, and which never could prejudice in any manner her acquired rights? The answer of Spain on this occasion is as simple as just: that, if Louis XIV. or the Government of France exceeded its powers in granting territories or rights over territories which were not their own, or that Spain claimed possession of, or property in, that grant ought to be considered as null as far as it extended over these territories, and that it flowed, without doubt, from the total ignorance which prevailed in those days with respect to the geography of the territories situated at a little distance to the west of the Mississippi, and of the establishments of the Spaniards in those parts, more ancient; and proved by repeated acts of possession, that the aforesaid patent of Louis XIV. is the royal order of the 12th of November, 1692, already cited, by which His Catholic Majesty ordered them to make new expeditions to the Texas; and the same are the other authentic acts and establishments of the Spaniards in that quarter.

The limits between Louisiana and [illegible] have been always known, even when [illegible] possessed Louisiana. Near the begin[illegible] last century, the venerable Alanjet of [illegible] of St. Francisco, founded, in the prov[illegible] as, towards the confines of Louisia[illegible] missions, among them that of Nacogdoc[illegible] a few years after he wrote, and it was [illegible] known in the writings of those times [illegible] province of Texas, or New Philippi[illegible] boundaries about the middle of the Go[illegible] co to Poncenes, the Rio Grande, and [illegible] Louisiana. Depending on Louisiana [illegible] upon the river Colorado, which discha[illegible] the Mississippi, the post of Natchito[illegible] the French took from Spain. But, [illegible] leagues from this, you find the aforem[illegible] of Nuestra Senora de los Adaes, belo[illegible] province of Texas; and it is undoub[illegible] Baron de Riperda, being Governor Ge[illegible] this province, and successor of Don Ala[illegible] nos, appears to have made treaties a[illegible] tions with the Indians of the same [illegible] Texas, stipulating that the Spaniards [illegible] among them such establishments as [illegible] acknowledging from that time as [illegible] the province of Texas, the Indians [illegible] cogdoches, Asenares, Nobedacuis, [illegible] Malayes, Ocuanes, Tancques, and A[illegible] the year 1770, there always was a [illegible] Adaes, from the time of its establishment [illegible] petent number of Spanish soldiers, as [illegible] in that of Ozquisaz et St. Saba; and [illegible] until the year 1773 that the Lieutenant [illegible] Gonzales evacuated the post of Adaes. [illegible] rison was no longer necessary, as Spain [illegible] Louisiana.

It follows, therefore, that the boundar[illegible] the provinces of Texas and Louisiana [illegible] be by a line which, beginning at the Go[illegible] co, between the river Caricut, or Cas[illegible] the Armenta, or Marmentoa, should [illegible] north, passing between the Adaes an[illegible] ches, until it cuts the Red river. A[illegible] this point the limits which ought to be [illegible] on the northern side are doubtful and [illegible] it appears indispensable to refer them [illegible] dent investigation of commissioners to [illegible] by both parties, in order that they, [illegible] territory, and having with them docu[illegible] dates that will be given them, rectifi[illegible] ought to be rectified, and furnishing [illegible] light to both Governments, upon [illegible] have never been fixed or determined [illegible] ness, may thus enable them to fix the de[illegible] completely conformable to the wishe[illegible]

With these views, the Governme[illegible] ever since it had definitively fixed the [illegible] of Louisiana to France, named a [illegible] of limits, destined to complete this [illegible] ject jointly with the commissioners F[illegible] think proper to name on her part. In [illegible] manner, it appears to me indispensable [illegible] if the demarcation is to be made with [illegible] sary exactness; and that the U[illegible] naming on their part a commissioner of [illegible]

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hould proceed by common accord, and make the territory the investigation which may cessary. It is more than a year that the lier General the Marquis de Casa Calvo, ie Engineer Don Josef Martinez, have, with icient number of persons to form the said ission on the part of His Catholic Majesty, waiting in New Orleans the arrival of the issioners of the United States to begin their

; only after the researches and investigation commissioners of both parties, furnished uch instructions as may be proper, that we ırsue the exact demarcation of limits, which, before having been fixed with the requisite ıess, cannot now be determined upon with ıce, but upon a view of the territory, and ; present the dates and documents necessary strate the subject.

ıough upon this point of the western limits ıisiana I could have extended myself much n detail, and accompanied my illustration naps and documents, my wish to answer Excellencies on this point with promptitude ted me. I, however, reserve to myself the of doing so hereafter should it be necessary.

ope your Excellencies, on reviewing what en urged on this point, will please to state your opinions upon the subject, and that, ill acknowledge that, as well in it, as in the course of the negotiation, I have not devi- jot from the principle proposed by your Ex- ies in your first letter of the 28th of January, opted by me in that of the 31st of the same —"Each of the points depending between o Governments ought to be examined im- ly, and all motives of complaint and in- de considered and terminated amicably; to ich," &c., &c.

had the honor to state to your Excellen- my letter of the 5th March, and believe it ensable to repeat here, on perusing the con- of your Excellencies' letters of the 30th and 12th April, I cannot but still consider emature to enter upon the forming of pro- or a convention on the whole or upon gregate of the depending points, without ing them first, at least to a certain point, thout fixing the right of each country as possible; because, as your Excellencies now extremely well, before we can proceed onvention on the whole, it is necessary to as far as possible, what are the rights and ions of His Majesty, and what are the of the United States and their objections; knowledge by detail ought to be the foun- of the negotiations, it being clear that, ac- ; to the extent which we believe the right ligations of the one and the other party to be, so ought the convention, upon the to be the more or less extensive.

ope to have the honor of receiving your Ex- ies' answer on the point which is the object letter, and reiterate to you the demonstra- f my distinguished consideration, &c.

PEDRO CEVALLOS.

Messrs Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *April* 20, 1805.

SIR: We had the honor to acknowledge the receipt of your Excellency's note of the 13th, to which we hasten to give a reply. It is not without much surprise, that we find by it that your Excellency should have construed the apprehension which we expressed in our note of the 30th ultimo, that you intended, by your silence, in not answering ours respecting the western limits of Louisiana for so long a term, to intimate a desire to terminate the negotiation at that point, as conveying any unfavorable imputation to your Excellency either in your public or private character. We do not hesitate to disavow any such intention, and to assure you that nothing was more remote from our views. In making this frank declaration, we must be permitted to add, that we do not think that that note, or any other that we have written, ought to have had such interpretation. We are persuaded that, in all negotiations, each party has a right to terminate that in which it is engaged, whenever it thinks proper, and that it is responsible for so doing to its own Government alone. This right seems to be incident to the very nature of such transactions, and not to be restrained by any promise made in the commencement, or afterwards, by either party, of what it proposes to do in the sequel, in respect to the mode of prosecuting it. Such promise must always be made on the idea, and be so understood by the other party, that the negotiation will be continued. It can never be construed in such a manner as to compel the party to continue it in case anything should occur to make it improper, in its judgment, so to do. It was in this light that we considered your Excellency's promise, and were, therefore, far from supposing that, in making the inquiry which we did, under existing circumstances, we violated any rule of decorum or delicacy. Whether there was sufficient cause for the impression we had taken in that respect, we will not pretend to say. It is, however, most certain that we thought there was, and for the following reasons: 1st, because unusual delay had occurred since our last communication, which we could not otherwise account for; 2dly, because, as your Excellency had repeatedly insisted on the relinquishment of the claim of the United States on Spain for compensation for French spoliations within her limits, and seemed in your note of the 15th to put the continuance of the negotiation on that issue, we were naturally led to suspect, on our repeating the assurance that we were decidedly of a contrary opinion, and could not abandon the claim, especially after so long an interval, that you had come to that resolution. Having this view of the subject, we did not know but that your Excellency had adopted that mode of making known to us the views of your Government, as the one which was deemed most suitable to the purpose, and had even expected on our part to lead to a more full and explicit declaration of them. In making the application, which we did with regret, we followed no rule, but were governed by an impulse which

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the occasion excited, and we trust merits to be considered as an honorable one—one to which your Excellency has shown too great a sensibility, or you would not have so much misconstrued our meaning. We repeat, therefore, that we neither intended, nor do we think that any of our letters ought to be construed to convey any imputation unfavorable to your Excellency in your public or private character, for which we renew the assurance of our high consideration and respect.

Our note of the 9th instant (for that of the 12th was only founded on it) was intended as a justification of the part which, under existing circumstances, we deemed it our duty to take. We intended it as a justification of our conduct equally to His Majesty's Government and our own. We were of opinion, for the reasons therein stated, that, as there was no prospect of obtaining an accord on such terms as our Government thought reasonable and just, and as our Government and ourselves were compromitted by the manner in which the negotiation continued to be conducted, that it was not only useless but highly improper for us to pursue it. It is usual, in all negotiations, especially in important concerns, for one of the parties to present to the other a project of a treaty or convention for the arrangement of the objects in contemplation, founded on his instructions, and to receive from the other party a like one in return, in case any difference of opinion appeared on any point between them. It is by an exchange of such projects, that the views of their respective Governments are seen, and each party is enabled to determine at once whether there is any prospect of an agreement, and to act accordingly; it is by such exchange that the points of agreement and difference between them are shown, and that the topics of discussion are distinctly marked, in case the negotiation is carried to that length; it is, in short, by it, and by it alone, that the basis of the negotiation is formed, and the parties to it placed on equal ground. Whenever this rule is departed from, it must be to the disadvantage of the party whose case forms an exception to it. It is in the power of the other to continue the negotiation as long as he thinks fit, and finally to break it off, if he is so disposed, on his own terms. When we did ourselves the honor to present to your Excellency, on the 28th January, our project for the arrangement of the points in question, with our note explanatory of it, it was in the expectation that we should have received a counter one in return, in case its conditions were not approved, with a note explicit to every point. We do not say that an express agreement to that effect was entered into, but as it was agreed that we should commence the negotiation in that mode, and, as it was known to be the established usage in such cases, we concluded that the business would necessarily take that course. In that expectation, however, we are disappointed in both respects. It was, perhaps, our duty to have declined proceeding in the negotiation until we were furnished with such a communication; and, had we done so, we presume it could not have been refused. By proceeding in it as we have done, in the mode adopted by your Excellency, we were governed, as heretofore observed, by a spirit of conciliation, in the belief that in that mode we should obtain the same, without any essential difference in point of time. In these latter respects we were also disappointed. Your Excellency has repeatedly observed, that you had followed the mode which we had recommended; but you will permit us to remark that, in this respect, your Excellency has altogether misapprehended our idea, in one of its most important features. We said, it is true, in our first note, that it was proper to ascertain the rights of each nation on each point, and we still say so. But did it follow from thence that we were willing to dispense with the *ordinary mode* of proceeding in such cases? with the just claim to a counter project or proposition from your Government? Did we consent to a mode of discussion in which each point should be made the subject of separate notes, and that these should be subdivided, and each subdivision become so? a mode which tended to create unavoidable delay. Most certainly nothing can be found in any communication from us, which gives the slightest approbation to such a proceeding. It is contrary to that which we expected would have been pursued in the negotiation; it is contrary to that in which we commenced it; and it has been the subject of serious and frequent complaint on our part since. It was after we saw with regret that three months had been consumed without effect, that unusual and unexpected delays had taken place in the discussion, which seemed likely to be protracted to an indefinite length of time, that no basis of the negotiation was laid; no propositions were presented, though often requested with as much earnestness as delicacy would permit; and that to those which we did ourselves the honor to present, we were answered, not in a spirit of accommodation, but with demands that we should surrender unconditionally the just claims of our Government in some of the most important points, that we wrote that letter. To a situation so improper, it was impossible for us to remain longer insensible. We could not but recollect, independent of the justice of our pretensions, that some consideration was due to the friendly and respectful advance that was made by our Government; that special missions in their nature require despatch, and generally receive it; that on former and important occasions those of the United States had received it from France, Spain, and Great Britain; that to the present one, by many causes, the public sensibility had been much excited, and that our Government waited with anxiety the result: in addition to which, that one of the parties to it was the representative of the United States at another Court, where their interests suffered by his absence. It was on a full view of these circumstances that that measure was taken—circumstances which appeared to us to be too imperious to have any cause for hesitation. In writing the letter we meant, as already observed, to vindicate our own conduct to both Governments. We did not mean in the slightest degree to call in question the right of His Majesty's Government to manage the ne-

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ion, or to conclude it in such mode as it
ht fit. We only claimed to ourselves a right
hdraw from it, and report the result to our
nment when it appeared to us impossible,
naking due exertions, to accomplish the ob-
f our mission.

ur letter of the 9th, we invited again your
ency's propositions, which have not been
ied. Your Excellency has, however, fur-
us with your observations on the last point
ussion, that of the western limits of Louis
y which the negotiation approaches a con-
in its ordinary form, by treaty or other-
hich your Excellency seems desirous to
. Our wish has been invariably the same
point, and we now feel ourselves called
ler existing circumstances, to give a new
nal proof of our disposition to conciliate.
is to adjust at this time the subsisting differ-
nd place the relations of the two countries
sis of permanent friendship, by arrange-
ounded on their common interest, we will
to hazard these great concerns, by any act
nay possibly impute the failure to us. In-
l by these considerations, we shall proceed
ss this last point in reply to your Excel-
note, although the propositions have not
nished, in the expectation that, after the
on on this point is finished, as we trust it
will be, we shall experience on your part
l co-operation to conclude the negotiation
th the utmost promptitude.

ave gone thus into detail, to place in its
t the part we have acted in these concerns,
motive of it. The negotiation naturally
interesting epoch in the political rela-
the two Powers, and it is important to the
States that it should be seen that nothing
tted on their part which was due to the
f justice and good neighborhood on the
His Catholic Majesty.

mining the question respecting the west-
ts of Louisiana, we are to be governed by
ts and principles which would have been
le to France had she never parted with
ince. All the rights which she formerly
l over it were restored to her by the trea-
Ildefonso, and by her transferred to the
tates by that of Paris, of 1803: to ascertain
s necessary to go back to that epoch when
Mississippi, with the waters which emp-
, and when the bay of St. Bernard were
overed. The boundary to the West was
ced by an exact line of demarcation be-
at province and the possessions of Spain;
ettling it at this day, the same principles
must govern as if it had been then made.
acts which are material in the case are
relate to the discovery and possession
rritory referred to by the subjects and
e authority of each nation. The princi-
those which have been recognised by
Powers in similar transactions, and
course ought to govern in the present one.
correct view of the material facts, and
ul application of these principles to them,
that the right of each nation will be established in this point, and thereby the boundary between them.

By the memorial which we had the honor to present to your Excellency on the 28th January last, the epoch of the discovery of the Mississippi and of the waters which empty into it, and of the bay of St. Bernard, and of the taking possession of the same, and of the country dependent thereon, is proved by documents which cannot be questioned. By these it is established, in respect to the Mississippi, its waters, and dependent country, as low down the river as the Arkansas, by the Sieurs Joliet and Marquette from Canada, as early as the year 1673, and to its mouth by the father Hennison, in 1680, and by De la Salle and Joutel, who descended the river with sixty men to the ocean, and named the country Louisiana, in 1682, and in respect to the bay of St. Bernard, in 1685. This was done at those periods in the name and under the authority of France, by acts which proclaimed her sovereignty over the whole country to other Powers, in a manner the most public and solemn, such as making settlements and building forts within it. Of these, it is material to notice in the present inquiry two only, which were erected in the bay of St. Bernard, on the western side of the river Colorado, by M. de la Salle, who landed there from France with two hundred and forty persons, in 1685. It was on the authority of the discovery thus made, and of possession so taken, that Louis XIV. granted to Anthony Crozat, by letters patent, bearing date 1712, the exclusive commerce of that country, in which he defines its boundary, by declaring that it comprehended all the lands, coasts, and islands, which are situated in the Gulf of Mexico, between Carolina on the east, and Old and New Mexico on the west, with all the streams which empty into the ocean within those limits, and the interior country dependent on the same. Such are the facts on which the claim of France rested: such are those on which that of the United States now rests.

The principles which are applicable to the case are such as are dictated by reason, and have been adopted in practice by European Powers, in the discoveries and acquisitions which they respectively made in the new world: they are principles intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extensive seacoast, that possession is understood as extending into the interior country, to the sources of the rivers emptying within that coast, to all their branches and the country they cover; and to give it a right, in exclusion of all other nations, to the same, (memoir——, page 116,) it is evident that some rule or principle must govern the rights of European Powers, in regard to each other in all such cases: and it is certain that none can be adopted in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory, so described, for the same society; to have connected its several parts together by the ties of a common interest, and to have detached them from others.

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If this principle is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of a European Power, who discovered and took possession of a new country, to the spot on which its troops or settlements rested: a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America. The other extreme would be equally improper; that is, that the nation who made such discovery should, in all cases, be entitled to the whole of the territory so discovered. In the case of an island, whose extent was seen, which might be soon sailed round, and preserved by a few forts, it may apply with justice; but in that of a continent, it would be absolutely absurd; accordingly, we find that this opposite extreme has been equally disclaimed and disavowed by the doctrine and practice of European nations. The great continent of America, north and south, was never claimed by any one European nation, nor was either portion of it. Their pretensions have been always bounded by more moderate and rational principles. The one laid down has obtained general assent.

This principle was completely established in the controversy which produced the war of 1755. Great Britian contended that she had a right, founded in the discovery and possession of such territory, to define its boundaries, to given latitudes in grants to individuals, retaining the sovereignty to herself from sea to sea. This pretension, on her part, was opposed by France and Spain, and was finally abandoned by Great Britain in the treaty of 1763, which established the Mississippi as the western boundary of her possessions. It was opposed by France and Spain on the principle here insisted on, which of course gives it the highest possible sanction in the present case.

The second is, that, whenever one European nation makes a discovery, and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. The justice and propriety of this rule is too obvious to require illustration.

A third rule is, that, whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, by grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European Powers. It is particularly illustrated by the stipulations of their most important treaties concerning those possessions, and the practice under them, viz: the Treaty of Utrecht, in 1715, and that of Paris, in 1763. In conformity with the tenth article of the first mentioned treaty, the boundary between Canada and Louisiana on the one side and the Hudson's Bay and Northwestern companies on the other, was established by commissaries, by a line to commence at a cape or promontory on the ocean, in 58° 31′ north latitude to run thence, southwestwardly, to latitude 49° north from the equator, and along that line indefinitely westward. Since that time, no attempt has been made to extend the limits of Louisiana or Canada to the north of that line, or of those companies in the south of it, by purchase, conquest, or grant from the Indians. By the Treaty of Paris, 1763, the boundary between the present United States and Florida and Louisiana, was established by a line to run through the middle of the Mississippi, from its source, to the river Iberville, and through that river, &c. to the ocean. Since that time no attempts have been made by those States since their independence, or by Great Britain before it, to extend their possession westward of that line, or of Spain to extend hers eastward of it, by virtue of such acquisitions made of the Indians. These facts prove incontestably that this principle is not only just in itself, but that it has been invariably observed by all the Powers holding possessions in America, in all questions to which it applies relative to those possessions.

The above are the principles which we presume are to govern in the present case. We will now proceed to apply these principles to the claim of the United States, as founded on the facts above stated, relative to the discovery and possession of Louisiana by France, and to designate the limit to which we presume they are justly entitled, by virtue thereof, in the quarter referred to.

On the authority of the principle first stated, it is evident that, by the discovery and possession of the Mississippi, in its whole length, and the coast adjoining it, the United States are entitled to the whole country dependent on that river, its several branches, and the waters which empty into it, within the limits of that coast. The extent to which this would go, it is not in our power to say; but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it.

It is equally evident, by the application of the second principle, to the discovery made by M. de la Salle of the bay of St. Bernard, and his establishment there on the western side of the river Colorado, that the United States have a just right to a boundary founded on the middle distance, between that point and the then nearest Spanish settlement, which, it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first above mentioned. To what point that would carry us, it is equally out of our power to say; nor is it material, as the possession in the bay of St. Bernard, taken in connexion with that on the Mississippi, has been always understood as a right to extend to the Rio Bravo, on which we now insist.

In support of this boundary, we rely much on the grant of Louis XIV. to Anthony Crozat, in 1712. That grant, it is true, establishes no new right to the territory. The right had already accrued by the causes and to the extent contended for, which was never abandoned afterwards, ex-

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cept by the treaty of 1763, which does not affect the present question.

This boundary is also supported by the opinions of the best informed persons who have written on the subject, with which we have become acquainted. By an extract from a work on Louisiana, written by the Colonel Chevalier de Champigny, in 1773, who, being of the country, was doubtless well informed, the Rio Bravo is laid down as the western boundary of that province. The fact is again asserted, with more minuteness, in his second note to that work, in which he states that Louisiana was bounded, before the treaty of 1763, to the west, by the mountains of New Mexico and the Rio Bravo. In a book containing several memoirs on different subjects, published about three years since at Paris, is one entitled a "Memoir, historical and political, on Louisiana, by the Count de Vergennes, Minister of Louis XVI," in which it is stated that Louisiana is bounded to the east by Florida, and to the west by Mexico. The opinion of geographers, in general, confirms that of other writers. By a chart of Louisiana, published in 1762, by Don Thomas Lopez, geographer to His Catholic Majesty, it appears that he considers the Rio Bravo as the boundary of the province, as it does by that of De Lisle, of the Royal Academy of Sciences at Paris, which was revised and republished in 1782. Others might be quoted, but it is useless to multiply them.

Having thus shown the principles on which the United States found their claim to the Rio Bravo as the western boundary of Louisiana, we will proceed to examine the claim of Spain which is opposed to it, as presented by your Excellency, in your esteemed note of the 13th inst. We find by it, that all the facts relied on in support of the claim of Spain, relate to the province of Texas, the whole of which lies eastward of the Rio Bravo, and, as we suppose, within the limits of Louisiana. They amount to this, at different epochs, certain religious missions were established within that province, the first of which was in 1690; that, in 1692, a royal order issued, directing new discoveries to be made in it, under which the river Colorado was explored; that, in 1714, Louis St. Denis, a Frenchman, with a passport from the Governor of Louisiana, made a visit to Mexico on some commercial projects, passing by the Spanish post St. John the Baptist, on the Rio Bravo, at which time Don Diego Lamon was sent into the province of Texas, where he was well received by the Indians, among whom he then founded several religious missions, one of them at a post within seven leagues of Natchitoches; that treaties were afterwards made with some tribes of Indians, who acknowledged their dependence on Spain, that, during the regency of the Duke of Orleans, hostilities took place between the French and Spaniards, in which the former attacked the latter at Adais and, broke up the establishment for a time; that, in 1730, the situation of the post Antonio de Bejar was improved by the Marquis de Aguago, who settled a certain number of families in its neighborhood; that, in 1775, hostilities took place with the Indians, who attacked the post of St. Saba, and killed some soldiers and priests; in consequence of which, a detachment was sent against them, under the command of Don Diego Otiz Pamille; that, after this, the Marquis de Rubi was empowered to organize a system of defence for the provinces of New Spain, which was completed in the year 1772. These, we believe, are all the facts stated by your Excellency, on which we think proper to make a few remarks.

It is evident, as every fact above stated was posterior, and even by many years, to the completion of the title on which the United States rely, that if the principles by which they support that title are sound, there is not the slighest foundation for the claim of Spain to rest on. Every act of Spain, within the limits which it appears justly belonged to France, was an encroachment, which the friendly relations between the two Powers might authorize in a wilderness, but which could give no title. That those acts were considered by the French as encroachments at the time they were made, is proved by many facts and documents the most authentic. In respect to the Spanish post, in the neighborhood of the Natchitoches, on which your Excellency seems chiefly to rely, we beg to refer you to Colonel Champigny's work, page 10 of his notes, by which it is stated, that the post which the Spaniards had established there was on the territory of the French. We refer you also to Du Praty's History of Louisiana, volume 1, page 12; by which it appears that the Spaniards were introduced there under the auspices of the French, by Louis St. Denis, to favor a contraband trade with Mexico; that the favorable reception given by the Indians to Don Diego Ramon was owing to St. Denis, who was recognised by them as their great chief; prior to which year, it appears, by the same author, that there was not an establishment of any kind east of the Rio Bravo, and only that of St. John the Baptist on the western bank of it. But the most authentic and conclusive of all proofs of the light in which these acts of the Spaniards were viewed by the French is, that hostilities actually did take place between them respecting those posts, which history has recorded, and your Excellency admitted.

Your Excellency has noticed, in your statement, some concessions or acknowledgments made to the Spaniards by the Indians of their dependence on them; but these, it is presumed, could convey no title to the sovereignty of the territory against France. The third principle relied on above is conclusive to this effect. Within the known limits of Mexico, there is a vast tract of vacant territory to the north, held and inhabited by the Indians. If any other Power was to treat with, and receive similar acknowledgments of them, would Spain admit that the territory was thereby transferred from her to such Power?

On this view of the subject, in which we have attempted to illustrate more in detail, but have added little to the contents of the memorial which we had the honor to present to your Excellency, on the 28th January last, we rest the title of the United States to the Rio Bravo as the western

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boundary of Louisiana. As every point has been thus fully discussed, we flatter ourselves that we shall now be honored with your Excellency's propositions for the arrangement of the whole business. The country on both sides of the Mississippi is yet a wilderness, and it is important to make those arrangements which their mutual interests may require while it is so. As your Excellency is possessed of the sentiments of our Government on every point, it is unnecessary to add more than to repeat, that on receiving your Excellency's propositions we shall have every disposition to conciliate the views and interests of His Majesty's Government which can be expected from the just and friendly policy of the United States.

We request your Excellency to accept, &c.

CHARLES PINCKNEY.
JAMES MONROE.

Don PEDRO CEVALLOS,
First Secretary of State, &c.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *May* 12, 1805.

SIR: Animated by the same desire which has governed us since the commencement of the negotiation, and influenced by that which was expressed by your Excellency in our interview last evening, we are willing to state the ultimate conditions on which we are authorized to adjust the several points depending between our Governments. With this view, we do ourselves the honor to inform your Excellency that, on condition His Catholic Majesty will cede the territory eastward of the Mississippi, and arbitrate the claims of the citizens and subjects of each Power, according to the convention of August 11, 1802, we will make the Colorado the boundary between Louisiana and Spain, by a line to be run in the manner proposed in the project which was presented on the 28th January last, the United States ceding all right to any territory westward of that line; we will establish a district of territory of thirty leagues on each side of that line, or on the American side only, if preferred by Spain to be run from the Gulf of Mexico to the northern boundary of Louisiana, which shall remain neutral and unsettled for ever; we will relinquish the claim to spoliations which were committed by the French within the jurisdiction of Spain, in the course of the last war, the United States undertaking to compensate the parties in a sum to be specified; and we will also relinquish all claim to compensation for the injuries which were received by the suppression of the deposit at New Orleans. Your Excellency will, we are persuaded, see in these propositions a most unequivocal proof of the sincere desire of our Government to meet the views of His Catholic Majesty in the points referred to, in a spirit of conciliation and concession, to place the friendly relations of the two Powers, who, as neighbors, have so many and powerful motives to promote that object, on a basis never to be shaken. We have endeavored also to give the strongest proof in our power of our disposition to conciliate the views which have been expressed on two points by His Majesty the Emperor of France, since, in case His Catholic Majesty adopts the propositions and cedes the whole of the territory eastward of the Mississippi, we are willing to accept the cession of West Florida from him; and, in assuming the payment to our citizens of their claims for French spoliations, we make it, as we presume, in a great measure, without any consideration whatever, as we consider that the concession which we propose to make on the western side of the Mississippi is, in itself, an equivalent for all the territory claimed by Spain on its eastern side. If these propositions are accepted, we have to request that your Excellency will be so good as to notify us of it, that a convention founded on them, may be concluded without delay. If they are rejected, we have then to request that your Excellency will consider the United States as in no respect bound by them, and the whole subject as standing on the same ground, in any future negotiation, as if none such had been made. In either event, we have to request that your Excellency will be so good as to give us an early and explicit answer to the same.

We request your Excellency to accept the assurance of our distinguished consideration and esteem.

CHARLES PINCKNEY.
JAMES MONROE.

Don PEDRO CEVALLOS,
First Secretary of State, &c.

P. S. We do ourselves the honor to enclose your Excellency the two notes which we submitted to your view last evening, with our signatures.

Propositions to the Secretary of State.

On condition that Spain will cede, on her part, the territory to the east of the Mississippi, and arbitrate her own spoliations conformably to the convention of August 11, 1802, the United States will cede, on their part, their claim to territory west of a line to be drawn from the mouth of the Colorado to its, source, and from thence to the northern limits of Louisiana, in such manner as to avoid the different rivers and their branches which empty into the Mississippi.

They will establish a territory of thirty leagues on both sides of this line, which shall remain unsettled forever, or of thirty leagues, on their own side, if Spain desire to extend her settlements to the Colorado.

They will also relinquish their claim for French spoliations, which amounts to one hundred and sixty-four vessels, by undertaking to satisfy the parties themselves in a sum to be specified.

They will relinquish, likewise, their claim to compensation for the suppression of the deposit at New Orleans.

From the 1st of October 1796, until the —, there were brought into the ports of His Catholic Majesty, in Europe and Africa, by the French, 166 vessels.

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Of the above, have been condemned,	- 74	
Acquitted, ransomed, or compromised,	- 23	
		— 97
Cases of the violation of the Spanish territory, condemned, - - - - -		13
Run ashore and lost, - - - - -		1
Unaccounted for, - - - - - -		7
Result not known, - - - - - -		50
Total by the French, - - - - -		168

A statement of the facts relative to American vessels taken by French privateers, and brought into Spanish ports, obtained from the most authentic sources.

Of the French spoliations, there have been fifty appeals from the consular judgments in Spain to the Council of Prizes at Paris, of which thirty have been released, nine condemned, and twelve are yet depending. Not one sous has been paid in any case, nor is there a single case of such spoliations on the list of liquidations now at the French treasury, which are to participate of the twenty millions of livres to be paid by the United States to their citizens, under the treaty of 1803, on account of French spoliations.

The American Minister never did demand payment of French spoliations made in Spain, knowing them as such; nor did the American agent ever demand it by his order or knowledge. The first intelligence which the American Government had of appeals being permitted from the French Consular tribunals in Spain to the Council of Prizes in France, was received from Spain herself. As soon as it was received, the Secretary of State wrote to the American Minister in Paris, to know what the fact was, and instructed him at the same time, to prohibit the agent from acting in such cases, it having been at all times the opinion of the Government that Spain alone was answerable, of whom only has the recompense been demanded.

Taken by the Spaniards, since the 1st of October, 1796, until the ——, 104 vessels and 4 cargoes. Of these have been condemned 29 vessels. Acquitted, ransomed, or compromised, 51. Disappeared, unaccounted for, or depending, 24. Total by the Spaniards, 104 vessels, 4 cargoes.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ *May* 15, 1805.

GENTLEMEN: I have read, with due attention, your esteemed note of the 12th, and the propositions you have been pleased to make in the name of your Government, reduced to the following: that Spain shall cede the Floridas, on her part, and shall arrange the point of the claims of the individuals of both nations, conformably to the convention of the 11th, August, 1802; and that, on their part, the United States would fix the river Colorado as the limit between Louisiana and the Spanish possessions, in the form that the said note expresses; and that they will abandon the claim arising from the damages occasioned by the French on the coasts and in the ports of Spain, during the last war, as also that for indemnification for damages occasioned by the suspension of the deposit at New Orleans.

On viewing these propositions, I cannot refrain from saying to your Excellencies that I do not see in them any convenient terms for entering into the exchange or contract proposed; for, although His Majesty has the power to bargain for the Floridas, as owner of them, in the fullest extent, and has also the right, if he pleases, to ratify the convention of August 11, 1802, which is suspended for the reasons your Excellencies know, there are wanting equal right and power in the United States to make the cession your Excellencies mention. The United States having no right to demand of Spain compensation for damages occasioned by the French privateers, as I have demonstrated in my notes on that point, and to which I again refer, Spain, therefore, could not receive from the United States the renunciation of a right they have not, and which she does not recognise as belonging to them. The same may be said as to the claim for the suspension of the deposit at New Orleans, and as to the claim to fix the limit of Louisiana at the Rio Bravo; from which claim flows the assertion, that the fixing it at the Colorado is to be considered as a cession. It is equally necessary for me to observe to your Excellencies, that the Spanish Government has made it appear, and is equally ready to show more and more, by the most irrefragable proof, that the limit which separates Louisiana and the Spanish possessions is a line which, beginning in the Gulf of Mexico, between the rivers Caracut or Carcase and the Armienta or Marmentao, ascends towards the north, between the Adais and Natchitoches, until it cuts the Red river; and as from this point they are doubtful and little known, the limits which ought to be marked on the northern side appear to be proper subjects for reference to the prudent investigation of commissioners of limits, to be named by both parties; who, having the view of the territory, and all the documents and dates which may be necessary, before them, rectifying what ought to be rectified, and furnishing the light necessary to both Governments, on limits which have never yet been fixed or determined with all the exactness necessary, may be thus able to establish the demarcation completely to the satisfaction of both Governments.

In this view of the subject, it cannot be concealed from the penetration of your Excellencies, that, as a consequence of the propositions you have made by your note of the 12th, Spain would cede to the United States, not only the territories which indisputably belong to her to the east of the Mississippi, that is the two Floridas, but also others, equally her own, in the interior province of New Spain, without receiving anything in return but the renunciation of a right which she does not acknowledge in the United States, which is, to reclaim for the damages arising from the suspension of the deposit, and for those occasioned by the French privateers, on the coast and in the ports of Spain, during the last war;

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when, on the contrary, Spain thinks she has shown that she is in no manner liable for the same.

The justice of the American Government will not permit it to insist on propositions so totally to the disadvantage of Spain; and, however anxious His Majesty may be to please the United States, he cannot, on his part, assent to them, nor can he do less than consider them as little conformable to the rights of his Crown.

I renew to your Excellencies the demonstrations, &c.

PEDRO CEVALLOS.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *May* 18, 1805.

SIR: We have received your Excellency's letter of the 15th instant, by which we perceive, with regret, that the propositions which we had the honor to make to His Majesty, on the part of our Government, on the 12th instant, for the adjustment of the several points depending between the United States and Spain, have been absolutely rejected. By this answer, which we presume is given by the order of His Majesty, we consider the negotiation concluded; we have, therefore, only to remark, that we shall hasten to communicate the result to our Government, who will not fail to bestow on it the attention which is due to a concern of such high importance to the United States. The special mission to His Catholic Majesty being thus ended, it becomes the duty of Mr. Monroe to repair immediately to London, where he is resident Minister of the United States; for which purpose, your Excellency will be so obliging as to furnish him with the necessary passport. As preparatory to that step, we have to request your Excellency will be so good as to obtain for him an early audience of their Majesties, that he may be enabled to take his leave of them; and, at the same time, to renew the assurance of the high consideration entertained for them by our Government.

We beg your Excellency to accept the assurance, &c.

CHARLES PINCKNEY.
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *May* 20, 1805.

GENTLEMEN: Having given an account to their Majesties of the contents of your esteemed letter of the 18th, in which you request the necessary passport for Mr. Monroe to return, agreeably to his wish, to his residence at London, obtaining before his departure an audience of leave, their Majesties have fixed to-morrow, being Wednesday, at half-past eleven, for the audience which Mr. Monroe wishes, and, without loss of time, I shall have the honor to send the necessary passport for Mr. Monroe.

I have the honor to reiterate the demonstrations of my distinguished consideration, &c.

PEDRO CEVALLOS.

Mr. Monroe's address on taking leave.

On my arrival here, I had the honor to assure your Majesty of the high consideration of my Government for your Majesty's person and Government. I then hoped to have had the honor to conclude the special mission with which I was charged, in conjunction with the Minister Plenipotentiary of the United States near your Majesty, to the advantage and satisfaction of both parties; but being disappointed in this respect, all propositions, which we deem just, being rejected, and none others ever offered on the part of your Majesty's Government, though often *invited*, it is my duty to return to my station at *London*. We have transmitted the result to our *Government* for its decision. Under these circumstances, I have thought it my duty to take leave of your Majesty in the usual form. In so doing, I avail myself of the occasion to assure your Majesty, an assurance which I give with pleasure, of the high consideration of my Government, and of the pleasure it would have derived from an amicable adjustment, on just and fair principles, of *all the questions* depending between the two nations, to accomplish which it has made so many friendly advances and exertions.

Messrs. Monroe and Pinkney to Mr. Madison.

ARANJUEZ, *May* 23, 1805.

SIR: We are sorry to inform you that the negotiation with which we were charged by the President with the Government of Spain is concluded, after failing in all its objects, notwithstanding our unwearied and laborious exertions, for so great a length of time, to procure for it a different result. We have heretofore availed ourselves of such opportunities as offered to transmit you copies of the papers which had passed in our correspondence with the Minister of Spain on the subject, at the dates of our several letters which accompanied them, by which you were apprized of the tone which this Government had assumed in the negotiation. We have now the pleasure to transmit to you, by Captain Dulton, a copy of those, and every subsequent paper which has passed in it. These will give you so clear a view of the transaction, that you will not be at a loss for the policy of Spain in the business, or of the motives which governed us in every stage of it. We endeavored, in obedience to our instructions, to adjust the differences subsisting between the two countries, on such conditions, and to establish their future relations by such arrangements as were in our judgment safe, honorable, and advantageous to Spain, and we pursued the object in a mode the most conciliating that we could adopt. In respect to the conditions, we were, indeed willing to make some sacrifice on our responsibility, in the persuasion that, under existing circumstances, our conduct would be approved. But a very different spirit animated this Government in every respect. We experienced, on its part, neither a spirit of candor nor conciliation in the management of the business, nor of accommodation in the conditions. In this latter point it has

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disclaimed our rights in every question on which it was possible that a difference of opinion could exist; it has pushed the pretensions of Spain to the most extravagant extent in each; and insisted, finally, in a tone not a little imperious, that those exaggerated pretensions should be the standard by which the subsisting differences and their future relations should be regulated. So far as depended on us, the business might have been ended in a few weeks, but nothing was more remote from the views of this Government than to bring it to an early conclusion. On the contrary, its ingenuity was displayed in an effort to prolong the negotiation to the latest possible epoch. When we asked of the Minister the acceptance or rejection of our propositions, he replied, that he could do neither till His Majesty should be correctly informed of his rights; that a discussion of every point was necessary to give him that information; and that, after he obtained it, he should give us the answer which we desired. Seeing very distinctly, almost from the commencement, that we had nothing to expect from the justice or friendship of this Government, and being of opinion that the delay which was so studiously sought on its part was with no friendly views to us, we resolved, as early as the 12th of February, to push the business to a conclusion as soon as we could consistent with that respectful course of conduct which might be necessary to procure it a favorable one. With this view, and as we saw that he disapproved of our propositions, we called on him, in a note of that date, for his own, to which we received a similar reply. His Majesty, he said, was not yet informed of his rights in the points in question; he must get that information from discussion; and, after the discussion should be ended, that he would proceed, by negotiation, to the arrangement of the whole business, in such manner as might prove of advantage to both countries. In our interviews, he repeatedly intimated, that although we might disagree on every point in the discussion, yet that his Government would be willing, after it was gone through, on a view of the whole subject, to make some sacrifice, as he termed it, to obtain an amicable adjustment. It became, therefore, necessary, even at this period, to decide whether it would be best to desire an explicit answer to our propositions, and, in case it was refused, to end the negotiation at that stage of the discussion. We bestowed on this point all the consideration which it merited; and the result of our deliberation was, that it would be best to proceed in the discussion till it was concluded; in a belief, however, that that would soon take place. We did not wish to furnish any pretext to his Government, how little plausible soever it might be, to sanction his declining to settle by treaty all the differences subsisting between the United States and Spain at this time. We thought it might be useful to answer some of his remarks, and to place in a more distinct light some of the questions that were involved in it; and we were not aware that the delay necessarily incident to it would put us in a less favorable situation to obtain a compliance with our just demands; in addition to which, it seemed proper for us to wait and see what the sacrifices were which he proposed to make when the discussion was concluded, and to which we were the more disposed, from a presumption, against the evidence of very strong facts, that this Government must have too just a knowledge of its interest to court a contest with us, especially by refusing its assent to the just and reasonable terms on which we insisted. Under these impressions, we proceeded in the business for some time, till finally there remained only one point, that of the western limits, to be treated of. Here it appeared to us that Mr. Cevallos had resolved to terminate it, having failed for so long a time to answer our last note, after having pressed some point in a manner to excite that expectation. We asked him, by note of the 30th March, if such was his intention, intimating, if it was, that we should not oppose it. He replied, that it was not, and that he should send us a note, as soon as he could, on the western limits. We waited several days for his note, without receiving one; we then desired an interview, in which we asked him when we should receive one? He replied, as soon as possible; that he was engaged in it. Would it be in the course of the week? It would not. In the course of the next? He could not promise it; he could neither fix the day nor the week. How long did he think it would require to conclude the business, that is, for him to be ready to conclude it, since it depended on him, as we could terminate it at once, and had been ready so to do from the commencement? He thought it was possible to finish it in three months from that time but would not engage for it. It was on this conversation that our note of the 9th of April was written, which obtained from him his reply of the 12th, and in it his essay on the western limits. We had resolved when our note of the 9th was addressed, to proceed no further in the discussion till we received his propositions, and intimated to him in it that we deemed it incompatible with our duty so to do. But, as we had now entered on the last point of discussion, which brought the business in his own mode so near a conclusion, as we wished to show the absurdity of his arguments on that point, and to establish, in reference to it, the perfect solidity of our claim to the Rio Bravo; and, also, as we wished to remove some impressions of a personal nature, which he seemed to have taken from our notes of the 30th of March and 9th of April, and in a spirit of perfect conciliation to open the door again to, and invite on terms the most liberal, the amicable adjustment of the business, we resolved to waive all form, and to proceed to the discussion. Accordingly, we answered his note on the western limits, in which we also took a review of the part which we had respectively acted in the negotiation, placed in its true light the conduct of each party, and again invited his propositions. The note bore date on the 20th of April, seven days after that of his, to which it was in reply, and to which we expected, of course, an early answer. We waited patiently for one till the 1st instant without effect; when it being the day of his weekly rendezvous with the several

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members of the diplomatic corps, we asked him, in a private interview, when we should hear from him on the subject of our last. He said it would be soon, as he was engaged on it. Would it comprise propositions? To which his reply was understood to be in the affirmative. Another week had elapsed, when a similar occasion furnished another opportunity to make the same inquiry. His reply to it was still equally vague and unsatisfactory. As we had anticipated such a one, we had made up our mind as to the part it became us to act in that event. We had resolved, on a view of the whole subject, to wait no longer for his propositions, but to offer him on our part such terms as we were willing to close the business on, by treaty, if they were accepted, or without, if they were rejected. With this view, we observed to him that we were disposed to make him a new and more advantageous offer, in which we should go further than our instructions permitted, but which we should do to meet as far as we could the views of His Majesty, for the purpose of terminating the business amicably at once. He replied, that such a proposition on our part in the present stage would be premature, as the discussion was not concluded. We had long seen through Mr. Cevallos's views, and given him cause to know that, in following him in the discussion, we had done it not solely because he had invited us so to do, but from superior considerations which justified us in that conduct; not solely because we were the dupes of his management, but that we really wished to furnish an incontrovertible proof of the sincere desire of our Government to preserve the relations of friendship with Spain, and of the steadiness and magnanimity with which it pursued that object, while the pursuit could be attributed to such generous motives. As this trait in Mr. Cevallos's conduct corresponded with the others, we were not at all surprised by it, nor would we be diverted from the course which we had resolved on. We, therefore, wrote him, on the 12th, a note, in which we made him the propositions above-mentioned, in terms of perfect respect, and to which we asked his explicit answer. On the 16th we received one which was perfectly so. This answer being of the character already stated, left no cause to doubt the part which it now remained for us to take. Accordingly, on the 18th, we informed him that his note of the 15th had ended the negotiation, on which it became our duty to report the result to our Government, and for Mr. Monroe to repair immediately to London, where his duty required his presence. As preparatory to this latter measure, we requested an audience of their Majesties, to enable him to take leave of them in the usual form, and a passport to leave the country; both of which were granted in the course of a few days.

As the above details furnish some facts not to be found in the correspondence with the Minister of Spain, we have thought it our duty to give them. If any doubts existed on a view of the other documents, by any circumstance which occurred in the course of the negotiation relative to the policy of this Government in it, we are persuaded that these will tend to remove them.—We do presume that the motive of this Government in seeking delay, by the management which it used, was its utter indisposition to accommodate the business with us on just principles. With such a determination, delay might be, on many considerations, desirable to it. Having the support of France on some important points, and knowing that an attempt was making by her to induce our Government to yield explicitly on them, it might wish to protract the business till that end was accomplished. Besides, it might hope to profit by the events of the present war. But, on our part, we did not see that any advantage could be gained by prolonging the negotiation, while we were persuaded that some essential injury might result from it. By prolonging, after so much time had already been consumed in it, we thought that we should have furnished the proof of timid councils; that we expected that our Government would yield to the pressure made on it, and thus tend to confirm this Government and that of France in increasing that pressure. While the negotiation was continued under existing circumstances, it seemed to us as if those Powers would have essentially the control of it. But, by withdrawing from it, we were persuaded that we should show the independence of our Government and country to the parties, and put the affair on its true ground in the eyes of other Powers, from which some advantage might result hereafter.

Of the terms on which this Government would have concluded a treaty with us, you will be able to form a tolerably correct opinion in some important points, by the documents which we send you. You will observe that it never furnished us with any propositions whatever, though often requested; that it refused to ratify the convention of August 11, 1802, but on conditions we were positively forbidden to accept; that it refused any accommodation on account of French spoliations, or the suppression of the deposit at New Orleans; disclaimed our right to West Florida, and asserted theirs, on the west of the Mississippi, to a line which should commence at the Gulf of Mexico, between the Caracut and Marmentao rivers and run thence between the Adais and Natchitoches to the Red river, &c.

The propositions which we made were not only in the spirit, and in conformity to our instructions, but such as we thought, in every respect just and reasonable. Our claim to the Rio Bravo appears to us to be as well founded as that of Spain to any portion of Mexico which is vacant, and we do conceive that the accommodation which we offered on that side of the Mississippi was worth at least that which was asked in return for it on the eastern side. The territory is more extensive, and it is at least as important to Spain to be accommodated on the side next Mexico as to the United States in respect to Florida; and the advantage of the parties is the standard by which the value ought to be estimated. Besides, we were convinced, if we succeeded at all we were as likely to do it on these propositions as on

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any we could make at this time, short of the extravagant pretensions above stated. We are convinced, if we do succeed by other terms than those, that it will be owing to the successful course of events, and to the imposing attitude and decision of our Government and country. To have proposed other terms at this time would have produced no effect as to an adjustment, while it would have weakened our claims and injured us on any future occasion.

In proposing to accept a cession of West Florida from Spain, and to relinquish the French spoliations, in the manner expressed in our note, we did it with a view to satisfy the pretensions of France in these respects. We deemed it advisable to take that ground, in the presumption that her Government might possibly avail itself of the opportunity thereby furnished to separate itself from the question, and eventually use its influence with Spain to adjust the business. You will observe that that proposition offered no relinquishment of those claims, but in case the whole project was accepted; in which case the United States were to pay on that account to the creditors a sum to be specified, for which they would have found in other respects a reasonable indemnity.

As we did not wish to compromit our Government more than was unavoidable, it was thought proper that Mr. Monroe should take leave of their Majesties in the usual form. In so doing, he avails himself of the opportunity to observe to His Majesty that the failure of the negotiation was attributable to his Government, and not that of the United States, for reasons which he took the liberty to mention. A copy of his address is enclosed. As nothing was said in my communication respecting the ordinary mission, it remains of course in force. At present it is our opinion that Mr. Pinckney should continue here, or leave some person charged with our affairs, should he find it inconvenient to remain till the orders of our Government are received on the subject. We are, however, strong in the persuasion that all our concerns depending with this Government, as well those of individuals as of the public, will remain suspended by it till our differences are adjusted.

The result of this negotiation forms an interesting crisis in our affairs, which it has been impossible to prevent, and to which the wisdom, firmness, and virtue of our Government will be fully equal. Having justice on its side, and having given the most ample proof of its moderation, there can be no doubt that its decision on the part now to be taken will be such as to sustain the high character of the American nation, vindicate its just rights, and merit the general approbation of our fellow-citizens.

We are, dear sir, with very great respect and esteem, very sincerely your very obedient servants,

CHAS. PINCKNEY.
JAMES MONROE.

Hon. JAMES MADISON,
Secretary of State.

STATE OF THE FINANCES.

[Communicated to the Senate, October 25, 1803.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report and estimates:

The annual net proceeds of the duties on merchandise and tonnage, had, in former reports, been estimated at nine millions five hundred thousand dollars. That estimated revenue, predicated on the importations of the years immediately preceding the late European war, and on the ascertained ratio of increase of the population of the United States, appears, from the experience of the two last years, to have been underrated. The net revenue arising from that source, which accrued during the year 1802, exceeds ten millions one hundred thousand dollars. The revenue which has accrued during the two first quarters of the present year, appears, from the best estimate that can now be formed, to have been only fifty thousand dollars less than that of the two corresponding quarters of the year 1802; and the receipts in the Treasury, on account of the same duties, during the year ending the 30th September last, have exceeded ten millions six hundred thousand dollars. Those facts afford satisfactory evidence that the wealth of the United States increases in a still greater ratio than their population, and induce a belief that this branch of the public revenue may now be safely calculated at ten millions of dollars.

From the statement A, it will appear that the same revenue, for the two last years of the late European war, (1800 and 1801) calculated at the present rate of duties, averaged $11,600,000 a year; but, although it might, with some degree of probability, be supposed that the renewal of hostilities will again produce a similar increase, no inference from that period is drawn in this report, in relation to the revenue of the ensuing years.

The statement B shows the several species of merchandise on which the duties on importations were collected, during the year 1802, the portion of that revenue which was derived from drawbacks, and that which arose from the extra duty on merchandise imported in foreign vessels.

Although the sales of the public lands, during the year ending on the 30th day of September last, were affected by the situation of the Western country, two hundred thousand acres have been sold during that period; and, as it appears by the statement C, that, independent of future sales, the sums already paid to the receivers, together with those which, exclusively of interest, fall due during the three ensuing years, amount to $1,250,000; the annual revenue arising from the proceeds of those sales, cannot be estimated at less than four hundred thousand dollars.

The permanent annual expenses of Government, which, under existing laws, must be defrayed out of that revenue, amount to nine millions eight hundred thousand dollars, to wit:

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1st. The annual appropriation of $7,300,000, for the payment of the principal and interest of the debt; of which about three millions and a half are at present applicable to the discharge of the principal, and the residue to the payment of interest - - - -		$7,300,000
2d. The current expenses of Government, which, according to the estimates for the year 1804, consist of the following items, viz:		
For the civil department, and all domestic expenses of a civil nature - - -	791,000	
For expenses attending the intercourse with foreign nations, including the permanent appropriation for Algiers, and all other expenses relative to the Barbary Powers - - - - - -	184,000	
For the Military and Indian departments - - -	875,000	
For the Naval Establishment, calculated on the supposition that two frigates and four smaller vessels shall be kept in commission - -	650,000	
		2,500,000
		9,800,000
And deducted from the permanent revenue of - - - -		10,400,000
Leaves a surplus revenue of six hundred thousand dollars, applicable to other objects - - - - - -		$600,000

The following extraordinary resources and demands, not being of a permanent nature, are not included in the above calculation, to wit:

The specie in the Treasury, which, on the 30th day of September last, amounted to	$5,860,000
The arrears of the direct tax, estimated at - - - - - - - -	250,000
The outstanding internal duties, which amount to near - - - - -	400,000
And the sum which will be repaid to the United States on account of advances heretofore made in England, for the prosecution of claims, estimated at - - - - - - - -	150,000
	$6,660,000

Constituting an aggregate of more than six millions six hundred thousand dollars, which, after reserving the sum which it is necessary to keep in the Treasury, will be sufficient to discharge the demands due on account of the convention with Great Britain, and amounting to	2,664,000
Sundry extraordinary expenses in relation to the conventions with France and Great Britain, estimated at -	100,000
The loan obtained from the State of Maryland for the City of Washington, amounting to - - - - -	200,000

And also to pay two millions of dollars on account of the purchase of Louisiana, being the same sum which was reserved for the purposes contemplated by the law of the last session, appropriating that amount for the extraordinary expenses attending the intercourse with foreign nations:

It appears by the estimate D, that the year ending on the 30th September payments from the Treasury, on the the public debt, have amounted to

Which, together with the increase of specie in the Treasury, during the same period, amounting to -

Making an actual difference in favor of the United States during that year

The payments on account of the principal public debt, from the 1st day of the 30th day of September, 1803 ed, as appears by the estimate

The specie in the Treasury, on the day of April, 1801, amounted to - - - - 1,750,000

And on the 30th day of September, 1803, to - - 5,860,000

Making an increase of -

These two items constitute an aggregate of - - - - - -

From which, deducting the extraordinary resource arising from the sale of the bank shares, which produced

Leaving, for the amount of the true difference in favor of the United States for the period of two years and a half the sum of - - - -

From this view of the present situation financial concerns of the United States that the only question which requires tion, is, whether any additional rev wanted in order to provide for the which, if Congress shall pass the laws to carry the treaty with France into result from the purchase of Louisiana.

The sum which the United States to pay by virtue of that treaty, amounts millions of dollars, and consists of first, $11,250,000, payable to the Government of France, or to its assignees, in a stock interest of six per cent., payable in the principal of which will be discharged Treasury of the United States, in ments, the first of which shall commence year 1818; secondly, a sum which cannot but may fall short of $3,750,000, payable cie at the Treasury of the United States the course of the ensuing year, to Am

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zens having claims of a certain description on the Government of France.

It has already been stated that two millions of dollars may be paid from the specie now in the Treasury, on account of the last item; and the whole amount of the new debt which may eventually be created, cannot therefore exceed thirteen millions of dollars, the annual interest of which is equal to $780,000; but, on account of commissions and variations of exchange, will be estimated at eight hundred thousand dollars.

The existing surplus revenue of the United States will, as has been stated, be sufficient to discharge six hundred thousand dollars of that sum; and it is expected that the net revenue collected at New Orleans will be equal to the remaining two hundred thousand dollars. That opinion rests on the supposition that Congress shall place that port on the same footing as those of the United States, so that the same duties shall be collected there, on the importation of foreign merchandise, as are now, by law, levied in the United States, and that no duties shall be collected, either on the exportation of produce or merchandise, from New Orleans to any other place, nor on any articles imported into the United States from the ceded territories, or into those territories from the United States.

The statements F, G, H, exhibit the annual exports of the United States, to and from Florida and Louisiana, for the year 1799 to 1802; and the statement G particularly shows, that the exportations from the Atlantic States to those colonies, of articles, not of the growth, produce, or manufacture, of the United States, amounted, for the three years, 1799, 1800, and 1801, to 6,622,189 dollars, making, an average of more than two millions two hundred thousand dollars of foreign articles liable to pay duty, annually imported into Florida and Louisiana from the United States alone.

It is ascertained that the exportations from the United States to Florida are so trifling that that statement may be considered as applying solely to New Orleans; and it is also known, that almost the whole of those importations were consumed within that colony; and that, during the war, the supplies from the United States constituted by far the greater part of its imports.

From thence it results, that the annual importations into the ceded territory, of articles destined for the consumption of its own inhabitants, and which will, under the revenue laws of the United States, be liable to pay duty, may safely be estimated at two millions five hundred thousand dollars; an amount which, at the present rate of duties, will yield a revenue of about $350,000.

From that revenue must be deducted $150,000, for the following items, viz:

1st. The amount of duties on a quantity of sugar and indigo, equal to that which shall be imported from New Orleans to the United States. The whole amount of sugar exported from New Orleans is less than 4,000,000 of pounds, and that of indigo is stated at about 30,000 pounds. Supposing (which, on account of that exemption, is not improbable) that the whole of those articles should, hereafter, be exported to the United States, the loss to the revenue will be about $100,000.

2d. No increase of expense in the military establishment of the United States is contemplated on account of the acquisition of territory; but the expenses of the civil administration of the province, and those incident to the intercourse with the Indians, are estimated at $50,000: leaving for the net revenue derived from the province, and applicable to the payment of the interest of the new debt, $200,000, as above stated. The only provisions, which, if that view of the subject be correct, appear necessary, and are respectfully submitted are, 1st, in relation to the stock of $11,250,000, to be created in favor of the Government of France, or of its assignees.

That that debt be made a charge on the Sinking Fund, directing the Commissioners of the Fund to apply so much of its proceeds as may be necessary for the payment of interest, and reimbursement or redemption of the principal, in the same manner as, by the existing laws, they are directed to do in relation to the payment of interest and discharge of the principal of the debt now charged on that fund.

That so much of the duties on merchandise and tonnage as will be equal to seven hundred thousand dollars, being the sum wanted to pay the interest of that new stock, be added to the annual permanent appropriation for the Sinking Fund, together with the existing appropriation, eight millions of dollars, annually applicable to the payment of the interest and principal of the public debt.

And that the said annual sum of eight millions of dollars remain thus pledged, and be vested in the Commissioners of the Sinking Fund, in trust for the said payments, until the whole of the existing debt of the United States and of the new stock shall have been reimbursed or redeemed.

As a sum, equal to the interest accruing on the new stock, will thus be added to the Sinking Fund, the operation of the fund, as it relates to the extinguishment of the existing debt, will remain precisely on the same footing as has been heretofore provided by Congress. The new debt will neither impede or retard the payment of the principal of the old debt; and the fund will be sufficient, besides paying the interest on both, to discharge the old debt before the year 1818, and that of the new within one year and a half after that year.

2d. In relation to the American claims, the payment of which is assumed by the convention with France.

That a sum not exceeding $3,750,000, inclusive of the two millions appropriated by a law of the last session of Congress, for defraying the extraordinary expenses incident to the intercourse with foreign nations, be appropriated for the payment of those claims, to be paid out of any moneys in the Treasury not otherwise appropriated.

That, for the purpose of effecting the whole of that payment, the President of the United States be authorized to borrow a sum not exceeding

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$1,750,000, at an interest not exceeding six per cent. a year.

And that so much of the proceeds of the duties on merchandise and tonnage, as may be necessary, be appropriated for the payment of the interest, and for the reimbursement of the principal of the loan, which may, eventually, be effected by virtue of the preceding provision.

It is not proposed to charge that loan on the Sinking Fund, because its amount, in case it shall be effected, cannot, at present, be ascertained; and because it may, perhaps, under the then existing circumstances of the Treasury, be found more expedient not to borrow the money, and, in lieu of it, to pay out of the Sinking Fund the whole, or a part of the two last instalments, payable by virtue of the convention with Great Britain, as authorized by the act making provision for the payment of the whole of the public debt.

It is evident that the possibility of thus providing for the payment of the interest of a new debt of thirteen millions of dollars, without either recurring to new taxes, or interfering with the provisions heretofore made for the payment of the existing debt, depends on the correctness of the estimate of the public revenue which has been submitted.

Although it is not without diffidence that the hope of such favorable result is entertained, some reliance is placed on the solidity of the basis on which the estimate is grounded. It rests, principally, on the expectation that the revenue of the ensuing year shall not be less than that which accrued during the year 1802. No part of it depends on the probable increase which may result from the neutrality of the United States during the continuance of the war in Europe, nor even on the progressive augmentation, which, from past experience, may naturally be expected to arise from the gradual increase of population and wealth. Nor has that effect been taken in consideration, which the uninterrupted free navigation of the Mississippi, and the acquisition of New Orleans, may have, either on the sales of the public lands, or on the general resources of the inhabitants of the Western States.

All which is respectfully submitted,

ALBERT GALLATIN,
Secretary of the Treasury.

[The tables are omitted.]

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Dec. 9, 1803.]

To the Honorable the Senate and House of Representatives of the United States, the memorial of the subscribers, artisans and manufacturers of Philadelphia, respectfully showeth:

That in every country there is an inseparable connexion betwixt the manufacturing and the duties on foreign merchandise, insomuch, that some of the greatest statesmen have made the imposts a political engine, to be used for the introduction or protection of the arts: for, as Rousseau observes, in his "Political Economy:" [illegible] longs only to the real statesman to [illegible] views, in the imposition of taxes, above [illegible] object of the finances, and to transform [illegible] dens into useful regulations."

After the peace, and during the Confed[illegible] the confusion that reigned in that branch [illegible] by every State having different objects [illegible] rendered the manufacturing interest at [illegible] precarious and uncertain. Since the [illegible] the Constitution, and that the imposts [illegible] transferred to the Federal Governme[illegible] the wisdom of Congress alone that your [illegible] rialists have to look up for protection.

It is with deep concern, however, that [illegible] morialists have to represent, that during [illegible] period from the peace which terminated [illegible] olutionary war to the present time, the [illegible] the wealth of the nation sent to foreign [illegible] to purchase a thousand articles which [illegible] well manufactured at home, and of which [illegible] has abundantly supplied us with the [illegible]

Among that immense number of [illegible] of the first necessity, manufactured [illegible] States by foreign nations, there are [illegible] could not be produced by our own [illegible] equal terms, if they were not prem[illegible] of the following reasons: 1st. [illegible] 2d. Our markets being constantly [illegible] foreign goods; 3d. The unjust [illegible] we are obliged to sustain with foreign [illegible] rers; 4th. The expense necessarily [illegible] commencement of complicated [illegible] and, 5thly. Duties injudiciously laid [illegible] terials, or goods partially manufactured [illegible] of these your memorialists beg leave [illegible] has come within their own observation.

1. The articles that are affected by fre[illegible] ion are principally clothing, and more [illegible] fabrics of cotton. Our manufacturers [illegible] ticle, in the trials that have already [illegible] find it impossible to keep pace with the [illegible] introduced by the new patterns from [illegible] tions: they are therefore confined to the [illegible] which bear very little profit, for which [illegible] are given, and have continually the [illegible] of seeing themselves excluded from the [illegible] itable branches of the trade, and their [illegible] jected by the citizens of America as unfa[illegible]

2. Our stores being constantly glutted [illegible] eign goods, is another very great obstacle [illegible] an incipient or even an established [illegible] The greater part of the manufactures [illegible] iron, silk, wool, cotton, or flax, are the [illegible] rials, ought to be established in the interior [illegible] country, where provisions, house-rent [illegible] are cheap. It is therefore necessary [illegible] should be a middle man betwixt the consumer [illegible] the manufacturer, that the latter may [illegible] his time in seeking for customers: these [illegible] storekeepers, wholesale or retail, who [illegible] towns and seaports. Now it is evident [illegible] foreign manufacturer shall be permitted [illegible] these people with a constant supply of [illegible] give them long credit, it will be impossible [illegible] citizen with a small capital to persuade [illegible]

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keeper to purchase his goods for ready money; and if he applies immediately to the consumer, the time that he wastes, in a country where the population is diffused, forces him to demand an extraordinary price, or fix himself in a large town, where house-rent, fuel, &c., eat up the profits of his labor.

3. The competition that the manufacturing citizens of the United States are, by the laws of the country, obliged to sustain with the manufacturers of a foreign nation, is, in the opinion of your memorialists, unjust, inasmuch as the finished articles of our infant manufactures, produced from raw materials found in the United States, such as works of copper, iron, lead, earth, cotton, glass, wool, wood, fur, bone, horn, and leather, are generally, either prohibited in foreign countries, or duties imposed far greater than is paid on the like goods coming into the United States; so that there is no encouragement to attempt to excel foreign manufactures: for, in spite of the greatest exertions, still the consumption must be confined to the United States. If any difference were to be made betwixt two competitors, it ought to be in favor, of the weakest; and an infant manufacture must have some protection, to enable it to contend with an old establishment. Your memorialits are however, under the painful necessity of stating, that, in the United States, the reverse of this takes place.

In several instances, especially in hats, shoes, paper, and saddlery, manufactures which have arrived to as high perfection as in any country, in spite of foreign competition; they, are however, not permitted into the country of our competitors, while theirs are still admitted here, and gain sometimes a temporary advantage over our manufacturers, which they are not able to recover for many years, owing to a fluctuation in the price of manual labor, or of the raw material, or the necessaries of life. But to whatever state of perfection our manufactures may arrive, and however low we may be enabled to sell them, we never can contend with our competitors in their own markets, or put them to temporary inconvenience, because they totally prohibit us from their markets. And in those manufactories which require great capitals, and a combination of talents, our competitors in foreign countries have us altogether at their mercy: or rather, the word competitor is a perversion of the term: for, wherever one party is laid prostrate at the feet of the other, there is an end to competition.

4. The next obstacle is the expense necessarily attending the commencement of complicated manufactories. Where an article must pass through the hands of several ingenious artists, before it is fit for the market, the expense of collecting those artists must be considerable. The time, too, that is taken up to bring the materials from a raw state, to be fit for sale, must require an additional capital, which no man would risk, unless the consumption of his fellow-citizens was secured to him, and, at the same time, defended from every species of competition, but what he can see, and whose strength he can measure, viz: with his fellow-citizens *only*. If an insidious foe is likely to come upon him in the dark, and in the guise of fashion, it would be the extreme of folly to venture his capital.

5. Your memorialists conceive, that the injudicious imposition of duties on raw materials, or goods partially manufactured, and in some cases a freedom from duty, equally injurious to the arts, merit the attention of Congress. Among the first, may be reckoned, rags for making paper, the bark of the cork tree, &c., and among the latter, wire of all kinds, as being an article for which the United States ought not to depend on a foreign country, especially as iron of the best kind is found here in abundance.

It is a position, that will not be denied by the greatest enemies to domestic manufacturing, that, as soon as any particular branch shall be established, foreign goods of the same kind ought to be prohibited or discouraged; and this is certainly the case with every manufactory of leather and fur; and yet your memorialists would be glad to know by what mode of reasoning it can be made to appear, that the hatter and shoemaker, who have spent their youth in acquiring those arts, should, every five or six years, be ruined by an excessive importation of foreign hats or shoes, which perhaps may be the remaining estate of some European bankrupt?

The enemies to the manufacturing system have, at different times, brought forward objections, which, to men fully acquainted with that branch of industry, hardly deserve notice; but, as there are others, with the best intentions, who are true friends to the prosperity of these States, who may be led away by these specious objections, or rather imaginary obstacles, we shall mention them, not with any intention of entering into a serious refutation, but only to show their insignificance. 1st. They say "this country is too young to begin the manufacture of clothing for the citizens." In the progress of every original country, (colonies excepted) the manufacture of clothing has always preceded everything else, even agriculture itself. But your memorialists cannot help expressing their opinion, that agriculture and the manufacturing arts ought neither to precede or be behind each other; that they were destined for mutual protection and support; of which the history and present state of all nations bear ample testimony. The flourishing state of agriculture must always be in proportion to the population; and population, on any given territory, is in proportion to the manufacturing arts, or the kind of labor in which the people are employed. Already, in some parts of the New England States, emigration is necessary to carry off the superabundant population; and it would be an injustice done to the landholders of that part of the Union, if they were prevented from pursuing that line of industry, which, by preserving the population to the State, would enhance the value of their property. And we have no hesitation in saying, that it will be bad policy indeed, when the United States shall retard the prosperity of the most ancient and most populous States, for no other reason than that the

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new States are not equally forward in point of population, agriculture, &c. There is no fact better authenticated than this, that several of the States have, from a multiplicity of causes, far outstripped others in the progress towards that state of society in which all the three great branches of national industry are combined, viz.: agriculture, manufactures, and commerce; and it is equally true, that not one of them, have been permitted to exert the force of their faculties, or call forth the industry of their citizens, but have been uniformly retarded and checked in their career, by United States' policy, and its fiscal regulations. In the great towns, we see all the evils attendant on luxury—such as pride, idleness, and dissipation, without any of the benefits and advantages, which, by political writers, have been ascribed to is: as, that it makes the rich contribute to the ingenious poor; calls forth talents and circulates the wealth of a nation. But no such good can attend luxury in America: instead of circulating the wealth of the nation, it transfers it to foreign Powers, and gives them the sinews of war, only to menace our peace and disturb our tranquillity.

It has been also objected to manufactures, that "they would retard or prevent the population of the Western wilderness"—as if the prosperity of the citizens, in old established situations, were to be sacrificed to new projects and land speculators. Every migration must be a loss, and not a gain, to the American nation at large. What the Western States gain the Eastern lose, and so far there is a balance. And the real loss is in the act of migration—the trouble, the change of climate, and a thousand other inconveniences, which, in a national scale, must be a loss.

The health of the citizens has been considered to be in danger by the sedentary life of manufacturers; but your memorialists know of no manufactory which can be called a sedentary employment, except the clerks necessary to keep the accounts; and, as far as it regards them, the objection will apply to merchants as well as to manufacturers. It is true, in foreign countries, where the Government, the law, and the employer, are all in combination, or rather conspiracy, against the employed, poverty and its concomitant, disease, must be very frequent among the people employed, not only in manufactories, but among the peasantry or cultivators of the ground. And to whatever deplorable condition artisans may be reduced, in these Governments, the cultivators of the soil are still worse; for to every other species of misery, ignorance must also be added.

Objections have been also made to arts and manufactories, on account of the supposed vice which is said to be found in manufacturing towns. A considerable number of your memorialists have seen the manufacturing towns of Europe, and are convinced that the greatest portion of virtue is to be found there, and that ten times the number of crimes are committed near courts and in seaports that are committed in manufacturing towns. In a word, (if we may judge from the state of society in Europe,) artisans and manufacturers, oppressed as they are, are nevertheless the most virtuous and the most intelligent class in [illegible] In a letter from Mr. Colquehoun of [illegible] Mr. Eddy of New York, author of [illegible] on the prisons of that city, we find [illegible] ing observations: "From the facts [illegible] closed relative to the criminal offences [illegible] in the city of New York, I am [illegible] large upon this subject. They appear [illegible] of a magnitude to excite a considera[illegible] alarm with respect to the degree of [illegible] the American towns, inasmuch as it [illegible] that they greatly exceed the larcenies [illegible] meanors committed in towns in Gre[illegible] of an equal or even a greater popu[illegible] (although I have not had an opportu[illegible] taining the fact) I have an impression [illegible] that the annual convictions in the w[illegible] land, where population approaches [illegible] of people, are short of those which [illegible] yearly in the State of New York."

The last objection that we shall [illegible] Government ought not to grant any [illegible] lege or protection to any part or por[illegible] tional industry, more than to another [illegible] manufactory will not take root [illegible] it is not fit for our climate or state [illegible] ought not to be cultivated here." [illegible] memorialists beg leave to answer [illegible] tion can only hold good in the [illegible] manufactory, which is begun and [illegible] ingenuity of one man, and where the [illegible] the ready sale of the article is at [illegible] not require the interposition of the [illegible] dispose of it, at a distance from the [illegible] but, in all complicated arts, where [illegible] of skill, and a combination of capital [illegible] lutely necessary, it will be found, that [illegible] has, and we presume never will be, [illegible] by the fostering care of Government. [illegible] inquire what other nations have done [illegible] circumstances, we shall find, that those [illegible] given the greatest encouragement to [illegible] manufactories, have been the most [illegible] most wealthy, and powerful; and, [illegible] English Government has always been [illegible] to let her artisans know that it was [illegible] owed her greatness, and has insidious[illegible] it to her navy, to her commerce, to her [illegible] situation, to her soil, to her climate, to [illegible] tution of her Government, and a num[illegible] secondary or auxiliary causes, your [illegible] are convinced that she is indebted for [illegible] ness and power to the well directed [illegible] her artisans and manufacturers; and [illegible] rialists, it is hoped, will not be blame[illegible] passing on the time of your honors [illegible] showing what that nation has done for [illegible] factories.

By the statute 3 Ed. IV. c. 4. no [illegible] other person shall bring into the king[illegible] sold within the realm, any of the following [illegible] viz. woollen cloths, laces, ribbons, silk [illegible] embroidered, saddles, stirrups, harness [illegible] wrought of tawed leather, shoes, hats [illegible] kind, &c. &c., upon pain to forfeit the [illegible] often as they may be found in the hands [illegible]

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person, to be sold, half to the King and half to the seizer. This statute was confirmed by 19 Hen. VII. c. 21. And, upon consideration that white ashes, made within the realm, are very necessary for the making of soap and saltpetre, and for whitening of linen cloth, and scouring of woollen, &c. therefore, it is enacted that no person shall ship, or carry beyond sea, any white ashes, on pain of forfeiting six shillings and eight pence for every bushel: 3 Ed. VI. c. 26. And to preserve the wool—rams, lambs, or sheep, alive, are prohibited to be carried out of the realm, upon pain that every offender shall, for the first offence, lose all his goods, and also suffer one year's imprisonment, and have his left hand cut off: 8 Eliz. c. 3. And the statute 12 Char II. c. 32, ordains that no person shall export any sheep, or wool, yarn made of wool, wool flocks, or fuller's earth, on pain of forfeiture, &c. And, for the protection of manufactures of leather, it is enacted by the 13 and 14 Char. II. c. 7, that no person shall carry out of England, the skins or hides, tanned or untanned, of any ox, steer, bull, cow, or calf, under a penalty of 500 pounds. And the statutes 13 and 14 Char. II. c. 19, prohibits the importation of card wire, or iron wire employed in making wool cards; that no part of their woollen manufactory might depend upon foreign nations. And for encouraging the manufactories of the kingdom, it is enacted, by the statute 11 and 12 Wm. III. c. 10, that all wrought silks, Bengals, and stuffs, of the manufacture of Persia, China, or the East Indies, and all printed, stained, and dyed calicoes, which shall be imported, shall not be worn in the kingdom; but shall be entered and carried to warehouses appointed by the commissioners of the customs, in order for exportation, and not taken thence, but on security given that they shall be exported. It was by such protecting statutes, and a multitude of others, that England created her extensive manufactories, which multiplied the objects of commerce, and laid the foundation of that Navy, which, at this day, gives laws to the maritime world. And an English author, who wrote upon the trade of that nation forty years ago, says, "What is of the utmost consequence to England, is, that, by laying high duties, we are always able to check the vanity of our people, in their extreme fondness for wearing exotic manufactures: for, if it were not for this restraint, as our neighbors give much less wages to their workmen than we do, and, consequently, can sell cheaper, the Italians, the French, and the Dutch, would have continued to pour upon us their silks, paper, hats, druggets stuffs, and even Spanish woollen cloths; for they have the wool of that country as cheap as we, and are become masters of that business, by the great encouragement they have given to able workmen from other countries to settle with them; and, thereby, have prevented the growth of those manufactories amongst us, and so might have reduced us to the low estate we were in before their establishment; and, therefore, it will be a maxim, to be observed by all prudent Governments, who are capable of manufacturing within themselves, to lay such duties on the foreign as may favor their own, and discourage the importation of any of the like sorts from abroad."

If other nations, as Spain, Portugal, Naples, &c., have neglected their manufactories, and, consequently, hold only a second or third rank among the nations of Europe, it would ill become the United States to follow their example. In this particular we should rather imitate England or France, without, however, making the source of riches a rod of oppression, as they have done; and, notwithstanding artisans are greatly oppressed there, whatever of republicanism is to be found in their constitutions, is to be ascribed to them; for in all ages the peasantry have been too ignorant to understand their rights, and too remote from each other to be able to withstand oppression.

It is, however, conceded by some, "that coarse goods, and articles of the first necessity, ought to be manufactured here, while fine goods, and articles of luxury, ought to be imported from abroad;" which is much the same as to say, that foreign manufacturers ought to be employed in the most beneficial branches of our consumption, and the citizens should be contented with the inferior kinds of labor.

If this be not the meaning of our opponents, then it must be inferred, either that our citizens want genius to perform the finer arts, or that they are despised in the United States. It is a fact, however, of perfect notoriety, that there are more fine goods of every manufacture used in the towns of America, than in those of the same size in Europe; and also, that our citizens do not want talents to execute, or genius to contrive, anything that may be required of them, and for which they shall have due encouragement. Among the members even of this society, if we except chinaware, it would be almost impossible to mention an article in use here that could not be made by one or other of them. It is true, that many of them are employed out of their proper line of business, and in occupations far beneath their genius or talents. Your memorialists cannot, therefore, be blamed for their opinion, that it would be more profitable to the nation to employ these people in teaching the rising generation those arts, than to continue purchasing foreign goods; and also, that the best and most profitable parts of the labor ought to be given to the citizens, and the coarse or inferior branches reserved for foreign nations.

But it has been said that high duties ought not to be laid, because we have not at present a sufficient number of hands to supply the United States. This only shows the necessity of protecting duties, which alone can give encouragement to men of genius to pursue complex and difficult manufactures; and that no length of time would ever produce a sufficient number of hands without it.

Having answered, as briefly as possible, some of the objections of our opponents, and shown what another great nation did for the arts, during their infancy, in that country, your memorialists beg leave to state some of the effects likely to be

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produced from an union of the three great branches of national industry—agriculture, manufactures, and commerce; in which it will be seen, that each of them would receive an additional impulse by such an union. And first, of agriculture.

It has been already observed that the state of agriculture is always in proportion to population. This is evident from a view of the price of land, which decreases in the compound ratio of its intrinsic worth, and its distance from the centre of a town, or the populous part of a country. But agriculture alone will never concentrate the population so as to form a town of any considerable magnitude. There can only be a country village, where a few neighboring proprietors are collected, with the blacksmith, tavern-keeper, and storekeeper, &c., which, instead of being the centre of trade and industry, is oftener the focus of dissipation. This scattered population requires a greater extent of roads than can be kept in any decent repair; hence, during several months in the year, they are impassable; and at all seasons, the distance is too great to make it profitable to transport heavy commodities, the rude produce of agriculture, except along the banks of navigable waters.

But when the useful arts are established, in the midst of a fertile country, the system of farming becomes improved; land advances in value, because all the produce of a farm finds a ready market in the neighborhood, and good roads may be made without oppressive taxation. It is thus that agriculture has always flourished best, in the neighborhood of the arts; and commerce consisting in the exchange of the commodities of one district for those of another, the histories of all nations demonstrate that, where objects of interest are greatly diversified, the greater is the trade of the merchant. Manufactories might change the nature and objects of commerce; but, to annihilate it, would be contrary to the experience of all mankind.

As the revenue of the United States is derived principally from the objects of foreign industry, it will be proper to inquire what would be the effects of the manufacturing system on that revenue. We will suppose that, with all the protection that would be given to manufactories, it would be, nevertheless, twenty years before the United States could supply themselves with everything they choose to make, or could arrive at that perfection, so as to equal foreign nations; and if the revenue on goods imported were divided into two parts, viz: 1st. That which arises from the useful arts, (which it would be proper for the United States to encourage here,) and, 2d. That which is levied on luxuries, such as tea, chinaware, &c., or other manufactures, which it, perhaps, would be imprudent, for a series of years, to attempt, it is highly probable, if not evident, that the increasing population of the United States would, in twenty years, double the produce of the revenue arising from the importation of those luxuries, and make the revenue from that part alone, equal to the whole of the present revenue. On the other hand, a heavy protecting duty on the useful arts would make a very considerable addition to the revenue for a few years, which would, however, be gradually diminishing, as manufactories were established throughout the country. This argument is predicated upon the stationary quality which the expenses of the Federal Government possesses, and on the nature of its revenue, increasing in proportion to the population.

Nothing can be a more appropriate object of taxation than foreign fashions and foreign luxuries. When foreign luxuries shall have become more expensive, the citizens will be contented with more decent attire, and learn to place a higher value on the plain fabrics of home manufacture. In a few years, the genius of Americans will be called forth to invent luxuries of our own, which are as beneficial to a country as foreign luxuries are injurious.

Thus, by one operation, many advantages will accrue to the nation. New sources will be laid open for the employment of capital in the interior; the coasting trade and internal commerce will receive a new impulse; domestic industry will put to shame idleness and dissipation; foreign nations will lose their influence over our councils. The fertile lands of America will rise to their just value, by bringing a market to the door of the farmer. The riches with which nature has so bountifully blessed this country, will be explored and brought into use, and the minerals and waters of the country will be employed to the purposes for which they were designed by the God of nature.

Your memorialists now beg leave to state, in a general way, what alterations it would be necessary, in our opinion, to make on the duties on importation, so as to protect some of the most useful arts already established, and to encourage the introduction of others; and this we do, neither in the servile language of petition, nor with the presumption of dictating to the wisdom of Congress.

And 1st. It is our opinion that all manufactures of which wood, fur, leather, horn, bone, or rags, are the raw materials, as they are the produce of the country, ought either to be prohibited, or high duties laid on their importation. Goods manufactured from these materials are either already made here, or may be made as soon as the artisans are secured in their respective pursuits.

The manufactures also, of which hemp, flax, cotton, and iron, are the raw materials, as they require great capital, a great diversity of skill and talents, and have, for the most part, had a beginning here, ought to receive all the fostering care of Government; that we should not, in these expensive undertakings, have to contend with foreign goods in our own market.

Whenever Congress shall seriously take up the subject of manufactures, a great number of articles will come under consideration, which are neither properly raw materials, in the strict sense of the word, nor finished goods; such, for example, are iron and brass wire, sheet iron, sheet

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copper, printing ink, types, &c., all of which are, however, necessary to the completion of other manufactures. These, it is believed, might, some of them, be encouraged by premiums from the States; for it is known that, if once they are fairly set up, and the first expense got over, a very moderate duty would prevent foreign nations from rivalling us.

Manufactories of the precious metals have already been established; but it is questionable whether they will preserve their reputation without being assayed and stamped, as is practised in other nations, and whether this be within the jurisdiction of Congress.

No nation can be called independent which relies for military or naval stores on a foreign country, and there can be no certainty of a supply, in time of war, but by encouraging their manufacture in times of peace, by prohibiting all foreign arms and ammunition.

Every fabric of silk may, at present, be considered as a luxury, and, therefore, the proper subject of taxation; which, at the same time, would operate greatly in favor of the Southern States, where silk, in a few years, might be as plenty as in China.

Your memorialists have forborne to say much on the manufacture of wool, as that article cannot be multiplied at pleasure, as cotton, hemp, and flax may. This would depend upon a combination of circumstances. The people must be induced to prefer mutton and lamb to the flesh of hogs; and this can only be done by an attention to the breed, and improvements in the mode of pasturing those useful animals—a subject which would come with more propriety from a society of agriculturists.

Having thus submitted our case to the wisdom of Congress, your memorialists must now wait, with anxiety, your decision; and, in whatever manner this great question shall be determined, we shall console ourselves with having brought it to an issue; for, after your determination, the citizens will be no longer in suspense as to the nature and object of their pursuits. The capitalist will be able to calculate in what line he ought to employ his capital. Parents will judge what occupation will be most profitable for their children. And foreign artists will see the propriety or impropriety of migrating hither—points which are not easily determined in the present state of things. All which is respectfully submitted, &c.

DRAWBACK.

[Communicated to the House, December 20, 1803.]

Mr. Samuel L. Mitchill made the following report: The Committee of Commerce and Manufactures report such facts as have occurred to them, on a resolve of the House, of the 9th of November, directing them to report, by bill or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States, and exported to foreign ports or places, together with their opinion on the same.

By "An act laying certain duties on snuff and refined sugar," a duty was laid and collected of two cents the pound, on sugar refined within the United States. By the fourteenth section of the same act, this duty was allowed to be drawback on exportation, together with three cents a pound on account of the duties paid upon the importation of crude sugar. At the time of making this regulation, the duty on crude sugar was one cent and a half the pound. Upon the calculation that two pounds of crude sugar were required to make one pound of refined sugar, three cents of drawback were allowed on exporting the refined article, and to this were added the two cents paid to the excise: the sum of the duty and the excise, when added together, making the five cents of drawback at that time.

By the statute of March the third, one thousand seven hundred and ninety-seven, an additional duty of half a cent the pound was levied on brown sugar imported from foreign places; and by the fifth section of that act, there was allowed an additional drawback of one cent the pound on exported refined sugar, of domestic manufacture; observing the same rate of calculating two pounds of crude-sugar for one of refined.

On the thirteenth day of May, one thousand eight hundred, Congress imposed a further duty of half a cent the pound on imported brown sugar, and increased the drawback, in consequence thereof, to one cent the pound on the importation of domestic refined sugar.

The whole amount of drawback, amounting thus to seven cents the pound, on the exportation of sugar refined in the United States, was done away by the statute repealing the internal taxes.

The committee find further, notwithstanding the repeal of the statutes, and of their parts which relate to the duties, excises, and drawbacks, provided for crude and refined sugars, that the refining of sugar at home is not wholly unprotected. It is known that sugar candy or crystallized sugar could be imported from Asia, not only so cheap as to vie with West India brown, but even to be substituted, in many cases, for refined sugars in the markets of the United States. The merchants who could have brought great quantities of this elegant form of sugar, were interrupted in their trade in this article, by the imposition in the statute of March 3, 1797, of the excessive duty of nine cents the pound, and by the statute of May 13th, 1800, an additional duty of two cents and one half per pound, making together eleven cents and one half the pound, and, of course, the almost entire prohibition of the importation. Thus, to protect the domestic refiners of sugar, the merchants who trade to the East Indies are prohibited from bringing sugar candy to the United States, and the citizens at home from consuming it, but at the enormous price paid for it, as a dainty, a medicine, or a rarity.

Sugar candy being thus excluded our market, and, of course, from competition, Congress made another provision for encouraging the domestic

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sugar refinery. They imposed, by the several acts of August 10, 1790, of June 7, 1794, and of January 29, 1795, various duties, amounting to nine cents, on the importation of foreign refined loaf sugar, and six and one half cents on all the other refined sugar. They refused, by the statute of June 5th, 1794, a drawback on the exportation of imported loaf and lump sugars of foreign refinery; they forbade the importation of it altogether in vessels of less burden than one hundred and twenty tons; and they, even then, prohibited the admission of it in parcels of smaller quantities than six hundred pounds. This amounts almost to the prohibition of foreign refined sugar; as a proof of which, it may be observed that, from one thousand seven hundred and ninety, to one thousand seven hundred and ninety-two, the quantity of imported loaf sugar consumed in the United States, was two hundred and eight thousand five hundred and forty pounds; from one thousand seven hundred and ninety-three, to one thousand seven hundred and ninety-eight, it was forty-one thousand three hundred and thirty-seven pounds. In one thousand seven hundred and ninety-nine, and one thousand eight hundred, it was eleven thousand seven hundred and eleven pounds; which, at the rate of nine cents per pound, produced, in the first period, eighteen thousand seven hundred and sixty-nine dollars of revenue: in the second period, only three thousand seven hundred and twenty dollars; and in the last, but one thousand and fifty-four dollars. From October the first, one thousand eight hundred, to the thirtieth of September, one thousand eight hundred and one, there were only sixteen thousand six hundred and twenty-eight pounds of loaf sugar imported; of which, twelve thousand seven hundred and fifteen pounds were in American, and three thousand nine hundred and thirteen pounds in foreign vessels.

Under this loss of revenue from the existing regulations concerning sugar, it is believed, by the persons engaged in the refining business, that, in the infantine state of this manufacture, it stands in need of greater encouragement.

It will be remembered that, already, sugar candy and loaf sugar, from abroad, are loaded with such heavy duties that their prohibition operates as a bounty on the domestic manufacture. It will be recollected, too, that the duties on the refined sugar consumed at home, are paid by the consumer; and that, to protect the refiners of sugar in the United States, Government have adopted measures that have considerably lessened the revenue on that article; and, by removing foreign competition, enhanced the price to the domestic consumer.

Still it is inquired whether the drawback ought not to be allowed on the exportation of refined sugars of our own manufacture?

There are two difficulties attending this, arising from the acquisition of Louisiana.

The first is, that already four thousand and five hundred casks of sugar, weighing half a ton each, estimated to be worth three hundred and two thousand and four hundred dollars, are prepared and exported annually from New Orleans, and its vicinity. By annexing this territory to the United States, this quantity of sugar, or a ratable proportion of it, will come into the States, and probably be refined. It would be unreasonable to pay a drawback upon sugar which had never paid a duty. Under an improved cultivation, the country lying between the river Iberville and the city of New Orleans may be made additionally productive of sugar cane; it is supposed that a tract of ninety miles in length, and three quarters of a mile in breadth, on both sides of the Mississippi, will be turned into sugar plantations, and yield, annually, twenty-five thousand hogsheads of sugar, and twelve thousand puncheons of rum. This quantity, thrown into our market, may be contemplated as good stock for our refiners to work upon.

The second difficulty is, that a refinery of sugar has been, for some time, established at New Orleans, which is said to produce two hundred thousand pounds of loaf sugar annually. This branch of manufacture may be expected to increase there, as the quantity of sugar increases, and as capitalists and men of enterprise go into the business. By performing the operation of refining near the place where the sugar is raised, much of the expense of transportation will be saved, by carrying the wrought rather than the raw article to a distant or a foreign market. And to accomplish the object, which the refiners in the United States have in view, it would be necessary to prohibit the importation of refined sugar from Louisiana; and to avoid paying the amount of a drawback upon sugars that have never paid duties, it will be necessary for the economy of Government, and the security of the treasury, to distinguish those of Louisiana from others of foreign production.

It would appear, from this examination of facts, that sugar refining has been more favored by Government than, perhaps, any branch of domestic manufacture. The diminution of 17,735 dollars in the revenue, heretofore derived from imported loaf sugar, indicates the amount of a virtual bounty annually paid to encourage the business.

It may be questioned whether a drawback ought to be allowed on the exportation of domestic refined sugar, unless the duties were lessened on the importation of sugar candy and foreign refined sugar. While the prohibitory duties exist on the latter articles, the demand for Fredish [United States] refined sugar, in foreign markets, may raise the price of the article, so as sensibly to affect the consumer of refined sugar at home.

This rise of the price of refined sugar at home and abroad, will, of course, raise the price of brown or crude sugar in our home market; and by the competition between the refiners and the housekeepers, muscovado sugar itself must be paid for at a dearer rate by the citizens, at large, who consume it. Thus the trade will be in danger of being engrossed by the refiners, who, without paying any revenue to Government, raise the price of loaf, lump, and brown sugar, to the consumer.

A good reason does not occur to the committee, wherefore both the treasury of the nation, and the

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pockets of the individual citizens, should be subjected to greater payments than at present, for promoting the refinery of sugar; and particularly, as the extension of the laws of the United States to Louisiana, presents this subject in an aspect different from any in which it has been viewed before.

The plain principle on which drawbacks are allowed, is that the *identical* article imported, shall be exported according to law. If they are granted upon articles that have undergone a remarkable chemical or mechanical alteration, then they ought to be allowed on all exported cordage formed from imported hemp, on exported rum, distilled from imported molasses, and on garments made at the slop shops, and otherwise from imported cloth, and afterwards carried abroad.

In the case of sugar, the committee is inclined to think, that the operation of refining has already been patronised to as great an extent by Government as is consistent with political economy and public good; and under that conviction, they submit to the House their opinion—

That it would be improper, at this time, and under existing laws and regulations, to allow a drawback upon the exportation of domestic refined sugar.

SINKING FUND.

[Communicated to the Senate, February 6, 1804.]

WASHINGTON, *Feb.* 4, 1804.

The Commissioners of the Sinking Fund respectfully report to Congress as follows: That the measures which have been authorized by the board, subsequent to their report, of the 5th February, 1803, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury, to this board, dated the third day of the present month, and in the statements therein referred to; which are herewith transmitted, and prayed to be received as part of this report.

JOHN BROWN, *Pres't of Senate.*
J. MADISON, *Sec'y of State.*
A. GALLATIN, *Sec'y of Treasury.*
LEVI LINCOLN, *Att'y Gen. of U. S.*

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund:

That, at the close of the year 1801, the unexpended balance of the disbursements, made out of the Treasury, for the payment of the principal and interest of the public debt, which was applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, (as will appear by statement A) amounted to - - - - - - - $1,085,907 60

That, during the year 1802, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt, viz:

1. There was paid on account of the reimbursement and interest of the domestic funded debt, the sum of -		4,618,021 39
2. On account of domestic loans obtained from the Bank of the United States, viz:		
On account of the principal - - -	$1,290,000 00	
On account of interest -	162,025 00	
		1,452,025 00
3. On account of the domestic unfunded debt, viz:		
On account of debts due to foreign officers, - - -	7,994 92	
On account of certain parts of the domestic debt - - -	14,966 84	
		22,961 76
4. On account of the principal and interest of the Dutch debt, including repayments in the Treasury - -	3,359,992 03	
Amounting altogether, to		9,453,000 18

As will appear by the annexed list of warrants B.

Which disbursements were made out of the following funds, viz:

1. From the funds contituting the annual appropriation of $7,300,000 00, for the year 1802, viz:		
From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund, as per statement annexed to last year's report, marked B, -	326,449 92	
From the fund arising from payments into the Treasury of debts which originated under the late Government, as per statement annexed to last year's report, marked C, -	888 79	
From the fund arising from dividends on the capital stock, which belonged to the United States, in the bank of the said States, as per statement annexed to last year's report, marked D - -	33,960 00	
From the fund arising from the sale of public lands, being the amount of moneys paid into the Treasury, in the year 1802, as per statement annexed to last year's report, marked E -	179,575 52	
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships and vessels - - -	6,759,125 77	
		7,300,000 00

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2. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part and on account of the annual appropriation of $7,300,000, for the year 1803 - - 745,807 40

3. From repayments in the Treasury, on account of remittances purchased for providing for the foreign debt, as will appear by the statement E, viz:

Repayment of the purchase money - -	109,120	
Damages and interest recovered - -	10,472 78	
		119,592 78

4. From the proceeds of two thousand two hundred and twenty shares of the capital stock of the Bank of the United States as per statement annexed to last year's report, marked F 1,287,600 00

$9,453,000 18

That of the above-mentioned disbursements, together with the above-mentioned balance, which remained unexpended on the 1st January, 1802, and, amounting altogether, to - - - $10,538,907 78

Ten millions five hundred and thirty-eight thousand nine hundred and seven dollars and seventy-eight cents, have been accounted for in the following manner, viz:

1. There was repaid in the Treasury, during the year 1802, on account of protested bills or advances made for contracts, which were not fulfilled, as appears by the above-mentioned statement E, a sum of - - - - - - - 109,120 00

2. The sums actually paid during the same year, to the payment of the principal and interest of the public debt, as ascertained by accounts rendered to the Treasury Department, amount to seven millions seven hundred and seventy-two thousand eight hundred and fifty-four dollars and seventy cents, viz:

1. Paid in reimbursement of the principal of the public debt - - -	3,638,744 63
2. On account of the interest and charges on the same - - - -	4,134,110 07
	7,772,854 70

As will appear by the statement D.

3. The balance remaining unexpended at the close of the year 1802, and applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, amounted to (as will appear by the statement F) - - 2,656,933 08

10,538,907 78

That, during the year 1803, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt, viz:

1. There was paid on account of the reimbursement and interest of the domestic funded debt, a sum of - - 4,568,176 68

2. On account of domestic loans obtained from the Bank of the United States, viz:

On account of the principal - - - -	500,000 00	
On account of the interest	82,000 00	
		[illegible]

3. On account of the domestic unfunded debt, viz:

On account of debts due to foreign officers - -	12,123 31	
On account of certain parts of the domestic debt -	12,873 43	
		[illegible]

4. On account of the principal and interest of the foreign debt, including repayments in the Treasury - - [illegible]

Amounting altogether, to - - [illegible]

As will appear by the annexed list of warrants.

Which disbursements were made out of the [illegible] funds, viz:

1. From the funds constituting the annual appropriation of $7,300,000, for the year 1803, viz:

From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund, as per statement N - -	401,[illegible]
From the fund arising from payments into the Treasury, of debts which originated under the late Government, as per statement O - - - - -	135 [illegible]
From the fund arising from the sales of public lands, being the amount of moneys paid into the Treasury, in the year 1803, as per statement P -	158,949 [illegible]
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels - - -	5,993,752 44
Amounting altogether, to	
Which sum of - -	6,554,192 [illegible]
Together with the sum advanced during the year 1802, on account of the appropriation for the year 1803, and amounting, as above stated, to - - -	745,807 40
Make, in the whole, for the year 1803, the annual appropriation of	7,300,000 00

2. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part, and on account of the annual appropriation for the year 1804 - - - [illegible]

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3. From repayments in the Treasury on account of remittances purchased for providing for the foreign debt, and of advances made to Commissioners of loans, as will appear by the statement I, viz:

Repayment of the purchase money, and advances -	13,117 48	
Damages and interest recovered - . - - -	2,218 00	
		15,335 48

4. From the moneys appropriated by law, for paying commissions to agents employed in the purchase of remittances for the foreign debt, being the amount paid at the Treasury, during the year 1803, for that object, as will appear by statement G - - - 4,957 11

	7,327,721 59
That the above-mentioned disbursements, together with the stated balance of - - - - - - -	2,656,933 08
Which remained unexpended at the close of the year 1802, and with a further sum arising from profits made on remittances made to Holland, by the way of London, which is estimated at - - - - - -	11,200 00
	9,995,854 67

And amounting altogether, to nine millions nine hundred and ninety-five thousand eight hundred and fifty-four dollars and sixty-seven cents, will be accounted for in the next annual report, in conformity with the accounts which shall then have been rendered to the Treasury Department.

That, in the meanwhile, the manner in which the said sum has been applied, is, from the partial accounts which have been rendered, and from the knowledge of the payments, intended to be made both in Holland and in America, estimated as follows, viz:

1. The repayments in the Treasury have amounted, as by the above-mentioned statement I, to - - - -		13,117 48
2. The sums actually applied, during the year 1803, to the payment of the principal and interest of the public debt, are estimated as follows, viz:		
Paid in reimbursement of the principal of the public debt -	4,528,196 74	
Paid on account of interest and charges on the same - - -	3,903,144 11	
Amounting, altogether, to		8,431,340 85
As will appear by the estimate K.		
3. The balance remaining unexpended at the close of the year 1803, and applicable to payments falling due after that year, is estimated, as per estimate L, at - - - - - -		1,551,396 34
		$9,995,854 67

That no purchases of the debt of the United States have been made since the date of the last report to Congress.

And that the statement M exhibits the operations at the Treasury, in the transfer of stock to the Commissioners of the Sinking Fund, in trust for the United States, upon the reimbursement of the foreign debt, in the year 1802; and includes, also, the sum of six thousand three hundred and fifty-nine dollars and twenty cents, being the aggregate of the several species of stock transferred in the year 1803, in payment for public lands.

All which is respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Feb.* 3, 1804.

A.

Statement of the provision made before the 1st January, 1803, *for the payment of the principal and interest of the public debt falling due after the year* 1801.

I. On account of the foreign debt.

1. Cash in the hands of the commissioners at Amsterdam and Antwerp, on the 31st December, 1801:

	Guilders.	*Dolls. Cts.*
In Amsterdam, per treasury statements No. 13,824 & 14,359	1,508 14 02(*a*)	
In Amsterdam, transferred by the commissioners during the year 1802, from the account of Gov. Morris to the credit of Dutch debt, being the balance of a sum formerly remitted for paying the interest on the debt due to foreign officers	41,787 10 08	
	43,296 04 10	
Deduct balance due to C. J. M. De Wolf, in Antwerp, - -	1,432 00 00	
	41,864 04 10	
At 40 cents, is -		16,745 69
2. Amount of remittances paid for at the treasury and remitted to the commissioners on or before the 21st December, 1801, which are credited by the commissioners in their account for 1802 $2,240,523 04(*b*)		
Which remittances cost only $888,065 64, but, at 40 cents, is -		896,209 28
3. Amount of payment, made at the treasury before the 31st December, 1801, for remittances which have been protested for non-payment, on account of contracts not fulfilled, and on that day not repaid into the treasury, - - - -		153,120 00 (*c*)
4. Advances made to G. Simpson and P. R. Dalton, agents for purchasing bills of exchange, unexpended on 31st December, 1801, -		20,961 40
II. From which deduct, on account of the domestic debt, viz:		
The balance on 31st December, 1801, in the hands of deceased commissioners of loans, is	$3,393 99	

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Ditto in the hands of acting ditto - -	1,196,390 16	
Overpaid to Bank of United States beyond the dividends payable at the Treasury - - -	95 88	
	1,999,880 03	
The demands unsatisfied on the same day, on that account, were, viz:		
Dividends payable by the Commissioners of Loans, including that due on 1st January, 1802, and exclusively of unclaimed dividends no longer demandable at their offices - - -	1,178,863 59	
Unclaimed dividends payable at the Treasury - - -	22,126 59	
Balance due to the late Commissioner of Loans for Georgia	18 62	
	1,201,008 80	
Balance due on account of domestic debt - - - - - - -		1,128 77
Amount advanced in anticipation of payments for the public debt -		1,085,907 60

NOTES TO STATEMENT A.

(*a*) In the account of the Commissioners for the year 1801, as settled at the Treasury, per report 13,824, a balance is stated in favor of the United States, of guilders - - - - - - 57,631 16 15

In their account for the year 1802, as settled at the Treasury, per report No. 14,359, they are charged for transactions antecedent to 1802, with a further sum of - - - - - 6,146 14 03

63,778 11 02

From which deducting an item for dividends on stock sold, only suspended for want of vouchers, and amounting to - - - - - - - - - 62,269 17 00

Leaves the balance, as per statement B 1,508 14 02

The Commissioners, in their account for 1801, had stated a balance due to them by the United States, of - 19,676 15 00

Making a difference of - - 21,185 09 02

Which difference consists of the following items, viz:

Overcharge of one-half per cent. on their charges for negotiating the loan of 3,000,000 guilders, of 1st January, 1794—guilders - -	15,000 00 00
Interest charged by them on said sum	2,679 09 00
Amount of a bill paid to them on account of the Dutch debt, and by them erroneously credited to the Department of State - - - -	3,000 00 00
Interest on the said sum - - -	467 05 03
Commission overcharged on payment of interest on Dutch debt - -	38 14 15
Guilders - - -	21,185 09 02

(*b*) This sum, which makes part of the 5,009,985 02 08 accounted for by the Com[illegible] during the year 1802, as per their accou[illegible] year, settled at the Treasury, (report N[illegible] consists of the following items, viz:

Guilders, -	814,364 00 at 39 cents, $[illegible]
	1,426,159 04 at 40 " [illegible]
	2,240,523 04 cost - [illegible]

(*c*) This sum consists of the following pa[illegible]

		Yel in [illegible]
Bill purchased from Pragers & Co. in 1798, guilders	120,000	
Ditto from A. Brown in 1801	60,000	
		Repai[illegible]
Ditto from D. Harris "		$5,000
Ditto from J. Burrall "		10,000
Ditto do do "		8,000 at [illegible]

Advance to J. and R. Waln, on account [illegible] contract for paying moneys in Amste[illegible] not fulfilled in 1801, - - - [illegible]

JOSEPH NOUN[illegible]

TREASURY DEPARTMENT,
Register's Office, Feb. 1, 18[illegible]

STATE OF THE FINANCES.

[Communicated to the Senate, Novem[illegible]

In obedience to the directions of [illegible] mentary to the act, entitled "An a[illegible] the Treasury Department," the Sec[illegible] Treasury respectfully submits the [illegible] port and estimates:

Revenue.

The net revenue arising from [illegible] chandise and tonnage, which accru[illegible] year 1802, and on which the estimate[illegible] were predicated, amounted, as will a[illegible] statement A, to $10,154,000. The [illegible] arising from the same source, which [illegible] ring the year 1803, has amounted, a[illegible] the same statement, to $11,306,000: [illegible] certained that the net revenue whic[illegible] ring the three first quarters of the year [illegible] erably exceeds that of the correspon[illegible] of the year 1803. Without drawing a[illegible] from the increase of the present year [illegible] which must be ascribed to the sus[illegible] rope, and will, eventually, be dimi[illegible] sequent re-exportations, that branch [illegible] may, exclusively of the Mediterran[illegible] safely estimated at $10,730,000, wh[illegible] rage of the two years 1802 and 1803. [illegible] payments in the Treasury, on acc[illegible] duties, during the year ending on the [illegible] tember last, amount nearly to the sum [illegible] there is no reason to suppose that th[illegible] the ensuing, will fall short of those of [illegible]

The statement B exhibits, in detail [illegible] species of merchandise, and other sou[illegible]

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which that revenue was collected, during the year 1803.

It also appears that the revenue arising from the sales of public lands is gradually increasing. The statement C shows that, exclusively of the September sales at Cincinnati, three hundred and fourteen thousand acres have been sold during the year ending on the thirtieth of September last. The proceeds of those sales, calculated on the supposition that every purchaser will be entitled to the discount allowed in case of prompt payment, would yield five hundred and fifteen thousand dollars. And, notwithstanding the difficulties which exist in drawing into the Treasury the moneys collected by the receivers of the remote land offices, it is believed that the actual receipts from that source will, for the ensuing year, exceed four hundred and fifty thousand dollars.

The permanent revenue of the United States may, therefore, including the duties on postage, and other small incidental branches, be computed at eleven millions two hundred thousand dollars.

And the payments in the Treasury, during the year 1805, on account of the temporary duties which constitute the "Mediterranean Fund," are estimated at five hundred and fifty thousand dollars; making, in the whole, for the probable receipts of that year, a sum of - - $11,750,000

Expenditures.

The expenses of the year 1805, which must be defrayed out of that year, consist of the following items:

1. The annual appropriation of eight millions of dollars, for the payment of the principal and interest of the public debt; of which near $3,700-000 will be applicable to the discharge of the principal, and the residue to the payment of interest		$8,000,000
2. For the Civil Department, and all domestic expenses of a civil nature, including military pensions, the light-house and mint establishments, and the expenses of surveying public lands - - -		952,000
3. For expenses incident to the intercourse with foreign nations, including the payment of awards under the seventh article of the British Treaty, and the permanent appropriation for Algiers - - -		294,000
4. For the Military and Indian Departments, including the permanent appropriation for certain Indian tribes - - - - -		954,000
5. For the Naval Establishment, viz. annual appropriation charged to the ordinary revenue -	$650,000	
Extraordinary expenses of last expedition to Tripoli, which will be payable in the year 1805, and are chargeable to the Mediterranean fund -	590,000	
		1,240,000
6. Reserved out of the Mediterranean fund, for meeting other extraordinary expenses, which may be incurred under the act constituting the fund - - - - -		100,000
Making, altogether - -		11.540,000
And deducted from the revenue of -		11,750,000
Leaves a surplus of - -		210,000

Mediterranean Fund.

The sum which may probably be received during the year 1805, on account of that fund, and the payments during that year, which will ultimately be charged to the fund, are included in the preceding estimate of receipts and expenditures; but it is necessary to give a distinct view of the whole amount of revenue and expenses under that head.

The value of merchandise paying duties ad valorem, which was imported in the year 1802, amounts, after deducting the exportations of the same year, to $31,706,000. The value of the same description of merchandise, imported in the year 1803, amounts to $34,370,000. The additional duty of two and a half per cent. on that description of imported articles, constitutes the Mediterranean Fund, and calculated on the average importations of the two years, would have yielded, annually, $826,000. But several articles, which, in the years 1802 and 1803, paid duties ad valorem, having, in lieu thereof, been charged with specific duties, by an act of last session, are not liable to the additional duty of two and a half per cent. Although the value of those articles cannot be precisely ascertained, it is believed that the deduction, on that account, will not amount to $50,000, and the proceeds of the additional duty may be computed at the annual sum of $780,000; and for the eighteen months commencing on the first of July, 1804, and ending on the 31st of December, 1805, at $1,170,000. The expenses authorized under the act constituting the fund, have been predicated on that estimate, and apportioned in the following manner:

1. For the Navy Department, (in addition to the annual appropriation of $650,000,) viz:

There had been advanced, from the ordinary revenue, prior to the 30th of September, 1804 - - - -	$350,000
A further payment will be made before the first of January, 1805, of - -	130,000
To be paid during the year 1805, on account of this fund, as stated under the fifth item of expenditures for the year 1805 - - - - - -	590,000
	1,070,000
2. Reserved for other extraordinary expenses, which may be incurred for the same object, being the sixth item of expenditures for the year year 1805 - - - - - - -	100,000
	1,170,000

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Those duties began to operate on the first day of July last; but, as they are payable six, eight, nine, ten, and twelve months after the importation, no part will be paid in the Treasury during the present year; and a sum of only $550,000 is expected to be received in the course of the year 1805. For that sum only, credit has been taken in the general estimate of receipts for that year; whilst a part of the $1,170,000, chargeable to the fund, has already been expended, and the rest is included in the preceding estimate of expenses for 1805. The difference, amounting to $620,000, will, at the end of the next year, consist of outstanding bonds, payable in 1806. And, if the additional duty should, as well as the extraordinary expense for which it is appropriated, cease at that time, that outstanding balance will, as it is collected, replace in the Treasury the sum advanced for the ordinary revenues, in anticipation of the proceeds of the fund. For it is hoped that the situation of the Treasury will render it unnecessary to recur to the authority given by the act, to borrow on the credit of the fund.

Balance in the Treasury.

The greater part of the balance of $5,860,981 54, which, on the 30th day of September, remained in the Treasury, was, in the last year's report, considered as applicable to the payments of extraordinary demands, therein stated.

As no payment has been made on that account during the last year, besides the first instalment of $888,000 due to Great Britain, nor any other extraordinary expense has been discharged, than the advance of $350,000, in anticipation of the Mediterranean Fund; the balance remaining in the Treasury on the 30th September, 1804, still amounted to $4,882,225 11. That sum, together with the estimated surplus of revenue for the sum advanced from the ordinary revenue to the Mediterranean Fund, and the arrears of the direct tax and internal revenues, may still be considered as sufficient to discharge the balance of $1,776,000, due to Great Britain; the loan of $200,000 due to Maryland; and $2,600,000 on account of the American claims assumed by the French convention. As the greater part of those demands will be paid in the course of the year 1805, the balance will not, probably, at the end of that year, exceed the sum which it is always expedient to retain in the Treasury.

Public Debt.

It appears, by the estimate D, that the payments on account of the principal of the public debt, have, during the year ending on the 30th September last, amounted to - - $3,652,887 15

And during the three years and a half, commencing on the first day of April, 1801, and ending on the thirtieth day of September, 1804, to - - - - - $13,576,891 86

During the same period, a new debt of thirteen millions of dollars has been created by the purchase of Louisiana, viz:

Six per cent. stock, issued in conformity with the convention - $11,25

Amount of American claims assumed by the convention, and for the payment of which authority has been given to obtain a loan; two millions thereof being already provided for, out of the surplus specie in the Treasury - - - - - - -

Another view of the subject may the following manner:

The balance in the Treasury amounted, on the first day of April, 1801, to - - - - 8

And on the thirtieth September, 1804, to - - - - -

Making an increase of - -

From which deducting the proceeds of the sales of the bank shares - - - - -

Leaves for the increase arising from the ordinary revenue

From the 1st day of April, 1801, to the 30th of September, 1804, the following debts, which originated prior to that period, have been discharged:

1. Payment on account of the domestic and foreign debt, as above stated - - - - -
2. First instalment of the sum payable to Great Britain, "in satisfaction and discharge of the money which the United States might have been liable to pay, in pursuance of the provisions of the sixth article of the Treaty of 1794" - - - - -

Making altogether - -

And from which, deducting fifteen millions, being the purchase money of Louisiana - -

Leaves - - -

A difference of more than twelve hundred sand dollars in favor of the United States.

It may be added that, if the revenue during the ensuing year, prove, as is probable, more productive than has been expected, surplus will be applied towards the the above-mentioned sum of $1,75 provided for, on account of the American and will, so far, diminish the amount authorized for that object.

From the preceding statements and it results that the United States have period of three years and a half, ended 30th September last, discharged a large

of principal of their old debt, than the whole amount of the new debt, which has been or may be created in consequence of the purchase of Louisiana; and that their existing and growing resources will, during the ensuing year, be sufficient, after defraying the current expenses of the year, and paying more than $3,750,000, on account of the engagements resulting from the French and British Conventions, to discharge a further sum of near three millions and seven hundred thousand dollars of the principal of the public debt.

All which is respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT,
November 19th, 1804.

EXTENSION OF DUTY BONDS.

[Communicated to the Senate, January 17th, 1805.]

To the Honorable the Senate and House of Representatives of the United States in, Congress assembled, the petition of the subscribers, merchants, residing in the city of New York, respectfully showeth:

That your petitioners are concerned in trade and navigation, to a considerable extent, between the port of New York and different ports on the continent of South America; that, by the act, entitled "An act to regulate the collection of duties on imports and tonnage," the terms of credit allowed for the payment of duties imposed on all "goods, wares, and merchandise, (other than wines, salt, and teas) imported from any other place than Europe or the West Indies," are as follows: one half of such duties payable in six months, one quarter in nine months, and the other quarter in twelve months from the date of each respective importation, as by the said act, to which your petitioners refer, may more fully appear; that, by a construction of the said act, adopted by the collector of the port of New York, which appears to your petitioners to be evidently founded in mistake, and which they are advised by counsel is certainly incorrect, your petitioners conceive that they have been much aggrieved by being obliged to give bonds to the said collector for the payment of such duties, on goods imported from the continent of South America, the one half in three months, and the other half in six months, and to pay such duties, accordingly, as in the case of goods imported from the West Indies; that your petitioners are credibly informed, and believe, that a different construction of the said act, in this respect, has prevailed in several other ports of the United States, and the terms of credit, first above-mentioned, allowed, which your petitioners believe is obviously the intent and meaning of the said act; that some of your petitioners have, at length, resisted the payment of the said duties at the periods claimed by the said collector of the port of New York, and have commenced a suit in the circuit court of the United States, in equity, for the district of New York, in order to obtain a judicial determination of the credits allowed for the payment of such duties by the said act, but, at the same time, offering, in the said suit, to pay the duties in question therein, at such times as should be directed by the said court, which suit is still depending and undetermined; and your petitioners hoped that the mode so adopted, of settling the construction of the said act, if there existed any doubt concerning it, would have been deemed proper, and that a judicial decision thereon would be regarded as regulating the subsequent practice under the same. But your petitioners have since been informed that some application or representation on this subject has been made to your honorable body, and that, in consequence thereof, a bill hath been introduced in the honorable the House of Representatives, proposing to alter or limit the terms of credit on goods imported into the United States from all places on the continent of South America, situated north of the equator, to the periods of credit allowed for duties on goods imported from the West Indies. Your petitioners cannot but view the limitation proposed by the said bill as particularly injurious to their interest, and to the prosperity of a trade, already extensive, and in which a large portion of citizens of the United States are engaged; and your petitioners beg leave to represent, as an important consideration in favor of the periods of credit which they consider to be well established by the act above-mentioned, that the voyages to the usual places of trade on the continent of South America; although north of the equator, are generally as long, and as difficult and expensive, as the ordinary course of voyages to Europe; that, in the apprehension of your petitioners, the principal object or reason of allowing a credit in the payment of duties on foreign imports is to enable the merchant, out of the proceeds of the sales of the goods imported, to reimburse himself the amount of such duties before they become payable; that, without a credit of sufficient length to answer this end, it can be of little importance whether any credit be, at all, given: for, if the amount of the duties are required to be paid before they can be realized from the proceeds of the imports on which they are charged, it imposes on the merchant the necessity of employing his capital, or a part of it, for the discharge of such duties, instead of applying to that object the proceeds of such imports. This would operate as a tax upon his capital, and would necessarily tend to cramp and embarrass the negotiations of trade, and, consequently, instead of increasing or aiding the revenue, would diminish its receipts. Your petitioners, therefore, apprehend that the true interests of the merchant and of the Government are, in this respect, the same, and that, considering the heavy duties already imposed on imports in general, it would be just as well as politic to allow a sufficient time of credit to enable the merchant to pay such duties out of the proceeds of the goods on which they are charged. Your petitioners also conceive that such credit, while it is at all times important to the merchant, cannot, when once in operation, prove, in any respect, material

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or detrimental to the revenue; and, in conformity to these ideas, your petitioners are also of opinion, and such they believe to be the opinion of a large majority of this and other ports of the United States, that the periods of credit allowed on goods imported from the West Indies are too short and injurious to that trade. And your petitioners are convinced, from experience, that the trade with the continent of South America cannot be carried on, without great disadvantage, except upon terms of credit for the payment of duties equally beneficial with those which they conceive themselves at present entitled to by law, and they therefore humbly pray that your honorable body will not pass any act to limit or curtail such such credit. And your petitioners, &c.

NEW YORK, *January 9th*, 1805.

SINKING FUND.

[Communicated to the Senate February 5, 1805.]

The Commissioners of the Sinking Fund respectfully report to Congress as follows:

That the measures which have been authorized by the Board subsequent to their report of the 4th of February, 1804, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the fourth day of the present month, and in the statements therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

A. BURR, *President of Senate.*
J. MARSHALL, *Chief Justice U. S.*
A. GALLATIN, *Sec'y Treasury.*

WASHINGTON, *Feb.* 5, 1805.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund:

That the balance remaining unexpended at the close of the year 1802, and applied to payments falling due after that year, which balance, as appears by the statement F, annexed to the last annual report, amounted to two millions six hundred and fifty-six thousand nine hundred and thirty-three dollars and eight cents, - - - - - $2,656,933 08

Together with the disbursements made during the year 1803, out of the Treasury, on account of the principal and interest of the public debt, which disbursements, as appears by the statement G, annexed to the last annual report, amounted to seven millions three hundred and twenty-seven thousand seven hundred and twenty-one dollars and fifty-nine cents - - 7,327,721 59

And amounting altogether to nine millions nine hundred and eighty-four thousand six hundred and fifty-four dollars and sixty-seven cents - - $9,984,654 67

Have been accounted for in the following manner, viz:

1. There was repaid into the Treasury, during the year 1803, on account of the principal of protested bills, and of advances made to Commissioners appears by the statement I, annexed to the nual report a sum of thirteen thousand and seventeen dollars and forty-eight cents.

2. The sums actually applied during the same year, to the payment of the principal and interest of the public debt, as ascertained by accounts rendered to the Treasury Department, amounted as will appear by the statement A, to eight millions six hundred and twenty two thousand four hundred dollars and sixty-eight cents, viz:

1. Paid in reimbursements of the principal of the debt, $4,727,788 44
2. Paid on account of the interest and charges on the same - - - 3,894,612 24

3. The balance remaining unexpended at the close of the year 1803, and applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department amounted, as will appear by the statement B, to one million three hundred and forty-nine thousand one hundred and thirty-six dollars and fifty-six cents - - -

That, during the year 1804, the following payments were made out of the Treasury of the principal and interest of the public debt:

1. On acccount of the reimbursement and interest of the domestic funded debt
2. On account of domestic loans obtained from the Bank of the U. States, viz:
   On account of the principal, - - - - $250,000 00
   On account of interest, 60,593 08
3. On account of the domestic unfunded debt, - - - - -
4. On account of the principal and interest of the foreign debt, and of the interest on the Louisiana stock, -

Amounting altogether, as will appear by the annexed list of warrant C, to eight millions two hundred and fifty-nine thousand eight hundred and forty-five dollars and fifty-five cents, -

Which disbursements were made out of ing funds, viz:

1. From the moneys appropriated by the third section of the act of 10th November, 1803, for paying the interest accruing on the Louisiana stock, to the end of the year 1803, - - -
2. From the funds constituting the annual appropriation of $,800,000 for the year 1804, viz:

From the fund arising from interest on the debt transferred to the Commis-

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sioners of the Sinking Fund as per statement I, - -	$366,223 50	
From the funds arising from the sales of public lands, being the amount of moneys paid into the Treasury, from the 1st October 1803, to the 30th June 1804, as per statement K, - - -	324,021 66	
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, - -	6,556,518, 44	
Amounting, altogether, to - -		7,246,763 60
Which sum of - -	7,246,763 60	
Together with the sum advanced during the year 1803, on account of the appropriation for the year 1804, and amounting, as appears by the last annual report, to -	753,236 40	
Makes, in the whole, the annual appropriation for the year 1804, of - -	$8,000,000 00	
3. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part, and on account of the annual appropriation for the year 1805,		829,801 59
4. From repayments in the Treasury, on account of remittances purchased for providing for the foreign debt, and of advances made to Commissioners of Loans, as will appear from statement F, viz:		
Repayment of the purchase money and advances, - - -	$121,446 51	
Damages and nterest recovered, - -	32,370 91	
		153,817 42
5. From the moneys appropriated by law, for paying commissions to agents employed in the purchase of remittances for the foreign debt, being the amount paid at the Treasury, during the year 1804, for that object, and will appear by the statement C, - - - -		6,863 01
		8,259,845 55
That the above-mentioned disbursements, together with the above stated balance of - - - - - - -		1,349,136 51
which remained unexpended at the close of the year 1803, and with a further sum, arising from profit on remittances purchased in the year 1804, and amounting, as will appear by the statement D, to - - - - -		45,049 25
And amounting, altogether, to nine millions six hundred and fifty-four thousand and thirty-one dollars and thirty-one cents, - - - - -		$9,654,031 31

will be accounted for in the next annual report, in in conformity with the accounts which shall then have been rendered to the Treasury Department.

That, in the meanwhile, the manner in which the said sum has been applied, is estimated as follows, viz:

1. The repayments in the Treasury, on account of principal, have, during the year 1804, amounted, as by the above-mentioned statement E, to		$121,446 51
2. The sums actually applied during the year 1804, to the payment of the principal and interest of the public debt, are estimated as follows, viz:		
1. Paid in reimbursement of the principal of the public debt	$3,205,248 52	
2. Do. on account of the interest and charges on the same, as will appear by the estimate F, -	4,006,799 69	
		7,212,048 21
3. The balance remaining unexpended at the close of the year 1804, and applicable to payments falling due after that year, is estimated, as per estimate G, at		2,320,536 59
		$9,654,031 31

That no purchases of the debt of the United States have been made since the date of the last report to Congress, and that the statement H exhibits the amount of stock transferred to the Commissioners of the Sinking Fund, in trust for the United States, to the 31st December, 1804, including the sum of $12,730 27, being the aggregate of the several species of stock transferred in the year 1804, in payment for public lands.

All which is respectfully submitted.

A. GALLATIN, *Sec. Treasury.*

TREASURY DEPARTMENT, *Feb.* 4, 1805.

DESCRIPTION OF LOUISIANA.

[Communicated to Congress Nov. 14, 1803.]

To the Senate and House of Representatives of the United States:

I now communicate a digest of the information I have received relative to Louisiana, which may be useful to the Legislature in providing for the government of the country. A translation of the most important laws in force in that province, now in the press, shall be the subject of a supplementary communication, with such further and material information as may yet come to hand.

TH. JEFFERSON.

NOVEMBER 14, 1803.

AN ACCOUNT OF LOUISIANA.

The object of the following pages is to consolidate the information respecting the present state of Louisiana, furnished to the Executive by several individuals among the best informed upon the subject.

Of the province of Louisiana no general map, sufficiently correct to be depended upon, has been published, nor has any been yet procured from a private source. It is, indeed, probable that surveys have never been made upon so extensive a

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scale as to afford the means of laying down the various regions of a country which, in some of its parts, appears to have been but imperfectly explored.

Boundaries.

The precise boundaries of Louisiana, westward of the Mississippi, though very extensive, are at present involved in some obscurity. Data are equally wanting to assign with precision its northern extent. From the source of the Mississippi, it is bounded eastwardly, by the middle of the channel of that river, to the thirty-first degree of latitude; thence, it is asserted, upon very strong grounds, that, according to its limits, when formerly possessed by France, it stretches to the east as far, at least, as the river Perdido, which runs into the bay of Mexico, eastward of the river Mobile.

It may be consistent with the view of these notes to remark, that Louisiana, including the Mobile settlements, was discovered and peopled by the French, whose monarchs made several grants of its trade, in particular to Mr. Crozat, in 1712, and some years afterwards, with his acquiescence, to the well known company projected by Mr. Law. This company was relinquished in the year 1731. By a secret convention, on the 3d November, 1762, the French Government ceded so much of the province as lies beyond the Mississippi, as well as the island of New Orleans, to Spain; and, by the treaty of peace which followed in 1763, the whole territory of France and Spain, eastward of the middle of the Mississippi, to the Iberville, thence, through the middle of that river and the lakes Maurepas and Pontchartrain to the sea, was ceded to Great Britain. Spain having conquered the Floridas from Great Britain, during our Revolutionary war, they were confirmed to her by the Treaty of Peace of 1784. By the Treaty of St. Ildefonso, of the 1st of October, 1800, His Catholic Majesty promises and engages on his part to cede back to the French Republic, six months after the full and entire execution of the conditions and stipulations therein contained, relative to the Duke of Parma, "the colony or province of Louisiana, with the same extent that it actually has in the hands of Spain, that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States." This treaty was confirmed and enforced by that of Madrid, of the 21st of March, 1801. From France it passed to us by the Treaty of the 30th of April last, with a reference to the above clause as descriptive of the limits ceded.

Divisions of the Province.

The province as held by Spain including a part of West Florida, is laid off into the following principal divisions: Mobile, from Balize to the city, New Orleans, and the country on both sides of lake Pontchartrain, First and Second German Coasts, Catahanose, Fourche, Venezuela, Iberville, Galveztown, Baton Rouge, Pointe Coupée Attakapas, Opelousas, Ouachita, Avoyelles, Rapide, Natchitoches, Arkansas, and the Illinois.

In the Illinois there are commandant[illegible] Madrid, St. Genevieve, New Bourbon, St[illegible] and St. Andrew's, all subordinate to [illegible] mandant-general.

Baton Rouge having been made a Gov[illegible] subsequently to the Treaty of Limits [illegible] Spain, the posts of Manchac and Ta[illegible] creek, were added to it.

Chapitoulas has sometimes been rep[illegible] separate command, but is now inclu[illegible] the jurisdiction of the city. The lower [illegible] the river has likewise had occasionally a [illegible] commandant.

Many of the present establishments are [illegible] ted from each other by immense and [illegible] deserts, having no communication with e[illegible] by land, except now and then a solitary [illegible] of its being attempted by hunters, wh[illegible] swim rivers, expose themselves to the [illegible] of the weather, and carry their provisions [illegible] backs for a time, proportioned to the leng[illegible] journey. This is particularly the case [illegible] west of the Mississippi, where the com[illegible] is kept up only by water between the [illegible] the distant settlements; three mo[illegible] quired to convey intelligence from [illegible] other by the Mississippi. The [illegible] complished by a boat in ascending [illegible] per day. The rapidity of the [illegible] season especially, when the waters [illegible] are high, facilitates the descent [illegible] voyage by water, which requires [illegible] months to perform from the capital [illegible] to it in from twelve to sixteen days. [illegible] pal settlements in Louisiana are on the [illegible] pi, which begins to be cultivated [illegible] leagues from the sea, where the [illegible] yet thin, and owned by the poorest [illegible] cending, you see them improve [illegible] you reach the city, which is situated [illegible] bank, on a bend, of the river, thirty [illegible] from the sea.

Chapitoulas, first and second Ger[illegible] Catahanose, Fourche, and Ib[illegible]

The best and most improved are [illegible] and comprehended what is there [illegible] Paroisse de Chapitoulas, Premier [illegible] Cote des Allemands, and extend [illegible]

Above this begins the parish of Cata[illegible] first Acadian settlement, extending [illegible] on the river. Adjoining it, and [illegible] is the second Acadian settlement, or [illegible] Fourche, which extends about six leagues [illegible] parish of Iberville then commences [illegible] ed on the east side by the river of the [illegible] which, though dry a great part of the [illegible] when the Mississippi is raised, it [illegible] with the lake Maurepas and Pontch[illegible] through them with the sea, and this [illegible] is called the island of New Orleans. [illegible] the point just below the Iberville [illegible] from New Orleans is settled the whole [illegible] the river, and presents a scene of [illegible] plantations in sight of each other, [illegible] to the Mississippi are all cleared, and [illegible]

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that river from five to twenty-five acres, with a depth of forty; so that a plantation of five acres in front contains two hundred. A few sugar plantations are formed in the parish of Catahanose, but the remainder is devoted to cotton and provisions, and the whole is an excellent soil incapable of being exhausted. The plantations are but one deep on the island of New Orleans, and on the opposite side of the river, as far as the mouth of the Iberville, which is thirty-five leagues above New Orleans.

Bayou de la Fourche, Attakapas, and Opelousas.

About twenty five leagues from the last-mentioned place, on the west side of the Mississippi, the creek or bayou of the Fourche, called in old maps La Riviere des Chitamaches, flows from the Mississippi, and communicates with the sea, to the west of the Balize. The entrance of the Mississippi is navigable only at high water, but will then admit of craft of from sixty to seventy tons burden. On both banks of this creek are settlements, one plantation deep, for near fifteen leagues; and they are divided into two parishes. The settlers are numerous, though poor, and the culture is universally cotton. On all creeks, making from the Mississippi, the soil is the same as on the bank of the river, and the border is the highest part of it, from whence it descends gradually to the swamp. In no place on the low lands is there depth more than suffices for one plantation before you come to the low grounds incapable of cultivation. This creek affords one of the communications to the two populous and rich settlements of Attakapas and Opelousas, formed on and near the small rivers Teche and Vermillion, which flow into the bay of Mexico. But the principal and swiftest communication is by the bayou or creek of Plaquemines, whose entrance into the Mississippi is seven leagues higher up on the same side, and thirty-two above New Orleans. These settlements abound in cattle and horses, have a quantity of good land in the vicinity, and may be made of great importance. A part of their produce is sent by sea to New Orleans, but the greater part is carried in the batteaux by the creeks above mentioned.

Baton Rouge, and its dependencies.

Immediately above the Iberville, and on both sides of the Mississippi, lies the parish of Manchac, which extends four leagues on the river, and is well cultivated. Above it commences the settlement of Baton Rouge, extending about nine leagues. It is remarkable as being the first place where the high land is contiguous to the river, and here it forms a bluff from thirty to forty feet above the greatest rise of the river. Here the settlements extend a considerable way back on the east side; and this parish has that of Thompson's creek and bayou Sara subordinate to it. The mouth of the first of these creeks is about forty-nine leagues from New Orleans, and that of the latter two or three leagues higher up. They run from northeast to southwest, and their head waters are north of the thirty-first degree of latitude. Their banks have the best soil, and the greatest number of good cotton plantations, of any part of Louisiana, and are allowed to be the garden of it.

Pointe Coupée and Fausse Riviere.

Above Baton Rouge, at the distance of fifty leagues from New Orleans, on the west side of the Mississippi, is Pointe Coupée, a populous and rich settlement, extending eight leagues along the river. Its produce is cotton. Behind it, on an old bed of the river, now a lake, whose outlets are closed up, is the settlement of Fausse Riviére which is well cultivated.

In the space now described from the sea, as high as and including the last-mentioned settlement, are contained three-fourths of the population, and seven-eighths of the riches of Louisiana.

From the settlement of Pointe Coupée, on the Mississippi, to Cape Girardeau, above the mouth of the Ohio, there is no land on the west side that is not overflowed in the spring to the distance of eight or ten leagues from the river, with from two to twelve feet of water, except a small spot near New Madrid; so that, in the whole extent, there is no possibility of forming a considerable settlement contiguous to the river on that side. The eastern bank has, in this respect, a decided advantage over the western, as there are on it many situations which effectually command the river.

Red River and its Settlements.

On the west side of the Mississippi, seventy leagues from New Orleans, is the mouth of the Red river, on whose banks and vicinity are the settlements of Rapide, Avoyelles, and Natchitoches, all of them thriving and populous. The latter is situated seventy-five leagues up the Red river. On the north side of the Red river, a few leagues from its junction with the Mississippi, is the Black river; on one of whose branches, a considerable way up, is the infant settlement of Ouachita, which, from the richness of the soil, may be made a place of importance. Cotton is the chief produce of these settlements; but they have likewise a considerable Indian trade. The river Rouge, or Red river, is used to communicate with the frontiers of New Mexico.

Concord, Arkansas, St. Charles, St. Andrew, &c.

There is no other settlement on the Mississippi, except the small one called Concord, opposite to the Natchez, till you come to the Arkansas river, whose mouth is two hundred and fifty leagues above New Orleans. Here there are but a few families, who are more attached to the Indian trade (by which chiefly they live) than to cultivation. There is no settlement from this place to New Madrid, which is itself inconsiderable. Ascending the river, you come to Cape Girardeaux, St. Genevieve, and St. Louis, where, though the inhabitants are numerous, they raise little for exportation, and content themselves with trading with the Indians and working a few lead mines. This country is very fertile, especially on the banks of the Missouri, where there have been formed two settlements, called St. Charles and St. Andrew, mostly by emigrants from Kentucky. The

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peltry procured in the Illinois is the best sent to the Atlantic market, and the quantity is very considerable. Lead is to be had with ease, and in such quantities as to supply all Europe, if the population were sufficient to work the numerous mines to be found within two or three feet from the surface in various parts of the country. The settlements about the Illinois were first made by the Canadians, and their inhabitants still resemble them in their aversion to labor, and love of a wandering life. They contain but few negroes compared with the number of the whites; and it may be taken for a general rule, in proportion to the distance from the capital, the number of blacks diminishes below that of the whites; the former abounding most on the rich plantations in its vicinity.

General description of Upper Louisiana.

When compared with the Indian Territory, the face of the country in Upper Louisiana is rather more broken, though the soil is equally fertile. It is a fact, not to be contested, that the west side of the river possesses some advantages not generally incident to those regions. It is elevated and healthy, and well watered with a variety of large, rapid streams, calculated for mills and other waterworks. From Cape Girardeau, above the mouth of the Ohio, to the Missouri, the land on the east side of the Mississippi is low and flat, and occasionally exposed to inundations; that on the Louisiana side, contiguous to the river, is generally much higher, and in many places very rocky on the shore. Some of the heights exhibit a scene truly picturesque. They rise to a height of at least three hundred feet, faced with perpendicular *lime and free-stone*, carved into various shapes and figures by the hand of nature, and afford the appearance of a multitude of antique towers. From the tops of these elevations the land gradually slopes back from the river, without gravel or rock, and is covered with valuable timber It may be said, with truth, that for fertility of soil no part of the world exceeds the borders of the Mississippi: the land yields an abundance of all the necessaries of life, and almost spontaneously; very little labor being required in the cultivation of the earth. That part of Upper Louisiana which borders on north Mexico is one immense prairie. It produces nothing but grass. It is filled with buffalo, deer, and other kinds of game. The land is represented as too rich for the growth of forest trees.

It is pretended that Upper Louisiana contains in its bowels many silver and copper mines, and various specimens of both are exhibited. Several trials have been made to ascertain the fact; but the want of skill in the artists has hitherto left the subject undecided.

The salt works are also pretty numerous: some belong to individuals; others to the public. They already yield an abundant supply for the consumption of the country, and, if properly managed, might become an article of more general exportation. The usual price per bushel is one dollar and a half in cash at the works. The price will be still lower as soon as the manufac... salt is assumed by Government, or pri... men who have large capitals to em... business. One extraordinary fact, rel... must not be omitted. There exists ... thousand miles up the Missouri, and ... that river, a salt mountain. The ex... such a mountain might well be ques... it not for the testimony of several resp... enterprising traders who have visited ... have exhibited several bushels of the ... curiosity of the people of St. Louis, w... it still remains. A specimen of the s... been sent to Marietta. This mounta... be one hundred and eighty miles long ... five in width, composed of solid roc... out any trees, or even shrubs on it. ... are very numerous beneath the s... mountain, and they flow through the ... cavities of it. Caves of saltpetre a... Upper Louisiana, though at some d... the settlements. Four men, on a tr... lately discovered one several hund... the Missouri. They spent five ... the manufacture of this article ... St. Louis with four hundred w... proved to be good, and they sold ...

The geography of the Missis... and their contiguity for a gre... but little known. The trade ... hundred miles above their ju... walk from one to the other in a ... asserted that, seven hundred miles ... the portage may be crossed in fo... This portage is frequented by trad... on a considerable trade with some ... Indians. Their general route is th... Bay, which is an arm of Lake M... then pass into a small lake connected ... which communicates with the Pe... then cross over a short portage into ... sin river, which unites with the Mis... distance below the Falls of St. A... also said that the traders communic... Mississippi above these falls, throu... perior; but their trade in that qua... less considerable.

Canal of Carondelet.

Behind New Orleans is a canal ... and a half long, which communicates ... called the bayou St. Jean, flowing ... Pontchartrain. At the mouth of it ... a half leagues from the city, is a sm... St. Jean, which commands the entr... lake. By this creek the communic... up through the lake and the rigolets ... the settlements in West Florida. C... from six to eight feet water can ... mouth of the creek; but, except ... swells of the lake cannot pass the ... being lightened.

St. Bernardo.

On the east side of the Mississipp... leagues below New Orleans, and at ... the English bend, is a settlement ...

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of the Poblacion de St. Bernardo, or the au Bœufs, extending on both sides of a or drain, whose head is contiguous to the sippi, and which flowing eastward, after a of eighteen leagues, and dividing itself vo branches, falls into the sea and Lake e. This settlement consists of two parishes, all the inhabitants of which are Spaniards he Canaries, who content themselves with fowls, corn, and garden stuff for the mar- New Orleans. The lands cannot be culti- to any great distance from the banks of the on account of the vicinity of the marsh be- nem, but the place is susceptible of great rement, and of affording another communi- to small craft of from eight to ten feet it, between the sea and the Mississippi.

Settlements below the English turn.

he distance of sixteen leagues below New s, the settlements on both banks of the re of but small account. Between these fort of Plaquemines the country is over- in the Spring, and, in many places, is in- of cultivation at any time, being a morass impassable by man or beast. This small of land extends considerably into the sea, is visible on both sides of the Mississippi ship's mast.

y from Plaquemines to the sea, and effect of the hurricanes.

Plaquemines to the sea is twelve or thir- agues. The country is low, swampy, chief- red with reeds, having little or no timber, settlement whatever. It may be necessary tion here, that the whole lower part of the y, from the English turn downward, is sub- overflowing in hurricanes, either by the g of the river, or reflux from the sea on de; and, on more than one occasion, it has overed from the depth of two to ten feet, ing to the descent of the river, whereby lives were lost, horses and cattle swept and a scene of destruction laid. The last ty of this kind happened in 1794; but, for- ly, they are not frequent. In the preceding e engineer who superintended the erection fort at Plaquemines was drowned in his near the fort, and the workmen and garri- aped only by taking refuge on an elevated the fort, on which there were, notwith- g, two or three feet of water. These hur- have generally been felt in the month of t. Their greatest fury lasts about twelve They commence in the southeast, veer o all points of the compass, are felt most y below, and seldom extend more than a gues above New Orleans. In their whole they are marked with ruin and desolation. hat of 1793, there had been none felt from r 1780.

Passes, or mouths of the Mississippi.

ut eight leagues below Plaquemines the ippi divides itself into three channels, are called the passes of the river, viz: the East, South, and Southwest passes. Their course is from five to six leagues to the sea. The space between is a marsh, with little or no timber on it; but, from its situation, it may hereafter be ren- dered of importance. The East pass, which is on the left hand going down the river, is divided into two branches about two leagues below, viz: the Pass à la Loutre, and that known to mariners by the name of the Balize, at which there is a small block-house, and some huts of the pilots, who reside only here. The first of these second- ary channels contains at present but eight feet water; the latter from fourteen to sixteen, ac- cording to the seasons. The South pass, which is directly in front of the Mississippi, has always been considered as entirely choked up, but has ten feet water. The Southwest pass, which is on the right, is the longest and narrowest of all the passes, and a few years ago had eighteen feet water, and was that by which the large ships al- ways entered and sailed from the Mississippi. It has now but eight feet water, and will probably remain so for some time. In speaking of the quantity of water in the passes, it must be under- stood of what is on the bar of each pass; for im- mediately after passing the bar, which is very narrow, there are from five to seven fathoms at all seasons.

Country East of Lake Pontchartrain.

The country on the east side of Lake Pontchar- train to Mobile, and including the whole extent between the American line, the Mississippi above New Orleans, and the lakes, (with the exception of a tract of about thirty miles on the Mississippi, and as much square, contiguous to the line, and comprehending the waters of Thompson's creek, bayou Sara, and the Amet,) is a poor, thin soil, overgrown with pine, and contains no good land whatever, unless on the banks of a few small riv- ers. It would, however, afford abundant supplies of pitch, tar, and pine lumber, and would feed large herds of cattle.

The Inhabitants, and their Origin.

The inhabitants of Louisiana are chiefly the descendants of the French and Canadians. There are a considerable number of English and Amer- icans in New Orleans. The two German coasts are peopled by the descendants of settlers from Germany, and a few French mixed with them. The three succeeding settlements, up to Baton Rouge, contain mostly Acadians, banished from Nova Scotia by the English, and their descend- ants. The government of Baton Rouge, espe- cially the east side, which includes all the coun- try between the Iberville and the American line, is composed partly of Acadians, a very few French, and a great majority of Americans. On the west side they are mostly Acadians; at Point Coupée and Fausse Rivière they are French and Acadians. Of the population of the Attakapas and Opelousas, a considerable part is American. Natchitoches, on the Red river, contains but a few Americans, and the remainder of the inhabi- tants are French; but the former are more nu- merous in the other settlements on that river, viz:

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Avoyelles, Rapide, and Ouachita. At Arkansas they are mostly French, and at New Madrid Americans. At least two-fifths, if not a greater proportion of all the settlers on the Spanish side of the Mississippi, in the Illinois country, are likewise supposed to be Americans. Below New Orleans the population is altogether French and the descendants of Frenchmen.

New Orleans.

By recurring to the maps, and examining the position of Louisiana, it will appear that the lower part projects considerable into the sea. It has, in all probability, been formed by the sediment brought down by the current and deposited on the flat coast. There is, therefore, on the east side but a very narrow slip along the bank of the river, from the sea to the Iberville. The land is not generally susceptible of cultivation more than a mile in depth from the river; the rest is low and swampy to the lakes and the sea; but, in general, abounds with cypress timber, which is sawed by mills, which are worked by artificial streams from the Mississippi, in the time of freshets. They generally run five months in the year.

What has been said of the east equally applies to the west side of the river. The soil and situation are nearly the same. After leaving the bank of the river there is an immense swamp, intersected by creeks and lakes, extending to the highlands of Attakapas, and occupying a space of thirty or forty leagues.

The city of New Orleans, which is regularly laid out on the east side of the Mississippi, in latitude 30 degrees north, and longitude 90 degrees west, extends nearly a mile along the river, from the gate of France on the south, to that of Chapitoulas above, and a little more than one-third of a mile in breadth from the river to the rampart; but it has an extensive suburb on the upper side. The houses in front of the town, and for a square or two backward, are mostly of brick, covered with slate or tile, and many of two stories. The remainder are of wood, covered with shingles. The streets cross each other at right angles, and are thirty-two French feet. There is in the middle of the front of the city a *place d'armes*, facing which the church and town-house are built. There are from twelve to fourteen hundred houses in the city and suburbs. The population may be estimated at ten thousand, including the seamen and garrison. It was fortified in 1793; but the works were originally defective, could not have been defended, and are now in ruins. The powder magazine is on the opposite bank of the river.

The public buildings, and other public property in New Orleans, are as follows;

Two very extensive brick stores, from one hundred and sixty to one hundred and eighty feet in length, and about thirty in breadth. They are one story high and covered with shingles.

A Government house, stables, and garden, occupying a front of about two hundred and twenty feet on the river, in the middle of the town, and extending three hundred and thirty-six feet back to the next street.

A military hospital.

An ill-built custom-house of wood. [illegible] ruins, in the upper part of the city. [illegible]

An extensive barrack in the lower [illegible] city, fronting on the river, and calcula[illegible] twelve or fourteen hundred men.

A large lot adjoining the King's [illegible] few sheds in it. It serves as a par[illegible]

A prison, town-house, market-hou[illegible] room, some ground rents, and the co[illegible] the town.

A public school for the rudiments [illegible] ish language.

A cathedral church unfinished, and [illegible] belonging to it.

A charitable hospital, with some bo[illegible] ing to it, and a revenue of $1,500 [illegible] dowed by an individual lately deceased.

The Canal de Carondelet has been [illegible] scribed.

Number of Inhabitants.

According to the annexed census [illegible] Louisiana, including Pensacola and [illegible] as made in 1785, the whole numbe[illegible] ants amounted to thirty-two thousand [illegible] two, of which fourteen thousand [illegible] and fifteen were free whites, [illegible] hundred and three free people [illegible] teen thousand five hundred and [illegible]

The statement No. 4, from [illegible] ments, makes the whole number [illegible] sand three hundred and seventy [illegible] whites, twenty-one thousand two [illegible] forty-four; the free people of colo[illegible] seven hundred and sixty-eight; [illegible] twelve thousand nine hundred and tw[illegible]

A particular statement respecting [illegible] tion, &c., of Upper Louisiana, and [illegible] taining the census of New Orleans [illegible] are numbered 5 and 6, in the appen[illegible]

These papers certainly exhibit a [illegible] ber than the real population of the [illegible] an official document, made in July [illegible] ceived from Attakapas since the st[illegible] was formed, it appears that it co[illegible] thousand two hundred and seventy [illegible] hundred and ten free people of co[illegible] sand two hundred and sixty-six [illegible] three thousand seven hundred and [illegible] instead of one thousand four hundred [illegible] seven, as therein stated. It is highly [illegible] the return for the neighboring dist[illegible] sas is in the same proportion underva[illegible]

A conjectural estimation, made by [illegible] of great respectability and correct[illegible] residing at Natchez, raises the num[illegible] in the island of New Orleans, on the [illegible] the river, and some settlements on [illegible] to fifty thousand one hundred and [illegible] number of blacks to thirty-nine [illegible] hundred and twenty. His statement [illegible] joined, No. 3.

It is at all times difficult to obtain the [illegible] sus of a country, and the impediments [illegible] creased in this, from its scattered popu[illegible]

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actual enumeration may, therefore, fall short of the true numbers.

Militia.

There is a militia in Louisiana. The following is the return of it, made to the Court of Spain by the Baron of Carondelet:

From Balize to the city.—Volunteers of the Mississippi—four companies of 100 men each—complete	400
City.—Battalion of the city, five companies	500
Artillery company, with supernumeraries	120
Carabineers, or privileged companies of horse, two companies of 70 each, incomplete	100
Mulattoes, two companies; negroes one	300
Mixed legion of the Mississippi, comprehending Galveston, Baton Rouge, Point Coupée, Attakapas, and Opelousas, viz: two companies of grenadiers, eight of fusileers, four of dragoons, and two lately added from Bayou Sara—in all, sixteen companies of 100 men each	1600
Avoyelles.—One company of infantry	100
Ouachita.—One company of cavalry	100
Natchitoches.—One company of infantry and one of cavalry	200
Arkansas.—One company of infantry and cavalry	100
Illinois.—Four companies of cavalry and four of infantry; these are always above the complement	800
Provincial regiment of Germans and Acadians, from the first German coast to Iberville—companies—viz: two of grenadiers and eight of fusileers	1000
Mobile, and the country east of Lake Ponchartrain, two companies of horse and foot, incomplete	120
	5,440

The same gentleman alluded to, page 348, makes the number of the militia to amount to 10,340 men within the same limits to which his estimate of the population applies. He distributes them in the several settlements as follows:

1. The island of New Orleans, with the opposite margin and the adjacent settlements	5000
2. The west margin from Manchac, including Pointe Coupée, and extending to the Red river	800
3. Attakapas, along the coast, between the delta of the Mississippi and the Sabine river	350
4. Opelousas	750
5. Red river, including bayou Bœuf, Avoyelles, Rapides, and Natchitoches	1000
6. Ouachita	300
7. Concord	40
8. Arkansas	150
9. New Madrid and its vicinity	350
10. Illinois and Missouri	1000
11. The settlements on the east side of the Mississippi, from the American line to the Iberville, and some other settlements	600
	10,340

It is to be observed that none of these statements include the country beyond the river Sabine, nor even all those which lie eastwardly of it. Data are also wanting to give them.

Fortifications.

St. Louis has a lieutenant colonel to command in it, and but few troops. Baton Rouge is an ill-constructed fort, and has about fifty men. In describing the canal of Carondelet, the small fort of St. Jean has been mentioned, as has the block-house at the Balize, in its proper place. The fortifications of New Orleans, noticed before, consist of five ill constructed redoubts, with a covered way, palisade, and ditch. The whole is going fast to decay, and it is supposed they would be of but little service in case of an attack. Though the powder magazine is on the opposite side of the river, there is no sufficient provision made for its removal to the city in case of need.

The fort of Plaquemines, which is about twelve or thirteen leagues from the sea, is an ill-constructed, irregular brick work, on the eastern side of the Mississippi, with a ditch in front of the river, and protected on the lower side by a deep creek, flowing from the river to the sea. It is, however, imperfectly closed behind, and almost without defence there; too much reliance having been placed on the swampiness of the ground which hardens daily. It might be taken, perhaps, by escalade, without difficulty. It is in a degree ruinous. The principal front is meant to defend the approach from sea, and can oppose, at most, but eight heavy guns. It is built at a turn in the river where ships in general must anchor, as the wind which brings them up so far, is contrary in the next reach which they must work through; and they would therefore be exposed to the fire of the fort. On the opposite bank are the ruins of a small closed redoubt, called Fort Bourbon, usually garrisoned by a sergeant's command. Its fire was intended to flank that of the fort of Plaquemines, and prevent shipping and craft from ascending or descending on that side. When a vessel appears, a signal is made on one side and answered on the other. Should she attempt to pass, without sending a boat on shore, she would be immediately fired upon.

Indians.

The Indian nations within the limits of Louisiana are, as far as known, as follows, and consist of the numbers hereafter specified.

On the eastern bank of the Mississippi, about twenty-five leagues above Orleans, are the remains of the nation of Houmas, or red men, which do not exceed sixty persons. There are no other Indians settled on this side of the river, either in Louisiana or West Florida, though they are at times frequented by parties of wandering Choctaws.

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On the west side of the Mississippi are the remains of the Tounicas, settled near, and above Pointe Coupée, on the river, consisting of fifty or sixty persons.

In the Attakapas.—On the lower parts of the Bayou Teche, at about eleven or twelve leagues from the sea, are two villages of Chitimachas, consisting of about one hundred souls.

The Attakapas, properly so called, dispersed throughout the district, and chiefly on the bayou or creek of Vermilion, about one hundred souls.

Wanderers of the tribes of Bilexis and Choctaws, on Bayou Crocodile, which empties into the Teche, about fifty souls.

In the Opelousas, to the northwest of Attakapas.—Two villages of Alabamas, in the centre of the district near the church, consisting of one hundred persons.

Conchates, dispersed through the country as far west as the river Sabine, and its neighborhood, about three hundred and fifty persons.

On the river Rouge.—At Avoyelles, nineteen leagues from the Mississippi, is a village of the Biloni nation, and another on the lake of the Avoyelles; the whole about sixty souls.

At the Rapids, twenty-six leagues from the Mississippi, is a village of Choctaws of one hundred souls, and another of Biloxes, about two leagues from it, of about one hundred more; about eight or nine leagues higher up the Red river is a village of about fifty souls. All these are occasionally employed by the settlers in their neighborhood as boatmen.

About eighty leagues above Natchitoches, on the Red river, is the nation of the Cadoquies, called by abbreviation Cados; they can raise from three to four hundred warriors; are the friends of the whites, and are esteemed the bravest and most generous of all the nations in this vast country; they are rapidly decreasing, owing to intemperance and the numbers annually destroyed by the Osages and Choctaws.

There are, besides the foregoing, at least four to five hundred families of Choctaws, who are dispersed on the west side of the Mississippi, on the Ouachita and Red rivers, as far west as Natchitoches, and the whole nation would have emigrated across the Mississippi, had it not been for the opposition of the Spaniards and the Indians on that side who had suffered by their aggressions.

On the river Arkansas, &c.—Between the Red river and the Arkansas there are but a few Indians, the remains of tribes almost extinct. On this last river is the nation of the same name, consisting of about two hundred and sixty warriors; they are brave, yet peaceable and well disposed, and have always been attached to the French, and espoused their cause in the wars with the Chickasaws, whom they have always resisted with success. They live in three villages; the first is at eighteen leagues from the Mississippi, on the Arkansas river, and the others are at three and six leagues from the first. A scarcity of game on the eastern side of the Mississippi has lately induced a number of Cherokees, Choctaws, Chickasaws, &c., to frequent the neigh[illegible] Arkansas, where game is still in abun[illegible] have contracted marriages with the [illegible] and seem inclined to make a perma[illegible] ment, and incorporate themselves w[illegible] tion. The number is unknown, but [illegible] ble, and is every day increasing.

On the river St. Francis, in the [illegible] of New Madrid, Cape Girardeau, R[illegible] Pomme, and the environs, are settled [illegible] vagabonds, emigrants from the Delaw[illegible] nese, Miamis, Chickasaws, Cherok[illegible] and supposed to consist in all of fi[illegible] families; they are at times troubles[illegible] boats descending the river, and have [illegible] dered some of them and committed [illegible] ders; they are attached to liquor, sel[illegible] long in any place; many of them spe[illegible] all understand it, and there are some [illegible] read and write it.

At St. Genevieve, in the settlemen[illegible] whites, are about thirty Piorias, Kas[illegible] Illinois, who seldom hunt for fe[illegible] Indians; they are the remains of [illegible] fifty years ago, could bring into fie[illegible] sand two hundred warriors.

On the Missouri.—On the Mis[illegible] ters are many and numerou[illegible] known of which are: The Osa[illegible] the river of same name, on the ri[illegible] Missouri, at about eighty leagues [illegible] ence with it; they consist of one [illegible] riors, who live in two settlements [illegible] tance from each other; they are [illegible] stature and well proportioned; are [illegible] whites and of all other Indian nat[illegible] mit depredations from the Illinois [illegible] sas. The trade of this nation is [illegible] an exclusive grant. They are a [illegible] cious race, and are hated and fear[illegible] other Indians. The confluence of th[illegible] with the Missouri is about eighty [illegible] the Mississippi.

Sixty leagues higher up the Mis[illegible] the same bank, is the river Kansas [illegible] nation of the same name, but at abo[illegible] eighty leagues from its mouth. It [illegible] about two hundred and fifty warriors [illegible] fierce and cruel as the Osages, and [illegible] and ill-treat those who go to trade [illegible]

Sixty leagues above the river Kan[illegible] about two hundred from the mouth [illegible] souri, still on the right bank, is the ri[illegible] or Shallow river, remarkable for its [illegible] and bad navigation; and near its co[illegible] the Missouri dwells the nation of [illegible] commonly called Otos, consisting [illegible] hundred warriors, among whom are [illegible] or thirty of the nation of Missouri, w[illegible] uge among them about twenty-five yea[illegible]

Forty leagues up the river Platte [illegible] the nation of the Panis, composed of [illegible] hundred warriors in four neighbor[illegible] they hunt but little, and are ill-provide[illegible] arms; they often make war on the S[illegible]

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ghborhood of Santa Fé, from which they far distant.

ıree hundred leagues from the Mississippi, e hundred from the river Platte, on the ank, are situated the villages of the Mahas. :onsisted in 1799 of five hundred warriors, said to have been almost cut off last year smallpox.

ıfty leagues above the Mahas, and on the nk of the Missouri, dwell the Poncas, to mber of two hundred and fifty warriors, ing, in common with the Mahas, their lan- ferocity, and vices. Their trade has never f much value, and those engaged in it are d to pillage and ill treatment.

ıe distance of four hundred and fifty leagues he Mississippi, and on the right bank of the ıri, dwell the Aricaras, to the number of hundred warriors; and sixty leagues above the Mandane nation, consisting of about ıundred warriors likewise. These two last s are well disposed to the whites, but have he victims of the Sioux or Mandowessies, ɔeing themselves well provided with fire- have taken advantage of the defenceless on of the others, and have on all occasions red them without mercy.

discoveries on the Missouri, beyond the ıne nation, have been accurately detailed, ı the traders have been informed that many ıavigable rivers discharge their waters into ıbove it, and that there are many numerous ıs settled thereon.

: Sioux, or Mandowessies, who frequent the 'y between the north bank of the Missouri Iississippi, are a great impediment to trade avigation. They endeavor to prevent all unication with the nations dwelling high : Missouri, to deprive them of ammunition rms, and thus keep them subservient to them- . In the winter they are chiefly on the of the Missouri, and massacre all who fall ıeir hands.

ere are a number of nations at a distance the banks of the Missouri, to the north and , concerning whom but little information has received. Returning to the Mississippi, and ding it from the Missouri, about seventy-five es above the mouth of the latter, the river gona, or rivière de Moine, enters the Missis- on the west side, and on it are situated the s, a nation originally from the Missouri, ing the language of the Otatachas; it con- of two hundred warriors before the small- ately raged among them.

e Sacs and Renards dwell on the Mississippi, t three hundred leagues above St. Louis, and ently trade with it; they live together, and st of five hundred warriors; their chief trade ıth Michilimakinac, and they have always peaceable and friendly.

ıe other nations on the Mississippi, higher ıre but little known to us. The nations of Missouri, though cruel, treacherous, and inso- may doubtless be kept in order by the United States, if proper regulations are adopted with respect to them.

It is said that no treaties have been entered into by Spain with the Indian nations westward of the Mississippi, and that its treaties with the Creeks, Choctaws, &c., are in effect superseded by our treaty with that Power of the 27th October, 1795.

Of Lands and Titles.

The lands are held in some instances by grants from the Crown, but mostly from the Colonial Government. Perhaps not one quarter part of the lands granted in Louisiana are held by complete titles; and, of the remainder, a considerable part depend upon a written permission of a commandant. Not a small proportion is held by occupancy, with a simple verbal permission of the officer last mentioned. This practice has always been countenanced by the Spanish Government, in order that poor men, when they found themselves a little at ease, might at their own conveniency, apply for and obtain complete title. In the mean time, such imperfect rights were suffered by the Government to descend by inheritance, and even to be transferred by private contract. When requisite, they have been seized by judicial authority, and sold for the payment of debts.

Until within a few years, the Governor of Upper Louisiana was authorized to make surveys of any extent. In the exercise of this discretionary power, some abuses were committed, and a few small monopolies were created. About three years ago he was restricted in this branch of his duty, since which he has been only authorized to make surveys to emigrants in the following manner: two hundred acres for each man and wife, fifty acres for each child, and twenty acres for each slave. Hence the quantity of land allowed to settlers depended on the number in each family; and for this quantity of land they paid no more than the expense of survey. These surveys were necessary to entitle the settlers to grants; and the Governor, and after him the Intendant at New Orleans, was alone authorized to execute grants, on the receipt of the surveys from the settlers. The administration of the land office is at present under the care of the Intendant of the province.

There are no feudal rights nor noblesse.

It is impossible to ascertain the quantity of lands granted, without calling on the claimants to exhibit their titles; the registry being incomplete, and the maps made by the different surveyors general having been burnt in the fires at New Orleans, of 1788 and 1794, no estimate has been obtained.

All the lands on both sides of the Mississippi, from the distance of sixteen leagues below New Orleans to Baton Rouge, are granted to the depth of forty acres, or near half a league, which is the usual depth of all grants. Some have double and triple grants; that is to say, they have twice or thrice forty acres in depth; and others have grants extending from the Mississippi to the sea or the lakes behind them. In other parts of the country, the people, being generally settled on the banks of creeks or rivers, have a front of from six to forty

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acres, and the grant almost invariably expresses a depth of forty acres. All the lands ungranted, on the island of New Orleans or on the opposite bank of the Mississippi, are sunken, inundated, and at present unfit for cultivation; but may in part be reclaimed at a future day, by efforts of the rich and enterprising.

Cultivation of Sugar.

The sugar cane may be cultivated between the river Iberville and the city, on both sides of the river, and as far back as the swamps. Below the city, however, the lands decline so rapidly, that, beyond fifteen miles, the soil is not well adapted to it. Above the Iberville the cane would be affected by the cold, and its produce would, therefore, be uncertain. Within these limits, the best planters admit that one quarter of the cultivated lands of any considerable plantation may be planted in cane, one quarter left in pasture, and the remaining half employed for provisions, &c., and a reserve for a change of crops. One Parisian arpent, of one hundred and eighty feet square, may be expected to produce, on an average, twelve hundred weight of sugar and fifty gallons of rum.

From the above data, admitting that both sides of the river are planted for ninety miles in extent and about three fourths of a mile in depth, it will result that the annual product may amount, in round numbers, to twenty-five thousand hogsheads of sugar, with twelve thousand puncheons of rum. Enterprising young planters say that one third, or even one half, of the arable land might be planted in cane. It may also be remarked, that a regular supply of provisions from above, at a moderate price, would enable the planter to give his attention to a greater body of land cultivated with cane. The whole of these lands, as may be supposed, are granted; but in the Attakapas country there is undoubtedly a portion, parallel to the seacoast, fit for the culture of the sugar cane. There vacant lands are to be found, but the proportion is at present unknown.

In the above remarks, the lands at Terre aux Bœuf, on the Fourche, bayou St. Jean, and other inlets of the Mississippi south of the latitude supposed to divide those which are fit, from those which are unfit, for the cultivation of the cane, have been entirely kept out of view. Including these, and taking one third instead of one fourth of the lands fit for sugar, the produce of the whole would be fifty thousand instead of twenty-five thousand hogsheads of sugar.

The following quantities of brown sugar, clayed and refined, have been imported into the United States from Louisiana and the Floridas, viz: In 1799, 773,542 pounds; in 1800, 1,560,865 pounds; in 1801, 967,619 pounds; in 1802, 1,576,933 pounds.

Of the Laws.

When the country was first ceded to Spain, she preserved many of the French regulations; but, by almost imperceptible degrees, they have disappeared; and at present the province is governed entirely by the laws of Spain, and the ordinances formed expressly for the colony. Various ordinances promulgated by General O'Reilly, its first Governor under Spain, as well as some other laws, are translated and annexed to Appendix, No. 1.

Courts of Justice.

The Governor's court has a civil and military jurisdiction throughout the province; that of the Lieutenant Governor has the same extent in civil cases only.

There are two Alcaldes, whose jurisdiction, civil and criminal, extends through the city of New Orleans and five leagues around it, where the parties have no *fuero militar*, or military privilege; those who have, can transfer their causes to the Governor.

The tribunal of the Intendant has cognizance of admiralty and fiscal causes, and such suits as are brought for the recovery of money in the King's name, or against him.

The tribunal of the Alcalde Provincial has cognizance of criminal causes, where offences are committed in the country, or when the criminal takes refuge there, and in other specified cases.

The ecclesiastical tribunal has jurisdiction in all matters respecting the church.

The Governor, Lieutenant Governor, Alcaldes, Intendant, Provincial Alcalde, and the Provisor in ecclesiastical causes, are, respectively, sole judges. All sentences affecting the life of the culprit, except those of the Alcalde Provincial, must be ratified by the superior tribunal, or Captain General, according to the nature of the cause, before they are carried into execution. The Governor has not the power of pardoning criminals. An auditor and an assessor, who are doctors of law, are appointed to give counsel to those judges; but for some time past there has been no assessor. If the judges do not consult those officers, or do not follow their opinions, they make themselves responsible for their decisions.

The commandants of districts have also a species of judicial power. They hear and determine all pecuniary causes not exceeding the value of one hundred dollars. When the suit is for a larger sum, they commence the process, collect the proofs, and remit the whole to the Governor, to be decided by the proper tribunal. They can inflict no corporeal punishment except upon slaves, but they have the power of arresting and imprisoning when they think it necessary: advice of which, and their reasons, must be transmitted to the Governor.

Small suits are determined in a summary way, by hearing both parties, *viva voce*; but, in suits of greater magnitude, the proceedings are carried on by petition and reply, replication and rejoinder, reiterated until the auditor thinks they have nothing new to say. Then all the proofs either party chooses to adduce are taken before the keeper of the records of the court, who is always a notary public.

The parties have now an opportunity of making their remarks upon the evidence, by way of petition, and of bringing forward opposing proofs. When the auditor considers the cause as mature, he issues his decree, which receives its binding

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om the Governor's signature, where the ependes before him.

e is an appeal to Havana, if applied for five days after the date of the decree, in ıbove a certain value. An ulterior appeal the Audience, which formerly sat at St. ço, but which is now removed to some Cuba; and from thence to the Council of ies, in Spain.

are of various durations. In pecuniary , the laws encourage summary proceedings. cution may be had on a bond in four days; the same space, on a note of hand, after ty acknowledged it, or after his signature ed. Moveable property is sold, after giving ıys' warning, provided it be three times r cried in that interval. Landed property e likewise cried three times, with an interine days between each, and it may then

All property taken in execution must be ed, and sold for at least half of the apıent. In pecuniary matters, the Governide verbally, without appeal, when the es not exceed one hundred dollars. The s have the same privilege, when the is not above twenty dollars.

dition to these courts, four years ago there tablished four Alcaldes de Barrio, or petty ates; one for each of the four quarters of , with a view to improve its police. They ıd decide all demands not exceeding ten ; exercise the power of committing to and in case of robbery, riot, or assassinaıey can, by calling upon a notary, take ınce of the affair; but, when this is done, e bound to remit the proceedings to some ther judges, and, in all cases whatever, to em information when they have commit- person to prison.

of the suits are personal contracts, rights er, inheritances, and titles to land. Those from personal quarrels are generally den a summary way. The inhabitants are t to be litigious.

ers, and Costs of the Courts, and Officers.

number of lawyers is small, not exceeding ır four attorneys. Their fees are small. ıre carried on in writings, called *escritos*, may be drawn up by the parties themselves, please, but they must be presented by the *no*, or notary, who is the keeper of the ref the court.

fees of the judges are twenty-five cents for ıalf signature or flourish, (which is usually on common occasions;) fifty cents for every signature; and two dollars and three-fourths ry attendance, as at a sale, or the taking of ce.

fees of the Abogado, or person consulted judges on law points, are twelve and a half or every leaf of which the process consists, ur dollars for every point of law cited. of the attorney, when employed, are sixtyd a half cents for a simple petition, or *escrito;* but, if it should be necessary to read a process in order to form his petition, and it should require much time and labor, he is compensated in proportion, besides twelve and a half cents per leaf for perusing the papers. For attendance on any business, he is allowed one dollar and fifty cents for the assistance of two and a half hours. The notary has fifty cents for each decree, or order of the judge; twenty-five cents for a notification in his office; and fifty cents for one out of it, but within the city; one dollar and seven-eighths for every attendance of two and a half hours on business, and twenty-five cents additional for every leaf of paper written by him.

A counsellor or two have sometimes resided at New Orleans, but being generally found obnoxious to the officers of the Government, they have not continued there. The counsellor values his own services, and, in general, exacts large sums. The attorney generally receives from the party who employs him more than is allowed by law.

Crimes, Criminal Jurisprudence, and Punishment.

In cases of petty crimes, the cognizance of the proper court may be said to be final, and without appeal; and most commonly such causes are decided in a summary way. With respect to crimes of a deeper dye, more solemnity is used. A person skilled in the laws is always nominated by the court to defend the accused. The trial is not public; but examinations and depositions in writing are taken privately by the auditor, at any time most convenient to himself, at which, nevertheless, the counsel of the accused is admitted to be present. He has also every kind of privilege granted to him in making his defence. Such suits are generally very tedious and expensive, when he is wealthy. The condemned is entitled to an appeal, as in civil cases, provided he give security for the payment of the future costs. There appears, however, to be a virtual appeal in every capital condemnation, because a stay of execution takes place until the confirmation of the sentence returns from St. Jago de Cuba, where there is a grand tribunal established consisting of five judges, before whom counsellors plead, as in our courts.

Crimes of great atrocity are very rare. Murder, by stabbing, seems to be confined to the Spanish soldiers and sailors. The terror of the magistrate's power restrains assaults, batteries, riots, &c.

Punishments are generally mild. They mostly consist of imprisonment and payment of costs; sometimes the stocks. White men, not military, are rarely, perhaps never, degraded by whipping, and in no case do any fines go into the public treasury. Murder, arson, and aggravated robbery of the King's treasury or effects, are punished with death. Robbery of private persons, to any amount, is never punished with death, but by restitution, imprisonment, and, sometimes, enormous costs. Crimes against the King's revenue, such as contraband trade, are punished with hard labor for life, or a term of years, on board the galleys, in the mines, or on the public works.

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Learning.

There are no colleges, and but one public school, which is at New Orleans. The masters of this are paid by the King. They teach the Spanish language only. There are a few private schools for children. Not more than half of the inhabitants are supposed to be able to read and write; of whom not more than two hundred, perhaps, are able to do it well. In general, the learning of the inhabitants does not extend beyond those two arts, though they seem to be endowed with a good natural genius, and an uncommon facility of learning whatever they undertake.

The Church.

The clergy consists of a bishop, who does not reside in the province, and whose salary, of four thousand dollars, is charged on the revenue of certain bishoprics in Mexico and Cuba; two canons, having each a salary of six hundred dollars; and twenty-five curates, five for the city of New Orleans, and twenty for as many country parishes, who receive each from three hundred and sixty to four hundred and eighty dollars a year. Those salaries, except that of the bishop, together with an allowance for sacristans and chapel expenses, are paid by the treasury at New Orleans, and amount annually to thirteen thousand dollars.

There is also at that place a convent of Ursulines, to which is attached about a thousand acres of land, rented out into three plantations. The nuns are now in number not more than ten or twelve, and are all French. There were formerly about the same number of Spanish ladies belonging to the order; but they retired to Havana during the period when it was expected that the province would be transferred to France. The remaining nuns receive young ladies as boarders, and instruct them in reading, writing, and needlework.

They have always acted with great propriety, and are generally respected and beloved throughout the province. With the assistance of an annual allowance of six hundred dollars from the treasury, they always support and educate twelve female orphans.

Of the Officers of Government.

The officers, who are merely judicial, have been already mentioned, and therefore some of them will be altogether omitted in this place. The executive officers, appointed by the Governor, for each division of the province, and called Commandants, are generally taken from the army, or the militia. When the settlement is small, some respectable character is appointed to the civil command, and the militia officer has the direction of military matters. Where there is a garrison, the commandant is sub-delegate of the Intendant, and draws upon him for all expenses incurred. In that case he has the charge of all matters relating to the revenue, within his district.

The duty of commandants is to superintend the police, preserve the peace of this district, examine the passports of travellers, and to suffer no strangers to settle within the limits of th[illegible] without regular leave obtained from G[illegible] They are to prevent smuggling: [illegible] all lands, petitioned for by the [illegible] vacant before they are granted: [illegible] quired, to put the owner in possess[illegible] besides notaries public; and in the [illegible] necessary to register all sales of lan[illegible] and even to make the contracts f[illegible] poses before them. They act as she[illegible] ecutions on property, attend and e[illegible] and collect the proceeds. They als[illegible] tories of the property of intestates. [illegible] nance of Baron Carondelet, syndic[illegible] lished every three leagues, who are [illegible] to the commandant, decide small ca[illegible] the police of roads, levees, travellers [illegible]

The officers of the General Govern[illegible] following: Besides his judicial pow[illegible] ernor is chief of the army and m[illegible] head of the civil Government. He [illegible] dent of the Cabildo, or Provincial [illegible] appoints and removes, at pleasure, [illegible] ants of districts. He appoints [illegible] militia, who are, nevertheless, [illegible] the King, and he recommends [illegible] for preferment. He is superin[illegible] affairs. He promulgates ordin[illegible] government and improvem[illegible] but he has no power to assess [illegible] habitants without their consent. [illegible] 1798, he possessed the sole pow[illegible] lands; but it then passed into the [illegible] Intendant.

The Cabildo is an hereditary cor[illegible] chosen originally from the most re[illegible] spectable families. The Governor [illegible] their meetings. Their office is [illegible] but it is acquired by purchase. [illegible] right to represent, and even to remo[illegible] Governor, in respect to the interior [illegible] of the province. The police of the [illegible] their control and direction. In it[illegible] the admission of physicians and sur[illegible] tice. Two members of the Cabildo [illegible] monthly, and take upon themselves [illegible] diate superintendence of markets, fai[illegible] bridges, and the general police of the [illegible] council distributes among its mem[illegible] important offices, such as Alguaz[illegible] High Sheriff, Alcalde Provincial, Proc[illegible] ral, &c. The last mentioned is a re[illegible] charge. The person who holds it is [illegible] the King's attorney, but an officer pe[illegible] civil law. He does not always pr[illegible] after conviction, he indicates the pu[illegible] nexed by law to the crime, and w[illegible] and is mitigated by the court. Like [illegible] lor in the English system, he is the [illegible] protector of orphans, &c.; and, fina[illegible] expounder of the law, the defender [illegible] leges belonging to the town, province [illegible] and the accuser of every public offi[illegible] fringes them. The Cabildo is also [illegible] a species of judicial authority, for w[illegible] a further elucidation of its constitu[illegible]

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functions of the officers springing from it, see the appendix No. 1.

The Intendant is chief of the departments of finance and commerce, and exercises the judicial powers already mentioned. He is entirely independent of the Governor, and no public moneys can be issued without his express order. The land office is under his direction.

The Contador, Treasurer, and Interventor, are officers subordinate to the Intendant. The first has four clerks under him, and keeps all accounts and documents respecting the receipt and expenditure of the revenue; and is, therefore, a check upon the Intendant. The treasurer is properly no more than a cashier, and is allowed one clerk. The interventor superintends all public purchases and bargains. The administrador is also subordinate to the Intendant, and, with a number of inferior officers, manages everything respecting the custom-house. Every clerk in these offices receives his commission from the King.

The Auditor is the King's counsel, who is to furnish the Governor with legal advice in all cases of judicial proceedings, whether civil or military.

The Assessor's functions are similar to those of the auditor, and are properly applicable to the Intendant's department.

Both of the officers last mentioned are also the counsellors of some of the other tribunals, as before intimated.

A Secretary of the Government, and another of the Intendancy.

A Surveyor General.

A Harbormaster.

A Storekeeper, who takes charge of all public moveable property.

An Interpreter of the French and Spanish languages, and a number of other inferior officers.

All appointments in the province, with a salary of more than thirty dollars per month, are made by the King; and most of those with a lower salary, by the Governor or Intendant, as belongs to their respective departments. There are no officers chosen by the people.

The salaries and perquisites of the principal officers are as follows:

	Salary.	*Perquisites.*
Governor, annually -	6,000	2,000
Intendant - - -	4,000	none
Auditor - - -	2,000	2,000
Contador - - -	2,000	none
Assessor - - -	1,200	1,000
Treasurer - - -	1,200	none
Administrador - -	1,200	none
Secretary of Government	600	2,000

The commandants of districts receive each one hundred dollars from the King annually, unless they are possessed of a military employment or pension.

Taxes and Duties.

Instead of paying local taxes, each inhabitant is bound to make and repair roads, bridges, and embankments through his own land.

A duty of six per cent. is payable at the custom-house on the transfer of shipping. It is ascertained upon the sum the buyer and seller declare to be the real consideration. As no oath is required from either, they seldom report more than half the price.

The following taxes are also payable in the province:

Two per cent. on legacies and inheritances, coming from collaterals, and exceeding two thousand dollars.

Four per cent. on legacies, given to persons who are not relatives of the testator.

A tax on civil employments, the salaries of which exceed three hundred dollars annually, called *media annata*, amounting to half of the first year's salary. By certain officers it is to be paid in two annual instalments, and by others in four. The first person appointed to a newly created office pays nothing, but the tax is levied on all who succeed him.

Seven dollars is deducted from the sum of twenty, paid as pilotage by every vessel entering or leaving the Mississippi; but the treasury provides the boats, and pays the salary of the pilots and sailors employed at the Balize. The remainder of the twenty dollars is thus distributed: to the head pilot four dollars; to the pilot who is in the vessel four dollars; and five dollars to the crew of the row-boat that goes out to put the pilot on board, or take him ashore.

A tax of forty dollars per annum for licenses to sell liquors.

A tax on certain places when sold, such as those of regidor, notary, attorney, &c.

But the principal tax is that of six per cent. levied on all imports and exports, according to a low tariff. The proceeds of which net about one hundred and twenty thousand dollars, whilst all the other taxes are said not to yield more than five or six thousand dollars annually.

Expenses and Debt.

The expenses of the present Government, comprehending the pay and support of the regiment of Louisiana, part of a battalion of the regiment of Mexico, a company of dragoons, and one of artillery, which form the garrison of the country, including Mobile, the repairs of public buildings and fortifications, the maintenance of a few galleys to convey troops and stores throughout the province, Indian presents, and salaries of officers, clergy, and persons employed for public purposes, amount to about six hundred and fifty thousand dollars. A sum, in specie, which does not generally exceed four hundred thousand dollars, is annually sent from Vera Cruz; but this, together with the amount of duties and taxes collected in the province, leaves usually a deficiency of one hundred or one hundred and fifty thousand dollars, for which certificates are issued to the persons who may have furnished supplies, or to officers and workmen for their salaries. Hence a debt has accumulated, which, it is said, amounts at present to about four hundred and fifty thousand dollars. It bears no interest, and is now depreciated thirty per cent. The latter circum-

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stance has taken place not from want of confidence in the eventual payment of the certificates, but from the uncertainty of the time when, and the want and general value of specie. The whole of this debt is said to be due to the inhabitants, and to American residents. It would have been long since paid off, but for a diversion of the funds, destined for that purpose, to different and external objects.

Imports and Exports.

The productions of Louisiana are, sugar, cotton, indigo, rice, furs and peltry, lumber, tar, pitch, lead, flour, horses, and cattle. Population alone is wanting to multiply them to an astonishing degree. The soil is fertile, the climate salubrious, and the means of communication between most parts of the province certain, and by water.

The following has been received as a sketch of the present exports of Louisiana, viz:

20,000 bales of cotton, of three cwt. each, at twenty cents per pound, increasing - -	$1,344,000
45,000 casks of sugar, ten cwt. each, at six cents per pound, increasing -	302,400
800 casks of molasses, one hundred gallons each, increasing - - -	32,000
Indigo, diminishing rapidly - -	100,000
Peltry - - - - - - -	209,000
Lumber - - - - - - -	80,000
Lead, corn, horses, and cattle, uncertain.	
All other articles, suppose - - -	100,000
	2,158,000

According to official returns in the Treasury of the United States, there were imported into our territory from Louisiana and Florida merchandise to the following amounts, in the several years prefixed:

In 1799, to the value of - -	$507,132
In 1800, to the value of - -	904,323
In 1801, to the value of - -	956,635
In 1802, to the value of - -	1,006,214

According to the same authority, (which makes the total of the exports to amount to two millions one hundred and fifty-eight thousand dollars,) the imports in merchandise, plantation utensils, slaves, &c., two and a half millions—the difference being made up by the money introduced by the Government to pay the expenses of governing and protecting the colony.

According to the returns in the Treasury of the United States, exports have been made to Louisiana and Florida to the following amount, in the years prefixed:

In 1799, foreign articles, to the value of -	$3,056,268
In 1799, domestic articles, to the value of -	447,824
Total - - - - - - -	$3,504,092
In 1800, foreign articles, to the value of -	$1,795,127
In 1800, domestic articles, to the value of -	240,662
Total - - - - - - -	$2,035,789
In 1801, foreign articles, to the value of -	$1,770,794
In 1801, domestic articles, to the value of -	137,204
Total - - - - - - -	$1,907,998
In 1802, foreign articles, to the value of -	$1,054,58[illegible]
In 1802, domestic articles, to the value of -	170,1[illegible]
Total - - - - - - -	$1,224,71[illegible]

It is to be observed, that if the total of the imports and exports into and from these Provinces (of which the two Floridas are but a very unimportant part, with respect to both) be as above supposed, viz:

Imports - - - - - -	$2,500,000
Exports - - - - - -	2,158,000
Making together - -	$4,658,000

The duty of six per cent. ought alone to produce the gross sum of two hundred and seventy-nine thousand four hundred and eighty dollars; and that the difference between that sum and its actual net produce arises partly from the *imperfect* tariff by which the value of merchandise is ascertained, but principally from the smuggling, which is openly countenanced by most of the revenue officers.

Manufactures.

There are but few domestic manufactures. The Acadians manufacture a little cotton into quilts and cottonades; and in the remote parts of the Province the poorer planters spin and weave some negro cloths of cotton and wool mixed. There is one machine for spinning cotton in the parish of Iberville, and another in the Opelousas, but they do little or nothing. In the city, besides the trades which are absolutely necessary, there is a considerable manufacture of cordage, and some small ones of shot and hair powder. There are likewise in, and within a few leagues of the town, twelve distilleries for making taffia, which are said to distil annually a very considerable quantity; and one sugar-refinery, said to make about two hundred thousand pounds of loaf sugar.

Navigation employed in the trade of the Province.

In the year 1802, there entered the Mississippi two hundred and sixty-eight vessels of all descriptions, eighteen of which were public armed vessels, and the remainder merchantmen, as follows: Ships, 48 American, 14 Spanish; brigs, 63 American, 17 Spanish, 1 French; polacres, 4 Spanish; schooners, 50 American, 61 Spanish; sloops, 9 American, 1 Spanish. Total, 170 American, 97 Spanish, 1 French.

Of the number of American vessels, twenty-three ships, twenty-five brigs, nineteen schooners, and five sloops, came in ballast; the remainder were wholly or in part laden. Five Spanish ships and seven schooners came in ballast. The united tonnage of all the shipping that entered the river, exclusive of the public armed vessels, was thirty-three thousand seven hundred and twenty-five register tons.

In the same year there sailed from the Missis-

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ro hundred and sixty-five sail, viz: Ships, ıerican, 8,972 tons; 18 Spanish, 3,714 tons. 8 American, 7,546 tons; 22* Spanish, 1,944 Schooners, 52 American, 4,346 tons; 58 ı, 3,747 tons. Sloops, 8 American, 519 tons; ıish, 108 tons. Polacres, 3* Spanish, 240 Total, 158 American, 21,383 tons; 104 Span- 53 tons.

ıoners, 3 French, 105 tons.

l American 158, tons 21,383; total Span- tons 9,753; total French 3, tons 105. Grand 5 sail, 31,241 tons.

tonnage of the vessels which went away ıst, and that of the public armed ships, are luded in the foregoing account; these latter away masts, yards, spars, pitch, tar, &c., one thousand tons.

e first six months of the present year, there the Mississippi one hundred and seventy- ıil, of all nations—four of which are public vessels, viz: two French and two Spanish, tonnage is not enumerated—as follows: 23 American, 5,396 tons; 14 Spanish, 3,080 French, 1,002 tons. Brigs, 44 American, ıns; 20 Spanish, 2,173 tons; 8 French, 878 Polacres, 3 Spanish, 480 tons; 2 French, ıs. Schooners, 22 American, 1,899 tons; ıish, 1,187 tons; 7 French, 488 tons. Sloops, rican, 278 tons; 3 Spanish, 167 tons.—To- American, 13 264 tons; 58 Spanish, 7,087 2 French, 2,804 tons.

l of American ships 93, tons 13,264; total nish ships 58, tons 7,087; total of French 2, tons 2,804. Grand total, 173 ships, 23,155

ıe same six months there sailed from the ıippi one hundred and fifty-six vessels, viz: 21 American, 18 Spanish, 2 French; brigs, ıerican, 31 Spanish, 1 French; polacres, 4 h; schooners, 17 American, 26 Spanish, 5 ı; sloops, 2 American, 1 Spanish. Total, erican, 80 Spanish, 8 French.

Coasting Trade.

re is a considerable coasting trade from Pen- Mobile, and the creeks and rivers falling nd in the neighborhood of, Lake Pontchar- from whence New Orleans is principally ed with ship-timber, charcoal, lime, pitch, r, and partly with cattle; and the places named are supplied with articles of foreign ı and produce in the same way from Orleans. essels employed are sloops and schooners— f which are but half-decked—from eight to ns; five hundred of which, (including their ed voyages,) and thirteen galleys and gun- entered the bayou St. Jean last year. There wise a small coasting trade between the At- ıs and Opelousas, and New Orleans, by way Balize, which would much increase if there ıy encouragement given by Government to away a few obstructions, chiefly caused by timber, in the small rivers and creeks lead- them.

ne in ballast.

DIGEST OF THE LAWS OF LOUISIANA.

[Communicated to Congress, Nov. 29, 1803.]

To the Senate and House of Representatives of the United States:

I now communicate an appendix to the information heretofore given on the subject of Louisiana. You will be sensible, from the face of these papers, as well as of those to which they are a sequel, that they are not and could not be official, but are furnished by different individuals as the result of the best inquiries they had been able to make, and now given, as received from them; only digested under heads to prevent repetitions.

Nov. 29 1803. TH. JEFFERSON.

Appendix No. 1.

Don Alexander O'Reilly, Commander of Benfayou, of the Order of Alcantara, Lieutenant General of the Armies of His Majesty, Inspector General of Infantry, and, by commission, Governor and Captain-General of the Province of Louisiana.

The process which has been had in consequence of the insurrection which has taken place in this colony, having fully demonstrated the part and influence which the council have taken in those proceedings, countenancing, contrary to duty, the most criminal actions, when their whole care should have been directed to maintaining the people in the fidelity and subordination which are due to their Sovereign; for these reasons, and with a view to prevent hereafter evils of such magnitude, it is indispensable to abolish the said council, and to establish in their stead that form of political government and administration of justice prescribed by our wise laws, and by which all the states of His Majesty in America have been maintained in the most perfect tranquillity, content, and subordination. For these causes, in pursuance of the power which our Lord the King (whom God preserve) has been pleased to confide to us by his patent, issued at Aranjuez, the 16th April, of the present year, to establish in the military police, and in the administration of justice and of his finances that form of government, dependence, and subordination, which should accord with the good of his service and the happiness of his subjects in this colony: We establish, in his royal name, a city council or cabildo, for the administration of justice and preservation of order in this city, with the number of six perpetual regidors, conformably to the second statute, title 10, book 5, of the Recopilation des Indes; among whom shall be distributed the offices of alferes royal, alcaid mayor provincial, alguazil mayor, depositary general, and receiver of penas de camara, or fines for the use of the royal treasury; these shall elect, on the first day of every year, two judges, who shall be styled alcaids ordinary, a syndic procureur general, and a manager of the rents and taxes of the city; such as the laws have established for good government and faithful administration of justice. And as the want of advocates in this country, and the little

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knowledge which his new subjects possess of the Spanish laws might render a strict observance of them difficult, and as every abuse is contrary to the intentions of His Majesty, we have thought it useful, and even necessary, to form an abstract or regulation drawn from the said statutes, which may serve for instruction and elementary formulary in the administration of justice and economical government of this city, until a more general knowledge of the Spanish language may enable every one, by the perusal of the aforesaid statutes, to extend his information to every point thereof. In consequence thereof, and with the reserve of His Majesty's good pleasure, we order and command the justices, cabildo, and their officers, to conform punctually to what is required by the following articles:

SECTION I.—*Of the Cabildo.*

1. The cabildo, at which the Governor shall preside, or, in his absence, the alcaid ordinary, who shall have the first voice, shall assemble at the city hotel on the first day of every year, and proceed to the election of alcaids ordinary and the other officers above mentioned; it shall also assemble every Friday, for the purpose of deliberating on all that may concern the public welfare. The syndic procureur-general shall propose in these assemblies what may appear to him for the welfare of the republic. One or two regidors shall immediately after inform the Governor, if he has not presided, of the resolutions that may have been taken; and, except in pressing cases when the cabildo for very important reasons may assemble at the Governor's dwelling, it shall not assemble in any other place than the city hotel; under the penalty, to the officers who compose it, of being deprived of their employments.

2. In urgent cases, which cannot be deferred until the usual day of meeting, the regidors may hold an extraordinary sitting; they shall be notified to that effect by one of the doorkeepers of the cabildo; and if any one of the members shall not have been notified, the resolutions which may have been taken shall, if he shall challenge the same, be void; as also in case the minority should not have been notified, even if those who have not been notified shall not object thereto. No assembly shall ever be held but by order of the Governor, and the assistants shall keep a profound silence in respect to the subject upon which the assembly may have deliberated.

3. The regidors shall have an active voice in the elections, as well as the alcaids of the preceding year, who shall remain in the cabildo until the election of their successors shall be confirmed, and they shall have been received. The alcaid, however, who, in the absence of the Governor, shall exercise the functions of President, shall not have an active voice; and so soon as the elections shall have been determined, the secretary of the cabildo shall give information thereof to the Governor, who alone may decide on the validity of the opposition made by any member to the persons elected to the municipal offices, and confirm the alcaids and other officers.

4. The office of alcaid should be given to capable persons who may have the information necessary to fill worthily a charge so important. They shall have a house in the city, and shall reside therein. Those who are employed in the minister may be named to those offices; and they may also be given to the regidors, whose employments may not be incompatible with those places.

5. The alcaids, and the other elective officers of the cabildo, cannot be continued in their employments but when all the members without exception shall have given their votes for their continuation. Without this condition, they cannot be re-elected until two years after they shall have quitted the distinguishing badge of their office.

6. Neither the officers of the finances, those who are indebted to the said finances, the sureties of either the one or the other, those who have not attained the age of twenty-six years, nor the new converts to our holy faith, can be elected to the said offices.

7. The election being confirmed by the Governor, the doorkeepers shall deliver tickets from the scrivener to the elected, notifying them to attend at the hall of the assembly, in order to take the oath prescribed by law; the form of which will be found annexed to this regulation, and to be received and put in possession of their offices.

8. The scrivener of the Government will keep a book entitled "Resolutions," in which he shall record the elections and decisions of the assemblies, ordinary and extraordinary; and which shall be signed by all the judges and members who may have assisted thereat.

9. The regidors cannot give their votes for the said offices in favor of their father, son, brother, step-father, son-in-law, step-son or step-brother, of their wives, although they may be elected by all those who shall be entitled to vote.

10. Whenever the cabildo shall *deliberate* upon an affair which may personally *regard a regidor*, or other officer of the cabildo, or even any one of his kindred, or for other particular reasons which might induce a suspicion of partiality, he shall withdraw immediately, and shall not return until the affair shall have been decided.

11. All decrees, royal provisions, and despatches, which may be addressed to the corporation either by the Governor or other authorized minister, shall be opened in the cabildo only, where they shall be recorded, and originals preserved in the archives of the said cabildo.

12. In case of the death or absence of one of the alcaids ordinary, the alferes royal shall exercise the duties of that office during the time that may be wanting to complete the year of him who may be deceased or absent: and, if two alcaids should be wanting at the same time, the other place shall fall of right to the senior regidor, provided he does not hold in the cabildo any office incompatible with that employment, as specified in the present regulation, under the heads of those several offices.

13. Whenever the regidors may assist in a body, they shall preserve the order following, as also in the cabildo, viz: the alferes royal shall take the

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ce; the alcaid mayor provincial the next; ıazil mayor, and the other regidors accordheir rank and their seniority.

Each regidor, according to his rank, and by hall be charged with the maintenance of nicipal ordinances, and the other disposi- government for the public good. He shall to the prices of provisions, exacting the fines, tting in force the penalties incurred by the ents.

Whenever there shall be the question of nting the price of meat, with which this abundantly and constantly supplied, the , at a public bidding, shall adjudge the con- him who shall oblige himself to furnish it best terms and for the greatest advantage public.

The cabildo shall have cognizance of ap- om sentences pronounced either by the Gov- or by the alcaids ordinary where the sum ot exceed 90,000 maravedis; which must be tood as extending only to causes wholly or in criminal cases the appeal must be o the superior tribunal, which His Majes- have the goodness to appoint, in conse- of my representations to him on that sub-

To legalize similar appeals, the cabildo shall two regidors, who, in quality of commis- , and after having taken the oath, shall de- n the justice or injustice of the sentence which an appeal is made, conjointly with idge who may have pronounced the same. nomination shall be made so soon as the ca- shall be required thereto by the appellant; rm of which, and of the institution of the ppeal, will be detailed in their places.

In the first ordinary assembly which may d after that for the elections of each year, bildo shall name two regidors to receive the nts of the mayordome de proprios of the pre- year, of the sums which he may have re- for account of the city, and of the expendi- by order of the cabildo for the objects to those sums are destined. They shall have accounts rendered with the greatest exacti- and shall oblige the said mayordome to de- up immediately to his successor the residue said account; the said regidors being respon- or the total thereof when the said accounts be settled by one of the principal officers of e.

Although the application and expenditures proprios for the objects to which they are ed belongs to the cabildo, it cannot, even in rdinary cases, dispose of more than 3,000 edis thereof; and when a greater expendi- nay be necessary, the consent of the Gov- must be previously obtained, without which id cabildo cannot assign either salary or al- ce upon any occasion whatsoever.

The electors in the two jurisdictions being sible for the injury and detriment which the may sustain by the bad conduct and inca- of the elected for the administration of jus- nd the management of the public interests, should have for their objects in the election of alcaids ordinary and the other officers the service of God, the King, and the republic; and, to prevent an abuse of that great trust, their choice should be directed to those persons who shall appear most suitable for those offices, by the proofs they may possess of their affection for the King, their disinterestedness, and their zeal for the public welfare.

21. The cabildo is hereby informed that it should exact from the Governors, previous to their taking possession, a good and sufficient surety and a full assurance that they will submit to the necessary inquiries and examinations during the time they may exercise their employments; and that they will pay what may be adjudged and determined in that respect. This article merits the most serious attention of the cabildo, who is responsible for the consequences which may result from an omission or neglect of exacting these securities from the Governor.

22. The offices of regidor and scrivener of the cabildo may be sold; those officers shall also be allowed to assign them in the manner prescribed by the laws of this kingdom. In acknowledgment of this favor, and in consideration of the value that these offices will acquire by the facility of assigning them, by which they will be effectively transferred from one person to another, there shall be paid into the royal treasury, for the first assignment, one-half the sum at which the said offices may be rated, and one-third of the same for every subsequent assignment thereof, exclusive of the royal custom of half annats, (receivable without any deductions in Spain;) which custom shall also be paid by the alcaids ordinary who may be yearly elected to those offices.

23. To render these assignments valid, the assigner should survive the same the term of twenty days, computing from the date thereof; and the assignee should present himself to the Governor within seventy days from the date of the same, provided with an authentic act substantiating the said assignment, as likewise the above-mentioned twenty days that the assigner shall have survived the same. Should neither of those precautions be taken, the assigner shall forfeit the said office, which shall be deemed vacant to the profit of the King's demesne; and neither he nor his heirs may lay claim to any portion of the price at which the same may be sold.

24. The said assignments shall not be valid, unless made in favor of persons known to be capable, of the age of twenty-six years, and possessing the capacity and talents necessary to the common good of the republic, and worthy of the cabildo, on account of the injury which would result therefrom should those officers be deficient in these qualifications. The said assignments shall be carefully executed and preserved by a public notary of the place at which they may be made.

Section II.—*Of the Alcaids Ordinary.*

1. The alcaids ordinary shall have cognizance of all matters in dispute, either civil or criminal, between inhabitants residing within their jurisdiction, which shall extend throughout the city

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and the dependencies thereof, excepting those which may come within the cognizance of the ecclesiastical, military, or other special court.

2. The alcaids ordinary cannot interfere in the affairs of Government, which come exclusively within the jurisdiction and competency of the Governor.

3. In all matters on which the cabildo may deliberate, the alcaids ordinary, who may assist thereat, shall, during their year of office, have an equal vote with the regidors.

4. The alcaids shall appear in public with decency and modesty, bearing the wand of royal justice,—a badge provided by law to distinguish the judges. When administering justice they shall hear mildly those who may present themselves, and shall fix the hour and place of audience, which should be at 10 o'clock in the morning, at the city hotel; and for the decision of verbal causes, in the evening between 7 and 8 o'clock, at their dwellings, and in none other.

5. One of the principal objects of justice being to prevent, effectually, those disorders which take place during the night, one of the alcaids, assisted by his alguazils and the scrivener, should go the rounds of the city; and, in case a greater force should be necessary, they may not only demand it from those persons who may be present, but also from the corps-de-garde nearest thereto.

6. It is also the duty of the alcaids ordinary to keep a watchful eye upon fornication, and to punish the same, and all other public offences, conformably to the laws; of which a sufficient detail will be given herein.

7. The alcaids may hear and decide verbally in civil causes, when the demand shall not exceed twenty piasters, as also in criminal causes of little importance. They may also hear and decide verbally those which may exceed that sum, in case the parties interested shall consent thereto.

8. Causes legaily brought before one of the judges, shall be continued and determined in his tribunal, and neither the Governor nor any other shall deprive him of the cognizance thereof. The Governor, however, being required thereto by the parties, may, by an order in writing, and suitable to the case, require and summon the alcaid to render speedy justice, conformably to law.

9. In cases of controversy, with respect to jurisdiction, between the Governor and one of the alcaids, or between these last, where one of them may claim the cognizance of a cause instituted with the other, either by reason of the said cause having been also instituted in his tribunal, or his supposing the same exclusively within his jurisdiction, they shall draw up a *procès-verbal* of the said controversy, in which they shall set forth their pretensions in a grave and judiciary style. The case shall remain in suspense until the decision of the superior, whom they shall be bound to consult, and to whom they shall deliver an exact copy of the proceeding, unless one of the judges may give way to the claim of the other, and thereby put an end to the said controversy. If, however, in the interval of the decision, one of the judges should proceed in, or take the least cognizance of, the aforesaid cause, he shall forfeit his [illegible] the same, which shall be immediately [illegible] the other.

10. If one of the parties pleading [illegible] against the alcaid who may have [illegible] cognizance of a cause, he may not [illegible] same but in conjunction with the other; [illegible] this last should also be excepted against [illegible] associate himself with a regidor, who [illegible] an oath to do his duty impartially, [illegible] nate the cause according to law, and [illegible] possible. Whatever may be done by [illegible] alone, after he may have been excepted [illegible] shall be void and of non-effect. The [illegible] the party to the written act of except[illegible] is mistrustful of the alcaid, shall be [illegible] render the same valid; but, if the party [illegible] pose to exclude him entirely from the [illegible] the cause, besides the aforesaid oath, he [illegible] known and substantiate the ground [illegible] relies for the support of his pretension [illegible] judge should be related, even in the [illegible] to the adverse party, or in such [illegible] ship with him as to excite a suspicion [illegible] or prepossessed against the exceptor [illegible] cases he shall be excluded from the [illegible] cause in controversy, which shall [illegible] to the other alcaid.

11. Two referees appointed [illegible] and the other by the exceptor, [illegible] to execute their office impartially, [illegible] whether the case be of the nature [illegible] tioned; and, if of the said nature, [illegible] the entire exclusion of the alcaid [illegible] if a difference should arise between [illegible] third, named by the judge, shall [illegible] which decision shall be indispensable [illegible]

12. The diversity of cases not permi[illegible] cial detail of the forms of proceeding [illegible] alcaids shall be guided by the formula [illegible] annexed; and shall consult with the [illegible] to be appointed for that purpose, upon [illegible] ful cases which may occur in their [illegible] which may not be provided for by the [illegible] ulary; and shall approach, as nearly [illegible] to the spirit of our laws for the administration [illegible] justice.

13. The alcaids ordinary, accompanied [illegible] alguazil mayor, and the scrivener, [illegible] Friday, make the visitation of the prison [illegible] shall examine the prisoners, the causes [illegible] detention, and the time of their imprisonment [illegible] They shall release the poor who may [illegible] for their expenses, or for small debts [illegible] jailer shall not exact from them any [illegible] fee. The alcaids may not set at [illegible] the prisoners detained by order of the [illegible] or of any other judge, without their [illegible] sent.

14. They may not release those who [illegible] prisoned for debts due to the domain; [illegible] imposed by law, unless the sum due [illegible] viously deposited.

15. The Governor, with the alcaids [illegible] zil mayor and the scrivener, shall, [illegible] eves of Christmas, Easter, and Pentecost [illegible]

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l visitation of the prisons, in the manner bed by the laws of the Indies. They shall those who have been arrested for criminal of little importance, or for debts, when the are known to be insolvent; and shall al- em a sufficient term for the payment of reditors.

ɔN III.—*Of the Alcaid Mayor Provincial.*

he regidor alcaid mayor provincial shall e rod of justice, and shall have cognizance ies committed in the inhabited places with- cities and villages. Thefts, robberies, carry- ay of property by force, rapes, as also trea- alice, accompanied by wounds, or followed th, setting fire to or burning down of houses s, and other crimes of this nature, shall be the competency of the said alcaid mayor cial.

e may also take cognizance of the aforesaid although committed in cities, when the ers have quitted the same, and have with- to the country with their plunder; as also ders or assaults committed on their officers in the exercise of their duties, or in the in- thereof, if the same are the effect of malice, wever, the Governor, or one of the judges ry of the city, shall have previously taken ance thereof, the alcaid mayor provincial ot interfere therein, by reason that the ju- ion of the same is vested in the alcaid ordi- The judge, however, who shall have ap- ided the offender, shall have the preference , even if the others should have preceded

Whenever it shall be known that the crime ot concern the tribunal of the St. Herman- he alcaid mayor provincial shall refer the ance of the same to one of the alcaids ordi- without waiting until he may be required o.

The alcaid mayor provincial shall see that lers are furnished with provisions at reason- rices, as well by the proprietors of planta- s by the inhabitants of the places through they may pass.

The principal object in the institution of the al of the St. Hermandad being to repress ers, and to prevent the robberies and assas- ons committed in unfrequented places by onds and delinquents, who conceal them- in the woods and attack travellers and the nt inhabitants, the alcaid mayor provincial l assemble a sufficient number of the com- ries or brothers of the St. Hermandad to his jurisdiction of those kinds of people, by ing them with spirit, seizing them or putting to flight.

For the purpose aforesaid, and conformably usage of the other India provinces within minions of His Majesty, the alcaids mayors ciaux, their commissaries, and the brothers St. Hermandad, shall have the right of ar- g, either within or without the city, all run- negroes and fugitives, and may exact a rea- le fee therefor; which right shall not be vested in any other person save the master of the fugitive slave.

The said fee is so much the more just, inasmuch as the alcaid mayor provincial, to comply with his duty, must, at his own expense, travel through the unfrequented places, for the benefit of the inhabitants.

7. The said officer shall render speedy justice in all matters within his competency; and from his judgment there shall be no appeal; otherwise it would be impossible to remedy the injurious consequences that would result therefrom But, on the other hand, his judgments shall be pronounced in strict conformity with the spirit of the laws, to which end he shall consult some lawyer; but, in the interim, he shall be guided by the instructions herein contained, which relate to the administration of justice and the forms of proceeding.

8. This office of the Hermandad being created with a view to prevent those disorders which may be committed in unfrequented places, the alcaid mayor should make frequent excursions from the city. This duty consequently renders his employment incompatible with that of alcaid ordinary, to which he cannot be elected, unless he shall have previously obtained permission of the King, to commit to a lieutenant, appointed by himself, the duties of the St. Hermandad.

9. The said officer and his lieutenants should take an oath of the form annexed to this abridgement; he shall account to the Governor for the appointments he may have made, and shall notify him of the judgments he may have pronounced, to the end that the same may be put into execution. Although this formality is not prescribed by any law, yet it is necessary for the purpose of preserving harmony and subordination, and for the facility of procuring assistance.

10. In all controversies, with respect to jurisdiction, which may occur between the tribunal of the St. Hermandad, and any other tribunal of the province, the parties shall conform punctually to the instructions which have been given in the particular article which relates to the alcaids ordinary. The instructions which have been given in relation to exceptions against judges, should also be strictly followed, as no alteration should take place on that subject between these officers.

SECTION IV.—*Of the Alguazil Mayor.*

1. The alguazil mayor is an officer charged with the execution of sentences and judgments rendered, as well for payments ordered, taking possession of goods for sale, and imprisonments, as for the punishment of crimes. He cannot be elected alcaid ordinary, unless he shall have appointed a lieutenant to discharge his duties, in the manner prescribed to the alcaid mayor provincial.

2. Recovery of moneys upon writs of execution, orders for taking possession of goods, and seizures of real property, shall be carefully executed by the alguazil mayor, taking the fees allowed by law, and fixed by the tariff included in the present regulation.

3. The alguazil mayor shall also have the super-

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intendence of the prisons, shall commission the jailers and keepers of prisons, after having presented them to the Governor, that he may judge of their capacity for those offices, under the penalty of being deprived, for one year, of the right of nominating the same; which shall, for that term, be vested in the Governor. All the jail fees which the prisoners may pay shall be for the use of the alguazil mayor.

4. The said officer cannot appoint as lieutenants any persons but such as are known to be suitable for those employments, who are young, and do not exercise any mechanical profession; they shall be presented to the Governor, and approved by him, and shall take the oath required. The alguazil mayor may not appoint to the said office either the relations or domestics of the judges and officers, but he shall be allowed to change the said lieutenants when he may have just reasons therefor.

5. The alguazil mayor and his lieutenants shall go the rounds, and shall visit the public places, both by night and day, to prevent noises and disputes, under the penalty of being suspended in their offices, and payment of the damages that result from their negligence. They shall arrest, without other authority, the offenders, and shall give immediate information thereof to the alcaids. They shall not tolerate unlawful games, nor public and scandalous offences. They are also hereby informed that, although they have the power of arresting any one without other authority, they may not release the same, under the penalty of being deprived of their offices, and of being declared incapable of holding any other.

6. The alguazil mayor shall conform strictly to the articles which relate to the prisons, and to the tariff which specifies the fees which are demandable. He shall also assist with the judges ordinary in the visitations of the prisons, which shall be made at times prescribed by this regulation.

Section V.—*Of the Depositary General.*

1. The depositary general, whose duties are incompatible with those of a judge, cannot be elected alcaid ordinary, unless he may name a lieutenant, who may be charged with the care of the deposits.

2. Before entering upon the said office, the depositary general shall give good and sufficient sureties, who shall answer for the safety of the deposits, and who shall be approved by the Governor, alcaids, and the cabildo. This warranty shall be recorded in the book to be kept by the scrivener of the cabildo for the recording of the deposits, in which he shall inscribe the day, month, and year of the said warranty.

3. The Governor, the alcaids, and the cabildo, shall carefully examine the books which exhibit the sureties of the depositary general, the state of his property, and that of the said sureties, which shall be certified by the scrivener of the cabildo, in order that the same may be verified the succeeding year, and the necessary order taken thereon.

4. If, by the said examination, it [illegible] that the situation of the depositary ge[illegible] his sureties, be such as to excite a[illegible] they shall prevent him from exer[illegible] of his office until he shall have re[illegible] counts, and given a better security.

5. The depositary general shal[illegible] first order the sums which may have [illegible]ited with him, in the same coin in w[illegible] ceived them; to which the judge[illegible] officers competent thereto, should p[illegible] attention.

6. The depositary general shall re[illegible] posits in a book similar to that of [illegible] of the cabildo; he shall receive fe[illegible] and for deposit fees, three per cent [illegible] in the commission which he has rece[illegible] exercise of his office.

Section VI.—*Of the Receiver of F[illegible]*

1. The receiver of fines (whose [illegible] compatible with those of alcaid [illegible] have cognizance of all matters in w[illegible] as also of those imposed by the je[illegible] last he shall keep and render an a[illegible] for that purpose a book similar [illegible] the scrivener for the same obje[illegible] shall be entered according to [illegible]

2. For the security of the [illegible] count rendered by the receiv[illegible] give good and sufficient sure[illegible] manner as the depositary gener[illegible] shall yearly be made into the [illegible] said sureties, which shall be charge[illegible] less substantial.

3. To the end that the receiver m[illegible] charge the duties of his office, a[illegible] knowledge be acquired of the fund[illegible] session, the scrivener, in whose pres[illegible] will have been laid, shall advise the [illegible] the cabildo of the same, who shall [illegible] a book, the leaves of which shall b[illegible] the Governor. After which the scr[illegible] cabildo shall inform the receiver the[illegible] these means, will at once perceive the[illegible] the sums which he should receive; [illegible] of the cabildo will serve to make hi[illegible] account of the sums which are entere[illegible]

4. The receiver of fines cannot [illegible] proceeds thereof without the order o[illegible] of His Majesty, by reason that the [illegible] the property of His Majesty cannot [illegible] without his approbation. He shall [illegible] that portion of them only which [illegible] posed by the judges in conformity t[illegible] he may receive, and not otherwise.

5. The receiver shall discharge [illegible] aforesaid portion of fines, the drafts [illegible] be drawn by the Governor, the alca[illegible] other judges, who shall restrain these [illegible] sums which may be necessary.

6. The said receiver shall render a [illegible] count of the sums he may have re[illegible] paid in the execution of his office. He [illegible] shall be settled by the officers of finance [illegible] ed thereto in this province.

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:e shall be allowed a commission of ten per n all sums which may be recovered and 'd by himself, or by those commissioned by ı r the recovery thereof.

TION VII.—*Of the Procureur General.*

he procureur general of the republic is an appointed to assist the public in all their ns, to defend them, pursue their rights and justice, and to pursue all other claims have relation to the public cause.

ı consequence thereof, the procureur gen- ho is appointed solely for the public good, ee that the municipal ordinances are strict- rved, and shall endeavor to prevent every or thing by which the said public might

or these purposes he shall apply to the tri- competent thereto, for the recovery of nd revenues due to the city funds, in qual- attorney for the city. He shall pursue with the activity and diligence necessary ıarge him from the responsibility in which ıld be placed by the slightest omission.

e shall see that the other officers of the l or cabildo discharge strictly the duties of ffices; that the depositary general, the re- of fines, and all those who are to give s, shall give such as are good and suffi- ınd in case of decadency therein, he shall d the renewal thereof, conformably to law.

:e shall be present at, and shall interpose division of lands, and other public mat- the end that nothing unsuitable or injuri- y occur in the distribution of the same.

ɔN VIII.—*Of the Mayordome des Propres.*

he mayordome des propres shall have the ement of, and shall receive all that is com- within the denomination of city funds; he ive receipts to debtors, and shall record all which he may receive, as also the expendi- e may make for account of the cabildo, in hat he may be able to render his accounts as his year of office shall expire.

e shall discharge the drafts of the cabildo, ıe rents of the city, and none other. He ıstain from furnishing or lending any sums individual whomsoever, under the penalty g responsible therefor, and of being de- incapable of holding any office under the c.

he construction and keeping in repair of , within and without the city, shall not be d out of the city funds; this expense shall ıe by those who shall enjoy the benefit , amongst whom the same shall be propor- in the manner pointed out by stat. 1, tit. k 4, of the Recopilation des Indes.

'hen any public work shall be undertaken, ɔy the cabildo or by individuals, care shall n that the same may be substantial and :. A regidor shall be named for that pur- ıo, without any requital, shall inspect the dertaking.

he expense of public mourning for the ımily shall be defrayed from the city funds, with all the economy which the cabildo can adapt to these circumstances.

SECTION IX.—*Of the Scrivener of the Cabildo.*

1. This officer shall preserve in his archives all the papers which may concern the cabildo, or its proceedings. He shall inscribe in a book all the securities and deposits which have relation to the depositary general; and, in another book, those which relate to the receiver of fines. He shall, also, keep a third book for guardians and their sureties, ordinary and extraordinary, in which he shall also record the patents and commissions by His Majesty, and shall take care to preserve the originals in the archives of the cabildo.

2. The scrivener of the cabildo shall never suffer any paper or act to be removed from his archives, and if the judges should be obliged to have recourse to the same, he shall furnish them a correct copy thereof, but shall never part with the original.

3. The said scrivener of the cabildo, and of the Government, shall note, at the foot of all acts and instruments of writing, and copies of the same which he may deliver, the fees which he may receive therefor, under the penalty of forfeiting the same, and of incurring the other penalties established, to prevent him from exacting more than is allowed by the tariff.

4. The scrivener of the cabildo, and of the Government, shall inscribe, in a separate book, the mortgages upon all contracts which may be made before him or any other; he shall certify at the foot of each deed, the charge or mortgage under which the sale or the obligation may have been made, conformably to the intention of the law, in order to prevent the abuses and frauds which usually result therefrom.

5. The regidors, the scrivener, and all those who may succeed to any of the venal offices established by the India laws, are hereby informed that the royal ordinances require that, within the term of five years, computing from the date of their commission, they must obtain His Majesty's confirmation, and present the same to the governor of the city or province in which they reside, under the penalty of being deprived of the said offices.

SECTION X.—*Of the Jailer and the Prisons.*

1. The jailer shall be appointed by the alguazil mayor, and approved by the Governor, before entering on the duties of his office. He shall also be presented to the cabildo to be received, and to take an oath to discharge faithfully the duties of the said office, to guard the prisoners, and to observe the laws and ordinances established in this respect, under the penalties therein declared.

2. The said jailer may not enter upon the duties of the said office until he shall have given good and sufficient sureties in the sum of two hundred piasters, which surety shall warrant that no prisoner detained for debt shall be released without an order from the judge competent thereto.

3. The jailer shall keep a book in which he

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shall inscribe the names of all the prisoners, that of the judge by whose order they have been arrested, the cause for which they are detained, and the names of those who may have arrested them. He shall reside in prison, and for each considerable fault committed by him he shall pay sixty piasters, applicable one-half to the royal chamber, and the other to the informer.

4. It is the duty of the jailer to keep the prison clean and healthy, to supply it with water for the use of the prisoners, to visit them in the evening, to prevent them from gaming or disputing, to treat them well, and to avoid insulting or offending them.

5. It is likewise the duty of the jailer to take care that the female prisoners are separate from the men; that both of them are kept in their respective apartments, and that they are not worse treated than their offence deserves, or than is prescribed by the judges.

6. With respect to his fees, the said jailer shall confine himself strictly to those which are established; he shall take none from the poor under a penalty of the value of the same. He may not, without incurring the same penalty, receive any gratification either in money or goods. He shall avoid entirely either playing, eating, or forming any intimacy with the prisoners, under the penalty of sixty piasters, applicable one-third to the royal chamber, one-third to the informer, and the remaining third to the poor prisoners.

Form of the oath to be taken by the Governors, the Alcaids, and the other Judges, when taking possession of their offices.

Don N., elected governor, or alcaid, &c., (according to the employment or office,) I swear before God, the holy cross, and the evangelists, to uphold and defend the mystery of the immaculate conception of our lady the Virgin Mary, and the royal jurisdiction to which I am attached by my employment. I also swear to obey the royal ordinances and the decrees of His Majesty, faithfully to discharge the duties of my office, to decide according to law in all cases which may come before my tribunal; and for the more certain attainment thereto, I promise to consult with such as are well informed in the law, whenever opportunities may occur in this city; and, lastly, I swear that I will never exact other fees than those fixed by the tariff, and that I will never take any from the poor.

Instructions upon the manner of instituting suits, civil and criminal, and of pronouncing judgments in general, in conformity to the statutes of the Recopilation de Castile and des Indes, for the government of the judges and parties pleading, until a more general knowledge of the Spanish dialect and more extensive information upon those statutes may be acquired: digested and arranged by Doctor Don Manuel Joseph de Urrustia and the counsellor Don Felix Rey, by order of his Excellency Don Alexander O'Reilly, Governor and Captain General of this Province by special commission of His Majesty.

SECTION I.—*Of Civil Judgments in General.*

It must, in the first place, be observed that in causes civil or criminal, of any nature whatsoever, persons belonging to any religious order may neither appear, nor make any demand without the permission of their superior. This permission is equally necessary to the son, whose father be living, and whose consent must be obtained; to the slave, who may not act without the consent of his master; to the minor, who must be authorized by his guardian, who may be chosen by himself at the full age of fourteen years, or appointed by the judge, when of an age less advanced; to the wife, who must obtain the permission of her husband; and, lastly, to lunatics and idiots, who must be represented by the guardian appointed by law to the care of their persons and property.

2. It must also be observed that the consent of the father is not necessary to the son, when pleading in his own name for the recovery of property or rights acquired by his services in war, which are styled *castrenses*, or by particular gratification from the prince; or, lastly, of those he may have acquired by some public employment, which are styled *quasi castrenses*. But in the case where the son shall demand a maintenance, or wish to be emancipated from his father, he shall previously obtain the permission of the judge, by reason of the consideration and great respect due to a father or other superior. The slave is also allowed the same course of proceeding towards his master, if the latter, in the exercise of his authority, shall exceed the bounds prescribed by law; in which case the slave is entitled to require either his liberty or to be sold. The wife may, also, without the consent of her husband, require her dowry, if he shall be on the point of squandering the same; or an alimony, in the case of separation or ill-treatment.

3. He who may purpose to institute an action at law for a sum exceeding one hundred livres, shall commence the same by a *petition setting* forth the fact, and the motives upon which he proceeds; he shall also specify whether his demand be for the proceeds of some sale, for money lent, or other similar claim, with every circumstance necessary to the elucidation of the case and for the information of the judge. He shall conclude by requiring either the return of the money, if lent, or the payment of his demand and the condemnation of the adverse party to the payment of costs, if he shall unjustly maintain the contrary.

4. The said petition shall be signed by the party or by his proxy, and shall then be presented to the judge, who shall cause the same to be presented to the party against whom the demand may be made, which proceeding shall have the validity of a citation. The defendant shall make his defence within nine days, computing from the day on which he may have been notified of the demand. He shall draw up a counter-declaration in answer thereto, which shall contain such arguments as tend to defeat the claim of the adverse party, if the same be not indisputable, and shall make his defence in the manner observed by the plaintiff in his introductory petition.

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5. If the defendant does not answer within nine days, the plaintiff shall require judgment by default, by a writing setting forth that the delay has expired; and moving that, no answer having been made, the defendant be condemned by default; and that, consequently, his claim be reputed acknowledged and sufficiently established.

6. If, on the contrary, the defendant shall answer within the nine days, and shall allege that he is not bound to defend the suit as to the merits thereof, by reason that judgment in the case is not within the competency of the judge who has taken cognizance of the same, that the plaintiff cannot plead in his own name, that the term of his engagement has not yet expired, or other similar exceptions, communication thereof shall be made to the plaintiff that he may reply, within six days, thereto. Upon his replication the judge shall decide whether the cause shall be defended as to the merits thereof; in which case, without admitting an appeal, the said cause shall be tried on the merits thereof.

7. But if the defendant, without producing any similar exception, shall set forth pleas tending indirectly to admit the demand, as, by alleging that the thing demanded has not become due, that the same has been already paid, or any other pleas, supported by vouchers, which may be admitted before the putting of the cause to issue, the effect of which pleas would discharge him from the demand, the same shall be communicated to the plaintiff, to reply thereto: a copy of which reply shall be delivered to the defendant for a rejoinder to the same; after which, the judge shall require the documents, and shall proceed to give judgment.

8. If the fact contested should be admitted to proof, as being doubtful, the same shall be determined within eighty days, at furthest; during which delay the parties shall furnish their proofs, and shall summon each other reciprocally to attend to the administering of the oath to the witnesses.

9. The testimony of the witnesses shall be so secretly given that neither of the parties shall have knowledge of the depositions of his own witnesses, nor those of the adverse party. The term to which the cause may have been continued having expired, one of the parties shall move that by reason of the said expiration the testimony of the witnesses be made public. This motion shall be communicated to the other party, who shall consent thereto, or if he shall not reply to the same, he shall be condemned by default, in the manner observed when one of the parties does not reply to the plea of the other. The judge shall order the publication of the said testimony, and the delivery thereof to the parties; observing that the same be first delivered to the plaintiff, that he may, if necessary, strengthen the same.

10. The testimony being made public, should the plaintiff find the witnesses of the defendant admissible, as being either his enemies, or the intimate friends or relations of the defendant, or for other causes which may weaken the faith which would otherwise be due to their testimony, shall draw up a declaration in which his exceptions shall be specified, after taking an oath that he has no intention of offending them; which oath shall be notified to the defendant, who may in reply state his exceptions to the witnesses of the plaintiff. The said exceptions shall then be put to the proof, and forty days may be granted therefor: one-half of the term allowed for the decision of the principal cause.

11. When the term allowed for the admission to proof of the exceptions shall have expired, the publication of the testimony, as in the principal cause, shall not be allowed; but the documents shall be delivered to the plaintiff, that he may set forth his proof; and if he shall establish that the same is more complete than that of the adverse party, a copy thereof shall be given to the defendant, upon whose reply, or in default thereof, the judge shall declare the controversy determined. He shall then order that the parties be summoned for the final decision, which must be given within twenty days, computing from the day on which he may have required the documents in the cause. He shall attentively examine the said documents, and determine the suit by condemning the debtor to payment, or by discharging him from the demand, according to the merits of the case.

12. If judgment be given for a sum not exceeding ninety thousand maravedis, an appeal to the cabildo may be made within five days, computing from the day on which the parties may have been notified of the sentence. If the judgment given be for a greater sum, an appeal shall be made to the tribunal to be appointed by His Majesty, in consequence of the representations which have been made to him on that subject. A brief explanation of the manner in which this recourse may be had, will be given at the conclusion of these instructions.

13. If no appeal shall be lodged within the five days allowed, the party who may have obtained judgment in his favor, shall draw up a writing, by which he shall, move that no appeal having been made within the legal delay, the judgment be considered definitive; and that, in pursuance thereof, execution be ordered; a copy of which shall be given to the adverse party; and on his reply, or in default thereof, the judge shall pronounce both on the validity of the judgment and the expiration of the delay; after which he shall order that the sentence take effect and be put into execution.

Section II.—*Of Executions.*

1. When a debt shall be fully established, and importing a confession of judgment, as by an agreement, or obligation made before a notary; by a simple note, legally acknowledged by the drawer; by confession of judgment, although without any written title from the debtor; by a definitive sentence of the court, or by the cash-books of the debtor acknowledged by him; in all these cases the creditor shall draw up a declaration setting forth his claim and his action, annexing thereto the document which entitles him to a writ of execution, and moving that, by virtue of the said document, a writ of execution be granted him for the sum due, as also the tenth, and the

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costs which may be allowed. He shall observe that his declaration contains the oath that the sum demanded is due, and ought to be paid by the debtor.

2. The judge shall examine if the document which entitles the creditor to a recovery imports a confession of judgment; and if such be the case, he shall order immediate execution, by addressing an order in writing to the alguazil mayor, directing him to summon the debtor to pay the demand, or, in default thereof, his property shall be seized to the value of the same, with the tenth and the costs.

3. By virtue of the said order the alguazil mayor shall summon the debtor; if he complies, the execution shall cease. If otherwise, his property shall be seized, and held in custody by the depositary general, unless he shall give good and sufficient security for the payment of the sum in which he is condemned by the sentence. But if he shall not give the security aforesaid, or if he has not property sufficient, he shall be imprisoned, unless exempted therefrom by the privilege of nobility, which is also enjoyed by the military, regidors, officers of finance, women, lawyers, physicians, and other distinguished persons. The alguazil mayor shall note, at the foot of the writ, his proceedings thereon, as also the day and hour of the same.

4. The property being seized, the creditor shall, by another writing, move that the same be valued by two capable persons, on whom the parties may agree, and that public notice be given that the sale thereof will be made after the usual delay, according to the nature of the property. The said delay shall be of nine days' duration for personal property, with a public notice every three days; and of thirty days' duration for real property, of which notice shall be given every nine days; but, if the debtor shall consent, the said notices need not be given.

5. The said term being expired, and public notice being given, the creditor shall require that the debtor be definitively summoned to make opposition, and prove that the sum demanded is not due, or has already been paid. In pursuance thereof the debtor shall be definitively summoned, if he has not previously opposed, which he might do during the time of seizure, or of his detention in prison.

6. If the debtor shall not make opposition, within three days, computing from the day on which he may have been definitively summoned, he shall be attached by default; but if he shall make opposition, he shall be ordered to prove his exceptions within ten days at furthest, which shall be common to both parties, to prove the justice of their pretensions in the manner which to them may seem best.

7. During the said delay, the proof offered by the two parties shall be received, and they shall cite each other reciprocally to attend at the administering of the oath to the witnesses, in conformity to the provision of section I, Nos. 8 and 9, for civil judgments in general; with this difference, however, that the said delay may be prolonged at the request of the creditor, and in which case the debtor shall enjoy the benefit of the said prolongation.

8. The term allowed having expired, no further proof shall be allowed, save the confession of the party; and the documents shall be returned to the creditor that he may set forth his right, of which a copy shall be given to the debtor. Upon his reply, or in default thereof, the judge shall require the documents, and shall proceed to give judgment.

9. He shall examine with attention if the exceptions made by the debtor are just, and more fully established than the claim of the plaintiff; and, if such be the case, he shall discharge him from the demand instituted against him. He shall order the restoration of his property, and shall condemn the plaintiff to the payment of costs.

10. If, on the contrary, the debtor has not proved his exceptions, and the sum demanded be found legally due, the judge shall declare the seizure to be valid, and shall order the fourth and last public notice of the sale to be given, and the adjudication of the property to the highest bidder, that from the proceeds of the same, the demand of the creditor may be fully discharged, as also the tenth and the costs. The creditor, shall, however, be held to give security in the amount of the sum, lest the sentence should be annulled by a superior tribunal.

11. This sentence shall be carried into execution notwithstanding appeal, but shall not prevent the party who may have been aggrieved, from appealing to the cabildo, provided the sum does not exceed 90,000 maravedis;* otherwise the appeal must be made to the superior tribunal, to be hereafter appointed by His Majesty.

12. Definitive judgment being pronounced, the day for the fourth and last notice of the sale of the property seized shall be appointed. On the said day the sale shall be made in the presence of the parties, who shall be legally summoned to attend; and the amount of his demand shall be paid to the creditor, who shall give the security aforesaid; the tenth shall be paid to the alguazil mayor, and the costs and expenses to the other officers, in conformity to the regulations of the tariff.

13. It must be observed, that, if the debtor discharges his debt within seventy-two hours after the seizure is pronounced to be valid, the tenth shall not be demanded; but in default thereof, the payment of the same may not be dispensed with; and on this account it has been heretofore declared indispensably necessary to note the day and the hour of the proceedings in the seizure.

SECTION III.—*Of Judgment in Criminal Causes.*

1. When information shall have been obtained of any crime, such as homicide, robbery, &c. having been committed, if no prosecutor shall appear the judge shall officially draw up a *procès-verbal*

* The 90,000 maravedis, mentioned both in the regulations and in the present instructions, make 22 piasters, 7 reals, and 2 maravedis, equal to 165 livres, 7 sols, 9 deniers.

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ontaining the knowledge he has acquired of the aid crime, and shall order an inquiry to be made nto the circumstances of the same; as, for ex-.mple, in the case of homicide, he shall cause the ›ody to be examined by one or more surgeons, vho shall declare whether the wounds have been nortal or otherwise; they shall set forth in what ›lace and in what situation the body was found, ınd with what instrument it may appear that the :rime has been committed. In the case of rob-›ery, an examination shall be made, and the scriv-ner shall detail and certify the marks of violence ›n the house or the furniture, indicating that the aid crime has been committed. The same state-nent of facts shall also be made in all other :rimes; a formality which is the basis of judicial ›roceedings, and without which the criminal :annot be prosecuted. The judge shall, at the ame time, order that the information be taken ınd the witnesses heard.

2. When the party injured shall bring forward ı complaint, he shall commence by a petition, :ontaining a correct and brief exposition of the act, and requesting an examination into the cir-:umstances of the crime, in the manner before-nentioned, and also that a summary inquiry may ›e made into the truth of the facts set forth in ıis petition. The judge shall take order on the :aid petition in the following words: "Be it done ıs is required."

3. The judge shall make the said inquiries in ›erson, unless unavoidably prevented; in which :ase he may intrust the same to the Register. If, ıowever, the crime be established, and the crimi-ıal unknown, every inquiry, search, and exami-ıation necessary to obtain a knowledge of the said criminal shall be made.

4. When the inquiries have been made, and the criminal be known, if two witnesses appear, or one witness of credit, joined to other circum-stances indicative of the aggressor, the judge shall direct the body of the said aggressor to be taken into custody, as also an inventory of his property to be taken, and the sequestration of the same in the hands of the depositary general.

5. If the criminal has not been arrested, by rea-son of either absence or concealment, the judge shall direct that, as by the report of the alguazil the said criminal has not been arrested, he be cited by public proclamation, three times repeated, in the manner following:

6. The accused shall first be cited to appear and deliver himself up within nine days; in default of which, the judge shall direct the scrivener to certify that the term has expired, and the jailer to affirm that the offender has not appeared. In consequence of the said certificates, which shall be annexed to the documents in the cause, the accused shall be condemned to the penalty of con-tumacy; and the judge shall direct that he be again cited to appear within the aforesaid term of nine days. On the expiration of this second delay the scrivener and jailer shall certify as before; after which the judge shall issue an order for his arrest, and direct the publication of the same, as also the continuance of the proclamation afore-said. These last nine days being expired, the scrivener shall again certify thereto, and the jailer shall affirm that the accused has not appeared at the prison. The judge shall then declare him fully convicted of contumacy; and if there be no prosecutor, a procureur fiscal shall be appointed to take the necessary steps in the case; but if there be a prosecutor, the cause shall be commit-ted to him that he may proceed therein as he may think best, and to bring the same before the tribu-nal, in which provisional judgments are given, and the criminal is cited as if he was present. The proceedings shall then be continued until the definitive sentence either in favor of or against the accused be pronounced.

7. If, however, previous to, or after the sentence, the accused shall present himself at the prison, the cause shall be instituted anew, and the defence of the accused shall be heard with attention; and upon what the prosecutor or the procureur fiscal may set forth in opposition thereto, the previous sentence shall be either confirmed or annulled, according to the documents reproduced on the trial.

8. If the criminal be taken after the order for his arrest has been issued, and the *procès-verbal* concluded, the judge shall direct the jailer to cer-tify that the accused is in prison, and the said judge shall, in person, commence the examination by demanding his name, age, quality, profession, country, and residence. If he be under twenty-five years of age, he shall be enjoined to choose a guardian; and, upon his refusal to do so, the judge shall appoint some one thereto, by reason that the said examination cannot proceed without the presence and authority of the said guardian.

9. In the said examination the judge shall charge the accused with the crime, pursuant to the testimony given, and shall start such questions as may tend to the disclosure of the circumstances of the same.

10. The examination concluded, the witnesses, both for and against the accused, shall be heard within the shortest delay possible; which, how-ever, if necessary, may be extended to eighty days, as allowed in civil causes in general. During this delay, the accused on one side, and the pros-ecutor, or the procureur fiscal, (in default of a prosecutor) on the other, shall produce their proof in the manner provided in civil causes; and al-though these proofs should be private, as also the re-examination of the witnesses, they may com-municate to each other the documents in the cause in order to the necessary arrangement of their proceedings.

11. The witnesses being re-examined, and the delay allowed having expired, one of the parties shall require that the testimony be made public. This demand shall be communicated to the other party, by a copy thereof, upon whose answer, or in default thereof, the judge shall direct the pub-lication of the said testimony. The documents shall then be delivered to the prosecutor, or to the procureur fiscal, that he may bring his accusation in form, and allege the sufficiency of the proof.

12. The accusation being made, conjointly

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with the declaration of the sufficiency of the proof, a copy thereof shall be given to the accused, that he may in defence set forth whatever he may think in favor of his case. When the said defence shall have been made, the pleadings shall be considered as concluded, and, consequently, the cause in a state to be determined.

13. If it shall happen that one or both of the parties except against the witnesses produced, they shall proceed in the manner pointed out under the head of civil causes in general, and shall conform precisely to the instructions therein given for similar cases. After the decision on the said exceptions has been made, the determination of the cause shall not be delayed; but the judge shall require the documents, and cite the parties for the definitive sentence.

14. The accused being convicted of the crime, as being fully established on the trial, or by some other proof, in conjunction with his own confession, he may be condemned to the penalty provided by law for the same. The said condemnation shall also take place when two witnesses of lawful age and irreproachable character shall depose that of their certain knowledge the accused has committed the crime; but when there shall appear against the accused but one witness, and other indications of conjectures, he may not be condemned to the penalty provided by law; but some other punishment shall be inflicted as directed by the judge, with due consideration of the circumstances which may appear on the trial; this state of things requires the greatest circumspection, as it must always be remembered that it is better to let a criminal escape than to punish the innocent.

15. After all these precautions, the judge shall pronounce sentence; and although in criminal causes an appeal should be admitted, yet if the judge shall have doubts, or from some difficulties on the trial he shall think it advisable to submit the same to the examination of a superior, execution shall be suspended, and this second instance shall be conducted as in civil causes.

Section IV.—*Of Appeals.*

1. When judgment has been given for a sum or an object, the value of which shall exceed ninety thousand maravedis, an appeal shall be brought by the party who may think himself aggrieved, directly to the tribunal to be hereafter appointed by His Majesty; and when the said appeal shall have been lodged, communication thereof shall be made to the adverse party, who shall plead against the merits of the same: that is to say, whether sentence shall be suspended or executed, notwithstanding appeal. To determine this point, the judge shall demand the documents, and after examining the same pronounce either for or against, as he shall think just; and in urgent and particular cases, such as dowry, alimony, or others of a similar nature, in which appeals should not lightly be admitted, he shall order execution. In this class are also comprised criminal causes, unless such circumstances should occur as are cited at the conclusion of the preceding paragraph; and in which case execution shall be suspended until the superior judge may have examined the same, and confirmed the sentence pronounced.

2. If the appeal be admitted, the second trial shall be conducted in the manner following: The judge shall direct the delivery of the documents in the cause to the appellant, that he may declare in what consists the grievance of which he complains; by which is meant that he shall set forth in argument the injury he would sustain by the execution of the sentence, which, for one or more reasons, is not in conformity to the provisions of the law in similar cases, and concluding by moving that the same be annulled. A copy of this declaration shall be given to the other party to reply thereto and confute the arguments of his adversary, by setting forth those tending to prove that the sentence has been pronounced in conformity to law. The judge shall then direct that after having transcribed the documents in the cause, at the expense of the appellant, the originals be transmitted to the tribunal, in which the appeal is to be tried. He shall summon the parties to hear the transcripts compared with the originals, as also to appear in person, or by proxy, at the tribunal to which the said appeal shall be carried, within the delay that may be allowed, according to the distance of the same from this province. The said delay shall commence from the day on which the first registered vessel shall sail from this port for the place where the superior tribunal shall be established; the judge having previously ordered the delivery, on board the said vessel, of the original documents aforesaid. He shall inform the appellant, that if, within the delay allowed, he shall not prove that he appeared before the said tribunal with the original documents, he shall fully and indisputably forfeit his appeal, and that the execution of the sentence shall consequently be ordered on the first requisition of the adverse party. If, however, the appellant shall establish the loss of the vessel in which his documents were embarked, or of the one in which he had transmitted the vouchers of his having appeared at the superior tribunal within the time prescribed; or, in short, any other impediment which may discharge him from the aforesaid obligation, the appeal may not be declared to be abandoned; but on the contrary, a further delay shall be granted; and if the originals have been lost, copies thereof shall be delivered to him, that he may prove his appearance and compliance with whatsoever has been required.

3. In the case of a judgment for a sum not exceeding 90,000 maravedis, exclusively of the costs, the appeal shall be made to the cabildo in this city, and the same shall be conducted in the manner following: Within five days, computing from the day of the signature of the sentence, the appellant shall present his petition, which shall be delivered to the register to annex his certificate thereto; on sight of which the cabildo shall appoint two regidors, in quality of commissioners, to decide on the cause of appeal, conjointly with the judge who pronounced the sentence. The said commissioners shall be bound to accept the said appointment, and

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ıall take an oath that they will impartially disıarge the duties of the same.

4. The said document with the certificate shall ɜ delivered to the scrivener in the cause, who ıall institute and pursue the appeal. The docuıent shall be delivered to the appellant, that he ıay deduce and set forth his grievance in the manıer explained in the second paragraph; which ıall be done within fifteen days at furthest; and ommunication thereof shall be made to the other arty, that he may reply thereto within a further ɜrm of fifteen days; so that within thirty days ɜom the appointment of commissioners the cause hall be ready for determination. It must be obɜrved that the aforesaid term of thirty days canot be prolonged, even with the consent of both arties.

5. The pleadings being concluded in the man.er prescribed, the scrivener shall, within two ıays, deliver the documents to the judges, who hall examine the same, and give judgment within en days, computing from the expiration of the hirty aforesaid, annulling or confirming, augmentng or diminishing, the previous sentence, as they nay think just. After the expiration of the aforeıaid ten days, judgment may not be pronounced; ɔr, if given, the same shall be void; and the first ɜentence shall take full effect, and be executed acɔording to the tenor thereof.

6. If a majority of the three judges appointed ıhall accord in opinion, their sentence shall be ɜalid and conclusive, and an appeal to any other ɜribunal shall not be admitted; but the judge who pronounced the first sentence shall cause the secɔnd to be executed so soon as the documents shall have been delivered to him for that purpose.

SECTION V.—*Of Punishments.*

1. He who shall revile our Savior, or his mother, the most holy Virgin Mary, shall have his tongue cut out, and his property shall be confiscated, applicable, one half to the public Treasury, and the other half to the informer.

2. He who, forgetting the respect and loyalty which every subject owes to his King, shall have the insolence to vilify his royal person, or that of the Queen, the hereditary prince, or the infants, their sons, shall be punished corporally, according to the circumstances of the crime; and the half of his property shall be confiscated to the profit of the public or royal treasury, if he shall have legitimate children; but if he shall have none, he shall forfeit the whole; applicable, two-thirds to the public treasury, and the other third to the accuser,

3. The authors of any insurrection against the King or the State, or those who, under pretext of defending their liberty and rights, shall be concerned or take up arms therein, shall be punished with death, and the confiscation of their property. The same punishments shall also be inflicted on all those who may be convicted of lèse-majesté, or treason.

4. Whosoever shall outrage another by either wounds, cuffs, or blows with a stick, shall be punished as the judge may think suitable to the case and to the rank of both the offender and the offended. But if the abuse consists only in words, and the aggressor be not noble, the judge shall exact the retraction of the same, in the presence of himself and other persons, and, moreover, shall condemn the said aggressor to a fine of 1,200 maravedis, applicable one half to the public treasury, and the other half to the party offended. If the aggressor be of rank, or enjoys the privileges of nobility, he shall be condemned to a fine of 2,000 maravedis, applicable as aforesaid. The judge, however, may, in lieu of the same, inflict any other punishment which he shall think suitable to the rank of the parties and the nature of the outrage. If no blood has been spilt, nor complaint been made by the offended, or if he shall desist from prosecuting the same, the judge may not interfere therein.

5. He who shall ravish a girl, a married woman, or a widow of reputable character, shall suffer death, and his property shall be confiscated to the use of the person injured; but if the said person be not of reputable character, the judge may inflict such punishment as he may think suitable to the case.

6. The married woman convicted of adultery, and he who may have committed the same with her, shall be delivered up to the will of her husband; with the reserve, however, that he may not put the one to death without inflicting the same punishment on the other.

7. The man who shall consent that his wife live in concubinage with another, or who shall have induced her to commit the crime of adultery, shall, for the first time, be exposed to the public shame, and condemned to a confinement of ten years in some fortress; and for the second time shall be sentenced to one hundred lashes and confinement for life.

8. The same punishment shall also be inflicted on those who carry on the infamous trade of enticing women to prostitution, by procuring them the means of accomplishing the same.

9. He who shall be guilty of fornication with a relation in the fourth degree shall forfeit half his property to the profit of the public treasury, and shall, moreover, be punished corporally, or banished, or in some other manner, according to rank of the person and degree of the kindred. If the said crime be committed between parents and their offspring, or with a professed nun, the same shall be punished with death.

10. He who shall commit the detestable crime against nature shall suffer death, and his body shall afterwards be burned, and his property shall be confiscated to the profit of the public and royal treasuries.

11. The woman who shall be publicly the concubine of an ecclesiastic shall be sentenced for the first time to a fine of a mark of silver, and to banishment for one year from the city or from the place where the offence may have been committed. The second time she shall be fined another mark of silver, and banished for two years, and in case of relapse, she shall be punished by one hundred lashes, in addition to the penalties aforesaid.

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12. If fornication be committed between bachelors and girls, they shall be admonished by the judge to discontinue every kind of intercourse with each other, under the penalty of banishment of the man, and confinement of the girl, for such time as may be necessary to operate a reformation. If this menace have not the desired effect, the judge shall put the same into execution, unless the rank of the parties requires a different procedure; and in which case the said offence shall be submitted to the consideration of the judges, collectively, to apply the remedy which their prudence and zeal for the repression of such disorders may suggest. They shall punish all other libidinous offences in proportion to their extent, and to the injury occasioned thereby.

13. He who shall break his oath taken, in conformity to law, for the validity of an agreement, shall forfeit the whole of his property to the profit of the public and royal treasuries.

14. False witnesses in civil causes shall be exposed to public shame, and banished for ten years; but in criminal causes, in which false testimony is more important in its consequences, the same shall be punished capitally. If, however, the accused shall not have thereby been sentenced to death, the false witness shall only be exposed to public shame, and be sentenced to perpetual banishment to some presidio. The said punishments may, however, be commuted, when from the rank of the offenders they cannot be condemned to the same.

15. He who shall steal the sacred vessels in a holy place shall suffer death.

16. Assassins and robbers on the highway shall suffer death.

17. The same punishment shall also be inflicted in cases of forcible robbery, which shall be reputed such, when the proprietor or other persons shall have made resistance.

18. Robberies of classes other than those comprised in the preceding articles shall be punished corporally, according to the nature of the same, and the rank of the persons.

19. He who shall kill another shall suffer death, unless done in his own defence, or under such circumstances as are explained in statutes 3, 4, 12, tit. 23, book 8, of the Nouvelle Recopilation.

20. He who shall commit wilful murder, or wound another with intent to deprive him of life, although the wounded person may survive, shall suffer death, and shall be dragged to execution at the tail of some animal; and the half of his property shall be confiscated to the profit of the public or royal treasury.

Section VI.—*Of Testaments.*

1. For the validity of a nuncupative will, it is necessary that the same be received by a notary public, in presence of at least three witnesses, residents of the place; or if there be no notary, there must be present five witnesses, residents of the place in which the will shall be made; if, however, it be impossible to procure the last mentioned number, three may suffice.

2. A testament shall be equally valid when made in the presence of seven witnesses, although they be not residents of the place, and although the same be not made in the presence of a notary.

3. If, after the closing of a will, the testator shall wish to add to, diminish, or change any disposition contained therein, he may do the same effectually by a codicil; observing the same formalities, and in the presence of the same number of witnesses required for the validity of the testament itself; but he may not change the name of the heir, unless another will shall be made.

4. If the testator be blind, five witnesses shall be necessary to each of the instruments aforesaid in order to prevent those deceptions to which those who labor under such a misfortune are exposed.

5. For the validity of a written will, styled in Latin *in scriptis*, the testator, on delivering the same to the notary, (who shall seal it,) shall put an endorsement on the cover, stating that the within is his will; which endorsement shall be signed by himself and the seven witnesses, if they can write; and if not, the others shall sign for them; so that there be eight signatures, including that of the scrivener, who shall also put his signature thereto.

6. Before the opening of a will, after the decease of the testator, it is necessary that the judge who shall have knowledge thereof, shall certify thereto, and that the witnesses appear before the said judge, and declare, on oath, that they were present when the testator declared the same to be his last will: they shall acknowledge their signatures, or shall declare (if such be the case) that by request some one has signed for them.

7. As it often occurs that persons, either unable or unwilling to make a will themselves, empower others for that purpose, they are hereby informed as follows:

8. That such authority must be given in presence of the same number of persons, and with the same formalities required for testaments.

9. That the person empowered to make a will for another cannot revoke a will previously made by his constituent, unless the said will shall contain a special clause to that effect.

10. That he may neither appoint an heir, bequeath a third or a fifth to any of the children or descendants of his constituent, disinherit any of them, substitute others in their stead, nor name a guardian for them without an express clause and special authority to that effect; by reason that the constituent should himself nominate his heir and designate, by his will, whatsoever he may wish to be done.

11. That if the testator has not appointed an heir, nor designated one in the power given to make a will for him, the person so empowered may only direct the payment of the debts of the deceased, after which a fifth part of the proceeds of his property shall be distributed for the repose and relief of his soul: the remainder shall be divided amongst the relations of the deceased who, according to law, shall inherit; or if there be none, the whole shall be applied to pious uses for the benefit of the soul of the deceased, after pre-

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deducting therefrom what is allowed by he wife, as dower, bridal presents, *dona-oper nuptias*, the half of the profits on the ate, and whatever may have fallen to her ession of donation during the marriage.

hat if the constituent shall have appoint-ir, the person empowered as aforesaid may ose of, in legacies pious and profane, an the fifth part of the property of the his debts being previously paid, unless, by l clause, he may be authorized to dispose ater part.

hat the person empowered should proceed completion of the will with which he is within four months, if he be in the place h the power was given, or, if not, within ths, unless he be out of the kingdom; in ast case, one year shall be allowed, com-rom the day of the decease of the constitu-ll that may be done by the person em-l as aforesaid after the expiration of that ll be void and of non-effect, even if he ege that he had no knowledge whatever aving been so empowered. But all the tipulations by the testator, in the said ontained, shall be carried into execution, remainder of his property shall be de-o his relations who shall inherit *ab intestat*, o, with the exception of the legitimate of the descendants or progenitors of the shall give the fifth part of the net pro-the said property for the ease and repose oul of the said testator.

hat the person empowered as aforesaid t in any manner revoke the will he shall ade by virtue of the authority aforesaid, l a codicil, nor any declaration thereto, the same should be for pious uses, and not-nding he may have reserved the power of g, augmenting, diminishing, or changing osal he shall have made.

o the said testaments, codicils, or powers that effect, women, monks, people under of fourteen, drunkards, or other disquali-sons, shall not be admitted as witnesses.

testator may bequeath a third or a fifth ne of his children or other legitimate de-ts, by specifying the part of his real or l property which he designs for that pur-

When a testator shall make a bequest to his children or legitimate descendants, he pose such condition, remainder, or entail-pon the property bequeathed as he may roper, in order that his other legitimate de-ts, or, in default thereof, his illegitimate ants, or if there be none of either of those ions, his relations may enjoy the benefits g therefrom; to the end that the said be-ay never pass to a stranger, unless all the s in the order aforesaid shall be deceased.

he father may also, while living, advance his children or legitimate descendants, in e manner as at his death, or by will; but be understood that he shall make the said ement but once, and that the same being made during his life cannot be revoked, if settled by agreement and fixed by a public instrument, which should precede the delivery of the object in which consists the advancement; or if having been made with a view to marriage, or for any other similar cause, unless he shall have reserved, by the said instrument, a power to that effect; in which case he may revoke the said advancement.

19. If the father or the mother shall have entered into an agreement not to advance any one of their children, the said agreement shall thereafter be binding; and if they should attempt the said advancement by any public instrument, the same shall be void and of non-effect. If, on the contrary, they shall promise the said advancement in consideration of marriage, or for other similar cause, the right to a third or a fifth shall be good at the decease of the parent, although no mention thereof shall have been made in the will.

20. The said advancement being made during life, or at the point of death, shall be calculated upon the real value of the property at the time of the decease, and not at the time of making the same.

21. All deeds of gift, or legacies, by the father or mother to their children or descendants, during life, or bequeathed by will, shall be reputed on account of the third or the fifth, although the same may not have been expressed. In consequence thereof, they may not bequeath a third or a fifth to any of the other children or descendants, which shall exceed the value of the said legacies, or gifts to the former.

22. When any one shall die intestate, and without having empowered another to make a will for him, in the manner hereinbefore explained, if there be no legitimate children, or progenitors who may inherit, the relations by blood and kindred of the fourth degree shall inherit the whole of the property; observing that the nearest relations shall inherit of right, and to the exclusion of those who may be further removed, unless the nearest relations shall be brothers of the deceased; in which case the children of the other brothers who shall have died previous to the decease of the person intestate, shall take a portion of the whole; that is to say, that if one brother, and three or four children of another brother, be living, the said children shall be entitled to an equal proportion of one half of the property, and the brother, uncle of the said children, shall inherit the other half, by reason that the nephews succeed by representation of their father, and not in their own right. This rule shall be followed in the division of estates when there may be a greater or less number of heirs; the foregoing being intended for an example.

23. If the deceased shall have neither progenitors nor descendants capable of inheriting, in the order explained in the preceding article, the King shall be his heir, and the property shall be vested in the treasury or royal chamber.

24. Those who have not legitimate descendants may will in favor of their illegitimate children, although they may have progenitors. It must be understood, that by illegitimate children are meant

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those born of a free girl, to whose marriage with the father of the said children no legal impediment existed. Those children shall succeed in their own right, to their mother, and shall inherit the whole of her property, whether she may have died intestate, or otherwise, and shall have a preference over the progenitors, in case she shall have no legitimate children, who would otherwise inherit, to the exclusion of the illegitimate children.

25. Illegitimate children of every description shall incontestably succeed to their mother, if she have no legitimate children or descendants, even to the exclusion of her father or other progenitors.

26. The father and mother having legitimate children or descendants, may not give, by way of maintenance, to their illegitimate children more than the fifth part of their property; of which proportion they may also dispose for the benefit of their souls, or by a legacy to a stranger; excepting from the foregoing, the children of ecclesiastics, or monks, who cannot in any manner inherit from their parents or kindred, nor pretend to anything possessed by them during their lives.

27. A son or daughter, while under the authority of the father, being of competent age, that is to say, the son being fourteen, and the daughter being twelve, may will, in the same manner as if they were emancipated from their parent, and may dispose of the third part of their property acquired by succession, donation, or in any other manner, unless derived from the father, who shall inherit the remaining two-thirds, in the same manner as the mother or other progenitor.

Table of Fees demandable by Judges, Lawyers, Scriveners, Attorneys, and the other officers of justice.

Judges.—For a signature containing the baptismal and family name of the judge, four reals in piasters fortes of America, as also for the other fees hereafter detailed. They shall put the aforesaid signature to judgments, decrees, warrants, titles, and despatches which they may deliver for another tribunal. They shall exact but two reals in the same money for a signature containing their family name only, and the same for their cipher.

For a sitting of two hours and a half, in cases of inventories, seizures, assessments, public sales, adjudications of real or personal property, procés-verbaux, declarations, examinations, and other acts of justice of whatsoever nature, two ducats, equal to twenty-two reals in milled piasters. For affixing the seals, in cases of death, one ducat. If a longer time be necessary for the security of the property, the fee may be augmented in proportion to the time that shall be employed. For the opening of a will, and the examination of the seven witnesses, which should precede the opening of the will, forty-eight reals; viz: forty-four for two sittings, and the other four for the signatures to the two instruments. They shall receive four ducats per diem while employed in the country, to continue until their return to their own houses; they shall be decently entertained, and shall be provided with a horse and other things necessary.

Assessors.—Assessors shall have also two reals for each sitting in the city, and four for the country, either with or without commission. They shall charge one real per leaf for revising documents, according to the bulk of the same, the circumstances of the case, and to what may be only a continuation of the usual business.

Alcaid, &c.—The Alcaid Mayor Provincial and the officers of the Saint Hermandad, shall receive the same fees as the other royal judges, for their signatures and their sittings.

Regidors.—In causes of little importance, which may be brought before the cabildo by appeal, two regidors shall be appointed as commissioners, conjointly with the judge who shall have pronounced the previous sentence. In all such cases they shall receive the same fees as the judge for their signatures and sittings.

The Alguazil Mayor.—In common executions against debtors, they shall require payment, and if the same be not complied with within seventy-two hours from the moment of the summons, the said debtors shall pay, besides the fees to the judge and the other officers of justice, the tenth to the alguazil mayor, which is five milled piasters for the first hundred piasters, and two and a half piasters for every other hundred piasters; so that if the execution be issued for three hundred piasters, he shall take ten for the tenth. He may not, however, exact the same until the creditor be satisfied in the sum for which the execution shall be given.

Depositary General.—The Depositary General shall take three per cent., on all sums in specie, which may come into his possession by way of deposit, and the same for plate, jewels, or other personal property which may be deposited with him.

For real property, as houses, plantations, and other property yielding revenue, he shall take five per cent. upon the said revenue, which shall be his compensation for the management of said property, for receiving the proceeds thereof, and for rendering an account of the same to the tribunal by whom he is appointed, whenever he shall be required thereto. He shall also take five per cent. upon the proceeds of the labor of all slaves in his care, who may not be employed upon the estate.

Whenever bonds or notes shall be deposited with him, he shall take five per cent. upon the sums which he may recover on account of the same.

Lawyers.—The fees of lawyers shall be settled by another lawyer whom the judge shall appoint; and for every sitting their compensation shall be the same as that of the judges and assessors. But when they may be employed in examining documents in order to assist at a court, they shall be paid separately.

Scriveners.—Scriveners shall have fifteen reals for a sitting in the city, and thirty per diem when employed in the country, to be continued until their return to their own houses, and two reals for each leaf of writing, and shall be furnished with a horse, and decently entertained.

For the opening of a will, the examination of

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: seven witnesses, which should preclude the ne, and legacies to the church, fifty-two reals.

For a copy of a decree or a provision, one real. ›r an act, two reals. For a notification, citan, or participation, two reals. For a declaran in his own house, six reals; or, if elsewhere, ght reals; and two reals for each leaf of writg, either in his own house or elsewhere. For a spatch, two reals per leaf, and eight for the mmencement and conclusion of the same. For ch leaf of an exemplification of an act, one real d three quartilles, and one real for his signare. For duplicates, or copies of documents awn from his records, two reals per leaf.

For a bill of sale of slaves, twelve reals. For sale of personal property, which usually conns two leaves, two piasters; and if the same all contain more on account of the conditions nich the parties may wish to be inserted, he ay augment in proportion. For a simple bond, ght reals; for a bond with mortgage, twelve als; and if there be several mortgages comised in the said bond, he shall be paid according the labor and trouble he may have had in awing up the same. For a receipt, eight reals. ›r an agreement, according to the number of aves the same may contain; and if an examinan of documents be necessary, the same should taken into consideration, and the charge should at least doubled.

For a will containing three or four sheets, four asters, and augmented in proportion to the numr of sheets.

Recorder of Mortgages.—For a certificate of house, plantation, or other real property, eight als. For a certificate of a slave, from one to e number of eighteen, four reals; and from that mber to one hundred, twelve reals for each rtificate. For a certificate of a mortgage on a ssel, four reals. For recording in the book of ortgages, those given for the security of payents, either for personal property, slaves, or vesls, four reals; and if the same be of an unusual ngth, eight reals; but when only a short note to signate the page in which the mortgage is rerded be required, no charge shall be made.

Attorneys.—For an introductory demand, five als. For assisting in the city at an inventory, le, adjudication, or seizure, twelve reals; for the me in the country, if employed a whole day, ree piasters. If, however, the case requires uch writing, they shall be paid according to the ne that the lawyer may have been employed in awing up the said case.

Contador Judiciaire.—For every five hours nployed in preparing an account for settlement, ur ducats, making forty-four reals, observing at five hours shall be accounted a day; and out the aforesaid sum he shall pay four reals to e scrivener for each sheet of twenty-five lines a page.

Assessor of Costs.—He shall be paid one quarlle for each sheet of the documents contained the cause; the costs of which he shall assess. our quartilles make a real.

Appraisers of Personal Property, Slaves, and other effects.—To the exchange broker, for the valuation of furniture, houses, slaves, merchandise, &c., eleven reals, notwithstanding the appraisement may require two hours and a half.

Alarifs, Master Carpenters, and Assayers of Silver.—Alarifs, master carpenters, masons, and joiners, shall have a ducat for every thousand piasters of the amount of the appraisement; and if the same shall exceed four, six, or eight thousand, they shall not demand more than four ducats; but if they be employed in the country, and the appraisement shall not amount to one thousand piasters, they shall have two ducats per diem during the time they may be employed, on account of the distance. If, however, one day only shall be necessary, although the appraisement shall amount to three or four thousand piasters, they shall be paid as if the same had been made in the city; but they shall be furnished with a horse, and shall be decently entertained. The assayer of silver shall have eleven reals for each appraisement, although the articles may be valuable, by reason that little time is required for that purpose.

Appraisers of Land.—They shall have two ducats per diem, and the same when they shall value buildings of little conseqnence in the country, woodland, and fields in grain.

Surveyors.—Surveyors shall have three ducats per diem.

Alguazils.—The Alguazils shall have four reals for a summons to appear, and for a demand of payment. They shall also receive the same sum for obtaining documents of every description. They shall have eight reals for arresting and conducting to prison. The sergeant, in this case, shall have the same.

Jail Fees.—The Alguazil Mayor shall have twelve reals for every free person imprisoned, and eight reals for a slave.

At New Orleans, the 25th November, 1769.

DON ALEX. O'REILLY.

Don Alexander O'Reilly, Commander of Benfayan, of the order of Alcantara, Inspector General of Infantry, appointed, by special commission, Governor and Captain-General of this Province of Louisiana.

Divers complaints and petitions which have been addressed to us by the inhabitants of Opelousas, Attakapas, Natchitoches, and other places of this Province, joined to the knowledge we have acquired of the local concerns, culture, and means of the inhabitants, by the visit which we have lately made to the Côte des Allemands, Côte des Acadiens, Iberville, and La Point Coupée, with the examination we have made of the reports of the inhabitants assembled, by our order, in each district, having convinced us that the tranquillity of the said inhabitants, and the progress of culture required a new regulation, which should fix the extent of the grants of lands which shall hereafter be made, as well as the enclosures, cleared lands, roads, and bridges, which the inhabitants are bound to keep in repair, and point out the damage by cattle, for which the proprie-

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tors shall be responsible. For these causes, and having nothing in view but the public good, and the happiness of every inhabitant, after having advised with persons well informed in these matters, we have regulated all those objects in the following articles:

1. There shall be granted to each newly-arrived family, who may wish to establish themselves on the borders of the river, six or eight arpents in front, (according to the means of the cultivator,) by forty arpents in depth; in order that they may have the benefit of the cypress wood, which is as necessary as useful to the inhabitants.

2. The grantees established on the borders of the river shall be held bound to make, within the three first years of possession, mounds sufficient for the preservation of the land, and the ditches necessary to carry off the water. They shall, besides, keep the roads in good repair, of the width of at least forty feet between the inner ditch which runs along the mound, and the barrier, with bridges of twelve feet over the ditches which may cross the roads. The said grantees shall be held bound, within the said term of three years' possession, to clear the whole front of their land to the depth of two arpents; and, in default of fulfilling those conditions, their lands shall revert to the King's domain, to be granted anew, and the judge of each place shall be responsible to the Governor for the superintendence of this object.

3. The said grants can neither be sold nor alienated by the proprietors, until after three years of possession, and until the abovementioned conditions shall have been entirely fulfilled. To guard against every evasion in this respect, the sales of the said lands cannot be made without a written permission from the Governor General, who will not grant it until, on strict inquiry, it shall be found that the conditions above explained have been duly executed.

4. The points formed by lands on the Mississippi river, leaving in some places but little depth, there may be granted, in these cases, twelve arpents of front; and, on a supposition that these points should not be applied for by any inhabitant, they shall be distributed to the settlers nearest thereto, in order that the communication of the roads may not be interrupted.

5. If a tract belonging to minors should remain uncleared, and the mounds and roads should not be kept in repair, the judge of the quarter shall inquire into the cause thereof. If attributable to the guardian, he shall oblige him to conform promptly to this regulation; but if arising from want of means in the minors, the judge, after having, by a verbal process, obtained proof thereof, shall report the same to the Governor General, to the end that the said land may be sold for the benefit of the minors, (a special favor, granted to minors only;) but if no purchaser shall, within six months, be found, the said land shall be conceded gratis.

6. Every inhabitant shall be held bound to enclose, within three years, the whole front of his land which shall be cleared; and for the remainder of his enclosure he will agree with his neighbors, in proportion to his cleared land and his means.

7. Cattle shall be permitted to go at large from the eleventh of November, to the fifteenth of March of the year following; and at all other times the proprietor shall be responsible for damages that his cattle may have done to his neighbors. He who may have suffered the damage shall complain to the judge of the district, who, after having satisfied himself of the truth thereof, shall name experienced men to estimate the value of the same, and shall then order remuneration without delay.

8. No grant in the Opelousas, Attakapas, and Natchitoches, shall exceed one league in front by one league in depth; but when the land granted shall not have that depth a league and a half in front by a league in depth may be granted.

9. To obtain in the Opelousas, Attakapas, and Natchitoches, a grant of forty-two arpents in front by forty-two arpents in depth, the applicant must make it appear that he is possessor of one hundred head of tame cattle, some horses and sheep, and two slaves to look after them; a proportion which shall always be observed for the grants to be made in the said places, but none shall ever be made of greater extent than that declared in the preceding article.

10. All cattle shall be branded by the proprietors; and those who shall not have branded them at the age of eighteen months cannot thereafter claim a property therein.

11. Nothing being more injurious to the inhabitants than strayed cattle, without the destruction of which tame cattle cannot increase, and the inhabitants will continue to labor under those evils of which they have often complained to us; and considering that the province is at present infested with stray cattle, we allow to the proprietors until the first day of July, of the next year, one thousand seven hundred and seventy-one, and no longer, to collect and kill, to their use, the said strayed cattle; after which time they shall be considered wild and may be killed by any person whomsoever, and no one shall oppose himself thereto, or lay claim to a property therein.

12. All grants shall be made in the name of the King, by the Governor General of the Province, who will, at the same time, appoint a surveyor to fix the bounds thereof, both in front and depth, in presence of the judge ordinary of the district, and of two adjoining settlers, who shall be present at the survey. The above-mentioned four persons shall sign the verbal process which shall be made thereof, and the surveyor shall make three copies of the same; one of which shall be deposited in the office of the scrivener of the Government and cabildo, another shall be delivered to the Governor General, and the third to the proprietor, to be annexed to the titles of his grant.

In pursuance of the powers which our lord the King (whom God preserve) has been pleased to confide to us, by his patent issued at Aranjuez, the 16th April, 1769, to establish in the military the police, and in the administration of justice

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nances, such regulation as should be con- his service and the happiness of his sub- his colony, with the reserve of His Ma- od pleasure, we order and command the ·, judges, cabildo, and all the inhabitants ·ovince, to conform punctually to all that d by this regulation.

at New Orleans, the 18th February, 1770.

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a concerning the general police, the repairs of roads, and mounds, and the police of slaves; use of the commanders of posts and of coasts, syndics of the Province of Louisiana.

tonishing success which has attended cergning, restless, and enthusiastic persons, certainly have nothing to lose, in dissemnjurious reports tending to produce an trust between the Government and the in-, which would infallibly plunge them into ıtrocities which have desolated the French has induced us to digest a regulation ca- ·e-establishing order, police, and tranquilıghout the province.

suance thereof, the Government will esvithin every three leagues, at farthest, a hosen from amongst the most industrious ectable inhabitants of the district, who :hanged in the month of January of every ess he may consent to be continued for eeding year, and whose functions shall be ate to the commander of the post, or of t, to whom he shall render a weekly ac- the occurrences in his district.

Functions of the syndics.

person who shall have acquired know- an unlawful attempt, either by being an ıess thereof, or from hearsay, shall be ı give information thereof to the syndic strict, and to require him to take the ne- ɔrder thereon, pointing out to him the of- he place, and those persons who may have lge of the same, under a penalty of six or even being punished to the extent of if his silence shall proceed from malice or nce. Seditious discourses, or those tend- arm the public mind, shall also be reported ndic of the district in which they may be attempts against the public tranquillity, ıe penalty of one hundred piasters; and lic who shall not give an account of the the commandant or to the Government, :ur the same penalty. Information being ıe syndic shall proceed to a verbal inquiry, ınied by two respectable inhabitants, who ist him as witnesses. In the present case, lic shall have power to oblige the two per- o may be nearest at hand, to assist him as es, under the penalty of four piasters, and ɔnsidered unfriendly to good order.

e necessity of an inquiry into the offence urgent, and the syndic may be absent, or lence at too great a distance, every indi- hall in this case have a right to summon nearest neighbors to accompany him to e where the offence may have been committed; and, in case of refusal, they shall incur the penalty aforesaid. The offender, being convicted of the offence, shall be conducted to and accused before the syndic, who shall secure him, and give information thereof, or send him to the commandant.

Syndics are authorized to search plantations, houses, negro huts, &c., accompanied by two witnesses, when the case shall require it, and when the informer shall bind himself to find therein the evidences of the truth of his information, and not otherwise; and if the informer shall fail in so doing, he alone shall be responsible to the proprietor.

The syndics shall take cognizance, provisionally and verbally, of all crimes and disorders, committed within their districts, notwithstanding the offender shall belong to another district.

The general police, and the security of the district, the repair of bridges, roads, and mounds, the general inspection of coasters, passengers, the provisions, maintenance, subordination, and police of the negro camps, the security of horses, cattle, &c., shall be within the province of the syndics, who shall conform strictly to the articles herein contained in relation to those objects.

Whenever the Government shall think it expedient to convoke the syndics to a general meeting at the capitol, or to a private meeting at the residence of the commandant of the post, they shall be accompanied by two persons as evidences of the satisfaction of their district, upon which condition only they shall be entitled to take a part in the deliberations; but the evidences shall take no part therein, their duties being to observe that their syndic does not lose sight of the interest of the district. The syndics may not assemble the inhabitants of their district without the permission of the commandant of the post, who shall not make opposition thereto without strong motives, which he shall communicate to the Government. All meetings consisting of more than eight inhabitants, for the purpose of treating of public affairs, is strictly prohibited; and the syndic is enjoined to give information thereof to the Government, under the penalty of being considered a party thereto.

In case a syndic shall incur any one of the penalties provided by this regulation, three individuals shall join him for the purpose of convicting and denouncing him to the commandant of the post, who shall impose the penalty provided, and shall communicate the same to the Government.

A syndic who, through negligence, or from motives of humanity, shall dissemble a fault, or conceal it from the knowledge of the commandant, or shall join with him for that purpose, shall incur the penalty provided for the offender, for having abused the public confidence; and the Government reserves the care of punishing the commandant with still greater severity if he shall be a party thereto.

The commandants of posts, or of the coasts, shall deliver to the Government, the first of December in each year, a list of the inhabitants in

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their opinion the most suitable to be elected syndics for the following year; observing that their respective distances from each other must not exceed three leagues, and on which account they shall mention the situation of their plantations; and observing, likewise, that there be some on both sides of the river, as also in the place of residence of the said commandant or adjacent thereto.

The first day of January, the new syndic, elected by the Government, shall enter upon the duties of their office, previously receiving, in presence of the commandant, this regulation, and the other instructions relative to their employment, from the hands of the syndic of the preceding year.

The persons of the syndics shall be respected by the public; and whosoever shall dare to insult, them, menace them, or disobey their orders, shall forfeit forty piasters for the two first-mentioned offences, and one hundred for the third; applicable one-half to the royal treasury, and the other half to defray the expenses of the prison and courts of the district.

Assaults shall be punished to the extent of the laws, when committed on those who are charged with the execution of them.

General Police.

All coasters and travellers shall exhibit their passports, and reply to the questions which may be put to them by the syndic of the district, who shall require the same, and shall make himself known, by declaring his family name.

The passport shall specify the number of horses conducted by the traveller, and all articles for sale on board the coaster, as also the number of the crew, who shall be persons known, and for whose conduct the master shall be responsible. Those who shall be found with an unusual number of horses, cattle, or quantity of merchandise, shall be arrested by the syndic of the district, and sent to the commandant of the post or of the coast, who shall give information thereof to Government.

A passenger that may be necessitated to change horses, to purchase others, or cattle, merchandise, &c., should have the same endorsed on his passport by the syndic of the district in which the said exchange or purchases may have been made.

A coaster who shall during his voyage leave any of his crew on shore, or take others on board, must have an endorsement to that effect made on his passport. Every person found without a passport shall be arrested by the syndic, examined, and delivered to the commandant of the post.

Every traveller, coaster, &c., previous to circulating any news of importance, shall make a relation thereof to the syndic of the district, who shall require his name, and shall permit him to divulge the same, or shall forbid him if the circulation thereof would be injurious to the public tranquility or the good of the State, and shall render an account thereof to Government, previously holding the said traveller or coaster responsible for the result.

Pocket pistols, poignards, large knives, sword canes, and other similar weapons, are forbidden by law, under penalty of the presidio; and the syndics shall arrest those who may wear them.

The syndics shall be acquainted with the brand or marks on the animals of their district, and cause those to be taken up which shall be found without the mark of the proprietor, or with another strange mark; in this last case they shall inform the commandant thereof, who shall communicate the same to the other syndics, to the end that the proprietor may be acquainted therewith.

Any person convicted of having detained, stolen or killed any kind of tame animal which shall not belong to him, without having given information thereof to the syndic of his district, shall be sentenced to return the same, if alive, and to a fine equal to one-half the value thereof; one-third of which shall go to the use of the proprietor, another third to the royal treasury, and the remaining third to defray the expenses of the courts and prison of the district; or, if the animal be dead, he shall pay four times the value thereof, which shall be applied as aforesaid.

It is absolutely forbidden, under the same penalty, to shoot at any tame animals without permission of the syndic, who shall not grant the same without the knowledge of the commandant, and then only when the cattle are known to be strayed and ravaging the grain fields.

The turning out of cattle is forbidden from the 15th of March, to the 15th of November; if, however, the inhabitants of a district shall unanimously agree to prolong the time, the syndic may, with the knowledge of the commandant, depart from this article; in all other cases, it shall be optional with the inhabitant either to kill the tame animals found in his grain fields, in presence of two witnesses, or to be indemnified for the damages by the award of two or three capable persons, one of whom shall be named by himself, another by the proprietor of the animal, and the third by the syndic, in case the two first shall be divided in opinion; observing that the award shall be made upon the supposed value of the grain when arrived at maturity, and that the animal shall be returned to the proprietor thereof.

Every proprietor having an exclusive right to the enjoyment of his property, none other shall fish, hunt, or go within his enclosures, without his permission, under the penalty of restitution of game, fish, &c., and of a fine of four piasters, applicable one-half to the expenses of the courts and prison of the post, and the other half to the royal treasury, to be imposed by the syndic of the place; and in case of repetition, the same shall be doubled, trebled, &c.

The syndic shall be entitled to command the patroles of his district when the case shall require it, and with the knowledge of the commandant; no one shall refuse to serve in his turn under a penalty of six piasters, applicable one-half to the person who shall have taken his place, and the other half to the royal treasury; and whosoever shall refuse to conduct a prisoner from one plantation to another on his way to the residence of the commandant of the post, shall incur the same penalty, which shall be disposed of as aforesaid.

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e more speedy execution of justice, the hall take cognizance, in the first instance, atters in dispute the amount of which exceed ten piasters; all others shall be before the commandant of the post, who give judgment for more than fifty piasshall refer those exceeding that amount government, by reason that the law reat they shall not be decided without the an assessor or a lawyer.

ery post not provided with a prison the lant shall call a meeting of the syndics, at shall preside, for the purpose of selectn for the building; which, being adopted ority of the meeting, shall be published ed up during nine days; after which they ceed to the erection of a prison proporthe population of the place, the expenses shall be defrayed by the inhabitants, aco their means.

ison of the post shall always be situated residence of the commandant, that he vide for the maintenance thereof, as also he prisoners insolvent; to which objects the fines imposed on the infringers of lation is appropriated. The commandl, in the months of July and January, to the Government for the fines they have and shall at the said times pay into the easury the amounts applicable thereto.

dissemination of false reports on the one of the most efficacious means resortthe disturbers of the public tranquillity proselytes, it would be proper that the should subscribe for the Moniteur, from hey would obtain correct information events of the day, and should communisame to the inhabitants of their district. ild not be less useful, that, whenever any ould arise in the public mind upon the of any proceeding of the Government, ics should give information thereof to the dant of the post, who would communisame to the Government of the province, ply would satisfy all those possessed of and zeal for the public welfare.

Bridges, Roads, and Mounds.

keeping in repair of bridges, roads, and being indispensable for the facility of ation, for the convenience of the inhabid travellers, and for the preservation of s of the earth, the syndics shall direct ole attention to that object, with an im and firmness proof against all reproach idly considerations.

inasmuch as experience has demonstrated greater part, fearful of reproach and of themselves enemies, have hitherto negn object so essential, and have confined es at most to communicating to the Gov the negligences of certain inhabitants, ndic who shall be convicted of having d to proceed against those inhabitants ll refuse immediately to repair their roads, and mounds, in conformity to the present regulation, shall himself be condemned to make the repairs aforesaid, and shall be responsible for the accidents which may result from his negligence.

The syndics, accompanied by the commandant of the posts and their witness, shall, in the month of July, make a strict examination of all the mounds and roads in their district; shall direct the repairs which each inhabitant is bound to make, of which they, as well as the commandant, shall keep an account; and shall notify the interested that those who shall not have complied with their directions previous to their second visit in December, (in which they shall also be accompanied by the commandant and the same witnesses,) shall be obliged to pay for the labor and food of the negroes of the district who shall be employed for that purpose, by order of and under the inspection of the syndic, besides the fine of one hundred piasters hereinbefore mentioned. The syndics shall require from the inhabitants that their negroes be employed on Sundays for the purpose above mentioned, and they may not refuse in consideration that the price of their labor shall be faithfully paid to the negroes. So soon as a gap shall be perceived, the syndic of the district shall issue orders to the inhabitants of his district to furnish the number of negroes which he may think necessary, in proportion to their means, without waiting for the orders of the commandant or of the Governor. Whoever shall refuse shall be responsible for the ravages occasioned by the waters, which might have been stopped if immediate assistance had been given, and shall besides incur the before-mentioned fine of one hundred piasters for disobedience. If the negroes of the district are insufficient, the syndic shall give immediate information thereof to the Governor or the commandant, who shall issue orders to the inhabitants who might be incommoded by the waters to furnish negroes, in proportion to their means.

The labor and food of the negroes employed in stopping a gap shall be paid by the proprietor of the land, at the rate of four escalins* per day, and one escalin for food.

Holes between the mounds and the river shall be carefully stopped at low water, and filled up by a talus. The drains shall be as far removed as the nature of the ground will permit from the foot of the mound, which they would totally weaken, and would expose to be undermined by the quantity of crawfish which frequent them.

All horses, mules, cows, steers, and hogs, found on the mounds without a conductor, shall be taken up by the proprietor of the mound, and delivered to the syndic, who shall not return the same to the owner, without exacting a fine equal to one half the value thereof, applicable one-third to the proprietor of the mound, another third to the Royal treasury, and the remainder to the expenses of the courts and prison of the district. The appraisement shall be made by two or three capable persons, one of whom shall be appointed by the owner of the animal, another by the proprietor of

* Eleven escalins make one dollar.

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the mound, and, if those two are divided in opinion, a third shall be appointed by the syndic.

Police of Slaves.

The disastrous events proceeding from the present war should, with redoubled force, impress upon the minds of the inhabitants the necessity of attention to their slaves, and of keeping them in that state of content and subordination which would alienate them from the wish of acquiring a freedom which has cost so much blood to those of St. Domingo. To prevent, on the one hand, that excessive indulgence with which the slaves of some plantations are treated, introducing insubordination and insolence, and thereby exhibiting a bad example to the others; and, on the other, to provide against the hardships and inhumanity of some masters of little reflection, who, infringing the first law, that of nature, expose their slaves to the influence of despair; the commandants and syndics are required to direct their whole attention to the internal police of the plantations, and to cause the following directions to be strictly observed, under the penalty of personal responsibility to the Government, and of incurring the reproaches of both their own consciences and of the public, if, by an ill-placed complaisance or neglect, their country should hereafter be exposed to the disasters which have ruined the French colonies:

Every slave shall punctually receive the barrel of corn allowed by the usage of the colony, and which quantity is voluntarily augmented by the greater part of their masters.

The syndics shall take measures to induce the planters of their district to allow their negroes a portion of their waste lands, by which they will not only add to their comforts, but increase the productions of the province, and that time will be usefully employed which would otherwise be devoted to libertinism.

Every slave shall be allowed half an hour for breakfast, and two hours for dinner; their labor shall commence at break of day, and cease at the approach of night. Sundays shall be the privilege of the slaves, but their masters may require their labor at harvest, &c., on paying them four escalins per diem.

The slaves who have not a portion of waste lands shall receive punctually from their master a shirt and trowsers of linen for the Summer, and a great-coat and trowsers of wool for the Winter.

No person shall cause to be given at once, more than thirty lashes to his slave, under the penalty of fifty piasters; but the same may be repeated, if necessary, after an interval of one day.

It is permitted to shoot at an armed runaway negro who shall refuse to stop when required, or who cannot otherwise be taken, even if he be not armed; at a negro who shall dare to defend himself against his master or overseer; and, lastly, at those who shall secretly enter a plantation with intent to steal.

Whosever shall kill a slave, except in one of the cases before mentioned, shall be punished to the extent of the law; and if he shall only wound him, he shall be punished according to the circumstances of the case, and shall, besides, allow the slave to seek another master; no one being permitted to dispose of the life of a man at his pleasure: as, for example, when a slave, threatened with thirty lashes, shall fly before his master, he is not yet guilty of any crime, and very often has no other intention than to gain time to solicit his master, or to implore the pity of some intercessor. With what shadow of justice could the law permit a master, transported with passion, to kill or wound this unfortunate, solely for endeavoring to escape a rigorous chastisement? Intrigues, plots of escape, &c., arising in general from the negroes of one plantation frequenting those of another, the inhabitants are forbidden, under the penalty of ten piasters, to allow any concourse or resort of negroes to their plantations for the purpose of dancing, &c.; and the amusements of their own slaves, which shall be allowed only on Sundays, shall terminate always before night.

A slave shall not pass the bounds of his master's land, without his permission in writing, under the penalty of twenty lashes.

To prevent those disputes and animosities occasioned by the slaves of one planter being chastised by another, no person shall be allowed to punish a negro not belonging to him, *without the consent of his master, or the syndic of the district*, under the penalty of thirty piasters.

Every slave arrested without a permission or passport shall be sent to the syndic, who shall order that he be punished and returned *to his* master. If the residence of the syndic be too remote, the person who may have arrested the slave shall give information thereof, in writing, to the syndic, requesting permission to punish him, and shall conform to the tenor of his reply; after which the slave shall be returned to his master.

A slave who shall ride the horse of his master, or any other person, without permission, shall be punished with thirty lashes during *two days; that* is to say, with an interval of one day.

Slaves are not permitted to be proprietors of horses, under the penalty of the confiscation thereof, one half to the use of the treasury, and the other half to defray the expenses of the courts and prison; and the master who shall tolerate the same shall incur a fine of four piasters for each horse.

Fire-arms are prohibited to slaves, as also powder, ball, and lead, under the penalty of thirty lashes during three days, and confiscation thereof, one half to the Royal treasury, and the other half to defray the expenses of the courts and prison.

An inhabitant may not have more than two hunters; and he shall oblige them to deliver up their arms and ammunition on their return from the chase, under the penalty of fifty piasters if his hunter shall be arrested without a passport, or his arms and ammunition be found in the case.

Slaves may not sell anything without the permission of their master, not even the productions of the waste lands allowed them, under pain of twenty-five lashes, and a fine of double the value of the thing sold; and the white person who shall

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·chased the same shall incur the forfeit-
ɔof, and shall be brought before the syndic.
ıite person, negro, or free mulatto, shall
ed entrance into a camp without the per-
of the master, nor to sell anything to the
ı the borders of the river, under pain of
rested by the proprietor of the plantation,
sported with all his merchandise to the
e of the syndic, who shall examine his
and merchandise, and shall sentence him
e of fifteen piasters; and if he have not
ıufficient to discharge the same, he shall
ıed fifteen days in the prison of the post,
the disposal of the commandant.
fire-arms, and ammunition, shall be seized
possession of coasters, by the syndic, and
d to the commandant, who shall sell the
public auction for the use of the Royal
, and to defray the expenses of the courts
prison.
yndic shall, from time to time, visit the
amps in his district, both by night and by
l shall punish with thirty lashes the slaves
ıg to other plantations, who shall be found
without the permission of both masters.
persons, free negroes, and mulattoes, shall
to the commandant of the post, who shall
them with fifteen days' imprisonment.
n an inhabitant shall be informed that
e runaway negroes in a certain place, he
ve notice thereof to the syndic, who shall
ıthority to assemble as many as fifteen arm-
bitants, without the permission of the com-
ıt, for the purpose of arresting them; but
l immediately after give notice thereof to
ımandant. Patroles, or other military pro-
s, may not be had without the permission
yndic, under the penalty of twenty pias-

ve may not complain to the Government,
t having previously made his complaint to
dic of the district and to the commandant,
ıain of thirty lashes upon the public square;
said persons shall be obliged to receive his
int, and to grant him strict justice.
soever shall shoot at a slave shall be obliged
notice thereof to the syndic within four
ınder the penalty of fifty piasters, applica-
half to the Royal treasury, and the other
defray the expenses of the prison and of
t; the syndic shall advise the commandant
circumstances within twenty-four hours,
e last mentioned shall give information
to the Government within a like term,
under the penalty of fifty piasters, to be incurred by the syndic or commandant, if either shall fail therein.

As there are plantations the masters of which are mostly absent, the syndic shall attend thereto, and shall charge some inhabitant with the care of the slaves, and to make the necessary visits both by night and by day; such cases excepted, no person shall have authority to visit plantations, granaries, negro camps, dwelling-houses, or huts, of whites, negroes, mulattoes, or mestives, without permission in writing from the syndic of the district; by reason that all property is sacred, and every house an asylum, which the authority of the law can only enter for the public advantage.

Free people of color, enjoying by law the same advantages with the other members of the nation with which they are incorporated, may not be molested in the possession of their property, injured, or ill-treated, under the penalties provided by law for the safety and security of the property of white persons.

The syndics and commandants of posts shall be watchful of their conduct, and shall require that deference and attention which is due from them to the members of that society whom they formerly served, and which has admitted them to its bosom. The syndics shall not tolerate any want of attention to the whites, but shall deliver them over to the commandant of the post, who shall punish them with imprisonment, but never by the lash, or by any other corporeal punishment.

The syndics shall also observe that all free people of color labor either in the field, or at some trade within their district, and shall send the indolent and vagabonds to the commandant of the post, who shall fix them at the capital, where they shall be employed upon the King's buildings, and other public works.

In case a syndic shall be sick, or obliged to be absent from the district, he shall commit the duties of his office to a respectable inhabitant, and shall give notice thereof to the commandant of the post.

All fines herein specified shall be equally divided, and applied to the Royal treasury, and to defray the expenses of the courts and prison of the post. Those persons who may be insolvent shall remain in prison as many days as there shall be piasters composing their debt.

BARON DE CARONDELET.

NEW ORLEANS, *June* 1, 1795.

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Census of the Territory of Louisiana.

No. 2.—*Census of Louisiana in the year* 1785.

Districts.	Whites.	Free people of color.	Slaves.	Tot[illegible]
Balize to the city,	387	67	1,664	[illegible]
New Orleans	2,826	563	1,631	[illegible]
St. Bernardo	584	2	–	[illegible]
Bayou St. Jean	91	14	573	[illegible]
Costa de Chapitoulas	1,128	263	5,645	[illegible]
First German Coast	561	69	1,273	[illegible]
Second German Coast	714	5	581	[illegible]
Catahanose	912	18	402	[illegible]
Fourche	333	–	273	[illegible]
Valenzuela	306	–	46	352
Iberville	451	–	222	673
Galveztown	237	–	5	242
Baton Rouge and Manchac	68	2	100	[illegible]
Pointe Coupée	482	4	1,035	[illegible]
Attakapas and Opelousas	1,204	22	1,182	[illegible]
Ouachita	198	–	9	[illegible]
Avoyelles	149	138	–	287
Rapides	63	–	25	88
Natchitoches	404	8	344	756
Arkansas	148	31	17	196
Illinois	1,139	18	434	1,591
Natchez	1,121	–	438	1,559
Mobile and Tombigbee	325	51	461	837
Pensacola	384	28	184	596
	14,215	1,303	16,544	32,062

No. 3.—*Island of New Orleans and adjacent settlements.*

	Whites.	Blacks.	Mi[illegible]
1. The island of New Orleans, with the opposite margin and settlements adjacent, computed at	25,000	25,000	5,000
2. The west margin, from Manchac, including Point Coupée, and extending to the Red river	4,000	5,000	800
3. Attakapas, along the seacoast, between the delta of the Mississippi and the western boundary	1,600	2,000	350
4. Opelousas, on the north of Attakapas	3,750	3,500	750
5. Red river, including bayou Bœuf, Avoyelles, Rapides, and Natchitoches, (the two first bounding on Opelousas)	5,000	3,000	1,[illegible]
6. Ouachita river, (falling into the Red river from the north)	1,200	100	[illegible]
7. Concord, a settlement on the margin of the river, opposite to Natchez	200	70	[illegible]
8. Arkansas river	600	–	150
9. New Madrid, and vicinity	1,750	50	350
10. Illinois and Missouri	4,000	570	1,00[illegible]
Total	47,150	39,220	9,7[illegible]
NOTE.—The settlements of Baton Rouge and New Feliciana, on the east side of the river, lying between the line of demarcation, lat. 31°, and the Iberville, including some establishments on the river Amite, &c, contain	3,000	600	[illegible]
	50,150	39,820	[illegible]

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No. 4.—*Census of the districts or posts of Louisiana and West Florida.*

Names and situation of the posts or districts.	Whites.	Free people of color.	Slaves.	Total.
to New Orleans - - - - - - - - -	–	–	–	2,388
rnardo, or Terre au Bœufs, on a creek running from the English , east, to the sea and Lake Borgne - - - - -	–	–	–	661
New Orleans and suburbs, as per detail No. 1 - - -	3,948	1,335	2,773	8,056
St. Jean and Chantilly, between the city and Lake Pontchar- - - - - - - - - - - -	–	–	–	489
f Chapitoulas, or along the banks of the Mississippi, six leagues rds - - - - - - - - - - - -	–	–	–	1,444
erman Coast, from six to ten leagues upwards, on both banks -	688	113	1,620	2,421
German Coast, from ten leagues, and ending at sixteen do. -	883	21	1,046	1,950
nose, or First Acadian Coast, commencing at sixteen leagues the city, and ending at twenty-three, on both banks - -	1,382	–	818	2,200
e, or second Acadian Coast, from twenty-three to thirty leagues town - - - - - - - - - -	677	–	464	1,141
ela, or settlements on the Basin de la Fourche, running from est side of the Mississippi to the sea, and called in old maps the che, or Rivière des Chilimachas - - - - - -	1,797	–	267	2,064
parish, commencing at about thirty leagues from Orleans, and g at the river of the same name - - - - - -	658	13	386	1,057
own, situated on the river Iberville, between the Mississippi and Maurepas, opposite the mouth of the Amite - - -	213	8	26	247
ment of Baton Rouge, including all the settlements between berville and the line of demarcation - - - - -	958	16	539	1,513
Coupée and False river behind it, fifty leagues from Orleans, on est side of the Mississippi - - - - - -	547	–	1,603	2,150
as, on the rivers Teche and Vermilion, &c. to the west of the ssippi, and near the sea - - - - - - - -	859	58	530	1,447
as, adjoining to, and to the northeast of the foregoing - -	1,646	–	808	2,454
ta, on the river of the same name, or upper part of the Black which empties into the river Rouge - - - - -	–	–	–	361
les, on the Red river, about —— leagues from the Mississippi -	336	2	94	432
on the Red river, about —— leagues higher up - -	584	–	169	753
oches on the Red river, about seventy-five leagues from the ssippi - - - - - - - - - -	785	–	846	1,631
d, an infant settlement on the banks of the Mississippi, opposite hez - - - - - - - - - -	Unk'n.			
as, on the river of the same name, about twelve leagues from its h - - - - - - - - - - -	335	5	48	388
Illinois, or Upper Louisiana, from La Petite Prairie, near New id, to the Missouri, inclusive, as per detail No. 2 - -	4,948	197	883	6,028
and country between it and Orleans, and borders of Lake Pont- rain - - - - - - - - - -	–	–	–	800
la, exclusive of the garrison, not exceeding - - -	–	–	–	300
	21,244	1,768	12,920	42,375

ORANDUM.—This census is taken from the latest returns, but is manifestly incorrect—the pop- being underrated. From some places there have been no returns for the last seven years; and, ose made this year, it is easy to see that certain causes induced the inhabitants to give in turns of their slaves and of their own numbers. The Spanish Government is fully persuaded population at present considerably exceeds fifty thousand souls.

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No. 5.—*Statement of the population of the settlements of Upper Louisiana, with the births, marriages, deaths, stock, and productions of the year* 1799.

Names of the settlements.	Whites.	Free mulattoes.	Free negroes.	Slaves.	Total.	Marriages.	Births.	Deaths.	PRODUCTIONS. Bushels of wheat.	Bushels of Indian corn.	Pounds of tobacco.	Bushels of salt.	Pounds of lead.	Horned cattle.	Horses.
St. Louis	601	50	6	268	925	9	52	20	4,300	10,300	1,650	–	–	1,140	215
Carondelet	181	–	–	3	184				3,300	2,760	4,500	–	–	198	45
St. Charles	840	–	–	55	895	15	41	11	6,640	12,170	4,053	–	–	1,102	241
St. Fernando	259	–	–	17	376	5	34	7	5,800	2,350	750	–	–	230	57
Marais des Liards	337	–	–	42	379				1,019	1,604	6,800	–	–	629	153
Maramee	115	–	–	–	115	–	–	–	200	6,370	3,150	–	–	229	125
St. Andrews	361	5	27	–	393	–	–	–	730	16,950	5,465	–	–	574	122
St. Genevieve	636	1	2	310	949	5	64	14	16,400	21,450	1,999	965	150,000	1,253	268
New Bourbon	445	–	1	114	560				1,680	14,300	300	–	20,000	295	83
Cape Girardeau	416	105	–	–	521	–	–	–	510	16,200	–	–	–	707	200
New Madrid	711	–	–	71	782	–	–	–	47,765	–	–	–	–	1,188	243
Little Meadow	46	–	–	3	49	–	–	–	–	2,675	–	–	–	35	
	4,748	161	36	883	6,028	34	191	52	88,349	84,534	28,667	965	170,000	7,980	1,763

Exports for New Orleans.

1,754	packs of shaved skins, of 100 pounds each, valued at -	$70,160
8	p'ks bear skins	256
18	do buffalo robes	540
36,070	pounds lead -	2,160
2,000	pounds flour -	60
		73,176

MEMORANDUM.

St. Louis is situated on the Mississippi, five leagues below the mouth of the Missouri.
Carondelet is two leagues below St. Louis, on the Mississippi.
St. Charles is on the Missouri, about seven leagues from its mouth, and about six from St. Louis by land.
St. Fernando, or Harissaret, is three or four leagues from St. Louis, in a valley, on one of the roads from St. Louis to St. Charles.
Marais des Liards is four leagues from St. Louis, and about a league to the west of the foregoing.
Maramee is on the river of the same name.
St. Andrews is situated about five leagues above St. Charles, on the Missouri.
St. Genevieve is opposite Kaskaskias, and on the banks of the Mississippi.
New Bourbon is about a league below St. Genevieve.
New Madrid is on the Mississippi, fifteen leagues below the mouth of the Ohio.
Little Meadow is seven leagues below New Madrid, on the banks of the river.

MEMORANDUM.

All the fine furs are shipped to Canada, as well as a great quantity of deer and bear skins, where they bring a better price than in New Orleans; and this being a contraband trade, no notice is taken of it in the above account of exports, which is the official one.

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No. 6.—*Census of the city of New Orleans, exclusive of seamen and the garrison.*

ate.	Quarters.	Whites.	Free people of color.	Slaves.	Total.
803.	First quarter	745	203	546	1,494
	Second quarter	891	–	951	1,842
	Third quarter	722	787	579	2,088
	Fourth quarter	440	219	225	884
	Suburb of St. Charles	70	–	170	240
	Suburb of St. Louis	380	126	302	808
		3,248	1,335	2,773	7,356
	Whole number of persons not domiciliated	700			700
		3,948	1,335	2,773	8,056

N. B. This census appears to be incorrect, as, by some unaccountable mistake, the number of free people of lor in the second quarter is not included; and, on the whole, the population is thought to be underrated.

APPEALS TO THE SUPREME COURT.

[Communicated to the House, Dec. 29, 1803.]

Mr. Boyle, from the committee to whom was ferred a resolution directing an inquiry into the cpediency of vesting the powers usually exercised a court of equity in the judges of the United tates, within the Indiana and other Territories, id also into the expediency of allowing writs of ror and appeals from the judgments and decrees said judges to the Supreme Court of the Uni- d States, made the following report:

The courts without equitable jurisdiction will in- itably, in some instances, become the instruments iniquity, instead of the administrators of jus- ce. Fraud, accident, and hardship, ingredients many of those transactions of human life, hich constitute the basis of litigation; entrench- l within legal forms and veiled with specious, it deceitful appearances, are many times not ithin the reach of a tribunal, vested with com- on law powers only. To develop, and re- eve against them, an equitable jurisdiction is ecessary. It may be proper also to observe, that ersons may avail themselves of the powers of a urt of equity to obtain more complete relief, by ercing the specific execution of contracts fairly ade, and rescinding those that are bottomed pon deceit, than a court of law is competent to rant; add to that, *trusts*, which frequently be- ome sources of forensic controversy, are matters roperly cognizable in courts of equitable juris- iction.

The committee, therefore, have agreed respect- ully to submit to the consideration of the House e following resolution:

Resolved, That it is expedient to vest the powers sually exercised by a court of equity in the judges of e United States in the Indiana and other Territories.

As to the second matter referred to them for their inquiry, the committee beg leave to observe, that the attainment of a uniformity of decision in any section of country subject to the same laws and usages, is one of the principal objects of the institution of a Supreme Court, with appellate jurisdiction. Where there are many courts dispersed over a country, though subject to the same laws and usages, yet, without one common tribunal, which shall have power to revise and correct the judgments and decrees of the inferior courts, their decisions will be various and contradictory. But to attain this uniformity of decision in each Territorial Government, it is not necessary to allow writs of error or appeals to the Supreme Court of the United States, because each Territory has a supreme court (relatively speaking) within itself, which is composed of three judges and has, or may have, appellate jurisdiction over all others erected in the Territory, whereby it may preserve that uniform rule of decision so desirable.

Correctness, or propriety of decision, is the only other object the attainment of which can be aided by allowing writs of error and appeals from the Territorial courts to the Supreme Court of the United States. The committee are not informed, nor do they believe, that there is any unusual want of confidence in the courts of the Territories. They are aware that hardship and injustice will result to individuals in some instances from the erroneous decisions of those courts, but it has not occurred to them that an appeal will insure infallible relief. Infallibility is not the attribute of any earthly tribunal. So vast is the distance from the Territorial courts to the Supreme Court of the United States, that the mischief resulting from the necessary delay, expense, and inconvenience of prosecuting or defending writs of error and appeals cannot, in the opinion of the commit-

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tee, be compensated by any advantage to be derived from the revision of the courts of the Territories by the Supreme Court of the United States.

It is obvious to those who have had an opportunity of observing the spirit which often prevails with litigants, that the right of appeal would sometimes be made use of as an instrument of vexation and oppression, where the distance is so great from the inferior to the superior court.

The committee, therefore, upon the second matter referred to them, agree to submit the following resolution:

Resolved, That it is inexpedient to allow writs of error and appeals from the judgments and decrees of the courts of the Indiana and other Territories to the Supreme Court of the United States.

DIRECT TAX.

[Communicated, to the House, Dec. 22, 1803.]

Documents accompanying "A bill further to amend the act, entitled 'An act to lay and collect a direct tax within the United States."

NOVEMBER 12, 1803.

SIR: I am instructed by the Committee of Ways and Means to submit the enclosed petition to you, and to request such observations upon it as you may deem material. I have the honor to be, &c. JOHN RANDOLPH.

HON. ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Dec.* 5, 1803.

SIR: I have the honor to return the petition of a number of owners of unoccupied lands in the State of New York, together with remarks thereon, in which the propriety of some further modifications of the laws laying a direct tax is submitted to the Committee. I have the honor to be, &c. ALBERT GALLATIN.

JOHN RANDOLPH, Esq.,
Chairman Committee Ways and Means.

Remarks on the petition of sundry inhabitants of New York, complaining of the operation of the law for levying a direct tax.

The inconveniences complained of by the petitioners apply to unoccupied lands, and relate either to the assessment or to the payment of the tax.

It is urged that the vague and uncertained descriptions of the lands assessed, with the omission of the names of the owners in many instances, render it difficult, and sometimes impracticable, to identify the estate to which the tax was attached.

It will be recollected, on that head, that it was enacted by the ninth section of the act "to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," that all persons in the United States owning or possessing any dwelling-houses, lands, or slaves, should deliver to the assessor within whose assessment district they resided, separate written lists specifying such houses, lands and slaves, owned by them respectively in each and every assessment district of the State, or of any other State, and designating the State, county, parish, township or town where the property lay, the quantity of land, name of the owner, &c. And it was further provided, by the 12th section of the same act, that all lists of property, taken with reference to any other assessment district than that in which the owner or possessor resided, should be immediately transmitted to the commissioner superintending the district, and from him to the principal assessor of the district within which such property was situated.

From thence it appears that, except in the case of sickness, or absence from his assessment district at the time fixed for delivering the lists, the uncertainty of the descriptions of lands is principally chargeable to the neglect of the owner himself, whose duty it was to prepare and deliver correct and descriptive lists of his property either lying in his own or any other assessment district. For it was only in the case when no such list had, in the manner provided by the act, been transmitted to the principal assessor of a district, that it became the duty of the assessor of such district to prepare themselves, in conformity with the section of the act, lists of houses, lands, and slaves, situated in the district, and not owned or possessed by any person residing within the same.

In that case, the assessors must have prepared the lists and described the lands in the best manner they could from the information they were able to obtain. In many instances, they may have mistaken the names of the owners, and when the owners were altogether unknown they have designated the land only by the number of the lot and by the name of the township or original patent. And it cannot be doubted that, either from want of information or from other causes, many vague, incorrect, and inapplicable descriptions of land are to be found in the lists of unoccupied lands which have been or may hereafter be sold for non-payment of the tax, as well in the State of New York as in all other States which contained large tracts of such lands.

It is, however, evident that, it is impracticable, at present, and especially in cases where the land has already been sold, to rectify the mistakes or incorrect descriptions of the assessment: and, however injurious the result may be to the parties it does not seem, for the abovementioned reasons, that they have, in that respect, a right to expect redress from Government. It must also be observed, that when the description of the land, without any mention of the owner, did not apply to the tract intended to be taxed; either (as has happened in many instances) the land could not be sold, and the tax is lost to the United States; or, the sale invest, in the purchaser, but a precarious title to the real tract; and in cases where lands were assessed in the name of other persons than the owner it has been expressly provided by the 5th section of the act "to amend an act entitled "An act to lay

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nd collect a direct tax within the United States," ıat copies of the lists of property assessed, state- ıents of the amount of taxes due thereon, and otifications to pay the same should, before the ollectors could proceed to sell, be published for xty days in four gazettes of the State, if there vere so many. From which last provision it ap- ears that when such publication has been omit- ɜd, the sale was illegal, and that when it has taken lace, the original proprietors may have recourse ı it, in order to ascertain the amount of their ıxes, even when, as is suggested, the collectors ɜfuse to communicate lists of the lands sold by ıem.

The petitioners, in the next place, complain that ıey cannot avail themselves, by a timely repay- ıent of the tax, costs, and interest, of the right ɜserved to them by law of redeeming, within two ears after the sale, those lands which may have ɜen sold for non-payment of the tax; because the ɔllectors to whom that payment was directed to e made, allege in some instances that their of- ce no longer exists, and sometimes refuse to ex- ibit their lists of lands sold; and because the ıpervisor has no means whereby to compel such ɔllectors to transmit transcripts of those lists, in onformity with their instructions.

The law appears to be defective as well in that ɜspect as in that no mode has been provided for onveying the lands sold and remaining unre- eemed; and although the mode of redress pointed ut by the petitioners may not afford complete re- ef in all cases, nor perhaps be adapted to its full xtent consistent with the rights already vested ı bona fide purchasers, its general principles do ɔt seem objectionable, and will enable the origi- al proprietors in many instances to redeem their ınds.

The following provisions are suggested to effect ıat object.

1. That the supervisor or officer to whose office ıe duties of supervisor have been annexed, and, ı those States where no such officer may exist, ıe marshal, should alone be authorized to make ɜeds for lands sold for non-payment of taxes and ɜmaining unredeemed.

2. That the collectors should within —— months ter passing the proposed act, when the land has ɜen previously sold, and within —— months af- r the completion of sales made subsequent to ıe date of such act, transmit to the supervisor, ficer acting as supervisor, or marshal, as the case ıay be, correct transcripts of the lists of lands sold r non-payment of taxes; specifying the land as ɜscribed by the assessment, the quantity of land ıld, the amount of tax, charges and costs for which was sold, and the name of the purchaser; and esignating also such tracts of said lands which ıay have been redeemed, in conformity with the ıw, by the original proprietors, or for their benefit; nd that they should also, within the same time, ay over to the said officer the amount of moneys ıid by or for such proprietors, and which shall ɔt by the collectors have been already repaid to ıe purchasers; under penalty of —— dollars in ıse of failure on their part either of transmitting such transcripts or of paying over such moneys; and that a reasonable allowance, to be repaid in case of redemption by the original proprietor, should be made to them for transcribing and transmitting those lists.

3. That no deeds should be executed to the purchasers of lands thus sold, unless such lands are stated in the transcripts received from the collectors, or unless the purchaser shall have delivered within a limited time to the officer authorized to make deeds, a receipt from the collector for the purchase money, dated within not more than —— subsequent to the sale, and specifying distinctly the original description of the land assessed and the quantity sold.

4. That deeds should be executed to the purchaser by the officer authorized to do the same, provided that the preceding provision shall have been complied with, unless the original proprietor, or some person in his name and for his benefit, shall within —— after passing the act (or after the date of the sale, or after the receipt either of the transcript, from the collectors, or of the collector's receipt from the purchaser) have either repaid to the officer the amount of the tax, charges, costs and interest, as directed by law, or produced to him a receipt from the collector for such repayment, dated within not more than —— subsequent to the passing of the proposed act: in which case the purchaser shall be entitled to receive the said amount from the officer or collector accountable for the same.

The three first provisions do not appear to be liable to any well grounded objection; but, in order to fix the details of the last, it is necessary previously to decide the question whether under the terms of the existing laws, a right to the land absolutely vests in the purchaser at the expiration of two years after the sale, so as to preclude Congress from extending the time of redemption beyond that term. The modifications of which the provision, fixing the time when deeds for lands unredeemed may be made, is susceptible, must necessarily depend on the opinion which shall be formed by the committee on that subject.

Respectfully submitted.

ALBERT GALLATIN.

PUBLIC LANDS.

[Communicated to the House, January 23, 1804.]

Mr. Nicholson made the following report:

The committee appointed to inquire into the expediency of amending the several laws providing for the sale of the public lands of the United States, and to whom were likewise referred several petitions from sundry persons residing in the State of Ohio, on the same subject; submit an additional report, in part, and recommend to the House the adoption of the following resolutions:

1. *Resolved*, That from and after the —— day of —— next, the public lands of the United States lying north of the river Ohio, shall be sold on payment of one-twentieth part of the purchase-money at the time of

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making the purchase, and the remainder within sixty days thereafter, the first payment to be forfeited, and the sale to be void, unless the second payment is made within the time above limited.

2. *Resolved*, That from and after the said —— day of —— next, those townships which have heretofore been sold in half sections, may be purchased, at the option of the purchaser, either in half or quarter sections; in which last case the half sections shall be divided, on application and at the expense of the purchaser, into two equal parts, by a line running due east and west.

3. *Resolved*, That from and after the said —— day of —— next, those townships which have heretofore been sold in entire sections, may be purchased either in entire or in half sections, at the option of the purchaser; in which last case the section shall be divided into two equal parts, on the application and at the expense of the purchaser, by a line running due north and south.

4. *Resolved*, That the sections heretofore reserved in the Steubenville district, and in the tract lying between the two Miamies, south of the twelfth range of townships, shall, from and after the —— day of —— next, be offered for sale on the same terms, and in the same quantities as the other lands within the same townships respectively.

5. *Resolved*, That the public lands north of the river Ohio, and above the mouth of Kentucky river, including the reserved sections mentioned in the preceding resolution, shall be offered for sale in half sections and in quarter sections, before the said —— day of —— next, at the respective land offices, to the highest bidder, provided that no half section shall be sold for less than —— per acre, and no quarter section for less than —— per acre, to be paid within forty days after the day of sale.

6. *Resolved*, That the said lands may, after the said —— day of —— next, be purchased at the respective land offices at the rate of —— per acre, for each entire or half section, and at the rate of —— per acre for each quarter section.

7. *Resolved*, That no interest shall be charged to persons who have purchased, or who, before the said —— day of —— next, shall purchase any of the said lands, in pursuance of the act of the 10th day of May, 1800, and shall not have alienated the same; provided that they have discharged, and shall hereafter discharge, the instalments due on the said lands, on or before the days on which the same have or may become due; but the interest shall be demandable in conformity with the provisions of the said act, from the date of the purchase, on each instalment which shall not have been paid on the day on which the same became or shall become due.

8. *Resolved*, That certificates receivable in payment for lands, shall be granted to persons entitled to the benefit of the last preceding resolution, and who shall have completed their payments before the passing of this act, for a sum equivalent to the interest which has been charged them, and from the payment of which it is intended they should be exonerated.

9. *Resolved*, That the authorities vested in, and the duties enjoined on, the surveyor general, shall extend to all the public lands to which the Indian title has been extinguished, north of the river Ohio, and east of the river Mississippi.

10. *Resolved*, That whenever any of the public lands shall have been surveyed, in conformity with the existing laws, they shall be divided by the Secretary of the Treasury into convenient districts; and a deputy surveyor shall, with the approbation of the said Secretary be appointed for each district by the surveyor general, whose duty it shall be to run and mark such lines as may be necessary for dividing and classing the lands sold by the United States; for which services they shall receive —— dollars for every mile thus surveyed and marked, from the purchaser of such lands.

11. *Resolved*, That from and after the —— day of —— next, each of the registers and receivers of the land offices heretofore established by law, shall, in addition to the commission heretofore allowed, receive one-half per cent. on all the moneys paid for public lands, and an annual salary of five hundred dollars, the register and receiver of the land office at Marietta excepted; the annual salary of each of whom shall be only two hundred and fifty dollars.

12. *Resolved*, That from and after the —— day of —— next, the fees payable by virtue of the act of the 10th of May, 1800, for surveying expenses, patents, entry of lands, and certificates granted by the register, shall no longer be demandable from and paid by the purchasers.

13. *Resolved*, That the two tracts of land lately purchased from the Indians, on the Wabash, and between the rivers Mississippi and Ohio, shall be surveyed and offered for sale, in the same manner, and on the same terms, as the public lands *north of the Ohio*, and above the mouth of the *river Kentucky, and in* conformity with the preceding resolutions.

Letter from the chairman of the committee appointed to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States, to the Secretary of the Treasury.

DECEMBER 1, 1803.

SIR: The committee appointed to inquire into the expediency of amending the several laws providing for the sale of the public lands of the United States, discovering that a variety of objects embraced by the several petitions referred to them, are connected with, and may materially affect, the revenue, they have directed me to submit to you the following propositions, and to request such information as the nature of the subject may require.

Will the sales of the lands be retarded or accelerated, and how will the revenue be affected?

1. By selling the lands in smaller tracts?

2. By charging no interest on the amount of sales, until after the purchaser has made default in payment?

3. By selling for cash instead of credit now authorized by law?

4. By reducing the price of the public lands?

5. By making grants of small tracts to actual settlers and improvers?

As, from the nature of your official duties, your attention has necessarily been frequently drawn to the several laws providing for the sale of the public lands, the committee will thank you to point out any defects which may have occurred in carrying them into effect; and to suggest such amendments as may appear to you proper to remedy existing inconveniences.

I have the honor to be, &c.

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ıpanying a report of the committee to whom ɜ referred, on the 22d of November last and 4th ant, the petitions of sundry residents and purıers of land in the State of Ohio:

TREASURY DEPARTMENT, *Jan.* 2, 1804.

: In conformity with the request contained ır letter of the first ultimo, I have the honor nmunicate such observations respecting the sed alterations in the laws providing for the ıf public lands, as have been suggested by operation.

der the present system, the public lands of the river Ohio and east of the river Muskı, are sold only in sections of one mile square, ontaining six hundred and forty acres each. ɔther lands north of the Ohio, and above the ı of the Kentucky river, are sold, one-half tions, and the other half in half sections, ining three hundred and twenty acres each. ovision has as yet been made, by law, for the f the reserved sections which are interspersroughout those lands, nor for that of the lying below the mouth of Kentucky river, ately purchased from the Indians; one of ı is situated on the Wabash river, around incennes, and the other between the Missisand Ohio river, above the confluence of these ivers.

e price at which all the lands offered for sale ɔe purchased, is two dollars per acre, payaspecie or in six per cent. stock at par, and ır equal instalments, the first of which must id at the time, and three others within two, and four years after the time of making urchase. In every instance, except in the of persons who had made contracts with Symmes, for lands lying between the two ıies, interest at the rate of six per cent. a is charged on the three last instalments, the date of the purchase; and in every case ount, at the rate of eight per cent. a year, is ed for prompt payment.

e cash price of the lands is, therefore, only ollar and eighty-four cents per acre, except ınds lying between the two Miamies, for ı contracts had been made with Judge nes, which may be paid for at the rate of ollar and sixty-four cents per acre. It folfrom thence, that if all the lands were sold ɜ same terms as the last-mentioned, that is ', without charging interest until after the ments had become due, it would operate a tion on their cash price of twenty cents per

e reasons which probably influenced the lature in fixing a price so much beyond had been the usual terms on which vacant had theretofore been granted in the several s, were a wish to prevent monopolies and speculations, and at the same time to secure nanent revenue to the Union. The first obıas been fully obtained: and, although the eds of the sales have not been commensuvith the vast increase of population, more nine hundred thousand acres have been sold ree years; on which near eight hundred thousand dollars have been received, and about eleven hundred thousand remain due by the purchasers.

It must, however, be observed, that the price of public securities, at the time of passing these laws would have reduced the real cash price of lands at about a dollar and an half per acre, and that the sales have been effected by the competition of lands held by individuals in the Connecticut reserve, in the military tracts, and in the Kentucky, and which might generally be purchased for a less price than that set on the public lands.

A considerable reduction of the price might be considered as a waste of the public property, and as promoting migration beyond its natural and necessary progress. It would certainly be injurious to private landholders, and by throwing the lands into the hands of a few individuals, prevent that gradual and equal distribution of property, which is the result of the present system. To reduce it only to what may be considered as the market price which actual settlers give for small tracts in similar situations, would only satisfy the demand for land created by the existing population, and without promoting migrations or speculations on a large scale, would increase the receipts in the Treasury: provided that reduction was connected with another measure which is considered as of first importance for the security of that branch of the revenue.

It has been observed that about eleven hundred thousand dollars are due to the United States on account of preceding sales. Great difficulties may attend the recovery of that debt, which is due by near two thousand individuals, and its daily increase may ultimately create an interest hostile to the general welfare of the Union. It appears extremely desirable in every point of view, that lands should hereafter be sold without allowing any other credit than that of forty days now given for the payment of the first instalment; and, as that provision might be considered injurious to that part of the community who are not able to make large payments, it would seem proper to connect it with a moderate reduction in price, and with a permission to purchase smaller tracts than is now allowed by law.

Supposing that the lands which are now sold in entire sections, should be offered for sale in half sections; that those which are now sold in half sections should be offered for sale in quarter sections, and that the price of entire and half sections should be reduced to one dollar and twenty-five cents, and that of quarter sections to one dollar and an half per acre, it is believed that the benefits resulting from the present system would not be impaired, and that several important advantages would be obtained.

1. The price being still as high as that at which lands held by individuals, in similar situations, are generally sold, and higher than can be afforded for any other purpose than that of improving the land or securing it for the use of the purchaser's family, monopolies and large speculations would be as effectually prevented as under the existing provisions.

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2. The poorest individuals, as they cannot, at present, purchase less than three hundred and twenty acres, must, in order to become freeholders, be able to pay one hundred and sixty dollars, and become bound for four hundred and eighty more, payable within four years; and it is proper to observe that, if they have no other resources, it is almost impossible that they should, during the first four years of a new settlement, draw the means of payment from the produce of the land. By the proposed alteration, a man might, by the payment of two hundred and forty dollars, acquire a freehold of one hundred and sixty acres, without encumbering himself with any debt whatever. The difficulty of raising eighty dollars more at first, is unimportant, if it shall be admitted that the subsequent payments must at present be provided for from other resources than those arising from the land itself: and, in every other respect, the purchaser will evidently be placed in a much more desirable situation.

3. Whatever revenue may be derived from that source will be collected in the most simple manner, and will be completely secured. There will be no outstanding debts, and the interest of every new purchaser will become identified with that of the Union.

4. It has already been observed that the sales have not, by any means, been commensurate with the demand for land and the increase of population; they have been limited partly to the competition of other lands in the market, and partly by the existing means of payment. Under the system, altered as has been suggested, they would be limited only by the last cause, and be altogether regulated by the amount of circulating medium acquirable by the purchasers. It is evident, indeed, that it would be more easy to sell 300,000 acres at a dollar and a third, than 200,000 acres at two dollars per acre; and no doubt is entertained that the revenue would be not only secured, but also increased by the proposed alterations.

The only difference to the United States will be, that they will transfer the property of a greater quantity of land for the same sum of money than they do at present. The estimated revenue of $400,000, derived from that source, is predicated on annual sales of 200,000 acres at two dollars, or, rather, of about 212,000 at one dollar and eighty-four cents per acre; 266,666 acres at one dollar and an half, or 320,000 at one dollar and twenty-five cents per acre, would produce an equal sum. It would, therefore, under the present alterations, cost annually to the United States about one hundred thousand acres more than at present, to raise a revenue equal to that which may be collected under the existing regulations. Compared with the quantity of land north of the Ohio and east of the Mississippi, not less certainly than one hundred and fifty millions of acres, the soil of which belongs to the United States, that difference is so trifling, and the effect which, in that respect, may result from the alteration so distant, that neither of them seems to afford sufficient ground of objection.

A more serious difficulty will arise from former purchasers, who may complain that they would be left in a worse situation than those who shall purchase under the new arrangement. It is true that those persons who have had the selection of the most eligible spots in point of situation and of soil; yet, under all circumstances, and also in order to secure punctual payments, it might be expedient to release them from the payment of interest until after their instalments had become due. That provision, which it is believed would be perfectly satisfactory, should be extended only in favor of those who shall discharge those instalments with punctuality, and who have not alienated the property. In the few cases where the purchasers have already completed their payments, certificates receivable in payment for land might be given to them for the sums which may have been charged for interest.

It is believed that the alterations which have been suggested will enable a great portion of the actual settlers to become purchasers; but the principle of granting them a right of pre-emption, exclusively of the abuses to which it is liable, appears irreconcilable with the idea of drawing a revenue from the sale of lands. Nor would the reduction of price, and especially the sale in smaller tracts, be an eligible measure, so far as respects the revenue, unless connected with a suppression of the credit which is now given to purchasers.

Should those outlines be adopted, it may be proper to provide that, before the reduction either in the price or in the size of the tracts shall take place, all the lands shall be offered at public sale, as on a similar occasion had been directed by the act passed on the 10th of May, 1800; and some other modifications of less importance, though not immediately connected with that part of the subject, may at the same time be taken under consideration.

The powers of the Surveyor General extend only over the lands lying north of the river Ohio and above the mouth of the river Kentucky; it seems proper, on account of the late purchases, that they should be extended over all the public lands lying north of the Ohio and east of the Missouri; for the surveys of the lands above the mouth of the Kentucky, to which the Indian title has been extinguished, being nearly completed, it is hardly necessary to create a new office for the others; and it would be useful to provide that that officer should also ascertain, by astronomical observations, the situations of some of the most important points of that part of the country.

The surveys are now executed by assistants appointed by the Surveyor General, whose offices cease with the completion of their work. For the purpose of making legal re-surveys, when called on by the parties; of surveying and marking the lines which, in conformity with the map presented by law, have been left open; and also of sub-dividing the tracts into quarter sections, in pursuance of the proposed modifications, it would be eligible to have "district surveyors" appointed, who should receive for their serious ser-

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ces stated fees, to be paid by the parties for hose benefit they may be rendered. That arngement, exclusive of other advantages, would eclude the necessity of any advance from the reasury for the subdivision of lands into quarter ctions.

Whatever price it may be thought proper to fix ı the lands, it will be more simple and conveent for the purchasers; that, with the exception the last mentioned expense, the several fees ıw paid to the United States for surveying exnses and for entry and certificates, and which, the purchase of an half section, amount, altother, to about three cents and an half per acre, ould be incorporated with the price.

The receivers of public moneys receive now ıe per cent. on all the moneys paid into the reasury, and the registers one-half per cent. on e same, besides the fees, amounting to twoirds per cent. more, the suppression of which is bmitted. Those compensations are much lower, proportion to the revenue collected, than those lowed to most of the officers employed in the ıllection of the other revenues of the Union, and ›pear inadequate to the responsibility attached the officers and to the rate of talents and knowdge necessary to discharge their duties. The 'opriety of increasing the commission of both ficers one-half per cent., and of giving to each them a small annual salary, as an equivalent r clerk hire and office rent, is respectfully subitted. The salary might in that instance be 500 to each officer, those of the Marietta district :cepted, for whom $250 would be sufficient. his, on account of the suppression of the regisr's fees, would give a greater increase to the resters; which, considering the risk attached to ıe safe-keeping of the public moneys, appears ›asonable.

The expediency of excluding the reserved seeons from the sales is doubtful, as the destruction timber is perhaps more than equivalent to the ıpposed increase of value, and it is particularly ›mplained of in the Steubenville district, and in ıe tract lying between the two Miamas, where ıe greater part of the adjacent lands is sold and :cupied.

The preceding observations have been made ıly in relation to the lands north of the river hio. It would be expedient to apply many of ıe regulations which have been submitted to the ıblic lands south of the State of Tennessee, and will beg leave to make a separate communicaon respecting the operation of the law passed ıring the last session on that subject.

I have the honor to be, &c.

ALBERT GALLATIN.

Hon. JOSEPH H. NICHOLSON, *Chairman, &c.*

INDIANA TERRITORY.

[Communicated to the House, Dec. 29, 1803.]

Mr. LUCAS, from the committee appointed on ıe eighth instant, to whom was committed the bill sent from the Senate, entitled, "An Act to divide the Indiana Territory into two separate governments," made the following report:

That, by the ordinance for the government of the territory north of the river Ohio, it is stipulated that when any of the three divisions, pointed out to form separate States, shall contain 60,000 inhabitants, that division shall become a State in the Union, and have a right to exercise and enjoy a form of government free and republican. That it appears that nearly all the people contemplated to be governed by a territorial government, according to the bill from the Senate, are within the boundaries pointed out by the ordinance to form the State, which is now called the State of Ohio, and that they have a right to be a part of said State, and to be governed in conjunction with the people of said State, until Congress shall think proper to make a State of that and the adjacent country, agreeably to the said ordinance. Of course your committee cannot recommend to the United States, to take upon themselves, at this time, the expenses of a separate territorial government over that part of the country.

From the foregoing considerations, your committee respectfully submit their opinion, that the said bill ought not to be passed by this House.

FISHERIES.

[Communicated to the House, Jan. 3, 1804.]

Mr. HUGER, from the committee to whom was referred on the 15th of November last, "the report of the committee appointed at the last session of the last Congress on so much of the Message from the President of the United States, as relates to the fostering of the fisheries of the United States," with instruction to inquire, whether any, and if any, what measures are necessary for encouragement of the whale and cod fisheries, made the following report:

That they have taken into consideration the report of the committee made to the last Congress, on the subject of the fisheries; that they coincide in opinion with that committee, as to the importance of the fisheries; and find the facts stated by them, and the inferences they have drawn from those facts, to be generally correct. The additional information, which has been obtained, leads them, moreover, to believe, that the conjecture hazarded in the above report, to wit: "that the cod fisheries have gained ground since the Revolution, more especially since the present Government first went into operation, whilst our whale fisheries, on the other hand, have, for some time past, been more or less on the decline," is well founded.

The documents marked A, B, C, D, which have been received from the Treasury department, and which the committee beg leave to include as a part of their report, seem to corroborate this opinion.

According to the document A, there were, in

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1799, 26 vessels and 5,055 tonnage; in 1800, 17 vessels and 2814 tonnage, and in 1801, only 15 vessels and 2.349 tonnage employed in the whale fishery; so that there was evidently a gradual and annual decline in this branch of business.

The document C, gives the quantity of oil, of spermaceti candles, and whalebone, exported from the United States during the 12 years preceding the year 1802. From this it appears, that, in the year 1791, there were exported 134,595 gallons spermaceti, and 447, 323 gallons whale oil, 182,-400 pounds spermaceti candles, and 124,829 pounds whalebone; but in the year 1802, only 28,470 gallons spermaceti, and 379,976 gallons whale oil, 135,637 pounds spermaceti candles, and 80,-334 pounds of whalebone. During the intermediate period, the quantity of these articles, the productions of the whale fisheries, exported from the United States, varied considerably; the greatest quantity of each specific article, exported in any viz: of spermaceti oil, 221,762 gallons; of whale oil, 1,176,650; of spermaciti candles, 290,666 lbs., of whale bone, 452,127 pounds. The annual quantity on an average for twelve years, from 1791 to 1802, inclusive, of each article is, in round numbers, of spermaceti oil, about 106,493 gallons; of whale oil, 573,941 gallons; of spermaceti candles, 197,967 pounds; and of whalebone, 191,334 pounds. It may be proper to add, that there would seem (from document B,) to have been a somewhat greater number of vessels and larger quantity of tonnage employed in the whale fisheries during the last than the two preceding years—20 vessels and 3,201 tons having been employed in this business during that year.

With respect to the cod fisheries, the above quoted document C. proves, that this branch of our fisheries has been, though slowly, yet gradually progressing. In 1791, there were 383,237 quintals of dried and 57,424 barrels of pickled fish exported from the United States, and the quantity of these articles annually exported, has annually increased from that period to the year 1802; when 440,954 quintals of dried and 75,819 barrels, and 13,229 kegs of pickled fish were exported from the United States. The average quantity of these articles exported annually during this period, was, of dried fish 402,226 quintals and of pickled, fish 61,743 barrels; to which is to be added during the last seven years, an annual average exportation of 10,125 kegs of pickled fish. Agreeably to the report made to the last Congress on this subject, there were employed in the cod fishery in 1800, twenty-five thousand tons of shipping and 3,840 men; on an average of ten years preceding, rather upwards of 33,000 tons of shipping and somewhat less than 5,000 men. In the year 1802, (document B) there were 1,140 vessels, 39,399 tons of shipping, and 4,533 men employed in the same fisheries, exclusively of vessels and boats under the size of five tons, and the men navigating them, the number of each of which, the committee have reason to believe, has of late years considerably increased.

Such is the least imperfect view of the subject referred to them, which the committee find themselves enabled to present to the Hou[illegible] official information with respect [illegible] heretofore received at the Treasury [illegible] does not appear, however, to have been [illegible] as satisfactory as might perhaps be [illegible] committee have ventured to suggest [illegible] of a more detailed account of their [illegible] being required annually from the [illegible] and they doubt not but that necessary [illegible] accordingly be taken by that departme[illegible] this desirable object into effect.

In the mean time, the committee be[illegible] state, in compliance with the instru[illegible] them by the House, "to inquire wh[illegible] and if any, what measures are necess[illegible] encouragement of the whale and cod [illegible] with respect to the last, (i. e. the co[illegible] that as it seems to have been gradua[illegible] ing under the present laws and regu[illegible] deem it unnecessary, at this time, [illegible] change in them, or to propose any [illegible] sure in regard to the cod fishery; unless [illegible] should, in their wisdom, think prope[illegible] resolutions submitted to the House of [illegible] atives at the last session of Congres[illegible] indeed, been suggested to them that [illegible] larger proportion of foreign fi[illegible] the United States than they [illegible] committee had it in contem[illegible] an increase of duty on foreign fi[illegible] standing that a proposition to the same effe[illegible] ere long be submitted to the House [illegible] quarter, they deem it unnecessary [illegible] further in the business than to expre[illegible] probation of the measure.

The whale fishery, on the other ha[illegible] itself under a much less favorable [illegible] ing been, for some years past, more [illegible] decline. And yet there is no branc[illegible] whatever, perhaps, more highly inter[illegible] public. Strongly impressed with th[illegible] committee think it a point of true [illegible] to afford it every encouragement, and [illegible] as much as possible, to invigorate and [illegible] it. They are perfectly aware, how[illegible] many demands on the Treasury, and [illegible] disinclination to draw unnecessarily [illegible] funds at this particular period. Yet [illegible] that, in the critical situation in which [illegible] fisheries appear to be placed, some [illegible] agement, similar to that which seems [illegible] so beneficial an effect on the cod fishe[illegible] turn the scale, and give new life to th[illegible] branch of our national industry, they [illegible] spectfully to submit to the House the [illegible] resolution:

Resolved, That there shall be paid to [illegible] sel, carrying on the whale fisheries, fr[illegible] every ton of such vessel's burden, if [illegible] ployed at sea, on one and the same voy[illegible] prosecution of the said fisheries, at least [illegible] not exceeding —— months, the sum of [illegible] if at least —— and not exceeding [illegible] the sum of —— cents; if at least —— [illegible] ceeding —— months, the sum of —— [illegible] if so employed at sea in one and the sa[illegible]

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uring —— months and upwards, —— cents: *'rovided, however,* That no one vessel shall re-ive for any one voyage, a greater sum than —— ollars.

YAZOO CLAIMS.

[Communicated to the House, Jan. 7, 1804.]

Mr. Nicholson, from the Committee to whom ere referred the memorials of Alexander Moul-ie, of South Carolina, in behalf of himself and hers, styling themselves "The South Carolina azoo Company," and of William Cowan, agent the Virginia Yazoo Company, made the fol-wing report:

It appears from the memorials, and from the ocuments submitted with them, that, on the 21st ay of December, 1789, the Legislature of the tate of Georgia passed an act to dispose of cer-in vacant lands lying within that State, by which was enacted that the tract of country lying be-veen the Mississippi and Tombigbee rivers, and ttending from the parallel of latitude which rosses the Mississippi at Cole's Creek, to the orthern boundary of the State, together with a ird tract, lying on the Tennessee river, should, r two years from and after passing the act, be eserved, as a pre-emption, for three companies, yled the "South Carolina Yazoo Company," e Virginia Yazoo Company," and the "Ten-essee Company;" and that the Governor should sue grants for the said tracts, according to cer-in boundaries defined in the act, to these compa-ies respectively, if they should, within two years, ay into the Treasury of the State the following ms, viz: the South Carolina Yazoo Company, e amount of $66,964; the Virginia Yazoo Com-any, the amount of $93,741; and the Tennes-e Company, the amount of $46,875.

It further appears from the statements exhib-ed, that the South Carolina Yazoo Company, n the 13th August, 1790, paid into the Treasury f Georgia, in bills of credit, the sum of £630 18*s.*; nd on the 11th September, 1790, the sum of £500 paper medium, making in the whole, £1,130, 8*s.*, in part of the purchase money; and that on e 19th of December, 1791, the said company ade a tender of the balance to the Treasurer of e State. This tender was made, as is alleged, artly in specie, partly in South Carolina paper edium, and partly in Georgia certificates, but as rejected by the Treasurer, either upon a pre-mption that the law itself did not authorize the ayment to be made in this description of paper, r in pursuance of a resolution of the same Legis-ature, passed in June, 1790, directing the Treasu-er to receive, after a certain day in the month of ugust following, payment for these lands only gold or silver, or in the paper medium of the tate.

The Virginia Yazoo Company, in a short time fter passing the act, (but when, not stated,) paid e sum of $1,515, in the paper currency of the tate, as a part of the purchase money, and on e 12th of December, 1791, made a tender of the balance to the Treasurer, in State certificates, and orders on the Treasury for liquidated claims. This tender was also refused, as it is presumed, for the same reason which governed in the other case, as above stated.

In consequence of the neglect or refusal on the part of these companies to pay, within the stipulated period of two years, in such description of money as the Treasurer of the State conceived himself authorized to receive, no grant issued, and the State ceded the same tract of country to the United States, by the articles of compact and cession bearing date the —— day of ——, 1802.

The money deposited by the Virginia Company was withdrawn by J. B. Scott, who was their agent, but who, the memorialist alleges, was not authorized to receive the same. That deposited by the South Carolina Company, is said still to remain in the Treasury of Georgia.

Both companies now contend that they have a claim against the United States for compensation for losses sustained by them, in consequence of the refusal on the part of Georgia to carry what is called their contract into effect, and urge, that if the Constitution of the United States had not been changed in regard to the suability of States, they could have compelled the State of Georgia to a specific execution of their contract. The act of 1789 is called a contract, because the memorialists say their petition to the Legislature, upon which the law is founded, is referred to in the preamble of the act, and thereby becomes a part of it; and they state, that, in this petition, it was proposed to make the payments in that description of paper which was afterwards tendered. The committee have not seen the petition, but they conceive that the idea of the petition being ingrafted into, and thereby becoming a part of the act, is too novel in its nature to require any comment from them to prove its inadmissibility. They do not consider the transaction in the light of a contract, as the companies were not bound by it to a compliance, and might have refused, at any time, to make a payment, without subjecting themselves to any penalty whatever. They view the act as a conditional grant, not of the land itself, but of the pre-emption right; and the title of the companies was to be protected, upon their complying with the condition contained in it. This condition was the payment of a sum of money, and if it had been fulfilled on their part, would have given them a claim upon the honor and justice of the State for a perfect and complete title. To show their compliance with the condition, they offer the evidence of their own petition, referred to in the preamble of the law, the depositions of some of the members of the Legislature, and the protest of the minority who voted against the act, to prove that it was the intention of the Legislature that payment might be made in that description of paper which was tendered.

The preamble of a statute is sometimes referred to, but always with caution, to assist in the interpretation of the enacting clauses, but the preamble of the act in question can throw no light on the

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present subject, as it contains no expression relative to the species of money or paper which was to be received in payment. The testimony of individuals who were members of the Legislature, and the protest of the minority, should be resorted to with still greater caution, as they are mere matters of opinion, and the same, or a greater number of other individuals, who were members of the same body, might have entertained opinions of a directly contrary nature. Indeed, the resolution of June, 1790, passed by the same Legislature who framed the act of 1789, directing the Treasurer to receive in payment from these companies only gold and silver, and the paper medium of the State, is a stronger evidence of its spirit and intention than any which has been offered, and this is in complete hostility to the pretensions of the present claimants. It is believed to be a sound doctrine, that laws should, if possible, be interpreted without calling in the aid of any foreign materials, and that the meaning of the Legislature should be collected from the language which they themselves have used to express it. If there should be an obscurity in one clause, all the others of the same act ought to be carefully examined, and compared with that in which the obscurity exists. If in this manner the meaning of the Legislature can be found, and that case be rendered clear which was obscure before, it is the safest method of interpretation, and is always preferred.

The memorialists appear to rely with much confidence upon one expression contained in the first section of the act of 1789, and this is the only one which favors their construction. They allege that, as the law declares they shall be entitled to a grant upon paying into the Treasury the amount of $66,000, and $93,000 respectively, they were at liberty to pay in paper at that time current in Georgia, (except what was called rattlesnake money,) whether bills of credit, certificates, or liquidated claims upon the Treasury. The expression (the *amount* of $60,000, &c.,) is certainly not a very common one, as here applied, the word *sum* being more generally used in this sense; but it is by no means an inconsistent expression. If the companies were authorized to give it the construction which they contend for, it might, with equal plausibility, be extended to wheat, flour, corn, tobacco, or almost any other article which is a subject of traffic between individuals, or, indeed, to the old Continental currency, and to the bills of credit issued by any other State in the Union. This certainly cannot be permitted, as in such case, the lands might have been paid for in paper not worth more than one dollar in the hundred. If, however, the use of the word *amount*, instead of the word *sum*, in the first section, creates any doubt as to the intention of the Legislature, this doubt will be removed by referring to the fourth section of the same act, which is in the following words, viz: "That the Treasurer of this State shall, on application of any agent of either of the said companies, within the said term of two years, receive the sum or sums of money, which they are hereby respectively directed to advance, a certificate or certificates of whatever ments, under the hand of the Treasurer, shall sufficient voucher for the Governor to issue grants to the respective companies aforesaid." this clause, the intention of the Legislature clearly and accurately expressed, as they speak of the "sums of money which the companies were, by the act, directed to advance," thereby referring to the $66,000, and $93,000 which was to be paid for the land, and rendering it clear beyond a doubt, that money alone was to be received.

The committee have been thus minute in investigating this case, because the memorialists appear to entertain an opinion that if the State of Georgia had been guilty of a breach of faith, the United States were bound, in equity, to make good the damages, they being second purchasers with notice. Without undertaking to decide this question, or to say whether it would be proper to place these companies on the same footing with those who claim under the act of 1795, the committee are decidedly of opinion that the Virginia Yazoo Company, and the South Carolina Yazoo Company have no claim whatever upon the United States.

IMPORTATION OF SLAVES.

[Communicated to the Senate, January 23, 1804.]

To the Senate and House of Representatives of the United States of America, in Congress assembled:

The American Convention for promoting the abolition of slavery, and improving the condition of the African race, beg leave respectfully to propose for your consideration the utility and propriety of passing such laws as shall prohibit the importation of slaves into the Territory of Louisiana, lately ceded to the United States.

Your memorialists feel themselves deeply impressed with this important subject, and they deem it their duty to solicit, most earnestly, your serious attention to the proposition. They believe that wisdom and sound policy are so intimately united by their Eternal Parent, that man cannot separate them with impunity. If wisdom urge the performance of any particular act, if it command the formation and establishment of any specific law, the soundest policy will be evinced by obedience to that injunction.

True virtue, the offspring of wisdom, teaches man to love his fellow-man, and enjoins him to perform all that may be within the compass of his abilities for the general happiness of his species. When national Governments comply with this benevolent and sublime law, they become the providential instruments of national blessings; but when they oppose or disregard its dictates, their constituents must necessarily feel, sooner or later, all the calamities which follow such opposition or neglect.

Our ancestors have, unhappily, entailed on some of our States the evils of slavery; many of our fellow-citizens in those States we believe are mournfully sensible of the magnitude of their

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n, but they know and feel that man may it error with more facility than he can ate its consequences. Your memorialists t you to reflect on, to consider with impartention, the dangers and difficulties before and beseech you, with deep concern, to ve the country, whose regulations depend ır wisdom, from similar calamities.

y also respectfully suggest to you, that the Constitution of the United States de- all men equally entitled to liberty, they conceive our Government as acting con- ly with its declarations, if it shall, in any e, authorize man to enslave unoffending In compliance with that distingushed le of our national Constitution, a former ess judged it expedient to introduce among lations, for the government of the North- n Territory, a provision resembling that your memorialists now suggest to you.

e is another consideration to which your ialists feel themselves bound to call your n. While the Governments of Europe are by civil discord, or surrounded by the in- ble cruelties and horrors of national war- beneficent and overruling Providence has eased to preserve for our country the bles- peace, to grant us new proofs of his good- d to place us in a condition of prosperity, led in the records of history. Does it not the duty of a nation, so crowned with the s of peace, and plenty, and happiness, to st its gratitude, to the whole world, by justice and virtue? For the true honor country, from benevolence toward the possessors of our newly acquired soil, emorialists hope you will hear and grant quest. And with all the respect which is the representatives of a free people, they e themselves, cordially, your friends and citizens.

d by order and on behalf of the Convention.

M. FRANKLIN. *Pres't*
OTHNIEL ALSOP, *Sec.*

ADELPHIA, *Jan.* 13, 1804.

NSTRANCE OF THE PEOPLE OF LOUISIANA.

nmunicated to the Senate, Dec. 31, 1804.]

the subscribers, planters, merchants, and habitants of Louisiana, respectfully ap- the Legislature of the United States with rial of our rights, a remonstrance against laws which contravene them, and a pe- r that redress to which the laws of nature, ed by positive stipulation, have entitled us. out any agency in the events which have our country to the United States we yet ed them as fortunate, and thought our secured even before we knew the terms cession. Persuaded that a free people acquire territory only to extend the blessings of freedom, that an enlightened nation would never destroy those principles on which its Government was founded, and that their Representatives would disdain to become the instruments of oppression, we calculated with certainty that their first act of sovereignty would be a communication of all the blessings they enjoyed, and were the less anxious to know on what particular terms we were received. It was early understood that we were to be American Citizens; this satisfied our wishes; it implied every thing we could desire, and filled us with that happiness which arises from the anticipated enjoyment of a right long withheld. We knew that it was impossible to be citizens of the United States without enjoying a personal freedom, protection for property, and, above all, the privileges of a free representative Government, and did not, therefore imagine that we could be deprived of these rights even if there should have existed no promise to impart them; yet it was with some satisfaction we found these objects secured to us by the stipulations of treaty, and the faith of Congress pledged for their uninterrupted enjoyment. We expected them from your magnanimity, but were not displeased to see them guarantied by solemn engagements.

With a firm persuasion that these engagements would be soon fullfilled, we passed under your jurisdiction with a joy bordering on enthusiasm, submitted to the inconveniences of an intermediate dominion without a murmur, and saw the last tie that attached us to our mother country severed with less regret. Even the evils of a military and absolute authority were acquiesced in, because it indicated an eagerness to complete the transfer, and place beyond the reach of accident the union we mutually desired. A single magistrate, vested with civil and military, with executive and judiciary powers, upon whose laws we had no check, over whose acts we had no control, and from whose decrees there is no appeal: the sudden suspension of all those forms to which we had been accustomed; the total want of any permanent system to replace them; the introduction of a new language into the administration of justice; the perplexing necessity of using an interpreter for every communication with the officers placed over us; the involuntarry errors, of necessity committed by judges uncertain by what code they are to decide, wavering between the civil and the common law, between the forms of the French, Spanish, and American jurisprudence, and with the best intentions unable to expound laws of which they are ignorant, or to acquire them in a language they do not understand; these were not slight inconveniences, nor was this state of things calculated to give favorable impressions or realize the hopes we entertained; but we submitted with resignation, because we thought it the effect of necessity; we submitted with patience, though its duration was longer than we had been taught to expect; we submitted even with cheerfulness, while we supposed your honorable body was employed in reducing this chaos to order, and calling a system of harmony from the depth of this confused, discordant mass. But we cannot conceal,

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we ought not to dissemble, that the first project presented for the government of this country tended to lessen the enthusiasm which, until that period, had been universal, and to fix our attention on present evils, while it rendered us less sanguine as to the future. Still, however, we wished to persuade ourselves that further inquiry would produce better information; that discussion would establish our rights, and time destroy every prejudice that might oppose them. We could not bring ourselves to believe that we had so far mistaken the stipulations in our favor, or that Congress could so little regard us, and we waited the result with anxiety, which distance only prevented our expressing before the passing of the bill. After a suspense which continued to the last moment of the session, after debates which only tended to show how little our true situation was known, after the rejection of every amendment declaratory of our rights, it at length became a law, and, before this petition can be presented, will take effect in our country.

Disavowing any language but that of respectful remonstrance, disdaining any other but that which befits a manly assertion of our rights, we pray leave to examine the law for erecting Louisiana into two Territories and providing for the temporary government thereof, to compare its provisions with our rights, and its whole scope with the letter and spirit of the treaty which binds us to the United States.

The first section erects the country south of the thirty-third degree into a Territory of the United States, by the name of the Territory of Orleans.

The second gives us a Governor appointed for three years by the President of the United States.

The fourth vests in him and in a council, also chosen by the President, all Legislative power, subject to the revision of Congress, especially guarding against any interference with public property either by taxation or sale.

And the fifth establishes a Judiciary, to consist of a Supreme Court, having exclusive criminal and original jurisdiction without appeal for all causes above the value of one hundred dollars, and such inferior courts as the Legislature of the Territory may establish. The judges of the superior court are appointed by the President, to continue in office four years.

This is the summary of our constitution; this is so far the accomplishment of a treaty engagement to "incorporate us into the Union, and admit us to all the rights, advantages, and immunities of American citizens." And this is the promise performed, which was made by our first magistrate in your name, "that you would receive us as brothers, and hasten to extend to us a participation in those invaluable rights which had formed the basis of your unexampled prosperity."

Ignorant as we have been represented of our natural rights, shall we be called on to show that this Government is inconsistent with every principle of civil liberty?

Uninformed as we are supposed to be of our acquired rights, is it necessary for us to demonstrate that this act does not "incorporate us in the Union," that it vests us with none of the "rights" that gives us no advantages, and deprives us of all the "immunities" of American citizens.

If this should be required, we think neither a will be difficult.

On the first point we need only appeal to the declaration of independence; to your constitution to your different State governments; to the writings of your revolutionary patriots and statesmen to your own professions and public acts; and finally, legislators, to your own hearts, on which the love of civil liberty and its principles are, we trust, too deeply engraved to be ever totally effaced.

A Governor is to be placed over us whom we have not chosen, whom we do not even know, who may be ignorant of our language, unfamiliar of our institutions, and who may have no connexions with our country, or interest in its welfare.

This Governor is vested with all executive and almost unlimited legislative power; for the law declares that, by and with the advice and consent of the legislative body, he may change, modify, and repeal the laws," &c. But this advice and consent will no doubt in all cases be easily procured from the majority of a council selected by the President or Governor, and dependent on him for their appointment and continuance in office; or if they should prove refractory, the power of prorogation frees him from any troublesome interference, until a more prudent selection at the end of the year shall give him a council better suited to his views. The true legislative power, then, is vested in the Governor alone, the council operates as a cloak to conceal the extent of his authority, to screen him from the odium of all unpopular acts, to avoid all responsibility, and give us the faint semblance of a representative assembly, with so few of its distinguishing features, that unless the name were inscribed on the picture it would be difficult to discover the object for which it was intended.

Taxation without representation, an obligation to obey laws without any voice in their formation, the undue influence of the executive upon legislative proceedings, and a dependent judiciary, formed, we believe, very prominent articles in the list of grievances complained of by the United States, at the commencement of their glorious contest for freedom; the opposition to them even by force, was deemed meritorious and patriotic and the rights on which that opposition was founded were termed fundamental, indefeasible, self-evident, and eternal; they formed, as your country then unanimously asserted, the only rational basis on which Government could rest; they were so plain, it was added, as to be understood by the weakest understanding; not capable of alienation, they might always be reclaimed: insusceptible of change, they were the same at all times in all climates, and under all circumstances; as the fairest inheritance for our posterity, they should never, it was firmly asserted, be abandoned but with life.

These were the sentiments of your predecessors; were they wrong? Were the patriots who composed your councils mistaken in their political

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es? Did the heroes who died in their de-
al a false creed with their blood? No,
re not wrong! The admiration of the
he respect still paid to the living, the ven-
accorded to the memory of the dead, attest
ty of their principles, and prove the truth
maxims, which rendered their lives a
to their country, and their deaths glorious
fence.

ruths, then, so well founded, so univer-
nowledged, inapplicable only to us? Do
axioms on the Atlantic become problems
nsferred to the shores of the Mississippi?
e unfortunate inhabitants of these regions
people who are excluded from those
hts acknowledged in your declaration of
lence, repeated in the different State con-
s, and ratified by that of which we claim
member? Where, we ask respectfully,
the circumstance that is to exclude us
articipation in these rights? Is it because
not heretofore enjoyed them? This, on
rary, would seem a reason to hasten the
ication, to indemnify us by a futurity of
for the years we have been deprived of
nable us, experimentally, to compare the
of a free Government with the evils of
tind of dominion. But the present situa-
fairs forms no pleasing contrast with that
past; and if we did not count with con-
n a change in the system you have
the prospect before us would not afford
r consolatory anticipation; for, though a
fixed for the absolute government placed
hough a year may terminate the equally
able system which succeeds it, yet what
w? Liberty? Self-government? Inde-
? and a participation in the advantages
ion? If these were offered to us as the
a certain term of patience and submis-
igh we could not acquiesce in the justice
ocedure, we should have some consola-
ur misfortunes; but no manifestation
awaits us at the expiration of the law is

y then again become the victims of false
on, of hasty remark, or prejudiced opin-
may then again be told that we are in-
f managing our own concerns, that the
emancipation is not yet arrived, and that
the school of slavery, we have learned
free, our rights shall be restored. Upon
to which this leads we are reluctant to
it misrepresented and insulted, it cannot
l improper to show how groundless are
nies which represent us as in a state of
n, unfit to receive the boon of freedom.
any supposed incapacity to direct the
our own country would release the Uni-
from their obligation to confer upon us
of citizenship, or upon what principle
o become the judges of that capacity,
believe, fairly be questioned; for we
ly not become less fit for the task since
ure of the treaty than we were before
d; and that no such incapacity was
then supposed to exist, is evident from the terms of that instrument, which declares that we are to be admitted as soon as possible, according to the principles of the Constitution. If the United States, then, may postpone the performance of this engagement until, in their opinion, it may be proper to perform it, of what validity is the compact, or can that be called one of which the performance depends only on the will of the contracting party?

But if capacity is to be the criterion, and information the preliminary requisite of our admission, let us respectfully inquire what is the nature of this capacity and information, and where it will most probably be found. By the distribution of powers between the General and State Governments, the former have the exclusive superintendence of all external relations, and of those internal arrangements, which regard the several States in their national capacity; the residuary powers, retained by the States, are more limited in their operations, and require in their exercise a species of information to be derived only from local sources. The purest principles will be misapplied, the best intentions will be ill directed, the most splendid efforts of genius will prove ineffectual, without an intimate knowledge of the manners, customs, pursuits, and interests of the people, to whom they are applied, or in whose favor they are exerted. Should this reasoning be just, it would appear to follow that local information should be preferred in a State legislator to splendid acquirement, when they cannot be united; and although we give the representatives of the United States all the superiority they claim and justly merit, yet we cannot be accused of presumption, in supposing that we know somewhat more of our own country and its local interests than men who are acquainted with it only from report. It will not, we trust, be answered that the members of the council must be selected from the inhabitants; we have already shown what share this council will probably have in legislation, and the residence of one year is certainly too short to attain information, or secure anything like a permanence of attachment.

If this local knowledge is necessary to legislate wisely, how much more so is it in order to select discreetly those on whom this task must devolve? The President must necessarily depend on the information of his agents here, without any personal knowledge of the men he must choose. How can he detect imposition, or counteract prejudice? How defeat intrigue, or secure himself from the reproach of having confided our interests to men in whom we have no confidence? We might contrast these inconveniences with the evident advantages of a choice made by the people themselves, and the conviction would be irresistible that the latter possess exclusively that species of information, with respect to character, conduct, circumstances, and abilities, which is necessary to a prudent choice of their representatives; but we presume enough has been said to show that among a people not absolutely sunk in ignorance, the kind of knowledge indispensable to good gov-

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ernment, or a selection of rulers, can only be found at home; that the best abilities, and the purest intentions will not replace it abroad, and that without it all legislation is tyrannical and oppressive. Convinced of this truth, we find the advocates for our subjection driven to an argument at which we have before hinted. To deprive us of our right of election, we have been represented as too ignorant to exercise it with wisdom, and too turbulent to enjoy it with safety. Sunk in ignorance, effeminated by luxury, debased by oppression, we were, it was said, incapable of appreciating a free constitution, if it were given, or feeling the deprivation, if it were denied.

The sentiments which were excited by this humiliating picture may be imagined, but cannot be expressed, consistent with the respect we owe to your honorable body. We were willing, however, to ascribe it to the want of correct information, but we could not avoid wondering that it should be so very defective as to have drawn from the names of some districts in our country an argument as to the language spoken in them, which proved fatal to an important amendment to the bill. We could not imagine what had excited the idea of our effeminacy and profusion; and the laborious planter, at his frugal meal, heard with a smile of bitterness and contempt the descriptions published at Washington of his opulence and luxury.

As to the degree of information diffused through the country, we humbly request that some more correct evidence may be produced than the superficial remarks that have been made by travellers or residents, who neither associate with us nor speak our language. Many of us are native citizens of the United States, who have participated in that kind of knowledge which is there spread among the people; the others generally are men who will not suffer by a comparison with the population of any other colony. Some disadvantages as to education in the higher branches of literature have lately attended us, owing to the difficulty of procuring it, but the original settlement of the province was marked by circumstances peculiarly favorable in this respect; it was made at no distant date, at a period when science had attained a great degree of perfection, and from a country in which it flourished; many individuals possessing a property and rank, which suppose a liberal education, were among the first settlers; and perhaps there would be no vanity in asserting, that the first establishment of Lonisiana might vie with that of any other in America for the respectability and information of those who compose it. Their descendants now respectfully call for the evidence which proves that they have so far degenerated as to become totally incompetent to the task of legislation.

For our love of order and submission to the laws we can confidently appeal to the whole history of our settlement, and particularly to what has lately passed in those dangerous moments when it was uncertain at what point our political vibrations would stop; when national prejudice, personal interest, factious views, and ambitious designs, might be supposed to combine for the interruption of our repose; when, in the frequent changes to which we have been subject, the authority of one nation was weakened before the other had established its power. In those moments of crisis and danger, no insurrection disturbed, no riot disgraced us; the voice of sedition was silent; and before a magistrate was appointed good morals served instead of laws, and a love of order instead of civil power; it is then as unjust to tax us with turbulence as it is degrading to reproach us with ignorance and vice. But let us admit, that by some train of reasoning to which we are strangers, by some incomprehensible fatality, we are cut off from national rights, and form an unfortunate exception to those general principles on which your revolution and Government are founded; that there is no clause for us in the great charter of nature, and that we must look for our freedom to another source; yet we are not without a claim; one arising from solemn stipulation, and, according to our ideas, full, obligatory, and unequivocal.

The third article of the treaty *lately concluded* at Paris, declares that "the *inhabitants* of the ceded territory shall be incorporated into the Union of the United States, and *admitted* as soon as possible, according to *the principles of the* Federal Constitution, to the *enjoyment of all* the rights, advantages, and immunities, of citizens of the United States, and in the mean time they shall be protected in the enjoyment *of their liberty*, property, and the exercise of the religion *they* profess."

Your honorable body seems to have adopted a construction of this article, which would *suspend* its performance until some period fixed by the principles of the Constitution, and to have read the article thus: "the inhabitants shall be incorporated into the Union, and admitted to the enjoyment of all the rights, &c., as soon as the principles of the Federal Constitution *will permit*." We, on the contrary, contend that the words "according to the principles of the Federal Constitution," as they are placed in the sentence, form no limitation, that they were to be conferred, and that the article contemplates no other delay in our reception than will be required to pass the necessary laws and ascertain the representation to which we are entitled.

The inhabitants of the ceded territory are to be "incorporated into the Union of the United States;" these words can in no sense be satisfied by the act in question. A Territory governed in the manner it directs may be a province of the United States, but can by no construction be said to be incorporated into the Union. To be incorporated into the Union must mean to form a part of it; but to every component part of the United States the Constitution has guaranteed a republican form of Government, and this, as we have already shown, has no one principle of republicanism in its composition; it is, therefore, not a compliance with the letter of the law, and is totally inconsistent with its spirit, which certainly intends some stipulations in our favor.

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Congress may govern us as they please, necessity was there for this clause, or how benefited by its introduction? If any however, could possibly arise on the first r of the sentence, it must vanish by a con- on of the second, which provides for their on to the rights, privileges, and immuni- citizens of the United States. But this ment, as we have shown, is totally incom- with those rights. Without any vote in tion of our Legislature, without any check ir Executive, without any one incident of ernment, what valuable "privilege" of hip is allowed us, what "right" do we f what "immunity" can we boast, except, the degrading exemption from the cares ation, and the burden of public affairs? it be said that though our right be admit- Congress are to determine the period when e conferred? This, we apprehend, would r be contrary to the words of the treaty, ıld be a solecism in itself. The words ing to the principles of the Federal Con- , to the enjoyment of the rights," &c., cer- ean to such rights as are secured by the s of the Constitution, or that we are to ted to their enjoyment in such manner as e principles direct; and at any rate, the as soon as possible," can never be con- o as to give a right of deferring it inde- If it may be procrastinated for two years, o reason, why it may not be deferred for or a hundred, or totally omitted. That al construction is the true one will be evi- m pursuing the other exposition to its nces. If the treaty means to say that we admitted as soon as the principles of the tion will permit, we must look into that nt to discover what restrictions oppose liate performance. We should naturally this reasoning be true, to find some pe- ed before which we could not become of the Union, some requisites of popula- ther circumstance to be previously at- performed; but, on the contrary, the admitting new States is vested in Con- hout any restriction whatever that can ıble to the present case; there is, there- ing that can satisfy these words, if they rued as a limitation; nothing but the ongress is referred to in the Constitution. ıstitution, then, would prove that the tates had stipulated to admit us into the soon as they should think proper; but implies a compact, and what compact from a stipulation to perform or not per- he party shall deem expedient? This such a solecism in argument, such a of terms, as must make us doubt the of any construction that leads to them, eel ourselves justified in a persuasion, eaty intended to incorporate us into the soon as the laws necessary for that pur- be passed.

ow not with what view the territory he thirty-third degree has been severed from us, and carried with it the distinguishing name which belonged to us, and to which we are attached; the convenience of the inhabitants we humbly apprehend would have been better consulted by preserving the connexion of the whole province until a greater degree of population made a division necessary. If this division should operate so as to prolong our state of political tutelage, on account of any supposed deficiency of numbers, we cannot but consider it as injurious to our rights, and therefore enumerate it among those points of which we have reason to complain.

If there is force in our reclamations on the great question of fundamental rights; if we are entitled to legislate for ourselves as a member of the Union, and to establish the forms on which that legislation shall be conducted, by framing a constitution suited to our own exigencies, then no further observations need be made on other parts of the law, for the right of local legislation implies that of making the alterations we might deem expedient; then our judiciary would become independent, the executive power would be properly circumscribed, and the legislative guarded against encroachment.

There is one subject, however, extremely interesting to us, in which great care has been taken to prevent any interference even by the Governor and Council, selected by the President himself. The African trade is absolutely prohibited, and severe penalties imposed on a traffic free to all the Atlantic States who choose to engage in it, and as far as relates to procuring the subjects of it from other States, permitted even in the Territory of the Mississippi.

It is not our intention to enter into arguments that have become familiar to every reasoner on this question. We only ask the right of deciding it for ourselves, and of being placed in this respect on an equal footing with other States. To the necessity of employing African laborers, which arises from climate, and the species of cultivation pursued in warm latitudes, is added a reason in this country peculiar to itself. The banks raised to restrain the waters of the Mississippi can only be kept in repair by those whose natural constitution and habits of labor enable them to resist the combined effects of a deleterious moisture, and a degree of heat intolerable to whites; this labor is great, it requires many hands, and it is all important to the very existence of our country. If, therefore, this traffic is justifiable anywhere, it is surely in this province, where, unless it is permitted, cultivation must cease, the improvements of a century be destroyed, and the great river resume its empire over our ruined fields and demolished habitations.

Another subject, not indeed growing out of this law, but of great moment to us, is the sudden change of language in all the public offices and administration of justice. The great mass of the inhabitants speak nothing but the French; the late Government was always careful in their selection of officers to find men who possessed our own language, and with whom we could personally communicate; their correspondence with the in-

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terior parts of the province was also carried on chiefly in our own language; their judicial proceedings were indeed in Spanish; but being carried on altogether by writing, translations were easily made; at present, for the slightest communication, an interpreter must be procured; in more important concerns, our interest suffers from not being fully explained; a phrase, a circumstance seemingly of little moment, and which a person uninterested in the affair will not take the trouble to translate, is frequently decisive, and produces the most important effects. That free communication so necessary to give the magistrate a knowledge of the people, and to inspire them with confidence in his administration, is by this means totally cut off, and the introduction of *viva voce* pleadings into the courts of justice subjects the party who can neither understand his counsel, his judge, nor the advocate of his opponent, to embarrassments the most perplexing, and often to injuries the most serious.

We have thus stated the great sources of discontent which have arisen from the measures your honorable body has been pleased to pursue. Did we suppose them the effect of a settled design to oppress; of a determination to disregard our natural and stipulated rights, we are persuaded we should do as much injustice to your views, as the strongest expressions would do to our feelings of indignation and grief; but we will not insult you by a suspicion so injurious to your motives; the want of true information with respect to us, opinions founded on a superficial acquaintance with our country, and prejudiced relations with our habits and manners, on reports the most unfounded, even as to our language, these alone have given rise to the measures of which we complain, and when these impressions shall have been effaced, we have the fullest confidence that their effects will cease, and the language of remonstrance will be changed to that of congratulation and thanks.

Deeply impressed, therefore, with a persuasion that our rights need only be stated to be recognised and allowed; that the highest glory of a free nation is a communication of the blessings of freedom; and that its best reputation is derived from a sacred regard to treaties; we pray you, Representatives of the people, to consult your own fame and our happiness, by a prompt attention to our prayer; we invoke the principles of your Revolution, the sacred, self-evident, and eternal truths on which your Governments are founded; we invoke the solemn stipulations of treaty; we invoke our own professions and the glorious example of your fathers, and we adjure you to listen to the one and to follow the other, by abandoning a plan so contradictory to every thing you have said, and they have taught—so fatal to our happiness, and the reputation of your country. To a generous and free people we ought not to urge any motive of interest, when those of honor and duty are so apparent; but be assured that it is the interest of the United States to cultivate a spirit of conciliation with the inhabitants of the territory they have acquired. Annexed to your country by the [illegible] cal events, it depends upon you to [illegible] ther we shall pay the cold homa[illegible] subjects, or render the free allegia[illegible] attached to your fortunes by choice [illegible] by gratitude for the best of blessing[illegible] cheerfully to your advancement to [illegible] tinies to which honor, liberty, and [illegible] conduct you, and defending, as we [illegible] ourselves to do, at the risk of fortu[illegible] common constitution, country, and [illegible]

We, therefore, respectfully pray [illegible] of the law above-mentioned, as pre[illegible] temporary government of this coun[illegible] it into two Territories, and prohibi[illegible] tion of slaves, be repealed.

And that prompt and efficacious [illegible] be taken to incorporate the inhabi[illegible] iana into the Union of the Unit[illegible] admit them to all the rights, pr[illegible] munities, of the citizens thereof.

And your petitioners, as in d[illegible] ever pray for the happiness and p[illegible] United States.

Conformable to the original [illegible] House of Representatives.

P. SIGTE
L. DERBIG
DESTREH[illegible]

The following remonstrance [illegible] ted to the House of Representa[illegible] 1805:

To the honorable the Senate, and [illegible] House of Representatives of the [illegible] Congress assembled: The remon[illegible] tion of the representatives elected [illegible] their respective districts in the Di[illegible] humbly show:

That your petitioners, as well [illegible] they represent, were filled with [illegible] pleasure at the first rumor of the [illegible] isiana to the United States. Wh[illegible] became us to doubt of the even[illegible] were informed that Congress were [illegible] to organize the newly-acquired [illegible] perienced emotions of gratitude [illegible] for ourselves and our posterity [illegible] which result to the people of the [illegible] from the wisdom and magnanimity [illegible] ened and free Government.

While we were indulging these [illegible] tions, unmixed with distrust or [illegible] the last session of your honorable [illegible] tled "An act erecting Louisiana [illegible] tories, and providing for the ter[illegible] ment thereof," came to our know[illegible] our eager grasp snatched the a[illegible] The dictates of a foreign Governo[illegible] culable accession of savage hord[illegible] on our borders! an entire priv[illegible] the dearest rights enjoyed by fre[illegible] are the leading features of that [illegible] which you have devised for us: [illegible] men, who, in a solemn treaty, you [illegible]

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and to treat as fellow-citizens; yet the
an colors are hoisted in our garrisons; this
ed signal of liberty to all, to us alone ex-
gloomy appearance, and makes us more
of the immeasurable interval between us
litical happiness. May we not be long
, like the prisoners of Venice, to read the
liberty" on the walls of prisons! We
your wisdom and goodness; you are the
ns of our Constitutional rights, and we
our hopes in you as in the sanctuary of

ight of the people peaceably to assemble
tion the Government for a redress of griev-
is declared and warranted by the first
ent to the Constitution. To this Consti-
e appeal; we learned from you to resist,
ul means, every attempt to encroach on
ts and liberties; the day we became Amer-
e were told that we were associated to a
ple. We cannot suppose that the lan-
f men jealous of their freedom can possi-
nwelcome to your ears.

e third article of the treaty between the
States and the French Republic, it is
'that the inhabitants of the ceded terri-
ll be incorporated into the Union of the
States, and admitted as soon as possible,
g to the principles of the Federal Consti-
o the enjoyment of all the rights, advan-
d immunities of citizens of the United
nd in the mean time they shall be main-
nd protected in the free enjoyment of
erty, property, and the religion they pro-

petitioners beg leave to represent to your
e Houses, that, according to the princi-
tained in the third article of the treaty
noted, they conceive that had not Con-
ought proper to divide Louisiana into two
ies, they should now be entitled by their
on to be incorporated into the Union as
endent State.

ordinance for the government of the Ter-
the United States northwest of the river
ticle the fifth, it is ordained, "that when-
r of the States to be formed out of the
estern Territory shall have sixty thousand
bitants therein, such State shall be admit-
s delegates into the Congress of the Uni-
es, on an equal footing with the original
n all respects whatever, and shall be at
form a permanent constitution and State
ent: *Provided*, That the constitution and
ent so to be formed shall be republican,
onformity with the principles contained
articles; and so far as it can be consid-
sistent with the general interest of the
racy, such admission shall be allowed at
er period, and when there may be a less
of free inhabitants in the State than sixty
." Your petitioners are informed, more-
at at the time of the admission of the
Ohio into the Union, said State, conform-
he last clause of the fifth article of the ordinance above quoted, did not contain more than from thirty-three to forty thousand free inhabitants; which proportion, if adhered to in our case, as it seems to us it should have been, the United States having bound themselves by the third article of the treaty above quoted to admit us as soon as possible into the Union, would have given us a right to be immediately incorporated into the Union.

We find neither in the Constitution of the United States, nor in the treaty with the French Republic, any provisions by which Congress may have been authorized to make such division.

We find in the treaty nothing but the plain and unequivocal obligation in Congress, to incorporate the ceded territory into the Union, and admit it as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; but if Congress had a right to divide Louisiana into two Territories last year, they may claim next year the right to divide it into four or eight Territories. Whenever the population of one of those Territories shall amount to very near the population required by the Constitution of the United States, to entitle that Territory to be admitted in the Union as an independent State, Congress may again claim the right to subdivide said Territory. Your petitioners, if the principle should be granted, see no end to the oppression likely to result from such a precedent; and ill-fated Louisiana is condemned to drag along for ages the fetters of an endless territorial infancy, never (to use the expression of one of the most strenuous advocates of American independence,) to be hardened into the bone of manhood.

Under ordinary circumstances, your petitioners would have been disposed to sacrifice some of those rights secured to them by a solemn treaty, to the convenience of the United States; but the provisory laws enacted by Congress for the district of Louisiana seem to us to be characterized by such an unusual spirit of severity as to oblige your petitioners (if those laws should be enforced) to pray for the unconditional fulfilment of those express engagements contained in the treaty of cession, and for those other benefits to which they are entitled as freemen of the United States. But had not your petitioners the unconditional provisions of a treaty to rest their rights upon, still they might have expected a Government founded on more liberal principles from the Representatives of a free people, who, on a great occasion, had previously declared to the world these truths to be self-evident: "That all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new Government, laying its foundations on such principles, and organizing its powers in such form, as

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to them shall seem most likely to effect their safety and happiness."

Little as we are acquainted with the United States, we know by heart your declaration of independence; we recollect the noble deeds of the heroes who bled in your glorious Revolution; we are no strangers to the Constitution of the United States, and the bills of right, and constitutions of the several States in the Union; and it was upon those highly respectable and absolutely binding authorities, that we had anticipated the blessings of freedom.

In order to enforce their pretensions, your petitioners are sensible that it becomes incumbent on them to submit to your honorable Houses a comparative view of the constitutions enacted by Congress, at different times, for the different Territories, which were erected previously to the erection of the district of Louisiana; from that statement, extracted from your own records, your honorable Houses cannot help being convinced that the act respecting the district of Louisiana alone, instead of the open, disinterested countenance of a fond adoptive mother exhibited to our sister territories, bears the stern, distrustful look of a severe, imperious master; and if your honorable Houses will be so good as to follow your petitioners through this interesting review, you will be fully satisfied that the humble remonstrances of your petitioners rest on the rock of American liberty and independence.

Although your petitioners lament that the principle should now appear consecrated by practice, that governors and judges should, contrary to every principle of liberty, and to the principles of the Constitution of the United States, which took care to separate them, unite in their hands the three powers, Legislative, Executive, and Judicial, yet your petitioners would have submitted in silence to whatever had been adopted by Congress, and submitted to by the people. But arbitrary measures without a precedent call loudly for the most energetic remonstrances to your honorable Houses.

By the twelfth section of the act erecting Louisiana into two Territories, and providing for the temporary government thereof, "the Executive power, now vested in the Governor of the Indiana Territory, is to extend to and be exercised in Louisiana." Your petitioners beg leave to state that they have read, with the utmost attention, the laws enacted at different times, for the provisory government of the several Territories of the Union; and that far from observing in those laws anything like trusting the Governor of a neighboring State or Territory with the government of a newly-erected Territory, they find, on the contrary, that Congress paid the most scrupulous respect to the interest and feelings of the inhabitants by the wisest precautions, in not only obliging the Governor to reside in the Territory which he governs, but also in obliging him to hold a freehold estate in the same Territory. In the ordinance for the government of the Territory of the United States Northwest of the river Ohio, we find this provision: "Be it ordained by the authority aforesaid, that there shall be a [illegible] from time to time by Congress a Gover[illegible] commission shall continue in force for [illegible] three years, unless sooner revoked by [illegible] he shall reside in the district, and have [illegible] estate therein in one thousand acres [illegible] in the exercise of his office."

In the act authorizing the estab[illegible] government in the Mississippi Terr[illegible] "and the President of the United St[illegible] authorized to establish therein a gov[illegible] all respects similar to that now ex[illegible] Territory Northwest of the river Oh[illegible] the act to divide the Territory of the U[illegible] Northwest of the river Ohio, we fi[illegible] *And be it further enacted*, That [illegible] established within the said Terri[illegible] ment in all respects similar to that [illegible] the ordinance of Congress, passed [illegible] of July, 1787, for the government [illegible] of the United States Northwest [illegible] Ohio."

In the act erecting Louisiana [illegible] ries, the executive power in the d[illegible] is vested in a Governor, who sh[illegible] territory, &c.

Here, then, are the laws of the [illegible] erected previously to the er[illegible] of Louisiana, and the laws [illegible] leans, erected by the very [illegible] make it necessary for the Gover[illegible] to be called upon for the discha[illegible] duties by every citizen of the T[illegible] side in said Territory. The law [illegible] to three of those Territories does [illegible] Congress were fully sensible that [illegible] of those Territories would place [illegible] in men who, like the inhabitants the[illegible] have a direct interest in the welfa[illegible] try, by their own possessions in [illegible] indispensable condition of residen[illegible] tory, they made it necessary for [illegible] while in the exercise of his office [illegible] hold estate therein in one thous[illegible] land.

The extension of the Executive [illegible] Governor of the Mississippi Terr[illegible] district of Orleans can hardly be [illegible] precedent; for, ever since the ex[illegible] jurisdiction, the Governor of the M[illegible] ritory has habitually resided in the [illegible] leans, of which he was Governor [illegible] the administration of the governm[illegible] sippi Territory was left in the hand[illegible] tary. But admitting, for argume[illegible] it might be construed into a prece[illegible] titioners beg leave to observe to y[illegible] Houses that the circumstances of [illegible] tories cannot be compared. There [illegible] two hundred and forty miles from [illegible] Orleans. An easy and speedy commu[illegible] be had at all times between the two pa[illegible] land and by water. The laws of both [illegible] may be very similar in many impor[illegible] by which the property of the inhabit[illegible] affected. Slavery prevails in both [illegible]

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On the contrary, the point of Louisiana nearest to the place where the Governor of the Indiana Territory makes his habitual residence is not less than one hundred and sixty-five miles distant, and there is not a house to be met with on the road; impassable at many seasons of the year, owing to the number of creeks and rivers which sometimes overflow their banks, sometimes are entirely covered with ice; so that we may conclude that, did not justice and sound policy prohibit the alliance in contemplation, nature itself loudly proclaims its impracticability. Your honorable Houses may judge at what an immense distance some parts of Louisiana must be from the Governor, to whom an appeal lies in many cases affecting the property and even the life of individuals.

What would it be, if, arriving at Vincennes in those circumstances, an inhabitant of Louisiana was told of His Excellency's being at Detroit, six hundred miles further? Besides, the laws of both Territories must be very dissimilar in a number of respects. Slavery cannot exist in the Indiana Territory, and slavery prevails in Louisiana; and here your petitioners must beg leave to observe to your honorable Houses that they conceive their property of every description has been warranted to them by the treaty between the United States and the French Republic. Your petitioners are informed that a law respecting slavery has been passed by Congress for the district of Orleans, similar in many respects to the one formerly made for the Mississippi Territory. Is not the silence of Congress with respect to slavery in this district of Louisiana, and the placing of this district under the Governor of a Territory where slavery is proscribed, calculated to alarm the people with respect to that kind of property, and to create the presumption of a disposition in Congress to abolish at a future day slavery altogether in the district of Louisiana?

The same wise precaution which induced Congress to make the residence of the Governor and the holding of property in the Territory where he exercises his office necessary, extends likewise, in the three Territories erected previously to the erection of the district of Louisiana, to the secretary and judges of the said Territories. In the same third section of the ordinance for the government of the Territory of the United States Northwest of the river Ohio, we find, "there shall be appointed, from time to time, by Congress, a Secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein in five hundred acres of land, while in the exercise of his office," &c.

And again, in the same third section, "there shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their office."

These provisions extend likewise to the Mississippi Territory, as may be seen by a reference to an act authorizing the establishment of a government in the Mississippi Territory; and to the Indiana Territory, as may be seen by a reference to an act of Congress to divide the territory of the United States Northwest of the Ohio into two separate governments.

Your petitioners cannot consider it as necessary to add any other reasons to those given already, and which appear to them grounded upon justice, in order to determine your honorable Houses immediately to repeal that part of the act providing for the government of the district of Louisiana, which places this district under the administration of the Governor, Secretary, and Judges of the Indiana Territory. To say more on the subject might appear to doubt your disposition to do justice to the request of your petitioners, and to your justice alone they are determined to appeal.

How far the extraordinary measures, contemplated by the fourteenth section of the bill erecting Louisiana into two Territories, may, in the opinion of Congress, have been rendered necessary by circumstances, it does not belong to your petitioners to determine. Were those measures only severe, we should oppose to them only the articles of compact between the original States and the people of the Northwestern Territory. Article second of said compact expressly declares: "That in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever interfere with or affect private contracts or engagements, *bona fide* and without fraud, previously formed.

In the fourth article of the same it is provided: "That non-resident proprietors shall in no case be taxed higher than residents."

Here Congress not only acknowledge that they have no right to make a law interfering with or affecting private contracts or engagements, *bona fide* and without fraud, previously formed, but so tender are they of the right of property, that they even go so far as to provide that non-resident proprietors shall in no case be taxed higher than residents.

How different is the condition of the Louisianians! Congress, in the fourteenth section of the act erecting Louisiana into two Territories, seems to acknowledge the validity of some incipient titles to land, for what else can mean these words? "Or to make null and void any *bona fide act* or *proceedings* to obtain a grant for lands done by an actual settler, agreeably to the laws, usages, and customs of the Spanish Government." Act or proceedings cannot certainly mean anything else than the incipient titles of which we are speaking.

Now, suppose such act or proceeding, agreeably to the laws, usages, and customs of Spain, to have actually taken place, three years were granted by the Spanish Government after having obtained a full or incipient grant for making a settlement thereon. There may be, and there are, American emigrants, who, some time previously to the 20th day of December, 1803, may have bought

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from the original proprietor, or rather holder, of that incipient title, his right to said lands. There may be, and there are, some who have obtained those incipient titles in their own name, and who, ignorant as they must have been of a law not enacted at the time, and taking it for granted that Congress would allow the same space of time which was allowed by the Spanish Government for making a settlement upon lands obtained from the Spanish Government, may have returned to the Eastern part of the United States in order to prepare everything necessary for their removal, and with an intention of coming back to Louisiana in the following spring to settle upon those lands which they had bought *bona fide* and without *fraud*. But perhaps Congress, who, in the beginning of the fourteenth section, had declared null and void every act and proceeding subsequent to the Treaty of St. Ildefonso, made the 1st day of October, 1800, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatever authority transacted or pretended, be, and have been, from the beginning, null, void, and of no effect in law or equity, may insist that since the sovereignty of the lands in Louisiana was vested in the United States, the 1st day of October, 1800, and since, more than three years elapsed from the 1st day of October, 1800, to the 20th day of December, 1803, they have unquestionably a right to expel from the lands they claim any man who, according to the conditions of the Spanish Government, has made no improvement on the lands he might have obtained on the 20th day of December, 1793; and as to Congress being pleased to confirm such in itself an insufficient title to any actual settler, it is a favor which they may or may not grant, without binding themselves to extend it to the representative of the original holder, unless the express condition of an improvement has been fulfilled; but if your honorable Houses give leave to your petitioners to remind you that, by the first article of the Treaty of St. Ildefouso, "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it has now in the hands of Spain, and that it had when France possessed it," it will be manifest to your honorable Houses that the King of Spain did not renounce his sovereignty over Louisiana on the 1st day of October, 1800.

At what period of time an absolute renunciation of Louisiana was made by the King of Spain your petitioners cannot ascertain; but they humbly conceive that the sovereignty of the United States in Louisiana did not begin previously to that absolute and unconditional renunciation on the part of the King of Spain.

And if your honorable Houses consider, moreover, that time sufficient must be allowed for the Spanish Government to make known its final treaty with the French Republic to its agents in Louisiana, (authorized, your petitioners humbly conceive, to grant lands in its name [illegible] ceived official notice of the treaty [illegible] Louisiana to France,) and that it is [illegible] that a Government at a considerable [illegible] be in a greater hurry to take steps [illegible] divests itself of the sovereignty of a [illegible] the Government which has just a[illegible] country, and which is on the spot [illegible] have its sovereignty acknowledged [illegible] ten months and ten days elapsed af[illegible] between the United States and the F[illegible] public before the United States [illegible] of Louisiana, your honorable Hou[illegible] clude that there may have been gr[illegible] obtained from the Spanish Gover[illegible] which those who have obtained [illegible] yet more than one year to comply [illegible] usages, and customs of the Spanish G[illegible] But your petitioners (we mean the [illegible] any knowledge at all of the law re[illegible] isiana, enacted during the last sess[illegible] orable Houses) find themselves [illegible] the necessity either of not comp[illegible] conditions on which they received [illegible] Spanish Government, or of acting [illegible] tradiction to a law enacted by [illegible] Houses; and yet what do the [illegible] to which were given since [illegible] ber, 1800? If your honorable [illegible] pleased to call upon officers [illegible] correct statement of the quan[illegible] since that epoch by the offic[illegible] Government, your honorable Hous[illegible] isfied that there has been but a very [illegible] quantity of land thus disposed of [illegible] chiefly in favor of hard laboring [illegible] to the various rumors which ran [illegible] try ever since the cession of Fran[illegible] of; the country belonging sometim[illegible] sometimes to France, sometimes [illegible] State, sometimes to Spain again; a[illegible] distance from every source of infor[illegible] often not understanding the langu[illegible] neighbors; discouraged at first fro[illegible] their means in making improvemen[illegible] which they had obtained an incipi[illegible] what they conceived the precarious[illegible] titles, likely to result from the interfer[illegible] or such a Power to which they we[illegible] iana belonged; prevented by your la[illegible] plying with the conditions of Spa[illegible] had it not any longer in their power [illegible] the country was ultimately to remai[illegible] ted States, and who, at the very [illegible] confidence had begun to revive, [illegible] whatever they may do, liable to be p[illegible] free and enlightened nation for havi[illegible] the dictates of prudence and placed [illegible] the United States.

Your petitioners beg leave to ob[illegible] that it was only on the 10th day of [illegible] that the United States took possess[illegible] trict of Louisiana; it should seem of [illegible] the inhabitants of Louisiana could n[illegible] by any law of the United States, pr[illegible] least, to that epoch: Yet your honora[illegible]

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aw approved by the President, on the 26th f March, 1804, deprive of his property, and does persist in his claim after the first day of er next, condemn to a fine not exceeding ousand dollars, and to suffer an imprison- not exceeding one year, any man who shall attempted a settlement on lands to which y not have obtained as yet a complete title, has made or attempted a settlement any posterior to the 20th day of December, 1803, s, more than three months before the law condemns him was enacted; and if your able Houses reflect that the act erecting iana into two Territories, is only to take on the first day of October, 1804, it will re- at a man may be guilty of doing an act rent in itself, in virtue of a law which is to lace more than nine months subsequently ling to the law itself, before the provision of w can be enforced, and that, too, in the very f the third article of the ninth section of the itution of the United States, which declares, t no bill of attainder, or *ex post facto* law, e passed.

15th section of the law erecting Louisiana wo Territories authorizes the President of ited States "to stipulate with any Indian owning lands on the east side of the Mis- i, and residing thereon, for an exchange of the property of the United States, on the ide of the Mississippi, in case the said tribes emove and settle thereon."

the United States bound themselves to ex- ate from the face of the earth every inhab- f Louisiana, your petitioners do not con- that they could have taken a more effectual owards the fulfilment of the engagement, he measures contemplated by the fifteenth n of the law, respecting the district of Lou- . But, by the treaty with the French Re- , the United States have engaged to main- nd protect us in the free enjoyment of our and property. Great God! a colony of s to protect us in our liberties and proper- And we hear, at the same time, that troops een ordered from some parts of this district uisiana; and, at this moment, the garrison w Madrid is reduced (not from death or ss, from which they have kept entirely free, virtue of orders received from the com- ing officer at Fort Massac,) to fifteen men. meantime, depredations and assassinations Indians have already begun: it is not a since your petitioners received the news, within forty miles of this place, the Indians antonly assassinated three men. A week , we heard of another set, on the river St. is, who committed against one of our scat- settlers every sort of depredation; killing ttle of every description, destroying all his ty of every kind, stripping him and his entirely naked, and, after glutting them- what provisions they found in the house, ing all the rest into the fire. What a time your honorable Houses chosen for the ex- e in contemplation! A plan, wearing the most threatening aspect to our lives and properties—a plan not only alarming in its immediate effects, but pregnant with evils of a most dangerous nature in its remote consequences.

Your petitioners humbly conceive, that the tribes of Indians living in your populous States cannot possibly prove, at any time, dangerous to their white inhabitants, principally dispersed and scattered as they are upon an immense, and, in many parts, very thickly inhabited territory: But your honorable Houses must be sensible that it would be far otherwise with respect to any habitual residence those now scattered Indians could make on the west side of the Mississippi. The Indians will be by the measures contemplated connected together, and our white settlers must, for a very considerable time to come, remain dispersed at an immense distance from each other; an easy and defenceless prey to the bloody rage of the merciless tomahawk. Is this protection? Is this justice? Is this equity? Would your honorable Houses acknowledge in all the Powers of Europe the right to collect in one body all their convicts, amounting in number (if such a number could be found) to twice, or perhaps three times your own population, and to vomit them on your shores? The narrow and limited view of your petitioners does not allow them to see any the least difference between the conduct of the Powers of Europe in that case, and your conduct with respect to us; except that in one case the Powers of Europe are not bound by any treaty to protect you, and the Government of the United States is bound to protect us. Your petitioners might add that convicts might possibly be reclaimed, but experience teaches us that the Indians, when conscious of their strength, the nearer they approach to civilization the more inclined they feel to resume at the first opportunity their naturally cruel and savage disposition.

Your petitioners do not doubt but that some grand political ends were expected to be answered by the provision in the fifteenth section of the bill erecting Louisiana into two Territories, but were those ends as advantageous as in the humble opinion of your petitioners they are disastrous—"Nothing," said Aristides to the Athenians, "could be more advantageous than the proposition of Themistocles, but nothing could be more unjust." Your honorable Houses are well acquainted with the determination of the Athenian people.

Your petitioners have thus gone through the painful, yet they conceive indispensable, task of remonstrating against grievances, in compliance with the duty they owed to their country, to themselves, and to posterity. Your petitioners are sensible that, in the discussion of interests of such magnitude, involving their dearest rights, they may, perhaps, appear to have deviated a little, either in some of the conclusions or expressions, from the respect they never intended to refuse to the highest authority of their country: but let your honorable Houses remember that your petitioners feel themselves injured, deeply injured. Could they tamely submit, could they even represent with more moderation in such a case, you

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yourselves would not consider them worthy to be admitted into a portion of the inheritance of the heroes who fought and bled for the independence of America.

Your petitioners ask, 1st. For the repeal of the act erecting Louisiana into two Territories, and providing for the temporary government thereof.

2dly. That legal steps should be immediately taken for the permanent division of Louisiana.

3dly. That a Governor, secretary and judges, should be appointed by the President, who shall reside in the district of Louisiana, and hold property therein to the same amount as is prescribed by the ordinance respecting the Territory Northwest of the river Ohio.

4thly. That the Governor, secretary, and judges, to be thus appointed, for the district of Louisiana, should, in preference, be chosen from among those who speak both the English and the French languages.

5thly. That the records of each county, and the proceedings of the courts of justice in the district of Louisiana should be kept, and had in both the English and French languages, as it is the case in a neighboring country, under a monarchical Government, and acquired by conquest.

6thly. That supposing the district of Louisiana to be divided into five counties, ten members, two from each county, shall be elected by the people having a right to vote in each county, according to the rules prescribed by the ordinance respecting the Northwestern Territory every two years, or such another number as Congress may appoint, which said members shall, jointly with the Governor, form the Legislative Council of said district of Louisiana.

7thly. That Congress would acknowledge the principle of our being entitled, in virtue of the treaty, to the free possession of our slaves, and to the right of importing slaves into the district of Louisiana, under such restrictions as to Congress in their wisdom will appear necessary.

8thly. That Congress, taking into consideration the distance at which we live from the seat of the General Government, which does not allow the General Government to be informed with respect to the true interest of this country but through the agents of that same Government, Congress should enact a law authorizing this district of Louisiana to send an agent or delegate to Congress, whose powers, as to speaking and voting in the House, Congress may circumscribe as to them may seem proper.

9thly. That funds should be appropriated for the support, and lands set apart or bought for the building and maintaining of a French and English school in each county, and for the building of a seminary of learning, where not only the French and English languages, but likewise the dead languages, mathematics, mechanics, natural and moral philosophy, and the principles of the Constitution of the United States should be taught. Independent of the obligation of spreading knowledge, upon which alone a free Government can stand in a country till now unacquainted with your laws and language, a additional interest will result, in the Congress, from the teaching principa ematics and natural philosophy, whe orable Houses reflect that Louisia with mines of every description, wh be worked to any advantage withou engines supplied by these two sciences.

10thly. That every private engag formable to the laws of Spain, enter the time Louisiana was ruled by the la shall be maintained.

11thly. That any judgment which ered as final, according to the Span not be revised by any of the tribuna lished in Louisiana by the United St

12thly. That any judgment from w peal might be had, according to the S to any superior tribunal, may be appe a tribunal of equal dignity within the or the United States, and that a fina had, conformably to the laws of La time the suits were brought into co

And now your petitioners tru strances and petition to the justice able Houses, and they do not entert doubt but that a nation, who in the of Independence, has proclaimed ors were intended for the gover governed for the governors; a nat plained so loudly of their right of rep a right inestimable to them, and tyrants only, being violated; a nat sented it to the world, as one of th separation from England, that the land had endeavored to prevent the their States; a nation who waged her mother country for imposing without their consent; a nation Indians "the merciless Indian sav known rule of warfare is an undist struction of all ages, sexes and cond not be deaf to their just complaints; a ing their grievances, will deserve for unbounded affection of the inhabitan trict of Louisiana.

Elated with these hopes, your pe ceive that they cannot end their pres strance and petition in a more sub than by renewing to you the oath the istered to them on the first day of the together in General Assembly, by the commandant of this district of Louisia

And we all swear "to be faithful States, to maintain with all our pow stitution of the United States, and laws made and to be made by Cong district of Louisiana."

Signed at St. Louis, the twenty-e September, in the year of our Lord eight hundred and four, and of the Am dependence the twenty-ninth.

[Signed by the Deputies of New Ma Girardeau, Ste. Genevieve, St. Louis pendencies, St. Charles and its depend

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DISTRICT OF COLUMBIA.

nmunicated to the House, January 22, 1805.]

: Senate and House of Representatives of the 'ed States: The memorial of delegates appointed arious sections of the District of Columbia re- tfully represents—

it their constituents, at the commencement present session, with a view to ascertain the il opinion on such objects as might require terposition of Congress, and which, by being ited in one view, might supersede numerous ns on subordinate points, so apt to distract ttention, and unnecessarily consume time ed by national concerns, empowered your rialists to take into consideration the situa- f the District, and submit whatever, in their n, its welfare required.

ir memorialists accordingly met at an early and made considerable progress in the busi- :onfided to them, when their deliberations arrested by the propositions offered for a ion of the District. As soon as a decision iade upon them, your memorialists resumed sittings, and now embrace the earliest op- iity in their power of inviting the attention Legislature to the results of their delibera- In submitting these they beg leave to state iey have refrained from noticing any objects, ention to which is not, at the present time, ispensable importance to the interests of the ct.

: object which, from its superior interest, ngaged their attention, is the administration tice. By a recurrence to the laws of Con- it appears that, in organizing the Judiciary n of the United States, fees were allowed to ficers of the courts established in the respec- itates equal to those allowed in the supreme thereof, with an addition of one third, to- r with other emoluments. The reason of iberal allowance was doubtless the high of suits generally carried before those tri- s, and the great extent of country they em- d. When Congress assumed jurisdiction his small territory, the same fees, it is pre- d from inadvertence, were allowed to the rs of the circuit court of the District of nbia, as those allowed in the other circuits. ous to this time, that portion of the District n at present forms the county of Washington charged with fees similar to those paid in ounty courts of Maryland; and that portion h now forms the county of Alexandria was ed with the same fees as those paid in the y courts of Virginia. By this provision the iave been increased, in some instances, to e, and, in other instances, to three times the int paid under the States to which the por- of the District were attached. Local and iar circumstances, so far from creating any n for this augmentation, strongly enforce a iution. Among these are,

e small size of the District;

compact population;

The increased number of suits before the circuit court, from the extension of its cognizance to controversies for sums exceeding twenty dollars, the greatest part of which arise between tradesmen and mechanics in moderate circumstances.

Without going into detail, it may be proper to state, that, when the defendant immediately on being served with writ satisfies the demand against him, the costs are seldom less than ten dollars; that, in the suit where the debt is not contested but which is carried into court solely for delay, the costs amount to thirty-three dollars, even in cases where the debt does not exceed twenty-one dollars. In the case of an appeal from the decision of a magistrate on a demand of thirteen dollars, which was reversed by the court, the costs incurred by the defendant amounted to about one hundred and thirty dollars, nearly one-third of which was in compensation to witnesses.

Your memorialists need scarcely, after the statement of those facts, and the mass of corroborating facts herewith submitted, say, that the existing system presses with a weight upon the district that threatens in a short time to destroy the industry of the honest citizen or drive him from it. In order to remove these evils, your memorialists pray a reduction of the fees of the officers of the circuit court, in the county of Washington, to the rates payable to the officers of the county courts of Montgomery and Prince George's, in the State of Maryland, at the time of the assumption of the jurisdiction by Congress; and of those of the officers of the circuit court in the county of Alexandria to the rates payable to the officers of the county court at Fairfax, in the State of Virginia, at the same period.

It is respectfully submitted whether the impartial administration of justice does not require the repeal of so much of the act of Congress, entitled "An act additional to, and amendatory of, an act concerning the District of Columbia," as repeals the act providing for the compensation of the justices of the peace thereby created; and as directs execution on magistrates' judgments to issue from the clerk's office, and allows him a compensation therefor; and likewise so much thereof as relates to the compensation of jurors in the county of Washington; which repeal, your memorialists have no hesitation in saying, will give general satisfaction to their constituents.

Experience having proved the existence of various defects in the militia system, it is recommended as the means of obviating them, and of rendering the system more acceptable to the inhabitants of the district, that it be so altered as to reduce the number of musters from eight, as now directed to be held, to five; that is, three musters in company, one in battalion, and one in legion; to reduce the number of courts for assessing fines from six, as now directed to be held, to four; that is, two battalion and two legionary courts; to make the persons of delinquents liable to arrest and imprisonment, not exceeding twenty-four hours, for each day's non-attendance, where property is not shown whereon to assess the fines; and to devolve the collection of fines on the marshal of the district as

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practised in the first instance, instead of collectors appointed by military courts, as is now the case.

Your memorialists further request that validity may be given in the District of Columbia to letters testamentary and of administration, granted in any part of the United States, in which the testator or intestate resided at the time of his death; and that owners of slaves residing within the district may be permitted to remove them from time to time from one county thereof to the other, without incurring any penalty or forfeiture.

Inconveniences having arisen from the want of competent authority, to lay out and keep in repair roads within the county of Washington, it is requested that adequate provision be made for this interesting object.

Your memorialists are duly impressed with the lateness of the period of their application, and its possible interference with an attention to objects under the consideration of Congress; but they are likewise impressed with a belief that a sincere disposition exists to promote the general interests of the district, and so far as they can be ascertained, to consult the wishes of its inhabitants; having, however, made no request, not dictated by considerations of great weight, and justified by a regard for the interest of their constituents, they entertain the hope that their representation will obtain the early attention of Congress.

C. CONINGHAM, *President*,
N. KING, *Secretary*.

JANUARY 18, 1805.

The committee appointed on the 19th November, 1804, to whom was referred a resolution directing certain inquiries to be made respecting the administration of law, and the fees allowed to the officers of the district court, offer the following report as the result of their labors:

They have, from Herty's Digest of the Laws of Maryland, ascertained the fees payable to the clerks of the county courts of the State, and reduced them from tobacco to the currency of the United States, (in paper marked A.)

They have, also, from the same source obtained the fees payable to the sheriffs in Maryland, in the money of the United States, (in paper marked B.)

They have, from the law of Congress, chap. 125, sec. 1, passed on the twenty-eighth of February, 1799, made an extract, (C,) of the fees allowed to the marshal; which they have also entered in paper B, for the purpose of making the comparison between them, and the fees received by the sheriffs of Maryland for similar services.

They have, from the same law, ascertained the fees of the clerk of the district court, (in extract D.) These are entered, where for similar services, in the paper A, for the purpose of comparing the compensation of clerk of the district court with the clerks of the county courts of Maryland.

The paper marked E shows the number of suits on the docket, at each court or term since the establishment of the county court for the county of Washington; from this it will appear, that, at the three courts holden in 1801, quarter yearly, there were 763 appearances, 384 imparlances, 193 trials, 8 appeals, and 71 criminal cases. At the three courts held in 1802, two of which were quarterly, and the third six months thereafter, there were 1,119 appearances, 657 imparlances, 746 trials, 23 appeals, and 96 criminal cases. At the two half yearly courts holden in 1803, there were 880 appearances, 723 imparlances, 462 trials, 17 appeals, and 93 criminal cases. That at the July term, in 1804, there were 467 appearances, 316 imparlances, 267 trials, 7 appeals, and 65 criminal cases.

Desirable as it is, your committee cannot obtain "the nature and amount of those suits, with the expenses attending them, and the sums recovered," without paying a large sum in fees to the clerk of the court for searches, &c., or they would willingly have taken on themselves the labor of extracting all the information which the documents would afford. Nor can they, from the same causes, obtain the facts relative to cases of insolvency, and which might throw light upon their causes, and show how far it is through the instrumentality of the judiciary establishment of the *District that* they occur.

The number of criminal cases which appear on the docket may be averaged at about ninety in each year, but the committee *have not been able* to ascertain the amount of *fines imposed*.

The marshal has been obliging enough to furnish the committee with (F) the amount of compensation paid to grand and petit jurors at March term, 1802; it being $711 75. One of the committee being referred to the marshal's office, from the clerk's, for this information, took the liberty of asking other information at the same time, which it was supposed might be obtained from that source (G.) The application was made to the deputy marshal at the office, as accident, rather than design, had led him there. Although unable to obtain the facts wanted, the committee believe the disposition lay with the marshal and deputy, to furnish any information in their possession; but not having complete returns of fees, judgments, &c. in the office, they could not satisfy the inquiries of the committee.

From a professional gentleman your committee have obtained the following information on the subject of uncontested claims: "That where the defendant is served with a writ, provided he immediately pays the debt, the costs are seldom less than ten dollars," And that the expenses attendant on a suit in the circuit court of the District of Columbia, in Washington county, on a debt of twenty-one dollars, where the defendant does not deny it, but only wishes to obtain time by carrying it into court, as nearly as follows: The plaintiff's costs, seventeen dollars sixteen cents, and the defendant's seven dollars thirty-seven cents, being twenty-four dollars and fifty-three cents incurred to the time of judgment. On execution issuing to the clerk and marshal for issuing, poundage, serving *fieri facias*, swearing appraisers, &c., a further expense of about seven dollars ninety-seven cents will be incurred; making, in all, the sum payable by the defendant to be about fifty-four dollars and

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forty-nine cents, instead of the original debt of twenty-one dollars! (I.)

The committee have not succeeded in their endeavor to ascertain the expense of a suit where an average number of witnesses were summoned, and the proceedings are protracted by appeal, delay, &c., but as an illustration of the effect of these principles, in a case not pursued to the extremity, they refer to the statement H, given by a citizen of Washington, of the expense he was involved in, by defending himself against what he considered as a gross imposition, and where he was supported in the belief by a previous adjudication. A claim of thirteen dollars was tried before a magistrate, and judgment given in favor of the defendant. The plaintiff by appeal carried the cause into court; about four witnesses were examined; the judges determined on the appeal, reversed the decision of a magistrate, and the defendant had to pay about one hundred and thirty dollars.

At the first establishment of the court, the legal appearance fee of an attorney was fixed at ten dollars. This was, however, at one of the succeeding terms reduced to six dollars and sixty-seven cents, at which sum it now stands.

On reviewing the information thus obtained, it has suggested certain observations, which the committee deem it proper to submit to the consideration of the delegation. The sudden transition from the economical county courts of the State of Maryland to a more dignified judiciary system given to the district, however flattering to our vanity, is not calculated to give satisfaction to those whom necessity impels into its vortex, or who take into view our real situation. For notwithstanding the per diem allowance to the marshal, and the clerk of the court, we find their fees vastly more than the State officers received. By a comparison of the fees allowed to our federal officers, with those paid to the officers of the county courts of Maryland, it appears that the clerk of the court receives about two hundred and fifty per cent. advance; and the marshal's fees are nearly double what the sheriff of Maryland used to receive. This great increase of compensation can scarcely have been dictated by considerations of our local situation, for, in a district only ten miles square, and where the population is more collected than usual in counties of a State, it cannot be supposed that additional labor would be imposed on the clerk, or on the marshal in the discharge of his duty; the reason of the case seems to point to a contrary conclusion. The circumstances of this district being established as the seat of the General Government must increase its population by the removal of strangers into it, many of whom will be tradesmen and mechanics, whose small debts will constitute a large proportion of the business of the courts, and on whom this increase of expense in prosecuting their claims must operate with peculiar hardship. If, on the other hand, these fees were given under the expectation, that from the smallness of the counties in the district few suits would be instituted, and that the compensation of the officers ought therefore to be increased to enable them to live, the result seems to show that expectation was erroneous; as, either from the extension of the jurisdiction to sums of twenty dollars, or the description of the inhabitants, the Washington county docket must afford a reasonable portion of business.

The great labor, and perhaps impossibility of procuring all the facts relative to the expense of prosecuting and the amount recovered, has prevented the committee from obtaining an accurate statement; yet from the docket of the terms which have already passed, they have ventured an estimate of the annual expense to the county of Washington, and the probable amount recovered.

The average number of appearances is nine hundred and eighty-eight in the year; of these suppose eighty-eight are not served, it will leave nine hundred suits on which appearence is entered. And supposing only two attorneys' fees to each suit, although there are frequently four, the amount of attorneys' fees in Washington county will be annually upwards of -	$12,000
The average trial docket is five hundred and twelve, to which suppose two hundred have witnesses summoned, two to each suit, and that they have to attend four days on the average, - - -	2,000
Suppose the clerk's and marshal's fees together, on each suit where the defendant enters an appearance, average five dollars, - - - - - - -	4,500
The supposed annual expense to the inhabitants of the county, in the prosecution of suits, - - - - - -	18,500
The average yearly trial docket being five hundred and twelve, suppose four hundred of these are actions of debt, and will, one with another, be for fifty dollars each. Then the yearly sum recovered in court will be, - -	20,000
Leaving an excess of the amount over the costs, of - - - - - -	1,500

It has often been considered as humane and beneficial, particularly to debtors, that the trials do not take place until the third term after the institution of the suit; and a very large portion of suits are believed to be carried into court for the purpose of obtaing this delay. Instead of that effect in this District, it appears that this delay costs between thirty and forty dollars; in many cases exceeding, and in some equal to, the original claim. That this expense is frequently involuntary on the part of the debtor, and generally renders him the more unable to pay; a circumstance which even the professional gentlemen and officers complain of, and by which they lose a considerable portion of their fees. It appears to your committee, as more correct, as well as more humane, that the debt should be substantiated as soon as possible, and the delay of execution be given afterwards. In this case, the creditor, having evidence of the truth of his claim, can transfer or otherwise dispose of it; while the debtor, knowing the sum he has to pay, for such a length

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of time previous to serving an execution, might make arrangements for its discharge.

From every view your committee have been able to take of the subject referred to them, they are of opinion that the delegation ought to ask of Congress an inferior court for the county of Washington; that this court should be composed of ——; that it should have original jurisdiction in all cases between twenty and one hundred dollars; decide on appeals from a single magistrate, and determine on sums under fifty dollars, without appeal; but that an appeal on matters of law should lie to the circuit court for sums of fifty dollars or upwards, and the original jurisdiction of the circuit court, in cases of debt, be limited to one hundred dollars.

DANIEL REINTZEL,
NICHOLAS KING,
BENJAMIN MOORE.

The committee to whom was referred the inquiry into the effects of our system of civil jurisprudence on the county of Washington, beg leave to report on the following subjects referred to them:

1st. The effect and operation of so much of a law of Congress, additional to and amendatory of an act concerning the District of Columbia, as prohibits the taking of fees by justices of the peace, and which authorize the clerk of the county court to issue executions on their judgments, and take fees therefor.

2d. The effect and operation of so much of the same law as compels jurors to serve without compensation.

3d. And, the effect and operation of so much of the law as provides that "no *capias ad satisfaciendum* shall issue on any judgment of a single magistrate, or in any case, where the judgment, exclusive of costs, shall not exceed twenty dollars."

On the first subject your committee have to observe, that the law and practice of the State of Maryland, which authorized the magistrates to receive fees for transacting such business as came before them, was never complained of as a grievance, because the sums allowed to be taken were in themselves reasonable, and a bare compensation for the time necessarily employed. For issuing a summons or warrant, they were entitled to twelve and a half cents; for judgment, twelve and a half cents; execution, twelve and a half cents; administering an oath, six cents; taking bail bonds, twenty-five cents; taking the acknowledgments of deeds, twenty-five cents to each magistrate; summoning a *venire*, seventy-five cents; valuing an orphan's estate, seventy-five cents; and for several other duties imposed on them, fees equally light.

While these fees, small as they are, were allowed, there was no complaint of a disinclination on the part of the justices to attend to the adjustment of differences arising among our poor but industrious citizens. The fees were received from a principle of justice, and the magistrate was reconciled to them by the consideration, that though an inadequate compensation for his time, they were generally paid by a class of citizens depending on their labor for support, and less able to pay the whole, than the magistrate to abate part of his reasonable claim. The passage of the law which prohibited the magistrates from taking fees was certainly an evil to the community; its tendency was, to render the magistracy less attentive to their duties, and the adjustment of differences less easy of attainment to the poor; it militated against the generally acknowledged principles of justice, particularly in republics, that services ought not to be claimed where compensation for them is not allowed; and it compelled many of our most useful justices of the peace to resign their commissions. While thus taking away from the magistrates, to whom all the trouble of trying the cases brought before them is given, the small compensation they had, the law directs executions on their judgments to be issued by the clerk of the court, and gives him double the fee which the magistrates were allowed to take.

The second subject of inquiry seems attended with more disadvantages to society than the first: for if there are a few men who can give up a portion of their time, without receiving compensation, to the adjustment of differences between their fellow-citizens, and to whom the honor of the magistracy is desirable, they are still fewer in number who can leave their affairs for whole days without previous notice, and attend at a distance from home, at the most unpleasant seasons of the year, for other people's advantage, without being paid for their attendance. When jurors were summoned for the term and received pay for their services, they made arrangements for the transaction of their business during their absence; those summoned were generally judiciously selected, respectable, and in some measure acquainted with those transactions in society to which their inquiries would be directed. Under the present system how differently are we situated: during the whole court, the citizens best qualified for jurors are obliged to keep out of the sight of the marshal and his deputies during the morning of the day when they ought to be attending to their business, lest they be summoned on the jury for the day: and the marshal is obliged to take those whom chance or design has thrown in his way; and they are sometimes travellers, strangers to our habits, our manners, and our laws; who serving against their will may be more anxious to be discharged than solicitous to do justice.

The inconveniences felt from the operation of that portion of the law which prohibits imprisonment for debts under twenty dollars, arise in a great measure from our peculiar local situation. Subject to an influx of strangers by the buildings going on, and the vessels of the United States discharging their seamen in this city, debts of this description to a very considerable amount are contracted by single men with our citizens: many of these contemplating but a transitory residence and finding the operation of this law, have the dishonesty to avail themselves of it, although they possess sufficient to discharge their debts; and instances of this kind of robbery, aggravated by insult, are not unfrequent. Enemies as your com-

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nittee are to everything tyrannical in the execu-ion of the law, they are induced to believe, that he effect of this indulgence is neither favorable to ıumanity nor justice; that it is more an introduc-ion to dishonesty than a provision of humanity n favor of the unfortunate; for few indeed have ›een the instances of committing a father of a amily to prison for a small debt. The law, how-ver, now favors the idle vagabond, shakes the onfidence which ought to exist among our citi-ens, and in many instances is supposed to prevent hat lenity and indulgence to the unfortunate, and hose having families, which they formerly re-eived. When the confidence of the citizen has ›een several times abused, he will of necessity vithdraw it from others, and the innocent will uffer from the injustice of the depraved.

The committee, therefore, recommend the pass-ng of the following resolution, as declaratory of he sense of the delegation on the subject of the oregoing report:

Resolved, That in the opinion of the delegates of the District of Columbia the repeal of so much of the act of Congress, entitled "An act additional o, and amendatory of, An act concerning the District of Columbia, as repeals the law providing for the compensation of justices of the peace there-by created," would be just, proper, and beneficial to the county of Washington; as would, also, the repeal of so much of the fourth section of said act as directs executions on magistrates' warrants to issue from the clerk's office, and allows the clerk a fee therefor.

DANIEL REINTZEL.
NICHOLAS KING.

[The tables, being voluminous, are omitted.]

MARINE HOSPITAL FUND.

[Communicated to the House, March 5, 1804.]

Mr. S. L. Mitchill, from the Committee on Commerce and Manufactures, to whom was referred the memorial of sundry citizens and mariners of the city of Baltimore, in the State of Maryland, praying for geater facilities to the admission of sick and disabled seamen into the marine hospitals, made the following report:

The memorialists state, as a grievance requiring a remedy, that seamen of the United States, taken sick or becoming disabled after their arrival in port, and before reshipment on another voyage, are refused admittance into the infirmary, and denied the benefit of the mariner's fund, although such applicants may have heretofore paid hospital money conformably to law. The distress experienced by many seamen, by this construction and execution of the laws, is loudly complained of: and the interposition of Congress is solicited to save the wretched from their present distress, and to avert similar calamities for the future. The seriousness of this complaint, proceeding from the suffering seamen of our country, has been contemplated with anxiety and concern by the committee: their helpless and unfriended situation has been beheld not only with pity, but with an active benevolence, which, at the instant it finds that succour is necessary, exerts itself promptly and without hesitation to afford it. The spectacle of these useful citizens, who navigate the ships of our country, on all their voyages, in which national glory and national wealth are concerned, turned out of doors, because they are sick and indigent, is too painful to be beheld without emotion.

The cause of these exhibitions of woe, so unpleasant to the feelings of individuals, and so calculated to affect the public sensibility, is worthy of being investigated; and the committee believe that much of the evil complained of, will be found to proceed from the generalization of the seamen fund by the act of May the 3d, 1802.

A reference to the different statutes passed on this subject, will satisfy the inquirer that this is the case. By the prudent and salutary provision of an act passed July 6th, 1798, it is made the duty of the master or owner of every ship or vessel of the United States, arriving from a foreign port, and before she shall be admitted to entry, to render to the collecter a true account of the number of seamen employed on board the vessel since her last entry in any port of the United States, and to pay to the said collector at the rate of twenty cents a month for every seaman so employed. The captain is authorized to deduct this out of the sailors' wages. The like regulation was extended to the crews of vessels enrolled or licensed for the coasting trade.

The money thus paid by the seamen, was directed to be accounted for to the Secretary of the Treasury. And the President of the United States was authorized to provide for the temporary relief of sick and disabled seamen. It was an express condition of this capital, that it should be expended only in the district in which it was collected And as it was judged that in some districts, a surplus would remain over and above the needful expenditure, it was directed that such surplus should be vested in the national stock, for the purpose of accumulation, and of being enlarged by charitable donations until proper marine hospitals could be procured for the permanent accommodation of sick and disabled seamen; or, what was better, until pensions could be assigned them.

To these excellent regulations, another important one was added by the statute of March 2d, 1799. By one of the sections of this act the Secretary of the Navy was directed to retain in his hands twenty cents a month from the wages of officers, seamen, and marines, in the navy, to be paid into the treasury, and expended for the same purposes as the money paid by the seamen in the merchants' service, whether on foreign voyages or in the coasting trade. But in that very statute an unhappy diversion was made of those funds from their original destination. In some of the districts, it happened that more money was expended than the sum collected within the same amounted to. This became, in those places, a matter of complaint; to

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remedy it, a great inroad was made. The expenditure, which had heretofore been limited to the collection district, was rendered lawful in any part of the State in which such district was situated, and within any other State next adjoining. There was an exception, however, as to the four New England States. Thus was the surplusage in any one district in a great degree prevented, and the project of accumulating money enough for lasting and well endowed hospitals or pensions, by which the sick, wounded, disabled, or veteran seamen might have been provided for and enabled to enjoy repose, almost altogether frustrated.

But even this encroachment upon the primitive design did not give entire satisfaction; complaints were still made in a few places that the surplus of money was inadequate to the wants of the sick and infirm seamen, and they were so loud and reiterated that, on the 3d of May, 1802, Congress listened to them, and declared by a law, the passing of which is never to be regretted, that the moneys heretofore collected—that is ever since 1798—and unexpended, and all moneys thereafter to be collected, under authority of the before mentioned acts, should constitute one general fund, to be employed as circumstances should require, in every seaport of the *nation*. In consequence of this generalizing scheme, the pleasing surplusage that was accumulating in the ports of New York, Philadelphia, Baltimore, and Boston, was broken down and drawn away, except a reservation of $15,000 for building an hospital in Massachusetts.

By this stroke all the hopes of permanent provisions for sailors, with impaired limbs and exhausted constitutions, were blasted at once. No prospect remained but that of a temporary supply, furnished monthly, or from hand to mouth, as the tax was paid to the Treasury. The sums saved by the good management and rigid economy of the managers of them in some places, were not now, as before, treasured up for future benefit there; but, serving merely to tempt the cupidity of persons, in other and distant places, they were melted down and absorbed in the general mass.

The diminution of the fund, in certain ports where it used to be most abundant, has led to a more strict scrutiny than has been usually practised heretofore as to the admission of sailors to the benefits of hospitals. In some places doubts have been entertained whether unemployed seamen ought to be allowed a participation of those advantages. In others (or one other) they have been refused unless the sickness or disability shall have accrued while they are in actual service. In consequence of this manner of construing and executing the law, uneasiness is manifesting itself in several of our most frequented and opulent seaports. Before the generalizing law, these expressions of dissatisfaction were few and local; since that event, they are growing more numerous, and even universal.

For an able and perspicuous view of the sums collected for the relief of seamen, and the places at which they have been collected and expended, with a variety of other interesting and instructive particulars, the committee beg leave to refer to a report of the Secretary of the Treasury, made in obedience to a resolve of this House, on the 1st day of January, and now lying on the table. In this it appears that in some places where more is collected, none is expended.

It is plain to the committee that the seamen of their country ought to be distinguished when in distress from common paupers. It was the intention of the Government to consider them so. They, therefore, while in health and employment, pay something towards their own support when they shall be sick and unable to perform services. The sum collected does not seem sufficient, or why should these unfortunate men be rejected as the memorial states? The committee, while it forbears to make any remarks on the sum of $33,401 expended at Norfolk, and $26,964 at Charleston, S. C., requests that gentlemen will take the trouble to examine these swelling items of the account, while they note only $7,330 are collected at the former of those places, and $15,843 at the latter.

In order, however, to enlarge the means of relief as to temporary purposes, the following proposition is submitted, to wit:

That an additional sum, of five cents per month, be paid for hospital money, by the seamen and others in the foreign, coasting, and naval service, intended by the act of 16th July 1798, and the act of March 2d, 1799.

And with the desire to provide some fund for the permanent relief of decrepit or superannuated seamen, exhausted in service, though not proper objects of a sick infirmary, it is recommended,

That the 1st section of the act of May 3d, 1802, as far as the same respects the generalization of the seamen's fund, be repealed.

LOSS OF THE FRIGATE PHILADELPHIA.

[Communicated to Congress, March 20, 1804.]

To the Senate and House of Representatives of the United States:

I communicate to Congress a letter received from Captain Bainbridge, commander of the Philadelphia frigate, informing us of the wreck of that vessel on the coast of Tripoli, and that himself, his officers, and men, had fallen into the hands of the Tripolitans. This accident renders it expedient to increase our force, and enlarge our expenses in the Mediterranean, beyond what the last appropriation for the naval service contemplated. I recommend, therefore, to the consideration of Congress, such an addition to that appropriation, as they may think the exigency requires.

TH. JEFFERSON.

MARCH 20, 1804.

TRIPOLI, *Nov.* 1, 1803.

SIR: Misfortune necessitates me to make a communication the most distressing of my life, and it is with the deepest regret that I inform you of the loss of the United States' frigate Philadelphia, under my command, by being wrecked on

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rocks between four and five miles to the eastward of the town of Tripoli. The circumstances relating to this unfortunate event are: At 9 A. M. being about five leagues to the eastward of Tripoli, saw a ship, in shore of us, standing before the wind to the westward; we immediately gave chase; she hoisted Tripolitan colors, and continued her course very near the shore; about eleven o'clock had approached the shore to seven fathoms water; commenced firing at her, which we continued, by running before the wind, until half-past 11; being then in seven fathoms water, and finding our fire ineffectual to prevent her getting into Tripoli, gave up the pursuit, and was bearing off the land, when we ran on the rocks in twelve feet water forward, and seventeen abaft; immediately lowered down a boat from the stern, sounded, and found the greatest depth of water astern; laid all sails aback, loosed top-gallant sails, and set a heavy press of canvass on the ship, blowing fresh, to back her off; cast three anchors away from the bows, started the water in the hold, hove overboard the guns, except some abaft to defend the ship against the gun-boats which were then firing on us; found all this ineffectual; then made the last resort, of lightening her forward, by cutting away the foremast, which carried the main top-gallant with it: but labor and enterprise were in vain, for our fate was direfully fixed. I am fully sensible of the loss that has occurred to our country, and the difficulty which it may further involve her in with this Regency; and feel, beyond description, for the brave unfortunate officers and men under my command, who have done everything in their power, worthy of the character and stations they filled; and, I trust, on investigation of my own conduct, that it will appear to my Government and country consistent to the station in which I had the honor of being placed.

Striking on the rocks was an accident not possible for me to guard against by any intimation of charts, as no such shoals were laid down in any on board, and every careful precaution (by three leads kept heaving) was made use of in approaching the shore, to effect the capture of a Tripolitan cruiser; and, after the ship struck the rocks, all possible measures were taken to get her off, and a firm determination made, not to give her up as long as a possible hope remained, although annoyed by gun-boats, which took their position in such a manner that we could not bring our guns to bear on them, not even after cutting away a part of the stern to effect it.

When my officers and self had not a hope left of its being possible to get her off the rocks, and, having withstood the fire of the gun-boats for four hours, and a reinforcement coming out from Tripoli, without the smallest chance of injuring them in resistance, to save the lives of brave men, left no alternative but the distressing one of hauling our colors down, and submitting to the enemy whom chance had befriended. In such a dilemma, the flag of the United States was struck; however painful it will be to our fellow-citizens to hear the news, they may be assured that we feel in a national loss equally with them. Zeal of serving our country, in doing our duty, has placed us in that situation which can be better conceived than described, and from which we rely on our country's extricating us.

The gun-boats, in attacking, fired principally at our masts; had they directed the shot at their hull, no doubt but they would have killed many.

The ship was taken possession of a little after sunset; and, in the course of the evening, myself, and all the officers, with part of the crew, were brought on shore, and carried before the Bashaw, who asked several questions. From his palace, the officers were conducted to the house which Mr. Cathcart lived in, where we lodged last night, and this day the Minister has become the guarantee to the Bashaw for us officers, and we have given him our parole of honor.

Enclosed you will receive a list of the officers, and a few of the people to attend them, who are quartered in the American Consular house, and are to be provided for by such ways and means as I can best adopt, which will be on as economical a plan as possible: the remainder of the crew will be supported by the Regency.

We have all lost everything but what was on our backs, and even part of that was taken off; the loss of the officers is considerable, as they were well provided in every necessary for a long station.

Mr. Nissan, the Danish Consul, has been extremely attentive, and kindly offers every service of assistance.

I trust, sir, you will readily conceive the anxiety of mind I must suffer. After the perusal of the enclosed certificate from the officers, on my conduct, should you be pleased to express the opinion of Government, you will much oblige me.

I have the honor to be, &c.

WM. BAINBRIDGE.

Hon. ROBERT SMITH,
Sec'y of the Navy, Washington.

P. S. Notwithstanding our parole, we are not permitted to leave the house, or to go to the top of it, and they have closed our view of the sea.

List of officers and men quartered at the American Consular-house at Tripoli.

Wm. Bainbridge, Captain; David Porter, Jacob Jones, Theodore Hunt, and Benjamin Smith, Lieutenants; Wm. S. Osborn, Lieut. of Marines; John Ridgely, Surgeon; Keith Spence, Purser; Wm. Knight, Sailing Master; Jonathan Cowdery, and Nicholas, Harwood, Surgeon's Mates; George Hodge, Boatswain; Bernard Henry, Daniel T. Patterson, James Gibbon, Benj. F. Reed, William Cutbush, Wallace Wormley, Robert Gamble, Richard B. Jones, James Renshaw, James Biddle, and Simon Smith, Midshipmen; Joseph Douglass, Sailmaker; Richard Stephenson, Gunner; William Godby, Carpenter; William Anderson, Captain's Clerk; Minor Forentan, Master's Mate; James C. Morris, Ship's Steward; Ottis Hunt, and David Irvine, Sergeants of Marines; William Leith, Ship's Cook; James Casey, Master-at-Arms; Peter Williams, Corporal; John Baptist,

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Lewis Hecksener, Frederick Lewis, Chas. Mitchell, Peter Cook, Leonard Foster, William James, William Gardner, and William Kemperfill—43.

43
264 men and boys in the Bashaw's Palace.

307 total of crew.

SIR: We, late officers of the United States frigate Philadelphia, under your command, wishing to express our full approbation of your conduct concerning the unfortunate event of yesterday, do conceive that the charts and soundings justified as near an approach to the shore as we made; and that, after the ship struck, every exertion was made, and every expedient tried, to get her off, and to defend her, which either courage or abilities could have dictated. We wish to add, that, in this instance, as well as every other since we had the honor of being under your command, the officer and seaman have distinguished you. Believe us, sir, that our misfortunes and sorrows are entirely absorbed in our sympathy for you.

We are, sir, with sentiments of the highest and most sincere respect, your friends and fellow-sufferers,

DAVID PORTER, Lieutenant.
J. JONES, Lieutenant.
THEODORE HUNT, Lieutenant.
BEN. SMITH, Lieutenant.
WM. S. OSBORN, Lieut. Marines.
JOHN RIDGELY, Surgeon.
KEITH SPENCE, Purser.
WM. KNIGHT, Sailing Master.
JONA. COWDERY, Surgeon's Mate.
NICH. HARWOOD, do.
BERNARD HENRY, Midshipman.
JAMES GIBBON, do.
BENJAMIN F. REED, do.
WALLACE WORMLEY, do.
ROBERT GAMBLE, do.
JAMES BIDDLE, do.
RD. B. JONES, do.
D. T. PATTERSON, do.
WM. CUTBUSH, do.
SIMON SMITH, do.
JOSEPH DOUGLASS, Sailmaker.
GEORGE HODGE, Boatswain.
RD. STEPHENSON, Gunner.
JAMES RENSHAW, Midshipman.
WM. GODBY, Carpenter.

DESTRUCTION OF THE PHILADELPHIA.

Commodore Preble to the Hon. Robert Smith, Secretary of the Navy.

U. S. SHIP CONSTITUTION,
SYRACUSE HARBOR, *Feb.* 19, 1804.

SIR: I have the honor to inform you that the United States brig Syren, Lieutenant Commandant Stewart, and ketch Intrepid of four guns, Lieutenant Commandant Decatur, arrived here last evening from a cruise. They left this port the 3d instant, with my orders to proceed to Tripoli and burn the frigate (late the United States frigate) Philadelphia, at anchor in that harbor. I was well informed that her situation was such as to render it impossible to bring her out, and her destruction being absolutely necessary to favor my intended operations against that city, I determined the attempt should be made.

I enclose you copies of my orders on this occasion, which have been executed in the most gallant and officer-like manner by Lieutenant Commandant Decatur, assisted by the brave officers and crew of the little ketch Intrepid under his command. Their conduct in the performance of the dangerous service assigned them cannot be sufficiently estimated; it is beyond all praise. Had Lieutenant Decatur delayed one half hour for the boats of the Syren to have joined him, he would have failed in the main object, as a gale commenced immediately after the frigate was on fire, and it was with difficulty the ketch was got out of the harbor. The Syren, owing to the lightness of the breeze in the evening, was obliged to anchor a considerable distance from the city, which prevented her boats from rendering much assistance, as they might have done had they entered the harbor earlier. Lieutenant Stewart took the best position without the harbor, to cover the retreat of the Intrepid, that the lightness of the wind would admit of. His conduct through the expedition has been judicious and meritorious. But few of the officers of the squadron could be gratified by sharing in the danger and honor of the enterprise. In justice to them, I beg leave to observe that they all offered to volunteer their services on the occasion; and I am confident, whenever an opportunity offers to distinguish themselves, that they will do honor to the service.

I enclose you Lieutenants Commandant Stewart and Decatur's official communication, with the names of the officers on board the ketch.

I have the honor to be, &c.
EDWARD PREBLE.

U. S. BRIG SYREN,
SYRACUSE HARBOR, *Feb.* 19, 1804.

SIR: I have the honor to enclose for your information the principal occurrences and observations during our late expedition in company with the ketch Intrepid, Lieutenant Commandant Decatur, to effect the destruction of the frigate Philadelphia in the harbor of Tripoli, and on the happy termination of that enterprise I heartily congratulate you. I only have to lament that a junction had not been formed with the Intrepid by the boats of the Syren under the command of Lieutenant Caldwell, as I make no doubt they would have been able to carry and destroy one or both of the cruisers lying near the frigate.

You will observe by my notes that the boats were despatched in due season to meet the Intrepid, agreeably to our arrangement; but circumstances rendering it advisable for Lieutenant Commandant Decatur to enter upon the enterprise much earlier than was intended, the junction

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nsequently defeated until after the ship was and the ketch retreating out of the harbor. 'e the honor to be, &c.

CHARLES STEWART.

ɔdore EDWARD PREBLE, *Commander of the . Squadron in the Mediterranean.*

ON BOARD THE KETCH INTREPID,
At Sea, February 17, 1804.

I have the honor to inform you that, in ıce of your orders of the 1st instant, to with this ketch off the harbor of Tripoli, endeavor to effect the destruction of the States' late frigate Philadelphia, I arrived ı company with the United States brig Lieutenant Commandant Stewart, on the owing to the badness of the weather, was o effect anything until last evening, when a light breeze from the N. E. At seven I entered the harbor with the Intrepid, the aving gained her station without the har- situation to support us in our retreat. At ıt 9, laid her along side the Philadelphia; ; and, after a short contest, carried her. I ıteiy fired her in the store-rooms, cock- berth-deck, and remained on board until ıes had issued from the spar-deck-hatch- ıd ports, and before I got from along side had communicated to the rigging and 'evious to our boarding, they had got their s out and hailed several times, but not a fired.

oise occasioned by boarding and contend- possession, although no fire-arms were 'e a general alarm on shore, and on board isers which lay about a cable and a half's 'om us, and many large boats filled with around, but from whom we received no ce. They commenced a fire on us from batteries on shore, but with no other ef- one shot passing through our top-gallant

'igate was moored within half gun-shot shaw's castle, and of their principal bat- wo of their cruisers lay within two cable's ı the starboard quarter, and their gun- hin half gun-shot on the starboard bow. all her guns mounted and loaded, which, ecame hot, went off; as she lay with her to the town, I have no doubt but some ıas been done by them. Before I got out ırbor, her cables had burnt off, and she ı under the castle where she was con- I can form no judgment as to the num- n that were on board of her—there were enty killed—a large boatful got off, and ɔed into the sea. We have made one ınd I fear from the number of bad wounds ɜceived, he will not recover, although stance and comfort has been given him. ɜd with sixty men and officers, leaving a board the ketch for her defence; and it ıe greatest pleasure I inform you I had killed in this affair, and but one slightly Every support that could be given, I received from my officers, and, as the conduct of each was highly meritorious, I beg leave to enclose you a list of their names. Permit me, also, sir, to speak of the brave fellows I have the honor to command, whose coolness and intrepidity was such as I trust will ever characterize the American tars.

It would be injustice in me, were I to pass over the important services rendered by Mr. Salvador, the pilot, on whose good conduct the success of the enterprise in the greatest degree depended. He gave me entire satisfaction.

I have the honor to be, &c.

STEPHEN DECATUR, JR.

Commodore EDWARD PREBLE, &c.

The following is a list of the officers employed on board the ketch Intrepid, under my command, in boarding and destroying the frigate Philadelphia, in the harbor of Tripoli, on the 16th instant:

Lieutenants—James Lawrence, Joseph Bainbridge, and Jonathan Thorn.

Surgeon—Lewis Herman.

Midshipmen—Ralph Izard, John Rowe, Charles Morris, Alexander Laws, John Davis, of the Constitution; Thomas M'Donough, of the Enterprise; and Thomas Oakley Anderson, of the Syren.

Mr. Salvador, pilot, and sixty-two men.

NAVAL OPERATIONS AGAINST TRIPOLI.

[Communicated to Congress, Feb. 20, 1805.]

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a letter of September 18, from Commodore Preble, giving a detailed account of the transactions of the vessels under his command, from July the 9th, to the 10th of September last past.

The energy and judgment displayed by this excellent officer, through the whole course of the service lately confided to him, and the zeal and bravery of his officers and men in the several enterprises executed by them, cannot fail to give high satisfaction to Congress and their country, of whom they have deserved well.

TH. JEFFERSON.

FEBRUARY 20, 1805.

Copy of a letter from Commodore Preble to the Secretary of the Navy.

U. S. SHIP CONSTITUTION,
Malta Harbor, Sept. 18, 1804.

SIR: I had the honor to write you from Messina, under date of the 5th of July; I then expected to have sailed the day following, but was detained, by bad weather, until the 9th, when I left it, with two small bomb vessels under convoy, and arrived at Syracuse, where we were necessarily detained four days. On the 14th I sailed, the schooners Nautilus and Enterprise in company with six gun-boats and two bomb vessels, generously loaned us by his Sicilian Majesty. The

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bomb vessels are about thirty tons, carry a thirteen-inch brass sea-mortar and forty men. Gun-boats, twenty-five tons, carry a long iron twenty-four pounder in the bow, with a complement of thirty-five men. They are officered and manned from the squadron, excepting twelve Neapolitan bombadiers, gunners, and sailors, attached to each boat, who were shipped by permission of their Government. This step I found necessary, as every vessel in the squadron was considerably short of complement. The gun-boats are constructed for the defence of harbors; they are flat bottomed and heavy, and do not sail or row even tolerably well. They were never intended to go to sea, and I find cannot be navigated with safety, unless assisted by tow ropes from larger and better sailing vessels, nor even then, in very bad weather. However, as they were the best I could obtain, I have thought it for the good of our service to employ them, particularly as the weather in July and August is generally pleasant, and, without them, my force too small to make any impression on Tripoli. On the 16th of July we arrived at Malta, where we were detained, by contrary gales, until the 21st, when we left it, and arrived in sight of Tripoli the 25th, and were joined by the Syren, Argus, Vixen, and Scourge. Our squadron now consisted of the Constitution, three brigs, three schooners, two bombs, and six gun-boats, our whole number of men, one thousand and sixty. I proceeded to make the necessary arrangements for an attack on Tripoli, a city well walled, protected by batteries judiciously constructed, mounting one hundred and fifteen pieces of heavy cannon, and defended by twenty-five thousand Arabs and Turks; the harbor protected by nineteen gunboats, two galleys, two schooners of eight guns each, and a brig mounting ten guns, ranged in order of battle, forming a strong line of defence, at secure moorings, inside a long range of rocks and shoals, extending more than two miles to the eastward of the town, which form the harbor, protects them from the northern gales, and renders it impossible for a vessel of the Constitution's draught of water to approach near enough to destroy them, as they are sheltered by the rocks, and can retire under that shelter to the shore, unless they choose to expose themselves in the different channels and openings of the reefs, for the purpose of annoying their enemies. Each of their gun-boats mounts a heavy eighteen or twenty-six pounder in the bow, and two brass howitzers on their quarters, and carry from thirty-six to fifty men. The galleys have each one hundred men; schooners and brigs about the same number. The weather was not favorable for anchoring until the 28th, when, with the wind E. S. E. the squadron stood in for the coast, and, at 3 P. M. anchored, per signal, Tripoli bearing S. two and a half miles distant. At this moment the wind shifted suddenly from E. S. E. to N. N. W., and thence to N. N. E. At 5 o'clock it blew strong, with a heavy sea, setting directly on shore. I made the signal to prepare to weigh. At 6, the wind and sea having considerably increased, the signal was made for the squadron to weigh and gain an offing: the wind continued veering to the eastward, which favored our gaining sea-room, without being obliged to carry a great a press of sail as to lose any of our gun-boats, although they were in great danger. The gale continued varying from northeast to south south east, without increasing much until the 31st July, when it blew away our reefed foresail, and close reefed maintopsail; fortunately the sea did not rise in proportion to the strength of the gale, or we must have lost all our boats. August 1st the gale subsided, and we stood towards the coast: every preparation was made for an attack on the town and harbor. August 3d, pleasant weather, wind from the East; stood in with the squadron towards Tripoli. At noon we were between two and three miles from the batteries, which were all manned, and observing several of their gun-boats and galleys had advanced in two divisions, without the rocks, I determined to take advantage of their temerity. At half past 12, I wore off shore, and made the signal to come within hail, when I communicated to each of the commanders my intention of attacking the enemy's shipping and batteries. The gun and mortar boats were immediately manned, and prepared to cast off, the gun-boats in two divisions of three each; the first division commanded by Captain Somers, in No. 1, Lieutenant Decatur, in No. 2, and Lieutenant Blake, in No. 3; the second division commanded by Captain Decatur, in No. 4, Lieutenant Bainbridge, in No. 5, and Lieutenant Trippe, in No. 6. The two bombards were commanded by Lieutenant Commandant Dent, and Mr. Robinson, first lieutenant of this ship. At half past 1 o'clock, having made the necessary arrangements for the attack, wore ship and stood towards the batteries. At 2, signal made to cast off the boats; at a quarter past 2, signal for bombs and gun-boats to advance and attack the enemy. At half past 3, general signal for battle. At three-quarters past 2, the bombs commenced the action by throwing shells into the town. In an instant the enemy's shipping and batteries opened a tremendous fire, which was promptly returned by the whole squadron within grape-shot distance; at the same time the second division, of three gun-boats, led by the gallant Captain Decatur, was advancing, with sails and oars, to board the eastern division of the enemy, consisting of nine boats. Our boats gave the enemy showers of grape and musket balls as they advanced; they, however, soon closed, when the pistol, sabre, pike, and tomahawk, were made good use of by our brave tars. Captain Somers being in a dull sailer, made the best use of his sweeps, but was not able to fetch far enough to the windward to engage the same division of the enemy's boats which Captain Decatur fell in with; he, however, gallantly bore down with his single boat on five of the enemy's western division, and engaged within pistol shot, defeated, and drove them within the rocks in a shattered condition, and with the loss of a great number of men. Lieutenant Decatur, in No. 2, was closely engaged with one of the enemy's largest boats of the eastern division

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ı stuck to him, after having lost a large pro-
n of men, and, at the instant that brave offi-
as boarding her to take possession, he was
ıerously shot through the head by the cap-
f the boat that had surrendered, which base
ct enabled the poltroon (with the assistance
:eived from other boats) to escape. The
boat of Captain Somers' division kept to
vard, firing at the boats and shipping in the
r. Had she gone down to his assistance, it
bable several of the enemy's boats would
ɔeen captured in that quarter. Captain De-
in No. 4, after having, with distinguished
·y, boarded and carried one of the enemy of
or force, took his prize in tow, and gallantly
own to engage a second, which, after a se-
nd bloody conflict, he also took possession
'hese two prizes had thirty-three officers and
killed, and twenty-seven made prisoners,
en of which were badly wounded. Lieu-
: Trippe, of the Vixen, in No. 6, ran along
f one of the enemy's large boats, which he
:d with only Midshipman John Henley and
nen, his boat falling off before any more
get on board; thus was he left, compelled
quer or perish, with the odds of thirty-six
ven. The Turks could not withstand the
of this brave officer and his assistants; in a
inutes the decks were cleared, and her colors
l down. On board of this boat fourteen of
emy were killed, and twenty-two made pris-
seven of which were badly wounded. The
f their boats retreated within the rocks.
:nant Trippe received eleven sabre wounds,
ɔf which are very severe. He speaks in the
ɜt terms of Mr. Henley, and those who fol-
him. Lieutenant Bainbridge, in No. 5, had
tteen yard shot away early in the action,
, prevented his getting alongside the ene-
boats, but he galled them by a steady and
irected fire with musket shot; indeed, he
:d the enemy until his boat grounded under
ıtteries; she was, fortunately, soon got off.
ɔomb vessels kept their stations, although
:d with the spray of the sea occasioned by
emy's shot. They were well conducted by
:nants Dent and Robinson, who kept up a
nt fire from the mortars, and threw a great
:r of shells into the town. Five of the ene-
gun-boats and two galleys, composing the
division, and stationed within the rocks as
rve, joined by the boats that had been driven
l supplied by fresh men from the shore to
e those they had lost, twice attempted to
ut, to endeavor to surround our gun-boats
ıeir prizes. I as often made the signal to
them, which was promptly attended to by
:igs and schooners, all of which were gal-
conducted, and annoyed the enemy exceed-
but the fire from this ship kept their flotilla
etely in check. Our grape shot made great
among their men, not only on board their
ng, but on shore. We were several times
ı two cables length of the rocks, and within
of their batteries, every one of which, in
sion, were silenced, so long as we could
bring our broadside to bear upon them; but the moment we passed a battery, it was reanimated, and a constant, heavy fire, kept up from all that we could not point our guns at. We suffered most when wearing or tacking; it was then I most sensibly felt the want of another frigate. At half past 4, the wind inclining to the northward, I made the signal for the bombs and gun-boats to retire from action, and, immediately after, the signal to tow off the gun-boats and prizes, which was handsomely executed by the brigs, schooners, and boats of the squadron, covered by a heavy fire from the Constitution. At three-quarters past 4, P. M., the light vessels, gun-boats, and prizes, being out of reach of the enemy's shot, I hauled off to take the bomb vessels in tow. We were two hours under the fire of the enemy's batteries, and the only damage received in the ship is, a twenty-four pound shot nearly through the centre of the mainmast, thirty feet from the deck; main royal yard and sail shot away; one of our quarter-deck guns damaged by a thirty-two pound shot, which, at the same time, shattered a marine's arm; two lower shrouds and two backstays were shot away, and our sails and running rigging considerably cut. We must impute our getting off thus well to our keeping so near that they overshot us, and to the annoyance our grape shot gave them; they, are, however, but wretched gunners. Gunboat No. 5 had her main yard shot away, and the rigging and sails of the brigs and schooners were considerably cut. Lieutenant Decatur was the only officer killed, but in him the service has lost a valuable officer. He was a young man who gave strong promise of being an ornament to his profession. His conduct in the action was highly honorable, and he died nobly. The enemy must have suffered very much in their killed and wounded, both among their shipping and on shore. Three of their gun-boats were sunk in the harbor, several of them had their decks nearly cleared of men by our shot, and a number of shells burst in the town and batteries, which must have done great execution. The officers, seamen, and marines, of the squadron behaved in the most gallant manner. The Neapolitans, in emulating the ardor of our seamen, answered my highest expectations.

I cannot but notice the active exertions and officer-like conduct of Lieutenant Gordon, and the other lieutenants of the Constitution. Mr, Harriden, the master, gave me full satisfaction, as did all the officers and ship's company. I was much gratified with the conduct of Captain Hall and Lieutenant Greenleaf, and the marines belonging to his company, in the management of six long twenty-six pounders, on the spar deck, which I placed under his direction. Captain Decatur speaks in the highest terms of the conduct of Lieutenant Thorn and Midshipman McDonough, of No. 4, as does Captain Somers of Midshipmen Ridgely and Miller, attached to No. 1.

Annexed is a list of killed and wounded; and, enclosed, a copy of my general orders on this occasion.

Killed.—Gun-boat No. 2, Lieut. James Decatur.

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Wounded.—Constitution, one marine; gun-boat No. 4, Captain Decatur, (slight,) one sergeant of marines, and two seamen; gun-boat No. 6, Lieut. Trippe, severely, one boatswain's mate, and two marines; gun-boat No. 1, two seamen; gun-boat No. 2, two seamen. Total—one killed and thirteen wounded.

August 5th.—We were at anchor with the squadron about two leagues north from the city of Tripoli; the Argus in chase of a small vessel to the westward, which she soon came up with, and brought within hail. She proved to be a French privateer, of four guns, which put into Tripoli a few days since, for water, and left it this morning. I prevailed on the Captain, for a consideration, to return to Tripoli, for the purpose of landing fourteen very badly wounded Tripolitans, which I put on board his vessel, with a letter to the Prime Minister, leaving it at the option of the Bashaw to reciprocate this generous mode of conducting the war. The sending these unfortunate men on shore, to be taken care of by their friends, was an act of humanity on our part, which I hope will make a proper impression on the minds of the barbarians, but I doubt it. All hands were busily employed in altering the rig of the three prizes, from latteen vessels to sloops, and preparing for a second attack. Observed one of the enemy's schooners and the brig. (two corsairs in the harbor) to be dismasted. Was informed by the French captain, that the damage these vessels received in the action of the third had occasioned their masts being taken out.

August 7th.—The French privateer came out, and brought me a letter from the French Consul, in which he observes, that our attack of the third instant has disposed the Bashaw to accept of reasonable terms, and invited me to send a boat to the rocks with a flag of truce, which was declined, as the white flag was not hoisted at the Bashaw's castle. At nine A. M., with a very light breeze from the eastward, and a strong current which obliged the Constitution to remain at anchor, I made the signal for the light vessels to weigh, and the gun and bomb boats to cast off, and stand in shore towards the western batteries; the prize boats having been completely fitted for service, and the command of them given to Lieutenants Crane, of the Vixen, Thorn, of the Enterprise, and Caldwell, of the Syren, the whole advanced with sails and oars. The orders were for the bombs to take a position in a small bay to the westward of the city, where but few of the enemy's guns could be brought to bear on them, but from whence they could annoy the town with shells; the gun-boats to silence a battery of seven heavy guns which guarded the approach to that position, and the brigs and schooners to support them, in case the enemy's flotilla should come out. At half-past one P. M., a breeze from N. N. E., I weighed with the Constitution and stood in for the town, but the wind being on shore, made it imprudent to engage the batteries with the ship, as, in case of a mast being shot away, the loss of the vessel would probably ensue, unless a change of wind should favor our getting off. At half-past two P. M., the bomb and gun-b[illegible] gained their station, the signal was [illegible] to attack the town and batteries. [illegible] blank shot, which was warmly re[illegible] enemy. The seven gun battery, in [illegible] hours was silenced, except one gun [illegible] the others were dismounted by our [illegible] walls were almost totally destroyed. [illegible] ter-past three P. M. a ship hove in [illegible] northward, standing for the town; [illegible] signal to chase. At half-past three [illegible] prize gun-boats was blown up by a [illegible] the enemy, which passed through [illegible] she had on board twenty-eight of[illegible] and marines, ten of whom were [illegible] wounded; among the killed were [illegible] well, First Lieutenant of the Syren [illegible] man John S. Dorsey, both excellent [illegible] shipman Spence, and eleven men [illegible] unhurt. Captain Decatur, whose [illegible] boat belonged to, and who was [illegible] time she blew up, reports to me that [illegible] was superintending the loading of the [illegible] moment, and, notwithstanding the [illegible] ing, he, and the brave fellows [illegible] charging, gave three cheers as the [illegible] under them, and swam to the [illegible] they assisted during the remainder of the [illegible] The enemy's gunboats and [illegible] ber) were all in motion [illegible] and appeared to meditate an attack [illegible] the Constitution, Nautilus, and [illegible] windward, ready, at every hazard, [illegible] from the harbor, if they should [illegible] while the Syren and Vixen were [illegible] to support and cover any of them [illegible] disabled. The enemy thought it [illegible] however, to retire to their snug retreat [illegible] rocks, after firing a few shot. Our [illegible] divisions, under Captains Somers [illegible] were well conducted, as were our [illegible] by Lieutenants Dent and Robinson. [illegible] must have suffered much from this [illegible] their batteries, particularly the seven-[illegible] must have lost many men. At half-pa[illegible] the wind began to freshen from the N[illegible] made the signal for the gun and bo[illegible] retire from action, and for the vessel[illegible] they were attached to take them in [illegible] Argus made signal that the strange [illegible] friend.

In this day's action, No. 4 had a [illegible] pound shot through her hull; No. [illegible] yards shot away; No. 8, a twenty-four [illegible] through her hull, which killed two me[illegible] the other boats had their rigging and [illegible] erably cut. We threw forty-eight [illegible] about five hundred twenty-four pou[illegible] the town and batteries. All the offic[illegible] engaged in the action behaved with [illegible] intrepidity. At half-past six, all the [illegible] in tow, and the squadron standing to [illegible] west. At eight, the John Adams, Capt[illegible] cey, from the United States, joined co[illegible] nine, the squadron anchored, Tripoli be[illegible] east, five miles distant. Gun-boat No.

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commanded by Mr. Brooks, master of the s, and No. 6 by Lieutenant Wadsworth, of onstitution.

nexed is a return of our loss in this attack.

lled. Gun-boat No 9—One lieutenant, one ipman, one boatswain's mate, one quarter er, one sergeant of marines, and five seamen.

lled. Gun-boat No. 8—Two seamen.

unded. No. 9—Six seamen, two of whom lly. *Total*—Twelve killed, six wounded.

ptain Chauncey brought the first positive nation that any reinforcement was to be ex- l. I was honored with your letters of the 2d, and 31st of May, informing me that four es were coming out, under Commodore Bar- who is to supersede me in the command of aval forces in these seas, at the same time bating my conduct, and conveying to me anks of the President for my services. I ou sir, to accept my warmest thanks for the obliging language in which you have made communications, and to assure the Presi- hat to merit the applause of my country is ly aim, and, to receive it, the highest grat- on it can bestow.

otain Chauncey informed me that the frigates be expected every moment, as they were to om Hampton Roads four days after him. sequence of this information, (and as I could ing the John Adams into action, she having l her gun carriages for her gun deck, except on board the Congress and Constellation, a two previous to her sailing,) I determined it a few days for the arrival of Commodore n, before another attack, when, if he should , the fate of Tripoli must be decided in a ours, and the Bashaw completely humbled. the John Adams brought out her gun car- , I should not have waited a moment, and ave no doubt but the next attack would make rival of more ships unnecessary for the ter- ion of the Tripoline war. I gave Captain ncey orders to remain on the station, that ight be benefitted by the assistance of his and men, as nearly half the crews of the titution, brigs, and schooners, were taken out an the bombs, gun, and ship's boats, when red for an attack.

gust the 9th, we were engaged supplying ombs and gun-boats with ammunition and , and getting everything in readiness for an the moment Commodore Barron should and make the signal I cannot but regret our Naval Establishment is so limited as to ve me of the means and glory of completely ing the haughty tyrant of Tripoli, while in the command; it will however afford me satis- n to give my successor all the assistance in ower. At three P. M., I went on board the s for the purpose of reconnoitering the har- Tripoli; westood in towards the town, and near being sunk by the enemy's fire. One eir heaviest shot, which struck about three short of the water-line, raked the copper off ottom under water, and cut the plank half gh. In the evening the wind blew from the N. N. E., the squadron weighed and kept under sail all night. The day following we anchored, Tripoli bearing S. S. W., six miles distant. At ten A. M., the French Consul hoisted a white flag at his flag-staff under the national colors, which was a signal that the Bashaw was ready to treat. I sent a boat into the harbor and took this opportunity to forward Captain Bainbridge and his officers letters from their friends: the boat was not allowed to land, but returned in the afternoon and brought me a letter, advising that the Bashaw was ready to receive five hundred dollars for the ransom of each of the prisoners, and terminate the war without any consideration for peace or tribute; this is three hundred and fifty thousand dollars less than was demanded previous to the action of the third instant. These terms I did not hesitate to reject, as I was informed by Captain Chauncey that it was the expectation of our Government, on the arrival of four frigates, to obtain the release of the officers and crew of the Philadelphia without ransom, and dictate the terms of peace. I enclose you copies of our correspondence, which will convince you that our attacks have not been made without effect.

16th. No news of the frigates, and but short allowance in the squadron. I sent the Enterprise to Malta, with orders to the agent there, to hire transports and send off immediately a supply of fresh water, provision, and other stores, which have become necessary, as some of the squadron have now been five months in sight of this dismal coast, without once visiting a friendly port; those vessels, as well as the gun-boats, receive their supply of water and provisions from the Constitution.

18th. As the season is fast approaching when we may expect bad weather, and no news of the frigates, I have determined to make an attack as soon as the wind proves favorable. At eight P. M., I sent Captains Decatur and Chauncey in two small boats to reconnoitre the harbor, and observe the disposition of the enemy's flotilla at night; they returned at midnight, and reported that they were anchored in a line abreast, from the Mole to the Bashaw's castle, with their heads to the eastward, for the defence of the inner harbor. At day-light the wind shifted suddenly from N. E. to N. N. W., and brought a heavy sea on shore, which obliged us, for the greater safety, to weigh and stand to sea.

20th. We had gained an offing of nine or ten leagues—still blowing hard. We met with the ketch Intrepid, from Syracuse, with a cargo of fresh water, stock, and vegetables, for the squadron.

22d. Fell in with a ship from Malta, with water and live stock for the squadron. These cargoes arrived very opportunely, as we have for some time past been on short allowance of water. The wind having moderated, we stood in, and anchored with the squadron six miles N. E. by N., from Tripoli; all the boats were engaged in discharging the transports. The Enterprise arrived from Malta, but brought no intelligence of the long-expected frigates.

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24th. With a light breeze from the N. E., we stood in, with the squadron prepared for action, intending to attack the town and shipping in the night. At eight in the evening, anchored about two miles and a half from the batteries. At midnight it fell calm. I sent the bomb vessels under the protection of the gun-boats, to bombard the town; the boats of the squadron were employed in towing them in. At two A. M., the bombardment commenced, and continued until day-light, but with what effect is uncertain. At six, all the boats joined us, and were taken in tow by the squadron, which was under weigh, and standing off. At seven, anchored four miles north of the town. The weather, for several days, proved unfavorable for approaching the shore.

28th. We were favored with a pleasant breeze from the eastward. At 3 P. M. we weighed, and stood in for Tripoli. At 5, anchored the Constitution two miles N. by E. from Fort English, and two-and-a-half from the Bashaw's castle; the light vessels ordered to keep under weigh. We were employed until 8 P. M. in making arrangements for attacking the town; a number of the officers, and many of the seamen in the Constitution being attached to the bomb, gun, and ship's boats; Captain Chauncey, with several of his officers, and about seventy seamen and marines, volunteered their services on board the Constitution. All the boats in the squadron were officered and manned, and attached to the several gun-boats; the two bomb vessels could not be brought into action, as one was leaky, and the mortar-bed of the other had given way. The John Adams, Scourge, transports, and bombs, were anchored seven miles to the northward of the town. Lieut. Commandant Dent, of the Scourge, came on board the Constitution, and took charge on the gun-deck; Lieut. Izard, of the Scourge, also joined me. Lieut. Gordon commands gun-boat No. 2, and Lieut. Lawrence, of the Enterprise, No. 5; these are the only changes. At half-past one A. M. the gun-boats, in two divisions, led by Captains Decatur and Somers, were ordered to advance, and take their stations close to the rocks at the entrance of the harbor, within grape-shot distance of the Bashaw's castle. The Syren, Argus, Vixen, Nautilus, Enterprise, and boats of the squadron accompanied them. At three A. M. the boats anchored with springs on, within pistol-shot of the rocks, and commenced a brisk firing on the shipping, town, batteries, and Bashaw's castle, which was warmly returned, but not as well directed; the ship's boats remained with the gun-boats, to assist in boarding the enemy's flotilla, if it should venture out; while the brigs and schooners kept under weigh, ready for the same service, or for annoying the enemy as occasion might present. At daylight, presuming that the gun-boats had nearly expended their ammunition, we weighed with the Constitution and stood in for the harbor. Fort English, the Bashaw's castle, crown and mole batteries, kept up a heavy fire on us as we advanced. At half-past five, I made the signal for the gun-boats to retire from action, and for the brigs and schooners to take them in tow. We were then within two miles' length of the rocks, and commenced a heavy fire of round and grape on thirteen of the enemy's gun-boats and galleys, which were in pretty close action with our boats. We sunk one of the enemy's boats; at the same time, two more disabled ran on shore to avoid sinking; the remainder immediately retreated. We continued running in until we were within musket-shot of the Crown and mole batteries, when we brought to, and fired upwards of three hundred round-shot, besides grape and canister, into the town, Bashaw's castle and batteries. We silenced the castle and two of the batteries for some time. At a quarter-past six, the gun-boats being all out of shot and in tow, I hauled off, after having been three-quarters of an hour in close action. The gun-boats fired upwards of four hundred round shot, besides grape and canister, with good effect. A large Tunisian galliot was sunk in the mole; a Spanish ship which had entered with an Ambassador from the Grand Seignior, received considerable damage. The Tripoline galleys and gun-boats lost many men and were much cut.

The Bashaw's castle and town have suffered very much, as have their crown and mole batteries. Captains Decatur and Somers conducted their divisions of gun-boats with their usual firmness and address, and were well supported by the officers and men attached to them. The brigs and schooners were also well conducted during the action, and fired a number of shot at the enemy, but their guns are too light to do much execution. They suffered considerably in their sails and rigging. The officers and crew of the Constitution behaved well; I cannot, in justice to Captain Chauncey, omit noticing the very able assistance I received from him on the quarter-deck of the Constitution during the whole of the action. The damage which we have received is principally above the hull; three lower shrouds, two spring-stays, two topmast back-stays, trusses, chains, and lifts of the mainyard shot away.

Our sails had several cannon shot through them, and were beside considerably cut by grape; much of our running rigging cut to pieces, one of our anchor-stocks and our larboard cable shot away, and a number of grape-shot were sticking in different parts of the hull; but not a man hurt! A boat belonging to the John Adams, with a master's mate (Mr. Creighton) and eight men, was sunk by a double-headed shot from the batteries while in tow of the Nautilus, which killed three men and badly wounded one, who, with Mr. Creighton, and the other four, were picked up by one of our boats. The only damage our gun-boats sustained, was in their rigging and sails, which were considerably cut with the enemy's round and grape shot.

At 11, A. M., we anchored with the squadron five miles N. E. by N. from Tripoli, and repaired the damage received in the action.

29th and 30th, preparing the bomb vessels for service; supplying the gun-boats with ammunition, &c.

31st, a vessel arrived from Malta with provis-

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nd stores; brought no news of Commodore n, or the frigates. We discharged this vesargo, and ordered her to return.

ıtember 2d, the bomb vessels having been ed and ready for service, Lieutenants Dent obinson, resumed the command of them. Morris, of the Argus, took command of ; and Lieutenant Trippe having nearly re-d from his wounds, resumed the command . 6, which he so gallantly conducted on the mo. Capt. Chauncey, with several young men, and sixty men from the John Adams, eered on board the Constitution. At 4, P. ıde the signal to weigh; kept under sail all

At 11, P. M., a general signal to prepare tle: a Spanish polacre, in ballast, came out poli, with an Ambassador of the Grand or on board, who had been sent from Conople to Tripoli, to confirm the Bashaw in e; this ceremony takes place in all the Bar-egencies, every five years. The captain of ssel informed us, that our shot and shells ıde great havoc and destruction in the city, ıong the shipping, and that a vast number ple have been killed; also informs us, that f the boats, which were sunk by our shot ıctions of the 3d and 28th ultimo, had been up, repaired, and fitted for service.

At 2, P. M. Tripoli bore S. S. W. 2 1-2 istant, wind E. by N. At half past 2 the were made for the gun-boats to cast off, e and attack the enemy's galleys and gunvhich were all under weigh in the eastern the harbor, whither they had for some time orking up against the wind. This was y a judicious movement of theirs, as it ed the possibility of our boats going down k the town, without leaving the enemy's in their rear, and directly to windward. I ngly ordered the bomb vessels to run down proper distance of the town, and bombard our gun-boats were to engage the enemy's and boats to windward. At half past 3, ɔur bombs having gained the station to they were directed, anchored and com- throwing shells into the city. At the me our gun-boats opened a brisk fire on eys and within point blank shot, which rmly returned by them and Fort English ı new battery, a little to the westward; but as our boats arrived within good musket-their galleys and boats, they gave way and l to the shore within the rocks and under f musketry from Fort English. They llowed by our boats and by the Syren, Vixen, Nautilus and Enterprise, as far as would permit them to go with prudence. ion was then divided. One division of s with the brigs and schooners attacked glish, whilst the other was engaged with ny's galleys and boats. The Bashaw's ıe Mole, Crown, and several other batpt up a constant fire on our bomb vessels were well conducted, and threw shells nto the town—but from their situation re very much exposed, and in great danger of being sunk. I accordingly ran within them with the Constitution, to draw off the enemy's attention, and amuse them whilst the bombardment was kept up. We brought to within reach of grape, and fired eleven broadsides in the Bashaw's castle, town, and batteries, in a situation where more than seventy guns could bear upon us. One of their batteries was silenced. The town, castle, and other batteries, considerably damaged. By this time, it was half past four o'clock. The wind was increasing and inclining rapidly to the northward. I made the signal for the boats to retire from action, and for the brigs and schooners to take them in tow, and soon after hauled off with the Constitution to repair damages. Our maintop-sail was totally disabled by a shell from the batteries, which cut away the leach rope and several cloths of the sail. Another shell went though the foretop-sail, and one though the jib. All our sails considerably cut—two topmast backstays shot away, mainsheet, fore-tacks, lifts, braces, bowlines, and the running rigging generally very much cut, but no shot in our hull, excepting a few grape. Our gun-boats were an hour and fifteen minutes in action. They disabled several of the enemy's galleys and boats, and considerably damaged Fort English. Most of our boats received damage in their rigging and sails. The bomb vessel No 1, commanded by Lieutenant Robinson, was disabled; every shroud being shot away, the bed of the mortar rendered useless, and the vessel near sinking. She was however towed off. About fifty shells were thrown into the town, and our boats fired four hundred rounds, besides grape and canister. They were led into action by Captains Decatur, and Somers, with their usual gallantry. The brigs and schooners were handsomely conducted, and fired many shot with effect at Fort English, which they were near enough to reach with their carronades. They suffered considerably in their rigging, and the Argus received a thirty-two pound shot in the hull forward, which cut off a bower cable as it entered. We kept under weigh until 11 P. M. when we anchored, Tripoli bearing S. S. W. three leagues. I again with pleasure acknowledge the services of an able and active officer in Captain Chauncey, serving on the quarter deck of the Constitution. At sunrise I made the signal for the squadron to prepare for action. The carpenters were sent on board the bombs to repair damages, and our boats employed in supplying the bombs and gun-boats with ammunition, and to replace the expenditures.

Desirous of annoying the enemy, by all the means in my power, I directed to be put into execution a long contemplated plan of sending a fireship, or infernal, into the harbor of Tripoli, in the night, for the purpose of endeavoring to destroy the enemy's shipping, and shatter the Bashaw's castle and town. Captain Somers, of the Nautilus, having volunteered his services, had, for several days before this period, been directing the preparation of the ketch Intrepid, assisted by Lieutenants Wadsworth and Israel. About one hundred barrels of powder and one hundred and fifty fixed shells, were apparently judiciously

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disposed of on board her. The fuzes leading to the magazine, where all the powder was deposited, were calculated to burn a quarter of an hour.

September 4th.—The Intrepid being prepared for the intended service, Captain Somers and Lieutenant Wadsworth made choice of two of the fastest rowing boats in the squadron, for bringing them out. After reaching their destination and firing the combustible materials, which were to communicate with the fuzes, Captain Somers' boat was manned with four seamen from the Nautilus, and Lieutenant Wadsworth's with six from the Constitution. Lieutenant Israel accompanied them. At eight in the evening, the Intrepid was under sail, and standing for the port, with a leading breeze from the eastward. The Argus, Vixen, and Nautilus, convoyed her as far as the rock. On entering the harbor, several shot was fired at her from the batteries. In a few minutes after, when she had apparently nearly gained the intended place of destination, she suddenly exploded, without their having previously fired a room filled with splinters and other combustibles, which were intended to create a blaze, in order to deter the enemy from boarding, whilst the fire was communicating to the fuzes, which led to the magazine. The effect of the explosion awed their batteries into profound silence, with astonishment. Not a gun was afterward fired for the night. The shrieks of the inhabitants informed us that the town was thrown into the greatest terror and consternation by the explosion of the magazine, and the bursting and falling of shells in all directions. The whole squadron waited with the utmost anxiety to learn the fate of the adventurers, from a signal previously agreed on in case of success, but waited in vain; no signs of their safety were to be observed. The Argus, Vixen, and Nautilus hovered round the entrance of the port until sunrise, when they had a fair view of the whole harbor. Not a vestige of the ketch or her boats was to be seen. One of the enemy's largest gun-boats was missing, and three others were seen very much shattered and damaged, which the enemy were hauling on shore. From these circumstances I am led to believe that those boats were detached from the enemy's flotilla to intercept the ketch, and, without suspecting her to be a fire-ship, the missing boat had suddenly boarded her, when the gallant Somers and the heroes of his party, observing the other three boats surrounding them, and no prospect of escape, determined at once to prefer death and the destruction of the enemy, to captivity and torturing slavery, put a match to the train leading directly to the magazine, which at once blew the whole into the air, and terminated their existence. My conjectures respecting this affair are founded on a resolution, which Captain Somers, Lieutenants Wadsworth, and Israel had formed, neither to be taken by the enemy, nor suffer him to get possession of the powder on board the Intrepid. They expected to enter the harbor without discovery, but had declared, if they should be disappointed, and the enemy should board them, before they reached the point of destination, in such force as to leave them no hopes of a safe retreat, that they would pa[illegible] the magazine and blow themselves [illegible] mies up together—determined as [illegible] exchange of prisoners, that their [illegible] never pay ransom for them, nor the [illegible] a supply of powder through their [illegible] disappearance of one of the ene[illegible] the shattered condition of three [illegible] me in my opinion, that they were [illegible] guard, detached from the main bod[illegible] on discovering the approach of the [illegible] that they attempted to board her [illegible] reached her point of destination [illegible] whole of their shipping must have [illegible] perhaps would have been totally des[illegible] she was blown up before she had [illegible] tion is certain, by which the servic[illegible] very gallant officers. Captain Som[illegible] tenants Wadsworth and Israel were [illegible] spicuous bravery, talents and mer[illegible] formly distinguished themselves [illegible] actions—were beloved and lamen[illegible] squadron.

September the 5th.—We were [illegible] plying the gun-boats with am[illegible] repairing the bomb vessels for [illegible] the wind shifting to the N.N.E. [illegible] ting on shore, and other indica[illegible] determined me for greater [illegible] mortars, shot and shells [illegible] Constitution and John Adams [illegible] ingly done. The weather [illegible] threatening aspect until the [illegible] munition being reduced to a [illegible] sufficient for three vessels to keep [illegible] no intelligence of the expected re[illegible] the season so far advanced as to [illegible] dent to hazard the gun-boats any [illegible] station; I gave orders for the John [illegible] Nautilus, Enterprise, and Scourge [illegible] bombs and gun-boats in tow, and [illegible] racuse with them, the Argus and Vi[illegible] with the Constitution to keep up [illegible]

September the 10th.—The United [illegible] President, Commodore Barron, and [illegible] Captain Campbell, hove in sight and [illegible] company, when the command of the [illegible] surrendered to Commodore Barron [illegible] ceremony. I continued in compa[illegible] squadron until the twelfth, when [illegible] ships came in sight standing dire[illegible] Chase was given and two of them [illegible] taken possession of by the Consti[illegible] sident in company, about four league[illegible] oli, but not more than five miles fro[illegible] while the Constellation and Argus we[illegible] of the third. The two boarded by the [illegible] tion were loaded with about sixte[illegible] bushels of wheat. Tripoli is in a sta[illegible] tion, and there can be no doubt but th[illegible] were meant as a supply and relief to [illegible]

Considering the season too far a[illegible] weather too uncertain to hazard any fu[illegible] tions against Tripoli at present, Comm[illegible] determined that the prizes should be se[illegible] under convoy of the Constitution, it [illegible]

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ıe should go into port to be recaulked and l. I notified Commodore Barron that it y wish to return to the United States in the John Adams Captain Chauncey; this and in the handsomest manner met his ac- ence. I shall accordingly return in that

service in this quarter cannot suffer from rangement, as Captain Decatur is at present ıt a ship, and my return will immediately ıim in the exercise of the duties attached to mmission, which he has so gallantly earned, country generously bestowed. I shall feel ure in leaving the Constitution under the ınd of that officer, whose enterprising and conduct I have often witnessed, and whose eminently entitle him to so handsome a ınd.

other commanders merit the highest com- tions for their prompt obedience to orders occasions, and for the zeal, spirit, and judg- which they displayed in the several attacks enemy's shipping and batteries, as well as general good order and discipline at all bserved on board their respective vessels. ficers of the squadron have conducted them- in a most gallant and handsome manner; conduct of the different ships' companies rited my warmest approbation since I have honor to command them.

ords me much satisfaction to observe, that we have neither had a duel nor court martial in the squadron since we left the United States.

I most sincerely regret the loss of our gallant countrymen who have sacrificed their lives to the honor of the service, and that it has not been in my power, consistent with the interest and expectation of our country, to liberate Captain Bainbridge and the unfortunate officers and crew of the Philadelphia. Be assured, sir, I have incessantly endeavored to effect this desirable object. I have no doubt but my successor will be able to effect their release, and establish peace on such terms as will reflect the highest honor on himself and his country.

September 17th.—Arrived at Malta with the two detained Greek vessels. We experienced very bad weather, but had the satisfaction to learn that the bombs and gun-boats had arrived safe at Syracuse the 15th instant without accident. Each of the Tripoline gun-boats which we have captured has two brass howitzers abaft, and a handsome copper gun in the bow, which carries a 29 pound shot, is 11½ feet long and weighs 6,600 pounds.

I send you a plan of the town and harbor of Tripoli, with the disposition of our squadron, and the enemy's flotilla, at the time of the several attacks, with sundry other papers.

I have the honor to be with the highest respect. sir, yours, &c. EDWARD PREBLE.

Hon. Secretary of the Navy.

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PUBLIC ACTS OF CONGRESS;

PASSED AT THE SECOND SESSION OF THE EIGHTH CONGRESS, BEGUN AND HELD AT THE CITY OF WASHINGTON, NOVEMBER 5, 1804.

AN ACT making a farther appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a sum not exceeding seventy thousand dollars be, and the same hereby is, appropriated, to be paid under the direction of the President of the United States, out of any moneys in the Treasury, not otherwise appropriated, for the purpose of carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America.

NATHL. MACON,
Speaker of the House of Representatives.
A. BURR,
Vice President of the United States, and President of the Senate.

Approved, November 24, 1804.

TH. JEFFERSON.

An Act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five.

Be it enacted, &c., That to make good a deficiency of the appropriation for the contingent expenses of both Houses of Congress, authorized by the act of the fourteenth of March last, the farther sum of two thousand five hundred dollars be, and the same hereby is, appropriated.

SEC. 2. *And be it further enacted*, That, towards defraying the expense of firewood, stationery, and other contingent expenses of both Houses of Congress, during the year one thousand eight hundred and five, the sum of three thousand dollars be, and the same hereby is, appropriated: which several sums shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States."

Approved, December 6, 1804.

An Act for the disposal of certain copies of the laws of the United States.

Be it enacted, &c., That three hundred copies of the laws of the United States, which have been procured by the Secretary of State, in obedience to the law passed for that purpose, and three hundred copies of the journals of Congress, which have been procured in pursuance of the resolution of the second of March, one thousand seven hundred and ninety-nine, shall be placed in the library of Congress.

SEC. 2. *And be it further enacted*, That the Secretary of the Senate, for the time being, be, and he is hereby authorized to receive three hundred copies of the laws of the United States, out of the thousand copies reserved by law for the disposal of Congress, as soon as the same shall be printed after each session; which he shall cause to be placed in the library, and assorted respectively with the sets of copies mentioned in the first section of this act; excepting only, that at the close of the present session, which will complete the eighth Congress, and in like manner after each particular session in future, which shall complete a Congress, he shall cause the several copies, reserved by him as aforesaid, for all the sessions for each respective Congress, to be bound in one volume, making three hundred volumes for each Congress, as aforesaid; which he shall cause to be placed in the library, assorted with the respective sets of copies mentioned in the first section of this act. And the several copies of the laws and journals of Congress, mentioned in this act shall not be taken out of the library, except by the President and Vice President of the United States, and members of the Senate and House of Representatives for the time being. And the expense of binding shall be paid, from time to time, out of the fund appropriated to defray the contingent expenses of both Houses of Congress.

SEC. 3. *And be it further enacted*. That the President of the Senate and Speaker of the House of Representatives, for the time being, be, and they are hereby, empowered to establish such regulations and restrictions in relation to the copies of the laws and journals of Congress, directed by this act to be placed in the library, as to them shall seem proper, and from time to time to alter and amend the same: *Provided*, That no regulation nor restriction shall be valid, which is repugnant to the provisions contained in this act.

SEC. 4. *And be it further enacted*, That to make up the deficiency of the appropriation heretofore made, for the purchase of four hundred copies of the laws of the United States, the sum of eleven hundred and forty-four dollars be, and the same is hereby appropriated, payable out of any money in the Treasury, not otherwise appropriated.

Approved, January 2, 1805.

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An Act concerning drawbacks on goods, wares, and merchandise.

Be it enacted, &c., That so much of the sixth section of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the Treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; and for other purposes," as prohibits the allowance of drawbacks of duties on goods, wares, and merchandise, exported from the port of New Orleans, other than those imported to the same place directly from a foreign port or place, shall be, and the same is hereby, repealed.

SEC. 2. *And be it further enacted*, That any goods, wares, or merchandise, which shall be exported from the United States, or the district of Mississippi, and the manner prescribed by law, to any foreign port or place, situated to the westward or southward of Louisiana, shall be deemed and taken to be entitled to such drawback of duties as would be allowable thereon, when exported to any other foreign port or place; anything in the act, entitled "An act to regulate the collection of duties on imports and tonnage," to the contrary notwithstanding.

This act shall commence and be in force from and after the first day of March next.

Approved, January 5, 1805.

An Act to divide the Indiana Territory into two separate Governments.

Be it enacted, &c., That, from and after the thirtieth day of June next, all that part of the Indiana Territory which lies north of a line drawn east from the southerly bend, or extreme, of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate Territory, and be called Michigan.

SEC. 3. *And be it further enacted*, That there shall be established within the said Territory, a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory Northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory Northwest of the river Ohio;" and the inhabitants thereof shall be entitled to and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people of the territory of the United States Northwest of the river Ohio by the said ordinance.

SEC. 2. *And be it further enacted*, That the officers of the said Territory, who, by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensation as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana Territory; and the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor.

SEC. 4. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana Territory, further than to prohibit the exercise thereof within the said Territory of Michigan, from and after the aforesaid thirtieth day of June next.

SEC. 5. *And be it further enacted*, That all suits, process, and proceeding, which, on the thirtieth day of June next, shall be pending in the court of any county which shall be included within the said territory of Michigan, and also, all suits, process, and proceedings, which, on the said thirtieth day of June next, shall be pending in the General Court of the Indiana Territory in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the Territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana Territory had remained undivided.

SEC. 6. *And be it further enacted*, That Detroit shall be the seat of government of the said Territory until Congress shall otherwise direct.

Approved, January 11, 1805.

An Act declaring Cambridge, in the State of Massachusetts, to be a port of delivery.

Be it enacted, &c., That the town, or landing-place of Cambridge, in the State of Massachusetts, shall be a port of delivery, to be annexed to the district of Boston and Charlestown, and shall be subject to the same regulations as other ports of delivery in the United States.

Approved, January 11, 1805.

An Act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Be it enacted, &c., That the corporation of Georgetown have power to levy a tax, not exceeding one per cent. per annum, on the real property in said town, and its additions within the jurisdiction of the said corporation, for the purpose of defraying the expense of erecting a dam or causeway across that arm of the river Potomac which passes between Mason's Island and the western shore of the said river; that the same shall not be erected until the consent of the proprietor or proprietors of the island, and of the western shore of the river opposite thereto, shall be first obtained. The power hereby granted to the said corporation of levying an extra tax to cease and determine when the object for which it is granted shall be completely effected.

Approved, January 19, 1805.

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ı Act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five.

Be it enacted, &c., That for defraying the exnses of the Navy of the United States during e year one thousand eight hundred and five, the lowing sums be and the same are hereby apopriated, that is to say:

For the pay and subsistence of the officers, and e pay of the seamen, four hundred and fifteen ousand five hundred and seventy-eight dollars.

For provisions, two hundred and twenty-seven ousand seven hundred and eighty-six dollars d forty cents.

For medicine, instruments, hospital stores, and expenses on account of the sick, ten thousand ven hundred and fifty dollars.

For repairs of vessels, store rent, and other congent expenses, four hundred and eleven thouıd nine hundred and fifty-one dollars and two ıts.

For the pay and subsistence of the marine corps, cluding provisions for those on shore, and forage the staff, eighty-two thousand five hundred d ninety-three dollars and sixty cents.

For clothing for the same, sixteen thousand e hundred and thirty-six dollars, and ninetyht cents.

For military stores for the same, one thousand hundred and thirty-five dollars.

For medicine, medical services, hospital stores, d all expenses on account of the sick belonging the marine corps, one thousand two hundred d fifty dollars.

For quarter-master's and barrack-master's stores, icers' travelling expenses, armorers' and carpen's' bills, fuel, premium for enlisting, music, and her contingent expenses, eight thousand four ındred and nineteen dollars.

For the expense of navy yards docks, and other ıprovements, the pay of superintendents, storeepers, clerks, and laborers, sixty thousand dol's.

For completing the marine barracks at the City Washington, three thousand five hundred dol's.

Sec. 2. *And be it further enacted*, That the veral sums herein specifically appropriated, and ıounting altogether to the sum of one million o hundred and forty thousand dollars, shall be id, first, out of the moneys accruing at the end the year one thousand eight hundred and five m the duties laid by the act passed on the enty-fifth day of March, one thousand eight ındred and four, entitled "An act further to proct the commerce and seamen of the United tates against the Barbary Powers," provided, ıat the sum to be paid from the proceeds of the ıid duties shall not exceed five hundred and inety thousand dollars; secondly, out of any balıce remaining unexpended of former appropriaons for the support of the Navy, and lastly, out any moneys in the Treasury, not otherwise ppropriated.

Approved, January 25, 1805.

An Act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes.

Be it enacted, &c., That a sum not exceeding one hundred and ten thousand dollars, shall be, and the same is hereby, appropriated, to be applied under the direction of the President of the United States, towards completing the south wing of the Capitol, at the City of Washington.

Sec. 2. *And be it further enacted*, That a sum not exceeding twenty thousand dollars shall be, and the same hereby is, appropriated, to be applied under the direction of the President of the United States, to such necessary alterations and repairs as he may deem requisite in the north wing of the Capitol, and other public buildings at the City of Washington; which said sums shall be paid out of any moneys in the Treasury, not otherwise appropriated.

Approved, January 25, 1805.

An Act to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes.

Be it enacted, &c., That the Secretary of the Treasury be, and he is, hereby authorized and directed to employ clerks, for such compensation as he shall judge reasonable, to complete, register, and record, under the direction of the supervisor of the district of South Carolina, the lists and abstracts of the valuation of lands and dwellinghouses, and of the enumeration of slaves within the State of South Carolina; and under the direction of the supervisor aforesaid, to add to, or to deduct from the valuations aforesaid, of each individual, such a rate per centum as has been determined by the commissioners appointed for the said State, under the act, entitled "An act to provide for the valuation of lands and dwellinghouses, and the enumeration of slaves within the United States," agreeably to the provisions of the said act, of the act entitled "An act supplementary to the act entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," and of the act entitled "An act to provide for equalizing the valuation of unseated lands:" which lists and abstracts, thus completed in conformity with the revisions and equalizations made by the commissioners aforesaid, shall have the same force and effect as if they had been completed, registered, and recorded, under the direction of the commissioners aforesaid, agreeably to the provisions of the above-mentioned acts. The supervisor aforesaid shall be allowed, in addition to his annual compensation, at the rate of three dollars per diem, for each and every day employed by him, in completing or superintending the completion of the lists and abstracts aforesaid: *Provided*, That the whole amount of the said additional allowance shall not exceed five hundred dollars; and the said allowance, as well as the compensation of the clerks employed by virtue of this section, shall be paid out of the moneys appropriated, or which may hereafter be

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appropriated for defraying the expenses incident to the valuation of houses and lands, and the enumeration of slaves within the United States.

SEC. 2. *And be it further enacted*, That the supervisor of the district of South Carolina be, and he is hereby, authorized and directed, as soon as the assessment of the direct tax to be levied and collected in the State of South Carolina, by virtue of the act, entitled "An act to lay and collect a direct tax within the United States," shall have been completed, to appoint for the whole of the said State, one or more surveyors of the revenue, who shall be authorized to make out the lists containing the sums payable, according to such assessment, for every dwelling-house, tract, or lot of land and slave within the said State. Which lists shall have the same force and effect, as if they had been made for each assessment district, by a distinct surveyor of the revenue; the surveyor or surveyors of the revenue, thus appointed for the whole State of South Carolina, shall likewise perform all the other duties, exercise all the powers, and receive the same compensation, which by virtue of the provisions still in force in any former act or acts, were directed to be performed, exercised, and received by the surveyors of the revenue for the several assessment districts; and so much of any act, or acts, as directed the appointment of one surveyor of the revenue for each assessment district, is, so far as relates to the State of South Carolina, hereby repealed.

SEC. 3. *And be it further enacted*, That the several supervisors, or officers acting as supervisors, may, with the approbation of the Secretary of the Treasury, unite, whenever such measure shall be thought expedient for the better collection of the direct tax, two or more assessment districts into one district, and appoint only one collector of the said tax for the assessment districts, thus united; anything in any former act or acts to the contrary notwithstanding.

SEC. 4. *And be it further enacted*, That the accounting officers of the Treasury be, and they are hereby, authorized to settle the accounts of any of the commissioners or assessors employed in making the valuations and enumerations above mentioned, in the State of South Carolina, although the same may not have been presented to, and certified by the commissioners aforesaid, in conformity with the provisions of the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States."

SEC. 5. *And be it further enacted*, That any of the commissioners aforesaid, who shall, on the request of the Secretary of the Treasury, attend for the purpose of assisting the supervisor of the district of South Carolina, in completing the lists and abstracts of the valuations, and enumerations in the manner provided by the first section of this act, shall be allowed the same rate of compensation, as is provided by law for attending a meeting of the board of commissioners.

SEC. 6. *And be it further enacted*, That a sum not exceeding thirteen thousand five hundred and ninety-three dollars, and twenty-three cents, be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same is hereby appropriated, for defraying the further expense incident to the valuation of houses and lands, and the enumeration of slaves within the United States.

Approved, January 30, 1805.

An Act concerning the mode of Surveying the Public Lands of the United States.

Be it enacted, &c., That the surveyor general shall cause all those lands north of the river Ohio, which by virtue of the act, entitled "*An act providing for the sale of the lands of the United States, in the Territory northwest of the river Ohio, and above the mouth of the Kentucky river,*" were subdivided by running through the townships parallel lines each way, at the end of every two miles, and by marking a corner on each of the said lines, at the end of every mile; to be subdivided into sections by running straight lines from the mile corners thus marked to the opposite corresponding corners, and by marking on each of the said lines intermediate corners, as nearly as possible equidistant from the corners of the sections on the same. *And the said surveyor general shall also cause the boundaries of* all the half sections, which had been purchased previous to the first day of July last, and on which the surveying fees had been paid according to law by the purchaser, to be surveyed and marked by running straight lines from the half mile corners heretofore marked to the opposite corresponding corners; and intermediate corners shall, at the same time, be marked on each of the said dividing lines, as nearly as possible equidistant from the corners of the half section on the same line: *Provided*, That the whole expense of surveying and marking the lines shall not exceed three dollars for every mile which has not yet been surveyed, and which shall be actually run, surveyed, and marked by virtue of this section. And the expense of making the subdivisions, directed by this section, shall be defrayed out of the moneys appropriated, or which may be hereafter appropriated, for completing the surveys of the public lands of the United States.

SEC. 2. *And be it further enacted*, That the boundaries and contents of the several sections, half sections, and quarter sections of the public lands of the United States, shall be ascertained in conformity with the following principles, any act or acts to the contrary notwithstanding:

1st. All the corners marked in the surveys, returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the said surveys, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.

2d. The boundary lines, actually run and mark-

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he surveys returned by the surveyor gene- by the surveyor of the land south of the of Tennessee, respectively, shall be estab- as the proper boundary lines of the sections, divisions, for which they were intended, e length of such lines, as returned by either surveyors aforesaid, shall be held and con- l as the true length thereof. And the boun- nes, which shall not have been actually d marked as aforesaid, shall be ascertained, ning straight lines from the established to the opposite corresponding corners; those portions of the fractional townships, no such opposite corresponding corners en or can be fixed, the said boundary lines e ascertained by running from the estab- corners, due north and south, or east and es, as the case may be, to the water course, boundary line, or other external boundary fractional township.

Each section, or subdivision of section, the s whereof shall have been, or, by virtue of section of this act, shall be returned by veyor general, or by the surveyor of the ands south of the State of Tennessee, re- ly, shall be held and considered as con- the exact quantity, expressed in such re- returns: and the half sections and quarter , the contents whereof shall not have been urned, shall be held and considered as con- the one half, or the one fourth part, re- ly, of the returned contents of the section h they make a part.

3. *And be it further enacted*, That so f the act, entitled "An act making provi- the disposal of the lands in the Indiana y, and for other purposes," as provides the ascertaining the true contents of sections visions of sections, and prevents the issue certificates, unless the said contents shall en ascertained and a plot, certified by the surveyor, lodged with the register, be, and e is hereby, repealed.

oved, February 11, 1805.

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for carrying into more complete effect the article of the Treaty of Friendship, Limits, and ation, with Spain.

enacted, &c., That whenever any Spanish all arrive in distress, in any port of the States, having been damaged on the coasts, n the limits of the United States, and her all have been unladen, in conformity with isions of the sixteenth section of the act, "An act to regulate the collection of du- imports and tonnage," the said cargo, or thereof, may, if the said ship or vessel e condemned, as not seaworthy, or be incapable of performing her original voy- rwards be reladen on board any other vessels, under the inspection of the offi- superintended the landing thereof, or per person. And no duties, charges, or atever, shall be paid on such part of the s may be reladed and carried away, either in the vessel in which it was originally imported, or in any other whatever.

SEC. 2. *And be it further enacted*, That the collector of the district of Norfolk, in Virginia, shall be, and he hereby is, authorized and required to refund to the owners or agents of the Spanish brigantine Nancy (which vessel arrived in distress at that port, in the year one thousand eight hundred and four) the amount of the duties secured by him on such part of her cargo as was re-exported: *Provided*, That the debenture or debentures issued by the said collector, for the drawback of the duties on the exportation of the said cargo, shall be duly surrendered to him, and cancelled.

Approved, February 14, 1805.

An Act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina.

Be it enacted, &c., That the Postmaster General shall be, and hereby is, authorized to make a new contract for carrying the mail in a line of stages between the town of Fayetteville, in the State of North Carolina, and the city of Charleston, in the State of South Carolina, upon such terms and conditions as he may deem most conducive to the interest of the United States: *Provided*, That he does not exceed the sum of four thousand two hundred dollars, annually, beyond the amount of the present contract; and that no contract made in virtue of this act shall extend beyond the time to which the present contract extends.

Approved, February 14, 1805.

An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five.

Be it enacted, &c., That, for defraying the expense of the Military Establishment of the United States, for the year one thousand eight hundred and five, for the Indian department, and for the expense of fortifications, arsenals, magazines, and armories, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the army of the United States, three hundred and two thousand seven hundred and ninety-six dollars.

For forage, four thousand four hundred and eighty-eight dollars.

For the subsistence of the officers of the army and corps of engineers, thirty one thousand three hundred and twenty-nine dollars and fourteen cents.

For the subsistence of non-commissioned officers, musicians, and privates, one hundred and seventy nine thousand and nine dollars and sixty-nine cents.

For clothing, eighty five thousand dollars.

For bounties and premiums, fifteen thousand dollars.

For medical and hospital department, twelve thousand dollars.

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For camp equipage, fuel, tools, expense of transportation, and other contingent expenses of the War Department, eighty-one thousand dollars.

For fortifications, arsenals, magazines, and armories, one hundred and thirty-three thousand two hundred and ninety-six dollars and eighty-eight cents.

For purchasing maps, plans, books, and instruments for the War Department, and military academy, five hundred dollars.

For the pay and subsistence of the commandants in Louisiana, five thousand nine hundred and seventy one dollars and seventy-seven cents.

For the Indian department, ninety-two thousand six hundred dollars.

SEC. 2. *And be it further enacted*, That the several appropriations hereinbefore made, shall be paid and discharged out of any moneys in the Treasury not otherwise appropriated.

Approved, February 14, 1805.

An Act supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That the same terms of credit which are granted by law for the payment of duties on articles the produce of the West Indies, and no other, shall be allowed on goods, wares, and merchandise, imported by sea into the United States, from all foreign ports and islands lying north of the equator, and situated on the eastern shores of America, or in its adjacent seas, bays, and gulfs.

SEC. 2. *And be it further enacted*, That it shall be lawful for any ship or vessel to proceed with any goods, wares, or merchandise, brought in her, and which shall, in the manifest delivered to the collector of the customs, be reported as destined or intended for any foreign port or place, from the district within which such ship or vessel shall first arrive, to such foreign port or place, without paying or securing the payment of any duties upon such goods, wares, or merchandise, as shall be actually re-exported in the said ship or vessel: *Provided*, That such manifest so declaring to re-export such goods, wares, or merchandise, shall be delivered to such collector within forty-eight hours after the arrival of such ship or vessel: *And provided, also*, That the master or commander of such ship or vessel shall give bond as required by the thirty-second section of the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Approved, February 22, 1805.

An act to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer."

Be it enacted, &c., That the consent of Congress be, and is hereby, granted and declared to the operation of an act of the General Assembly of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, entitled "An act to appoint a health officer for the port of Baltimore, in Baltimore county," so far as to enable the State aforesaid to collect a duty of one per cent. per ton on all vessels coming into the district of Baltimore, from a foreign voyage, for the purposes in said act intended.

SEC. 2. *And be it further enacted*, That this act shall be in force for nine years from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, March 1, 1805.

An Act to amend the act, entitled "An act further to amend an act, entitled 'An act to lay and collect a direct tax within the United States."

Be it enacted, &c., That the supervisor of the district of Kentucky is hereby allowed the further time of three months from the end of two years after the completion of the sales of land within his district, for the payment of the direct tax, to perform the several duties enjoined by the fourth section of the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States," anything in the said act to the contrary notwithstanding.

Approved, March 1, 1805.

An Act making appropriations for the support of Government for the year one thousand eight hundred and five.

Be it enacted, &c., That, for the expenditure of the civil list in the present year, including the contingent expenses of the several Departments and officers; for the compensation of the several loan officers and their clerks, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint Establishment; for the expenses of intercourse with foreign nations; for the support of lighthouses, beacons, buoys, and public piers; for defraying expenses of surveying the public lands in the Territories of Indiana and Mississippi; for the unexpended balances of former appropriations, defraying the expenses of the second census, and the purchase and erection of wharves and stores under the quarantine law; and for satisfying certain miscellaneous claims, the following sums be, and the same hereby are, respectively, appropriated, that is to say:

For compensations granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimated for a session of four months and a half continuance, one hundred and ninety-eight thousand, nine hundred and sixty-five dollars.

For the expense of firewood, stationery, printing, and all other contingent expenses of the two Houses of Congress, including the sum of three thousand dollars appropriated by the act of the sixth of December, one thousand eight hundred and four, twenty-eight thousand dollars.

For defraying the expenses incidental to demantling the late library room of Congress and fitting it up for the accommodation of the House

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epresentatives, at the ensuing session, seven red dollars.

r expenses of removal of the Library, and all contingent expenses of the same, and Li- .n's allowance for the year one thousand eight 'ed and five, nine hundred dollars.

' the expense of labelling, lettering, and ering five thousand seven hundred volumes 's and journals of the old Congress, direct- the act of the present session for the dispo- certain copies of the laws of the United , to be deposited in the Library, five hun- nd seventy dollars.

compensation to the President and Vice ent of the United States, thirty thousand :.

compensation to the Secretary of State, and persons employed in that Department, thousand three hundred and sixty dollars.

incidental and contingent expenses in said ment, four thousand two hundred dollars.

printing and distributing copies of the laws second session of the eighth Congress, and g the laws in newspapers, eight thousand ndred and fifty dollars.

printing the laws and other contingent ex- of the government of the Indiana Territo- onsequence of the union with it of that of rritory of Louisiana, three hundred and llars.

pecial messengers charged with despatch- thousand dollars.

ompensation to the Secretary of the Treas- rks, and persons employed in his office, ng those engaged on the business belong- he late office of the Commissioner of the e, thirteen thousand four hundred and ne dollars and eighty-one cents.

xpenses of translating foreign languages; ce to the person employed in receiving nsmitting passports and sea-letters; sta- and printing, one thousand dollars.

ompensation to the Comptroller of the y, clerks, and persons employed in his velve thousand nine hundred and seven- . dollars and eight cents.

xpense of stationery, printing, and inci- nd contingent expenses in the Comptrol- ce, eight hundred dollars.

mpensation to the Auditor of the Treas- ks, and persons employed in his office, housand two hundred and twenty dollars ty-three cents.

xpense of stationery, printing, and inci- nd contingent expenses in the office of tor of the Treasury, five hundred dollars.

mpensation to the Treasurer, clerks, and mployed in his office, six thousand two and twenty-seven dollars and forty-five

e expense of stationery, printing and in- and contingent expenses in the Treas- ce, three hundred dollars.

mpensation to the Register of the Treas- s, and persons employed in his office, housand and fifty-two dollars.

For expense of stationery and printing in the Register's office, (including books for the public stock and for the arrangement of the marine papers,) two thousand eight hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of the clerks employed for the purpose of making drafts of the several surveys of land in the Territory of the United States Northwest of the river Ohio, and in keeping the books of the Treasury in relation to the sales of lands at the several land offices, two thousand six hundred dollars.

For fuel and other contingent expenses of the Treasury Department, four thousand dollars.

For defraying the expenses incident to the stating and printing the public accounts for the year one thousand eight hundred and five, one thousand two hundred dollars.

For purchasing books, maps, and charts, for the use of the Treasury Department, four hundred dollars.

For compensation to a superintendent employed to secure the buildings and records of the Treasury, during the year one thousand eight hundred and five, including the expense of two watchmen, and for the repair of two fire engines, buckets, lanterns, and other incidental expenses, one thousand one hundred dollars.

For the erection of a fire-proof brick building for the preservation of the records of the Treasury; the cellars in which they have hitherto been kept being found, from their dampness, improper for that use, nine thousand dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and fifty dollars.

For the expenses of fuel, stationery, printing, and other contingent expenses of the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation to clerks employed in the Paymaster's office, one thousand eight hundred dollars.

For fuel in said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, including a sum of twelve hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for expense of stationery, store rent and fuel for the said office, four thousand six hundred dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, nine thousand one hundred and ten dollars.

For expense of fuel, stationery, printing and other contingent expenses in the office of the Secretary of the Navy, two thousand dollars.

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For compensation to the Accountant of the Navy, clerks, and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand four hundred and ten dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, including a sum of four thousand five hundred and ninety-five dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, thirteen thousand nine hundred and fifty-five dollars.

For expense of fuel, candles, house rent for the messenger, stationery, chests, &c., exclusive of expenses of prosecution, portmanteaus, mail locks, and other expenses incident to the Department, these being paid for by the Postmaster General out of the funds of the office, two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks of the several Commissioners of Loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans of the State of Pennsylvania, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For compensation to the Surveyor General and the clerks employed by him, and for expense of stationery and other contingencies of the Surveyor General's office, three thousand two hundred dollars.

For compensation to the surveyor of the lands south of the State of Tennessee, clerks employed in his office, stationery, and other contingencies, three thousand two hundred dollars.

For compensation to the officers of the Mint:

The director, two thousand dollars.

The treasurer, one thousand two hundred dollars.

The assayer, one thousand five hundred dollars.

The chief coiner, one thousand five hundred dollars.

The melter and refiner, one thousand five hundred dollars.

The engraver, one thousand two hundred dollars.

One clerk, at seven hundred dollars.

And two, at five hundred dollars, each.

For the wages of persons employed at the different branches of melting, coining, carpenters', millwrights', and smiths' work, including the sum of eight hundred dollars per annum, allowed to an assistant coiner and die forger, who also oversees the execution of the iron work, six thousand [illegible] hundred dollars.

For the repairs of furnaces, cost of rollers and screws, timber, bar-iron, lead, steel, potash, and for all other contingencies of the Mint, two thousand nine hundred dollars.

For compensation to the Governor, judges, secretary, and Legislative Council of the Territory of Orleans, nineteen thousand two hundred and forty dollars.

For incidental and contingent expenses of the Legislative Council, and of the secretary of the said Territory, two thousand dollars.

For compensation to the Governor, judges, and secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, judges, and secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For the expenses of stationery, office rent and other contingent expenses in the said territory, three hundred and fifty dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For additional compensation to the clerks of the several Departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding, for each department respectively, fifteen per centum in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For compensation granted by law to the Chief Justice, associate judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the Attorney General, fifty-five thousand nine hundred dollars.

For the like compensation granted to the several district attorneys of the United States, three thousand four hundred dollars.

For compensation to the marshals of the districts of Maine, New Hampshire, Vermont, Kentucky, Ohio, East and West Tennessee, and Orleans, one thousand six hundred dollars.

For defraying the expenses of the supreme, circuit, and district courts of the United States, including the District of Columbia, and of jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties, and likewise for defraying the expense of prosecution for offences against the United States, and for safe-keeping of prisoners, forty thousand dollars.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For the payment of an annuity granted to the children of the late Colonel John Harding and

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or Alexander Trueman, by an act of Con-
, passed the fourteenth of May, one thousand
hundred, six hundred dollars.
r the payment of the annual allowance to
nvalid pensioners of the United States, from
ifth of March, one thousand eight hundred
six, ninety-eight thousand dollars.
r the maintenance and support of light-
es, beacons, buoys, and public piers, and stake-
f channels, bars, and shoals, and certain con-
nt expenses, one hundred and fifteen thou-
two hundred and nine dollars and thirty-six
.
r fixing buoys in Long Island sound, in addi-
to the sums heretofore appropriated for that
t, three thousand dollars.
r erecting beacons in the harbor of New
, in addition to the sums heretofore appro-
ed for that object, six thousand dollars.
r erecting a beacon and placing buoys near
ntrance of Savannah river, being an expense
red under the act of the sixteenth day of
one thousand seven hundred and ninety-
, (the balance of a former appropriation for
ame object, having been carried to the credit
e surplus fund,) two thousand four hundred
inety-four dollars and eighty-nine cents.
r reviving so much of unexpended balances
propriations granted by an act passed the
of April, one thousand eight hundred and
and which have been carried to the surplus
to wit:
r erecting public piers in the river Delaware,
housand eight hundred and eighty-eight dol-
nd seventy-nine cents.
r erecting certain light-houses, and fixing
s in Long Island sound, nine thousand six
red and seventy-eight dollars and thirty-eight
.
d for building a light-house on Cumberland
Point, four thousand dollars.
r completing the light-house at the mouth
Mississippi, and the light-house at or near
tch of Cape Lookout, in addition to the sum
ofore appropriated to those objects, by the
the twenty-sixth of March, one thousand
hundred and four, twenty thousand dollars.
wards completing the surveys of public
in the State of Ohio, and in the Indiana
Mississippi Territories, forty thousand dol-

r the discharge of such miscellaneous claims
st the United States, not otherwise provided
s shall have been admitted in due course of
ment at the Treasury, and which are of a
e, according to the usage thereof, to require
ent in specie, four thousand dollars.
defraying certain expenses heretofore in-
d in the War and Navy Departments, and
, in due course of settlement in those de-
ents, have been adjusted, and cannot be dis-
ed out of any existing appropriation, twenty
and dollars.
the expense of taking the second census of
nhabitants of the United States, being the
ce of a former appropriation carried to the surplus fund, fourteen thousand one hundred and sixty-two dollars and seventy-seven cents.

For the expense of wharves and stores for quarantine ships and vessels, being the balance of a former appropriation carried to the credit of the surplus fund, seventeen thousand one hundred and forty-three dollars and one cent.

For the expense of returning the votes for President and Vice President of the United States for the term commencing the fourth day of March, one thousand eight hundred and five, one thousand six hundred and twenty-four dollars.

For defraying the contingent expenses of Government, (the unexpended balance of a former appropriation for the same object, being carried to the credit of the surplus fund,) twenty thousand dollars.

For expenses of intercourse with foreign nations, fifty-seven thousand and fifty dollars.

For the expenses of the intercourse between the United States and the Barbary Powers, including the compensation of the Consuls at Algiers, Morocco, Tunis, and Tripoli, sixty-three thousand five hundred dollars.

For the contingent expenses of intercourse with the Barbary Powers, two hundred thousand dollars.

For the relief and protection of distressed American seamen, five thousand dollars.

For the salaries of the agents at Paris and Madrid, for prosecuting claims in relation to captures, four thousand dollars.

For payment of demands for French vessels and property captured, pursuant to the convention between the United States and the French Republic, the balance of a former appropriation for the same object, by the act of the third of April, one thousand eight hundred and two, having been carried to the surplus fund, twenty-one thousand dollars.

Sec. 2. *And be it further enacted*, That the several appropriations, hereinbefore made, shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States," and out of the moneys in the Treasury, not otherwise appropriated.

Approved, March 1, 1805.

An Act further providing for the government of the Territory of Orleans.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to establish within the Territory of Orleans, a government in all respects similar, (except as is herein otherwise provided,) to that now exercised in the Mississippi Territory; and shall, in the recess of the Senate, but to be nominated at their next meeting, for their advice and consent, appoint all the officers necessary therein, in conformity with the ordinance of Congress, made on the thirteenth day of July, one thousand seven hundred and eighty-seven; and that from and after the establishment of the said government, the inhabitants of the Territory of Orleans, shall be entitled to and enjoy

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all the rights, privileges, and advantages secured by the said ordinance, and now enjoyed by the people of the Mississippi Territory.

Sec. 2. *And be it further enacted*, That so much of the said ordinance of Congress, as relates to the organization of a General Assembly, and prescribes the powers thereof, shall, from and after the fourth day of July next, be in force in the said Territory of Orleans; and in order to carry the same into operation, the Governor of the said Territory shall cause to be elected twenty-five representatives, for which purpose he shall lay off the said Territory into convenient election districts, on or before the first Monday of October next, and give due notice thereof throughout the same; and shall appoint the most convenient time and place within each of the said districts, for holding the elections: and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected. All subsequent elections shall be regulated by the Legislature; and the number of representatives shall be determined, and the apportionment made, in the manner prescribed by the said ordinance.

Sec. 3. *And be it further enacted*, That the representatives to be chosen as aforesaid shall be convened by the Governor, in the city of Orleans, on the first Monday in November next; and the first General Assembly shall be convened by the Governor as soon as may be convenient, at the city of Orleans, after the members of the Legislative Council shall be appointed and commissioned; and the General Assembly shall meet, at least once in every year, and such meeting shall be on the first Monday in December, annually, unless they shall, by law, appoint a different day. Neither house, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two branches are sitting.

Sec. 4. *And be it further enacted*, That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

Sec. 5. *And be it further enacted*, That the second paragraph of the said ordinance, which regulates the descent and distribution of estates; and also the sixth article of compact which is annexed to, and makes part of said ordinance, are hereby declared not to extend to, but are excluded from all operation within the said Territory of Orleans.

Sec. 6. *And be it further enacted*, That the Governor, secretary, and judges, to be appointed be virtue of this act, shall be severally allowed the same compensation which is now allowed to the Governor, secretary, and judges, of the Territory of Orleans. And all the additional officers authorized by this act, shall respectively receive the same compensation for their services, as are by law established for similar offices in the Mississippi Territory, to be paid quarter yearly out of the revenues of impost and tonnage accruing within the said Territory of Orleans.

Sec. 7. *And be it further enacted*: [illegible] ever it shall be ascertained by an [illegible] enumeration of the inhabitants [illegible] of Orleans, taken by proper [illegible] number of free inhabitants include[illegible] amount to sixty thousand, they [illegible] authorized to form for themselves a [illegible] State government, and be admitte[illegible] upon the footing of the original [illegible] spects whatever, conformably to [illegible] the third article of the treaty [illegible] on the thirteenth of April, one thous[illegible] dred and three, between the [illegible] French Republic: *Provided*, That [illegible] tion so to be established shall be [illegible] not inconsistent with the cons[illegible] ted States, nor inconsistent wit[illegible] the late Congress, passed the [illegible] July, one thousand seven hundred [illegible] so far as the same is made app[illegible] ritorial government hereby autho[illegible] lished: *Provided, however*, That [illegible] at liberty, at any time prior to [illegible] the inhabitants of the said Terr[illegible] of a separate State, to alter the [illegible] as they may judge proper: [illegible] alteration shall be made, whi[illegible] the period for the admiss[illegible] thereof to the rights of a [illegible] cording to the provision of [illegible]

Sec. 8. *And be it further enacted*: [illegible] of an act, entitled "An act [illegible] two territories, and providing [illegible] government thereof," as is repe[illegible] shall, from and after the first [illegible] ber next, be repealed. And the [illegible] act shall continue in full force [illegible] thing in the sixteenth section [illegible] the contrary notwithstanding.

Approved, March 2, 1805.

An Act further to amend an act, [illegible] ulating the grants of land, and [illegible] disposal of the lands of the United [illegible] the State of Tennessee."

Be it enacted, &c., That persons [illegible] obtained or shall obtain certificates [illegible] of Commissioners appointed to [illegible] claims to lands in the Mississippi Ter[illegible] be allowed three months after the [illegible] of such certificates, for entering [illegible] the register of the proper land office [illegible] cates thus entered shall have the same [illegible] effect as if they had been duly ent[illegible] said register, on or before the first day [illegible] one thousand eight hundred and five.

Sec. 2. *And be it further enacted*: [illegible] Commissioners appointed to ascertain [illegible] to land in the above-mentioned Ter[illegible] of Pearl river, shall be authorized [illegible] tificates for lands lying in the island [illegible] the name of Nannee Hubba, formerly [illegible] off of the river Tombigbee and Alabama [illegible] persons having claims for lands lyi[illegible] said island or east of the Tombigbee [illegible]

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rivers, shall be permitted to file the same the register of the land office, till the first f May, one thousand eight hundred and five; he Commissioners shall decide on the same same manner as if they had been presented the thirty-first day of March, one thousand hundred and four.

. 3. *And be it further enacted*, That each of st-mentioned Commissioners shall be allow- the rate of six dollars a day, for every day all attend subsequent to the first day of one thousand eight hundred and five: *Pro-* That such additional allowance shall not l five hundred dollars for each Commis-

. 4. *And be it further enacted*, That the of each of the Boards of Commissioners ap- d to ascertain the claims of lands in the -mentioned Territory, shall be allowed at te of seven hundred and fifty dollars a year, he time when he entered upon the duties of ice to the time when the board shall ad- *sine die.*

. 5. *And be it further enacted*, That per- laiming lands in the Mississippi Territory, tue of British grants, legally and fully com- , who may not have filed their claims with oper register of the land office, in conform- th the provisions heretofore made for that se, may, until the first day of December, one nd eight hundred and five, file such claims he register of the land office west of Pearl and have the same recorded. And the said r shall on or before the first day of January, ousand eight hundred and six, make to the ary of the Treasury a full report of all the grants thus recorded; which report shall liately after be laid before Congress. The contained in such grants shall not be other- isposed of until the end of one year, after me. And if any such person shall neglect such British grant, and to have the same ed, in the manner and time hereby provided, r such grant nor any other evidence of such which shall not have been recorded as above d, shall ever after be considered or admit- evidence in any court of the United States, inst any title, legally and fully executed, l from the Spanish Government; any act to the contrary notwithstanding.

roved, March 2, 1805.

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for ascertaining and adjusting the titles and s to land, within the Territory of Orleans, and District of Louisiana.

t enacted, &c., That any person or persons, e legal representatives of any person or per- who, on the first day of October, in the year ousand eight hundred, were resident within ritories ceded by the French Republic to ited States, by the treaty of the thirtieth il, one thousand eight hundred and three, o had, prior to the said first day of Octo- e thousand eight hundred, obtained from nch or Spanish Governments respectively, during the time either of the said Governments had the actual possession of said Territories, any duly registered warrant, or order of survey for lands lying within the said Territories to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands, in the same manner as if their titles had been completed: *Provided, however*, That no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years; nor unless the conditions and terms on which the completion of the grant might depend, shall have been fulfilled.

Sec. 2. *And be it further enacted*, That to every person, or to the legal representative or representatives of every person, who, being either the head of a family, or twenty-one years of age, had, prior to the twentieth day of December, one thousand eight hundred and three, with permission of the proper Spanish officer, and in conformity with the laws, usages, and customs of the Spanish Government, made an actual settlement on a tract of land within the said Territories, not claimed by virtue of the preceding section, or of any Spanish or French grant made and completed before the first day of October, one thousand eight hundred, and during the time the Government which made such grant had the actual possession of the said Territories, and who did on the said twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land; the tract of land thus inhabited and cultivated shall be granted: *Provided, however*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than one mile square, together with such other and further quantity, as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages, and customs, of the Spanish Government: *Provided, also*, That this donation shall not be made to any person who claims any other tract of land in the said Territories by virtue of any French or Spanish grant.

Sec. 3. *And be it further enacted*, That, for the purpose of more conveniently ascertaining the titles and claims to land in the Territory ceded as aforesaid, the Territory of Orleans shall be laid off into two districts, in such manner as the President of the United States shall direct; in each of which, he shall appoint, in the recess of the Senate, but who shall be nominated at their next meeting, for their advice and consent, a register, who shall receive the same annual compensation, give security in the same manner, and in the same sums, and whose duties and authorities shall in every respect be the same in relation to the lands which shall hereafter be disposed of at their offices, as are by law provided with respect to the registers in the several offices established for the disposal of the lands of the United States north of the river Ohio, and above the mouth of Ken-

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tucky river. The President of the United States shall likewise appoint a recorder of land titles in the district of Louisiana, who shall give security in the same manner, and in the same sums, and shall be entitled to the same annual compensation, as the registers of the several land offices.

SEC. 4. *And be it further enacted*, That every person claiming lands in the above-mentioned Territories, by virtue of any legal French or Spanish grants made and completed before the first day of October, one thousand eight hundred, and during the time the Government which made such grant had the actual possession of the Territories, may, and every person claiming lands in the said Territories, by virtue of the two first sections of this act, or by virtue of any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, shall, before the first day of March, one thousand eight hundred and six, deliver to the register of the land office, or recorder of land titles, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed; and shall also, on or before that day, deliver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the register or recorder, or by the translator hereinafter mentioned, in books to be kept by them for that purpose, on receiving from the parties, at the rate of twelve-and-a-half cents for every hundred words contained in such written evidence of their claim: *Provided, however*, That, where lands are claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant or order of survey, and the plat; but all the other conveyances or deeds shall be deposited with the register or recorder, to be by them laid before the commissioners hereinafter directed to be appointed, when they shall take the claim into consideration. And if such person shall neglect to deliver such notice, in writing, of his claim, together with the plat as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered, or admitted as evidence in any court of the United States, against any grant derived from the United States. The said register and recorder shall commence the duties hereby enjoined on them, on or before the first day of September next, and continue to discharge the same, at such place, in their respective districts, as the President of the United States shall direct.

SEC. 5. *And be it further enacted*, That two persons to be appointed by the President alone, for the district of Louisiana, and two persons, to be in the same manner appointed for ea[illegible] districts directed by this act to be laid off [illegible] ritory of Orleans, shall, together with the [illegible] or recorder of the district for which th[illegible] appointed, be commissioners for the [illegible] ascertaining within their respective [illegible] rights of persons claiming under any [illegible] Spanish grant as aforesaid, or under the [illegible] sections of this act. The said commi[illegible] shall, previous to their entering on [illegible] their appointment, respectively take and [illegible] the following oath or affirmation, [illegible] person qualified to administer the same: [illegible] ——, do solemnly swear (or affirm) [illegible] impartially exercise and discharge the [illegible] posed on me by an act of Congress, [illegible] act for ascertaining and adjusting the [illegible] claims to land within the Territory [illegible] and the district of Louisiana,' to the [illegible] skill and judgment." It shall be the [illegible] said commissioners to meet in their [illegible] districts, at such place as the President [illegible] directed therein, for the residence of [illegible] or recorder, on or before the first day of [illegible] next, and they shall not adjourn to any [illegible] nor for a longer time than three [illegible] first day of March, one thousand [illegible] six, and until they shall have completed [illegible] ness of their appointment. Each board, or a [illegible] jority of each board, shall, in their respective districts, have power to hear and decide [illegible] mary manner, all matters respecting [illegible] also to administer oaths, to compel the [illegible] of and examine witnesses, and [illegible] mony as may be adduced, to demand [illegible] from the proper officer and officers [illegible] records, in which grants of land, [illegible] orders of survey, or any other evidence [illegible] to land, derived from either the French [illegible] ish Governments, may have been [illegible] take transcripts of such record or [illegible] any part thereof; to have access to [illegible] cords of a public nature, relative to the [illegible] sale, transfer, or titles of lands, within [illegible] spective districts; and to decide in [illegible] way, according to justice and equity, [illegible] filed with the register or recorder, and [illegible] with the provisions of this act, and [illegible] plete French or Spanish grants, the [illegible] which, though not thus filed, may be [illegible] record on the public records of such grants [illegible] decisions shall be laid before Congress [illegible] manner hereinafter directed, and be [illegible] their determination thereon: *Provided*, [illegible] That nothing in this act contained shall [illegible] strued so as to recognise any grant or [illegible] title, bearing date subsequent to the [illegible] October, one thousand eight hundred [illegible] thorize the commissioners aforesaid to [illegible] decision thereon. The said boards [illegible] shall have power to appoint a clerk, who [illegible] it shall be to enter in a book to be kept [illegible] purpose, full and correct minutes of their [illegible] ings and decisions, together with the [illegible] which such decisions are made, which [illegible] papers on the dissolution of the boards [illegible]

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d in the respective offices of the registers nd offices, or of the recorder of land titles istrict; and the said clerk shall prepare nscripts of all the decisions made by the sioners in favor of the claimants to land; which shall be signed by a majority of l commissioners, and one of which shall mitted to the officer exercising in the dis- authority of Surveyor General; and the the Secretary of the Treasury. It shall be the duty of the said commissioners, to the Secretary of the Treasury a full re- ll the claims filed with the register of the land office, or recorder of land titles, as lirected, which may have been rejected, r with the substance of the evidence ad- n support thereof, and such remarks there- ey may think proper; which reports, to- with the transcripts of the decisions of the sioners in favor of the claimants, shall be the Secretary of the Treasury before Con- t their next ensuing meeting. When any or French grant, warrant, or order of as aforesaid, shall be produced to either said boards, for lands, which were not at of such grant, warrant, or order of survey, in one year thereafter, inhabited, culti- r occupied, by or for the use of the grantee; never either of the said boards shall not sfied that such grant, warrant, or order of did issue at the time when the same bears t that the same is antedated or otherwise ent; the said commissioners shall not be to consider such grant, warrant, or order ey, as conclusive evidence of the title, but quire such other of its validity as they em proper. Each of the commissioners, erks aforesaid shall be allowed a compen- of two thousand dollars in full for his ser- s such; and each of the said clerks shall, s to his entering on the duties of his office, nd subscribe the following oath or affirma- wit: "I, —— ——, do solemnly swear irm) that I will truly and faithfully dis- the duties of a clerk to the board of com- ners for examining the claims to land, as d by an act of Congress, entitled 'An act ining and adjusting the titles and claims l within the Territory of Orleans, and the t of Louisiana." Which oath or affirma- all be entered on the minutes of the board. . 6. *And be it further enacted*, That the ary of the Treasury shall be, and he is , authorized to employ three agents, one for board and whose compensation shall not l one thousand five hundred dollars each, purpose of appearing before the commis- s in the behalf of the United States, to in- ate the claims for lands, and to oppose all s said agents may deem fraudulent and nded. It shall also be the duty of the said for the district of Louisiana, to examine nd investigate the titles and claims, if any be, to the lead mines within the said district, ect all the evidence within his power, with t to the claims to, and value of the said mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the Secretary of the Treasury, to be by him laid before Congress, at their next ensuing session. The said board of commissioners shall each be authorized to employ a translator of the Spanish and French languages, to assist them in the despatch of the business which may be brought before them, and for the purpose of recording Spanish and French grants, deeds, or other evidences on the register's books. The said translator shall receive for the recording done by him, the fees already provided by law, and may be allowed not exceeding fifty dollars for every month he shall be employed; provided that the whole compensation, other than that arising from the fees, shall not exceed six hundred dollars.

Sec. 7. *And be it further enacted*, That the powers vested by law in the surveyor of the lands of the United States, south of the State of Tennessee, shall extend over all the public lands of the United States, to which the Indian title has been or shall hereafter be extinguished within the said Territory of Orleans; and it shall be the duty of the said surveyor to cause such of the said lands as the President of the United States shall expressly direct, to be surveyed and divided, as nearly as the nature of the country will admit, in the same manner and under the same regulations as is provided by law, in relation to the lands of the United States northwest of the river Ohio, and above the mouth of Kentucky river.

Sec. 8. *And be it further enacted*, That the location or locations of lands which Major General Lafayette is by law authorized to make on any lands, the property of the United States, in the Territory of Orleans, shall be made with the register or registers of the land offices established by this act in the said territory; the surveys thereof shall be executed under the authority of the surveyor of the lands of the United States south of Tennessee; and a patent or patents therefor shall issue, on presenting such surveys to the Secretary of the Treasury, together with a certificate of the proper register or registers, stating that the land is not rightfully claimed by any other person: *Provided*, That no location or survey made by virtue of this section, shall contain less than one thousand acres, nor include any improved lands or lots, salt spring, or lead mine.

Sec. 9. *And be it further enacted*, That a sum not exceeding fifty thousand dollars, to be paid out of any unappropriated moneys in the Treasury, be, and the same is hereby appropriated for the purpose of carrying this act into effect.

Approved, March 2, 1805.

An Act to authorize the Secretary of War to issue military land warrants; and for other purposes.

Be it enacted &c., That the Secretary of War be, and he hereby is, authorized, from and after the passing of this act, to issue warrants for military bounty lands to the sixty-three persons who have exhibited their claims, and produced satisfactory

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evidence to substantiate the same to the Secretary of War; and, also, to such persons as shall, before the first day of April next, produce to him satisfactory evidence of the validity of their claims, in pursuance of the act of the twenty-sixth of April, eighteen hundred and two, entitled "An act in addition to an act, entitled 'An act in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,"

SEC. 2. *And be it further enacted*, That the holders or proprietors of the land warrants issued by virtue of the preceding section, shall and may locate their respective warrants only on any unlocated parts of the fifty quarter townships, and the fractional quarter townships, which had been reserved for original holders, by virtue of the fifth section of an act, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

SEC. 3. *And be it further enacted*, That the act, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," approved the twenty-sixth day of April, eighteen hundred and two, be and the same is hereby continued in force until the first day of March, eighteen hundred and six.

Approved March 2, 1805.

An Act to amend the act, entitled "An act for the government and regulation of seamen in the merchants' service."

Be it enacted, &c., That all the provisions, regulations, and penalties, which are contained in the eighth section of the act, entitled "An act for the government and regulation of seamen in the merchants' service," so far as relates to a chest of medicines to be provided for vessels of one hundred and fifty tons burden, and upwards, shall be extended to all merchant vessels of the burden of seventy-five tons, or upwards, navigated with six persons or more, in the whole, and bound from the United States to any port or ports in the West Indies.

Approved, March 2, 1805.

An Act to authorize the erection of a bridge across a mill-pond and marsh in the Navy Yard, belonging to the United States, in the town of Brooklyn, in the State of New York.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized, by a proper instrument in writing under his hand, in due form, to grant to such person or persons, or body corporate, by their proper name or incorporation, as shall be authorized by an act of the Legislature of the State of New York, to open and improve a road from Brooklyn ferry, in that State, along the shore of the Wallabout, to Bushwick, to erect a bridge across the mill-pond and marsh, being part of the navy yard belonging to the United States, in the said town of Brooklyn, and to maintain such bridge, under such restrictions and on such conditions as he shall prescribe. *Provided, nevertheless*, That if, at any future time it shall appear to the President of the United States, that the property of the United States is injured by such bridge, he may revoke the permission granted by him for erecting the same.

And provided, also, That no toll shall be demanded at any time for any article the property of the United States, which may be conveyed to or for their use, over or across the said bridge, or from any person or persons employed in the said navy yard, who may pass or repass on the said bridge.

Approved, March 2, 1805.

An Act to appropriate a sum of money for the purpose of building gun-boats.

Be it enacted, &c., That the sum of sixty thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the Treasury, not otherwise appropriated, for the purpose of enabling the President to cause to be built a number of gun-boats, not exceeding twenty-five, for the better protection of the ports and harbors of the United States.

Approved, March 2, 1805.

An Act further providing for the government of the District of Louisiana.

Be it enacted, &c., That all that part of the country ceded by France to the United States, under the general name of Louisiana, which by an act of the last session of Congress was erected into a separate district, to be called the district of Louisiana, shall henceforth be known and designated by the name and title of the *Territory of* Louisiana, the government whereof shall be organized and administered as follows:

The Executive power shall be vested in a Governor, who shall reside in said Territory, and hold his office during the term of three years, unless sooner removed by the President of the United States: He shall be commander-in-chief of the militia of the said Territory, superintendent *ex officio* of Indian affairs, and shall appoint and commission all officers in the same, below the rank of general officers; shall have power to grant pardons for offences against the same, and reprieves for those against the United States, until the decision of the President thereon shall be known.

SEC. 2. There shall be a secretary, whose commission shall continue in force for four years, unless sooner revoked by the President of the United States, who shall reside in the said Territory and whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the Executive, and all the acts of the Governor and of the Legislative body, and transmit authentic copies of the same every six months, to the President of the United States.

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of a vacancy of the office of Governor, ernment of the said Territory shall be d by the secretary.

. The Legislative power shall be vested overnor and in three judges, or a majority who shall have power to establish infe- rts in the said Territory, and prescribe isdiction and duties, and to make all laws hey may deem conducive to the good ent of the inhabitants thereof: *Provided*, That no law shall be valid which is ent with the Constitution and laws of ed States, or which shall lay any person straint or disability on account of his opinions, profession, or worship, in all of e shall be free to maintain his own and rdened with those of another: *And pro- so*, That, in all criminal prosecutions, the ll be by a jury of twelve good and law- of the vicinage, and in all civil cases of e of one hundred dollars, the trial shall ry, if either of the parties require it. And ernor shall publish throughout the said y, all the laws which may be made as l, and shall, from time to time, report the the President of the United States, to be re Congress, which, if disapproved of by s, shall thenceforth cease and be of no

. There shall be appointed three judges, ll hold their offices for the term of four no, or any two of them, shall hold annu- courts within the said district, at such will be most convenient to the inhabit- reof in general; shall possess the same ion which is possessed by the judges of ana Territory, and shall continue in ses- ll all the business depending before them disposed of.

5. *And be it further enacted*, That for the nvenient distribution of justice, the pre- of crimes and injuries, and execution of criminal and civil, the Governor shall from time to time, as circumstances may to lay out those parts of the Territory in he Indian title shall have been extinguish- districts, subject to such alterations as found necessary; and he shall appoint such magistrates and other civil officers ay deem necessary, whose several powers horities shall be regulated and defined by

. *And be it further enacted*, That the or, secretary, and judges, to be appointed e of this act, shall respectively receive compensations for their services as are stablished for similar offices in the Indiana y, to be paid quarter-yearly out of the y of the United States.

7. *And be it further enacted*, That the or, secretary, judges, justices of the peace, other officers, civil or military, before they on the duties of their respective offices, e an oath, or affirmation, to support the tion of the United States, and for the discharge of the duties of their office; the Governor before the President of the United States, or before such other person as the President of the United States shall authorize to administer the same; the secretary and judges before the Governor; and all other officers before such person as the Governor shall direct.

Sec. 8. *And be it further enacted*, That the Governor, secretary, and judges, to be appointed by virtue of this act, and all the additional officers authorized thereby, or by the act for erecting Louisiana into two Territories, and providing for the temporary government thereof, shall be appointed by the President of the United States, in the recess of the Senate, but shall be nominated at their next meeting for their advice and consent.

Sec. 9. *And be it further enacted*, That the laws and regulations, in force in the said district, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

Sec. 10. *And be it further enacted*, That so much of an act, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," as is repugnant to this act, shall, from and after the fourth day of July next, be repealed; on which said fourth day of July, this act shall commence and have full force.

Approved, March 3, 1805.

An Act to amend the Charter of Georgetown.

Be it enacted, &c., That, from and after the second Monday in March current, the Corporation of Georgetown, in the District of Columbia, shall be divided into two branches; the first branch to be composed of five members, and a recorder, and to be called "the Board of Aldermen;" and the second branch to be composed of eleven members, and to be called "the Board of Common Council men;" which said two branches shall be elected as hereafter particularly provided.

Sec. 2. *And be it further enacted*, That, after the passage of this act, and before the said day above mentioned, the present members of the said corporation shall meet at their usual place of meeting, and then and there choose, by ballot, from their body, five persons to compose the said board of aldermen, which, said persons, when chosen as aforesaid, shall compose the said board of aldermen, and be, and continue such, until the fourth Monday in February, one thousand eight hundred and six; and that the present recorder of the said corporation shall be the president of the said board of aldermen, until the time last aforesaid: that the other members of the said corporation, (except the Mayor,) shall compose the said second branch, called the board of common council men, and be and continue such, until the time aforesaid, and shall choose out of their own body, a president, to be and continue such until the time aforesaid; and when thus organized, said corporation shall have, exercise and possess, all the powers and rights now vested

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in the said corporation, and to be herein and hereby vested in them.

Sec. 3. *And be it further enacted*, That the present Mayor of the Corporation of Georgetown, shall be, and continue such, until the first Monday of January next.

Sec. 4. *And be it further enacted*, That on the fourth Monday of February next, the free white male citizens of Georgetown, of full age, and having resided within the town aforesaid twelve months previously, and having paid tax to the corporation, shall assemble at a place to be appointed, as hereafter directed, and then and there shall proceed to elect, by ballot, five fit and proper persons, citizens of the United States, and residents of the said town one whole year next before the said day of election, above twenty-one years of age, and having paid a tax to said corporation, to compose the said board of aldermen; and shall also, at the same time, proceed as aforesaid, to elect eleven fit and proper persons, having the qualifications last aforesaid, to compose the said board of common council; the said board of aldermen to continue two years, and the said board of common council to continue one year: and the said mayor, together with such other fit persons as shall be named and appointed by the said corporation, shall be judges of the election, and the five persons voted for as aldermen, who shall have the greatest number of legal votes, on the final casting up of the polls, shall be declared duly elected for the board of aldermen: and the eleven persons voted for as common council, who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected for the board of common council; and that the like election for aldermen be held on the fourth Monday in February, every two years thereafter; and for the said common council, on the said fourth Monday in February, annually, forever thereafter.

Sec. 5. *And be it further enacted*, That on the first Monday of January next, and on the same day, annually, forever thereafter, the said corporation shall, by a joint ballot of the said two branches present, choose some fit and proper person to be mayor of the said corporation, and some fit and proper person, learned in the law, to be the recorder of the said corporation, to continue in office one year.

Sec. 6. *And be it further enacted*, That the said mayor, before he acts as such, and the said recorder, before he acts as such, shall, respectively, make oath, before some justice of the peace, for the county of Washington aforesaid, in the presence of both branches of the said corporation, that he will well and faithfully discharge the several and respective duties of his office; and that each member of the said two branches shall, before he acts as such, in the presence of the corporation, take an oath to discharge the duties and trust reposed in him, with integrity and fidelity.

Sec. 7. *And be it further enacted*, That four members of the board of aldermen, and seven members of the board of common council, shall form a quorum to do business; the said corporation shall hold two sessions in each year, commence on the first Monday in M[illegible] other on the first Monday in Decem[illegible] to adjourn from day to day, to be [illegible] place as the mayor may designate: [illegible] provided for by ordinance: *Provided* [illegible] the mayor shall have power, on urgent [illegible] to convene said corporation, on application [illegible] least five members, in writing, giving [illegible] notice of such intended meeting.

Sec. 8. *And be it further enacted* [illegible] of the said branches shall judge of [illegible] qualifications, and returns of its own [illegible] may compel the attendance of the [illegible] each branch by reasonable penalties [illegible] branch shall have power to appoint [illegible] dent, *pro tempore*, in case of the [illegible] one duly chosen, as aforesaid: [illegible] may originate in either branch, and [illegible] shall be passed but by a majority of [illegible] nor unless it shall pass both branches [illegible] same session, and be approved of [illegible] who shall sign the same, unless he [illegible] within forty-eight hours from the [illegible] is presented to him for signature, if he [illegible] object, he shall immediately return [illegible] said corporation, with his objections [illegible] if, on reconsideration, two thirds [illegible] the corporation shall be of opinion that the [illegible] law ought to be passed, it shall [illegible] the objections of the mayor, he [illegible] he shall sign the same; if the said [illegible] not return his objections to the said [illegible] corporation, within the time aforesaid [illegible] come a law, and shall be signed by [illegible] of the corporation shall record [illegible] kept by him for that purpose, all [illegible] solutions which shall be passed [illegible] deliver a copy of them to the public [illegible] printed by him for the use of the [illegible]

Sec. 9. *And be it further enacted* [illegible] the aldermen composing the first [illegible] at any time, on any question [illegible] equally divided, the recorder shall [illegible] ing vote, and determine such question [illegible] effect as if the same had been [illegible] majority of the aldermen present [illegible] power is hereby given to the president [illegible] ond branch in case of an equal [illegible] body.

Sec. 10. *And be it further enacted* [illegible] be the duty of the mayor to see that [illegible] the corporation be duly executed, [illegible] negligence or misconduct of any officer [illegible] corporation, who, on satisfactory [illegible] may remove from office the said [illegible] take such other measures thereupon [illegible] just and lawful; he shall lay before [illegible] poration, from time to time, in [illegible] terations in the laws of the said corporation [illegible] shall deem necessary and proper: [illegible] and exercise the powers of a justice [illegible] in the said town, and shall receive [illegible] annually, a just and reasonable compensation [illegible] be allowed and fixed by the said corporation [illegible] person shall be eligible to the said office [illegible]

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ıless a citizen of the United States, of the age of irty years, a resident of the said town for five ears then last past, and unless he shall have paid tax to said corporation.

SEC. 11. *And be it further enacted*, That in case 'a vacancy in either branch of the said corpo- tion, by death, removal, or otherwise, of either the members, a fit person or persons, qualified aforesaid, shall be elected by the people, in the anner aforesaid, to fill such vacancy immedi- ely thereafter; the mayor giving, however, at ıst five days' notice of such election; and in se of the vacancy of the mayor or recorder, the id corporation shall, within five days thereafter, hereinbefore directed, proceed to the choice of it person or persons, qualified as aforesaid, to fill ; or their place.

SEC. 12. *And be it further enacted*, That the d corporation shall have power to impose a tax, t exceeding, in any one year, fifty cents in the ndred dollars, on all property within the said vn; and the sessions of the said corporation ıll be held as heretofore, until the second Mon- / in March, current; and the said corporation ıll have, possess, and enjoy, all the rights, im- ınities, privileges, and powers heretofore enjoy- by them; and shall be called by the same name heretofore, and shall have perpetual succession; l, in addition thereto, they shall have power to ulate the inspection of flour and tobacco in said vn; to prevent the introduction of contagious eases within said town and precincts; to estab- ı night watches and patrols, and erect lamps; regulate the stationing, anchorage, and moor- of vessels; to provide for regulating and li- sing ordinaries, auctions, and retailers of li- ors, hackney carriages, wagons, carts, and drays, hin said town and precincts; to restrain or hibit gambling; to provide for licensing, reg- ting, or restraining theatrical or other public usements; to regulate and establish markets; pass all laws for the regulation of weights and asures; to provide for the licensing and regu- ng the sweeping of chimneys, and fixing the es thereof; to establish and regulate fire wards l fire companies; to regulate and establish the e of bricks to be made and used within said vn; the inspection of salted provisions, and the ize of bread; to sink wells and erect and re- r pumps in the streets; to impose and appro- ıte fines and penalties, and forfeitures for ach of their ordinances; to erect work-houses; open, extend, and regulate streets within the its of the said town; provided they make to person or persons who may be injured by h opening, extension, or regulation, just and ıitable compensation, to be ascertained by the dict of an impartial jury, to be summon- and sworn by a justice of the peace of the ınty of Washington, and to be formed of twen- three men, who shall proceed in like manner has been usual in other cases where private perty has been condemned for public use; and y shall have the power of restraining, regula- g, and directing the manner of building wharves l docks; also to direct the manner in which the improvements thereon to be erected, shall be made, so that they may not become injurious to the health of the town; in addition to the power heretofore granted to the said corporation by the act of Congress, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia," of laying a tax of two dollars per foot front for paving the streets, lanes, and alleys of the said town; they shall have the power, upon petition, in writing, of a majority of the holders of real property fronting on any street or alley, if, in their judgment, it shall be deemed necessary, to lay such further and additional sum on each front foot, on said street, or part of a street, as will be sufficient to pave said street or part of a street, lane, or alley, so petitioned for; and the like remedy shall be used for the recovery thereof as is now used for the recovery of the public county taxes, in the said county of Washington; and they shall have power by ordinance to direct or order the paved streets to be cleansed and kept clean, and appoint an officer for that purpose; to make and keep in repair all necessary sewers and drains, and to pass regulations necessary for the preservation of the same.

SEC. 13. *And be it further enacted*, That the duties on all licenses to be granted as aforesaid, shall be to and for the proper use and benefit of the said corporation; and the said corporation shall have power to pass all laws not inconsistent with the laws of the United States, which may be necessary to give effect and operation to all the powers vested in the said corporation; and to appoint constables and collectors of the taxes, and all other officers who may be deemed necessary for the execution of their laws, whose duties and powers shall be prescribed in such manner as the said corporation shall deem fit for the purpose aforesaid.

SEC. 14. *And be it further enacted*, That the jurisdiction of the said corporation shall extend to the limits of the original plan of said town, and to such additions as are recognised by law; and that a survey, as soon as conveniently may be after the passage of this law, shall be made, under the direction of the said corporation, ascertaining said limits, and a plat thereof made and returned to said corporation, which, when approved of by them, shall be preserved, and become a record.

Approved, March 3, 1805.

An Act supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty."

Be it enacted, &c., That the Secretary of the Treasury be authorized to cause the last payment due under the convention of the eighth day of January, one thousand eight hundred and two, between the United States of America and His Britannic Majesty, to be made in Great Britain: *Provided*, That the same may be effected without any risk to the United States.

Approved, March 3, 1805.

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An Act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie.

Be it enacted, &c., That from and after the thirty-first day of March next, all the shores and waters of the Lake Ontario, and the rivers and waters connected therewith, lying within the jurisdiction of the United States, and within the State of New York, to the westward of the western extremity of Sodus bay, but excluding all the rivers and waters emptying into the said bay, and to the eastward of the eastern extremity of a certain creek or bay, lying between Niagara and the Genesee river, and known by the name of Oak Orchard creek, shall be a district, to be called the district of Genesee, of which the river Genesee shall be the sole port of entry; and a collector for said district shall be appointed, to reside on the river Genesee.

Sec. 2. *And be it further enacted*, That all the shores, rivers, and waters heretofore belonging to the district of Niagara, which empty into Lake Erie, or into the river Niagara, above the Falls of Niagara, shall, from and after the thirty-first day of March next, be a district; to be called the district of Buffalo creek, of which Buffalo creek shall be the sole port of entry; and a collector for the said district shall be appointed to reside on Buffalo creek.

Sec. 3. *And be it further enacted*, That, from and after the thirty-first day of March next, all the shores, rivers, and waters of Lake Erie, within the jurisdiction of the United States, which lie between the west bank of Vermillion river, and the north cape, or extremity, of Miami bay, into which the river Miami of Lake Erie empties itself, and including all the waters of the said river Miami, shall be a district, to be called the district of Miami; and the President of the United States is authorized to establish such place at or near Sandusky, or on the said river Miami, to be the port of entry, as he shall judge expedient, and also to establish not exceeding two other places, to be ports of delivery only; and a collector for the said district shall be appointed, to reside at the port of entry, and surveyors to reside at such ports of delivery as may be established, as aforesaid.

Sec. 4. *And be it further enacted*, That the President be, and he is hereby, authorized to designate such place, in the district of Erie, as he shall judge expedient, to be the port of entry of the said district.

Sec. 5. *And be it further enacted*, That the several collectors and surveyors who may be appointed by virtue of this act, or by virtue of the third section of an act passed the third of March, one thousand eight hundred and three, which authorizes the establishment of a new collection district on Lake Ontario, in addition to the fees and commissions allowed by law, respectively, receive the same annual salary, which, by law, is allowed to the collectors and surveyors of the several districts comprising the northern and western boundaries of the United States.

Approved, March 3, 1805.

An Act further to alter and establish certain and for other purposes.

Be it enacted, &c., That the [illegible] roads be discontinued, namely:

In North Carolina—From Willie[illegible] don's store, Speed's and Wilson's [illegible] cey's and Norman's store to Perso[illegible] and from Wilkes to Ash Court-house

In Virginia—From New Dublin [illegible] Russell, and Lee Court-house, to Cr[illegible]

In Maryland—From Georgetow[illegible] and Laurel to Salisbury; from [illegible] Kent Island and Queenstown, to C[illegible]

In New Jersey—From Ringo's [illegible] ington.

In Massachusetts—From Worce[illegible] ter; from Springfield to Northa[illegible] Boston to Bridgewater.

In the Northwestern Territory—[illegible] cennes to Kaskaskia.

Sec. 2. *And be it further enacted*, [illegible] following post roads be establish[illegible]

In Massachusetts—From Warre[illegible] Rutland, Hubbardstown, Temple[illegible] don, and Fitzwilliam, to Keene [illegible] shire; from Weymouth Landing [illegible] East Bridgewater, and West [illegible] Taunton.

In New Jersey—From Cape [illegible] dinfield, Longacoming, Bar [illegible] Harbor, River Bridge, and Sand[illegible] secome in Galloway township.

In Pennsylvania—From America [illegible] Furnace and Bellefont, to W[illegible] Bristol, by Attleboro, Newtown, [illegible] to Quakertown; from New Hope [illegible] town and Montgomery's Square [illegible] from Norristown, by Pawlings [illegible] Morgantown, Churchtown, and New [illegible] Lancaster; from Philadelphia, thro[illegible] town, White Marsh, Montgomery [illegible] Quakertown, to Bethlehem; from [illegible] Lausanne, to Berwick; from Pres[illegible] lo Creek.

In Maryland—From Annapolis [illegible] to Chestertown.

In Virginia—From Randolph C[illegible] Frankfort; from Genito, by Cam[illegible] Amelia Court-house, and from the[illegible] sonville; from Prince Edward Court[illegible] Hunter's tavern, to Lynchburg; by C[illegible] Pittsylvania Courthouse, to Danv[illegible] field, by Sleepy Hole Ferry to Pors[illegible] Sleepy Hole to Suffolk.

In North Carolina—From W[illegible] by Bullock's and Brown's stores [illegible] and the Red House in Caswell county [illegible] Court-house; from Richland, by O[illegible] house, to Swanborough: from Ra[illegible] Ferry, on Neuse, Cross-roads at W[illegible] River, at Richardson's, Contentnea [illegible] ward's, Tossnot, at Dew's, to Tarbo[illegible] Greenville Court-house, in the Sta[illegible] Carolina, to Ashville in the State of [illegible] olina.

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:orgia—From Darien, by Tatnall and nery Court-house, to Fort Wilkinson. Washington in Kentucky, to Cincinnati

:iana—From Vincennes to Cahokia. *:per Louisiana*—From St. Louis to St.

:eans Territory—From Natchez, in the :pi Territory, by Caddy's Ferry, Cahola, :id settlements, to Natchitoches; from :ton city, by Athens in Georgia, to New and from Knoxville in Tennessee to the :ee settlements in the Mississippi Territo- to intersect the post road from Athens in :o New Orleans, at the most convenient ween Athens and the said settlements. ved, March 3, 1805.

aking appropriations for carrying into effect Indian treaties, and for other purposes of In- de and intercourse.

nacted, &c., That, for the purpose of de- he expenses that may arise in carrying :t the treaties lately made between the tates and the tribes of Indians called the :s, Piankeshaws, Sacs, and Foxes, the : sums, to be paid out of any moneys in :ury, not otherwise appropriated, be, and are hereby, appropriated, for the pay- :he annuities stipulated in the said trea- paid to the said Indians, that is to say: lawares, three hundred dollars, annually, ears, and the further sum of three hun- ars annually for ten years; to the Pian- annually, for ten years, the sum of two dollars; and to the Sacs and Foxes, one dollars annually, so long as the treaty n shall continue in force.

And be it further enacted, That, for the f exploring the Indian country, and of ng proper and convenient places for es- : trading-houses with the different Indian hin the territory of the United States, a ve thousand dollars be, and the same is ppropriated out of any moneys in the not otherwise appropriated.

And be it further enacted, That, for the f establishing additional trading-houses Indian tribes, a sum not exceeding one thousand dollars be, and the same is ›propriated, (the balance of a former ap- n being carried to the credit of the sur-) to be paid out of any moneys in the not otherwise appropriated. ed, March 3, 1805.

extend jurisdiction, in certain cases, to the Territorial Courts.

:acted, &c., That the superior courts of :l Territories of the United States, in istrict court has not been established by in all cases in which the United States :ned, have and exercise within their re- Territories the same jurisdiction and hich are by law given to, or may be exercised by, the district court of Kentucky district; and writs of error and appeals shall lie, from decisions thereon, to the supreme court, for the same causes and under the same regulations as from the said district court of Kentucky district.

Approved, March 3, 1805.

An Act to amend an act, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels, and for other purposes."

Be it enacted, &c., That the sixth section of the act, entitled "An act for imposing more specific duties on the importation of certain articles; and also for levying and collecting light-money on foreign ships or vessels, and for other purposes," shall not be deemed to operate upon unregistered ships or vessels, owned by citizens of the United States, in those cases where such ship or vessel is in possession of a sea-letter, or other regular document issued from the custom-house of the United States, proving such ship or vessel to be American property: *Provided, however*, That upon the entry of every such ship or vessel from any foreign port or place, if the same shall be at the port or place at which the owner or any of the part owners reside, such owner or part owners shall make oath or affirmation that the sea-letter, or other regular document possessed by such ship or vessel, contains the name or names of all the persons who are then owners of the said ship or vessel; or if any part of such ship or vessel has been sold or transferred since the date of such sea-letter or document, that such is the case, and that no foreign subject or citizen hath, to the best of his knowledge and belief, any share, by way of trust, confidence, or otherwise, in such ship or vessel. And if the owner or any part owner shall not reside at the port or place at which such ship or vessel shall enter, then the master or commander shall make oath or affirmation to the like effect. And if the owner or part owner, where there is one, or the master or commander, where there is no owner, shall refuse to swear or affirm as aforesaid, such ship or vessel shall not be entitled to the privileges granted by this act.

Approved, March 3, 1805.

An Act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

Be it enacted, &c., That, whensoever any treason, felony, misdemeanor, breach of the peace, or of the revenue laws of the United States, shall hereafter be committed within the jurisdiction of the United States, and the case shall be cognizable by or under their authority, if the person committing the same shall be on board of any foreign armed vessel, in any port or harbor in the United States, or in the waters within their jurisdiction, it shall be the duty of any judge or justice of any court of the United States, upon satisfactory proof thereof to him made, to issue his warrant, specifying the nature of the offence, and directed to a

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marshal, commanding him to take the body of the offender, and bring him before the said judge or justice, to be dealt with according to law. And if the said marshal shall deem the ordinary *posse comitatus* insufficient to insure the execution of the said warrant, he shall apply to the said judge or justice, who shall immediately issue his order, directed to any officer having command of militia, or any officer having command of regular troops, or of armed vessels of the United States, in the vicinity, requiring him to aid the said marshal with all the force under his command, or such part as may be necessary in executing the warrant aforesaid. And the said marshal, conforming in all things to the instructions which he shall receive from the President of the United States, or from any other person authorized by the President, shall first demand the surrender of the person charged with the offence; and if delivery be not made, or if the marshal be obstructed from making the demand, he shall use all the means in his power, by force and arms, to arrest the offender, and all others who are with him, giving him aid and countenance in evading the arrest, and he shall convey the said offender, and all others arrested as aforesaid, and deliver them to the civil authority, to be dealt with according to law. If death ensue to the person ordered to be arrested, or to any of those giving him aid and countenance, it shall be justified; but if to the marshal, or to any of those supporting him in the discharge of his duty, the persons engaged in resisting the civil authority shall be punished as in cases of felonious homicide.

Sec. 2. *And be it further enacted*, That whensoever, after the passage of this act, any felony, misprision of felony, misdemeanor, or breach of the peace, shall be committed within the body of a county in any one of the United States, and any process of law shall be issued under the authority of the State, for the purpose of arresting the offender, if the offender shall be on board any foreign armed vessel, in any port or harbor of the United States, and within the jurisdiction of the State in which the offence was committed, it shall be lawful for the Governor or other supreme executive officer of the State in which the said offence shall have been committed, upon due proof thereof, and upon his being satisfied that the ordinary *posse comitatus* is insufficient to insure the execution of the said process, to issue his order, directed to any officer having command of regular troops, or armed vessels of the United States in the vicinity, requiring him to aid the officer charged with the execution of the process, with all the force under his command, or such part thereof as may be necessary in arresting the offender, and all those giving aid and countenance in resisting the civil authority. And if the said offender shall flee to any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall be, and he is hereby, authorized to pursue the said offender into such place, taking with him, if necessary, the said armed force, and there arrest him in virtue of the said process. And if the said offender shall [illegible] or be on board of, any foreign armed vessel [illegible] in any place beyond the jurisdiction of the [illegible] and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall first demand the delivery of the said offender of and from the persons persons having charge and command of the said foreign armed vessel, declaring the authority and cause for which the demand was made; and if the said offender be not delivered according to the said demand, or if the officer charged with the execution of the process be obstructed in attempting to make the demand, then he shall use all the means in his power, by force and arms, to enter on board the said foreign armed vessel there to search for and arrest the said offender, and all those who are with him giving him aid and countenance, in preventing and resisting the execution of the said process; and the officer charged with the execution of the said process shall convey the said offender and deliver him over to the civil authority of the State, to be dealt with according to law; and all those arrested for being concerned in resisting the execution of the process, shall be delivered over to the civil authority of the United States, and shall be punished in the same manner as if they had been concerned in knowingly and wilfully obstructing, resisting, or opposing any officer of the United States, in serving or attempting to serve any warrant or other legal or judicial writ issued under the authority of the United States. But if any of those concerned in making the arrest be killed in a place within the exclusive jurisdiction of the United States, those engaged in resisting the civil authority shall be punished as in cases of felonious homicide; and if the person charged with the offence, or any of those concerned with him in resisting, be killed in a place under the exclusive jurisdiction of the United States, it shall be justified.

Sec. 3. *And be it further enacted*, That if any commanding officer of militia, of regular troops, or armed vessels of the United States, shall refuse to obey the requisition authorized by this act, he shall forfeit a sum not exceeding five thousand dollars.

Sec. 4. And in order to prevent insults to the authority of the laws, whereby the peace of the United States with foreign nations may be endangered, *Be it further enacted*, That it shall be lawful for the President of the United States either to permit or interdict, at pleasure, the entrance of the harbors and waters under the jurisdiction of the United States, to all armed vessels belonging to any foreign nation, and by force to repel and move them from the same, except when they shall be forced in by distress, by the dangers of the sea, by being pursued by an enemy, or when charged with despatches or business from the Government to which they belong; in which cases, as well as in all others when they shall be permitted to enter, the commanding officer shall immediately report his vessel to the collector of the district, stating the object or cause of his

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the harbor or waters, shall take such po- herein, as shall be assigned him by such r, and shall conform himself, his vessel, w, to such regulations respecting health, supplies, stay, intercourse, and departure, be signified to him by the said collector, he authority and directions of the Presi- the United States, and not conforming shall be required to depart from the Uni- tes.

5. *And be it further enacted*, That when- ny armed vessel of a foreign nation enter- harbors or waters within the jurisdiction Inited States, and required to depart there- all fail so to do, it shall be lawful for the nt of the United States, or such other per- e shall have empowered for that purpose, y such part of the land and naval forces Inited States, or the militia thereof, as he em necessary to compel the said armed depart; or if he shall think it proper, it lawful for him to forbid, by proclamation, course with such vessel, and with every essel of the same nation, and the officers v thereof; to prohibit all supplies and aid ing furnished them, and also to instruct ector of the district, where such armed all be, and of any and of every other dis- he United States, to refuse permission to el belonging to the same nation, or to its or subjects, to make entry or unlade, so the said armed vessel shall remain in the or waters of the United States, in defi- the public authority. And if, after the ion of said proclamation, and due notice any person shall afford any aid to such essel, or to any other, contrary to the pro- contained in the said proclamation, either ing the said vessel, or in furnishing her, ers or crew, with supplies of any kind, or nanner whatsoever; or if any pilot shall navigating the said armed vessel, or any ntrary to the prohibition contained in the clamation, unless it be for the purpose of the armed vessel required to depart, as l, beyond the limits and jurisdiction of ed States, the person or persons so offend- forfeit and pay a sum not exceeding one l dollars, and shall also be liable to be their good behaviour.

. *And be it further enacted*, That when- ny officer of an armed vessel commis- y any foreign Power, shall, on the high mit any trespass or tort, or any spoli- board any vessel of the United States, nlawful interruption or vexation of trad- ls actually coming to or going from the States, it shall be lawful for the Presi- the United States, on satisfactory proof cts, by proclamation to interdict the en- f the said officer, and of any armed ves- m commanded, within the limits of the tates; and if, at any time after such pro- n made, he shall be found within the lim- United States, he shall be liable therefor rested, indicted, and punished, by fine and imprisonment, in any court in the United States having competent jurisdiction; and it shall be a part of the sentence that he shall, within such time after the payment of his fine and the expiration of his term of imprisonment, as the court shall direct, leave the United States, never to return. And if he shall return within the limits of the United States, after the passing of such sentence, or be found therein after the period limited by the court as aforesaid, he shall again be liable to be indicted, fined, and imprisoned, at the discretion of the court: *Provided always*, That, if the said officer shall also have committed any other offence made punishable by this act, he shall be liable to prosecution and punishment; the provisions of this section to the contrary notwithstanding.

SEC. 7. *And be it further enacted*, That the President of the United States shall be, and he is, hereby, authorized and required to give, as soon as may be, after the passage of this act, to the collectors of the respective districts, and to such other persons as he may think proper, the necessary instructions for carrying this act into effect, particularly marking out the line of conduct to be observed by the marshal, and the several collectors, in performing the duties enjoined by this act.

SEC. 8. *And be it further enacted*, That if any person shall be sued for anything done in pursuance of, or in obedience to this act, he may plead the general issue and give this act in evidence, any law, custom, or usage, to the contrary notwithstanding.

SEC. 9. *And be it further enacted*, That this act shall continue in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

Approved, March 3, 1805.

An Act to regulate the clearance of armed merchant vessels.

Be it enacted, &c., That, after due notice of this act at the several custom houses, no vessel owned in whole, or in part, by any citizen or citizens of the United States, or by any person or persons residing within the same, or the territories thereof, and armed, or provided with the means of being armed at sea, shall receive a clearance or be permitted to leave the port where she may be so armed, or provided, for any island in the West Indies, or for any port or place situated on the continent of America, between Cayenne and the southern boundary of Louisiana, without bond with two sufficient sureties being given by the owner or owners, agent or agents, together with the master or commander, to the United States, in a sum equal to double the value of said vessel, her arms, ammunition, tackle, apparel, and furniture, conditioned that such arms and ammunition shall not be used for any unlawful purposes, but merely for resistance and defence, in case of involuntary hostility; and that the guns, arms, and ammunition of such vessel shall be returned within the United States, or otherwise accounted for, and shall not be sold or

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disposed of in any port or place in the West Indies; which bond may be sued for and recovered with costs of suit, in the name, and for the use, of the United States, in any court of competent to try the same.

Sec. 2. *And be it further enacted*, That no armed merchant vessel, or vessel prepared for armament, owned as aforesaid, shall receive a clearance, or be permitted to depart from any port in the United States, for any port or place other than those described in the first section of this act, unless the owner or owners, agent or agents, and the commander of such vessel, shall make oath that such vessel is not bound or intended to proceed to any island in the West Indies, or any port or place on the continent between Cayenne and the southern boundary of Louisiana, nor on the continent of America between Cayenne and the southern boundary of Louisiana, and also unless a bond be given by the owner or owners, agent or agents, and commander, in a sum equal to double the value of such vessel, her arms, tackle, apparel, and furniture, to the use of the United States, conditioned that such vessel shall not proceed to any island in the West Indies, or port on the continent, as aforesaid, unless compelled thereto by unavoidable accident; and if so compelled, that no part of the cargo of such vessel shall be sold, except so much thereof as may be absolutely necessary to defray the expenses necessary to enable such vessel to proceed on her intended voyage.

Sec. 3. *And be it further enacted*, That if any armed vessel, as aforesaid, shall proceed to sea without a clearance, contrary to the provision of this act, such vessel, with her arms, ammunition, tackle, apparel, and furniture, shall be forfeited to the use of the United States, and be liable to be seized, prosecuted, and condemned; or the value thereof may be sued for, and recovered with costs of suit, of the owner or owners of such vessel, in any court of competent jurisdiction; and the collector within whose district such forfeiture shall accrue, is hereby enjoined to cause prosecutions for the same to be commenced without delay, and prosecuted to effect.

Sec. 4. *And be it further enacted*, That this act shall be in force until the end of the next session of Congress, and no longer.

Approved, March 3, 1805.

An Act supplementary to the act entitled "An act making provision for the disposal of the public lands in the Indiana Territory; and for other purposes."

Be it enacted, &c., That the lands lately purchased from the Indian tribes of the Wabash, and lying between the rivers Wabash and Ohio, and the road leading from the falls of the river Ohio to Vincennes, shall be attached to, and made a part of the district of Vincennes, and be offered for sale at that place, under the same regulations, at the same price, and on the same terms, as other lands lying within the said district.

Sec. 2. *And be it further enacted*, That such and so many of the tracts of land lying north and west of the Indian boundary established by the Treaty of Greenville, which were ceded by that treaty to the United States, as the President of the United States shall direct, shall be surveyed and subdivided in the same manner as the other public lands of the United States, and shall be offered for sale at Detroit, or at such of the other land offices established by law in the State of Ohio, or in the Indiana Territory, as the President of the United States shall judge most expedient, under the same regulations, at the same price, and on the same terms, as other lands lying within the same district.

Sec. 3. *And be it further enacted*, That so much of the tract of land lately purchased from the Indian tribes known by the name of Sacs and Foxes as the President of the United States shall think expedient and shall direct, shall be attached to and made a part of the district of Kaskaskias, and shall be offered for sale at that place, under the same regulations, at the same price, and on the same terms, as other lands lying within the said district.

Sec. 4. *And be it further enacted*, That the lands lying within the districts of Vincennes, Kaskaskias, and Detroit, which are claimed by virtue of French or British grants, legally and fully executed, or by virtue of grants issued under the authority of any former act of Congress, by either of the Governors of the Northwest or Indiana Territories, and which had already been surveyed by a person authorized to execute such surveys, shall, whenever it shall be found necessary to resurvey the same for the purpose of ascertaining the adjacent vacant lands, be surveyed at the expense of the United States, any act to the contrary notwithstanding.

Sec. 5. *And be it further enacted*, That persons claiming lands in either of the said three districts, either under legal grants derived from the French or British Governments, or by virtue of actual possession and improvement, or for any other account whatever, may, until the first day of November next, give notice, in writing, to the register of the land office of their claims, and have the evidence of the same recorded, in the manner and on payment of the fees provided by the act to which this act is a supplement; and the right of any person neglecting to give in writing notice of his claim, and to have the evidence of the same recorded, shall become void and forever be barred.

The commissioners appointed for the purpose of examining the claims of persons claiming lands in the said three districts, shall, in their respective districts, have the same powers, and perform the same duties in relation to the claims thus filed, as if notice of the same had been given before the first day of January last; and as was provided by the act to which this act is a supplement, in relation to the claims therein described. It shall be the duty likewise of the clerk of each board to prepare two transcripts of all the decisions made by the said commissioners in favor of the claimants, and to transmit one to the surveyor general and one to the Secretary of the Treasury. It shall also be the duty of the said commissioners, respectively, to make to the Secretary of the Treasury a report of all the claims filed with the register of the land

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office, which they may have rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; and they shall in relation to any such rejected claims, which were founded on possession and actual settlement and improvement, particularly state the date of the improvement, and the quantity, situation and boundaries of the land claimed. Those reports, together with the transcripts of the decisions of the commissioners, in favor of claimants, shall be laid by the Secretary of the Treasury before Congress at their next session: and the lands, the claims to which shall have been affirmed by the commissioners, as well as those, the claims to which, though rejected by the commissioners, were derived from actual possession, improvement, and settlement, shall not be otherwise disposed of until the decision of Congress thereupon shall have been made. Each of the said commissioners, and each of the clerks of the respective boards, shall be allowed an additional compensation of five hundred dollars, in full for his services as such in relation to such claims; and each of the registers of the land offices, for the said three districts, shall be allowed a further sum of five hundred dollars, as a compensation in full for translating and recording, or causing to be translated and recorded, grants, deeds, or other evidences of claims in the French language.

SEC. 6. *And be it further enacted*, That the Governor of the Michigan Territory shall act as one of the superintendents of the sales of public lands at Detroit, in lieu of the Governor of the Indiana Territory.

SEC. 7. *And be it further enacted*, That all the sections heretofore reserved for the future disposition of Congress, and lying within either of the districts established for the disposal of public lands in the State of Ohio, with the exception of the section No. 16, of the salt springs, and lands reserved for the use of the same, and of the other sections or tracts of land, otherwise heretofore specially appropriated, shall be offered for sale in that district within which such reserved sections may lie, on the same terms, and on the same regulations, as other lands in the same district; *provided*, That such sections shall previously be offered to the highest bidder at public sales, to be held under the superintendence of the register and receiver of the land offices, respectively, to which they are attached, on the same terms as have been provided for the public sales of the other lands of the United States, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose: *And provided, also*, That no such heretofore reserved section shall be sold, at either public or private sale, for less than eight dollars per acre.

SEC. 8. *And be it further enacted*, That the expenses which may be incurred by virtue of this act, shall be defrayed out of the sums which have been, or may hereafter be appropriated for defraying the expenses incident to the surveying and disposal of the public lands of the United States in the Mississippi and Indiana Territories.

Approved, March 3, 1805.

An Act in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary War."

Be it enacted, &c., That the provisions contained in the first section of "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," passed the third day of March, one thousand eight hundred and three, are hereby extended to all those persons in the service of the United States, who, in consequence of their disability by known wounds, received in actual service, during the Revolutionary war, resigned their commissions, or took discharges; or who, after incurring their disability, were taken captive by the enemy, and remained, either in captivity, or on parole, until the close of the war; or who, in consequence of known wounds received in the actual service of the United States, have, at any period since, become, and continued disabled in such manner as to render them unable to procure a subsistence by manual labor; *Provided*, That every person of the several descriptions herein mentioned, applying for a pension, shall, in all other respects, conform to the requirements of the act to which this is an addition.

Approved, March 3, 1805.

An Act to provide for the accommodation of the President of the United States.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to cause to be sold such part of the furniture and equipage belonging to his household as may be decayed and out of repair; and that the sum of fourteen thousand dollars, together with the proceeds of such sales, be appropriated for the accommodation of the household of the President of the United States, to be laid out at his discretion, and under his direction.

Approved, March 3, 1805.

RESOLUTIONS.

Resolution expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers and crew of the United States ketch Intrepid, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

1. *Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled.* That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword, and to each of the officers and crew of the United States ketch Intrepid, two months' pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services of Captain Decatur, the officers and crew of the said ketch, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

Approved, November 27, 1804.

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Resolutions expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines of his squadron.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the thanks of Congress be, and the same are hereby, presented to Commodore Edward Preble, and through him to the officers, petty officers, seamen, and marines attached to the squadron under his command, for their gallantry and good conduct, displayed in the several attacks on the town, batteries, and naval force of Tripoli, in the year one thousand eight hundred and four.

Resolved, That the President of the United States be requested to cause a gold medal to be struck, emblematical of the attacks on the town, batteries, and naval force of Tripoli, by the squadron under Commodore Preble's command, and to present it to Commodore Preble, in such manner as in his opinion will be most honorable to him: and that the President be further requested to cause a sword to be presented to each of [illegible] missioned officers and mid-shipmen who [illegible] tinguished themselves in the several [illegible]

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Resolved, That the President of the [illegible] States be also requested to communicate [illegible] parents, or other near relatives of Captain [illegible] Somers, Lieutenants Henry Wadsworth [illegible] Decatur, James R. Caldwell, and [illegible] John Sword Dorsey, the deep regret [illegible] gress feels for the loss of those gallant [illegible] names ought to live in the recollection [illegible] fection of a grateful country, and who [illegible] ought to be regarded as an example [illegible] generations.

Approved, March 3, 1805.

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