udge 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 alledged againſt him; and this he prays may be enquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to them to require.

The third article of impeachment alledges that this reſpondent, "with intent to oppreſs and procure the conviction of the priſoner, did not permit the evidence of John Taylor, a material witneſs 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 theſe ſets of words was charged as a libel againſt John Adams, as preſident of the United States—and the twelvth 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 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 or not. If the law ſhould be conſidered as conſtitutional, then the traverſer, whether the words in the twelfth charge were proved 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 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 the teſtimony of John Taylor.

That the court did not feel this vindictive ſpirit, is certainly 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 ſentenced to only nine months impriſonment, inſtead of two years.—And this reſpondent avers, that he never felt or expreſſed a wiſh to go farther, 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 ſaid action, which in his colleague is conſidered as free from blame. But this reſpondent will not content himſelf with ſhewing, 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 ſhew 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 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 alledged in the publication. Theſe two phraſes therefore taken ſeperately, 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, and had ſubſerved the Britiſh intereſt, againſt the intereſts 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 ſhew 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 trial. 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 queſtion intended to be put to the witneſs, ſhould be reduced to writing, ſubmitted to their inſpection; ſo as to enable them to judge more accurately, how far thoſe queſtions were proper and admiſſable. 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?"

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 twelfth charge; for Mr. Adams's approbation or diſapprobation of the funding ſyſtem, could not have the remoteſt 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 of, to prove the truth of the other matter contained in the thirteenth charge. It was from their connection 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 connection with the matter in iſſue, although its irrelevancy is not quite ſo apparent. Mr. Adams 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 inferrence could not be made from the fact, admitting it to be true. The fact, if true, was *no* evidence to ſupport ſuch an inferrence, 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 any thing, 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 different 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 of no 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 entertain, concerning the nature of ariſtocracy, democracy or republicaniſm. And, laſtly, the queſtion itſelf was 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, immaterial 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. *(To be Continued.)*

FROM WASHINGTON:

SENATE OF THE UNITED STATES,

HIGH COURT of IMPEACHMENT

"*Thurſday, February* 14, 1805.

"The court of impeachment was opened to day at twelve, and continued open 'till half paſt three, when, many witneſſes, who had been ſummoned, not appearing when called, the court adjourned to meet to-morrow at *ten* o'clock—it ſeems the ſenate had previouſly come to a reſolution to that effect. The witneſſes, examined to-day, *Edmund Randolph*, of Virginia; *George Reed*, *James Lee*, and *John Crow*, all of Delaware; *John Montgomery*, and *J. T. Maſon*, of Maryland *S. H. Smith*, of Waſhington city; *John Stevens*, of Baltimore.

"The evidence of Mr. *E. Randolph* was not very important, as it appeared he had not been preſent on the particular occaſion, for which teſtimony was required.

"Mr. *Reed* and the other witneſſes from Delaware, ſupported the charges laid concerning the conduct of judge *Chaſe*, in that ſtate—their evidence was very full and circumſtantial.

"The teſtimony of Mr. *Montgomery* and of the other remaining witneſſes, went to ſuſtain the article arraigning the conduct of judge *Chaſe* on delivering a charge to a jury at Baltimore in 1803, when he reviled the adminiſtration of the government, the acts of congreſs, the conſtitution, legiſlature and law of Maryland, and reprobated the natural rights of man and of ſuffrage without eſtate.—The expreſſions and manner of the judge were fully repreſented in the able and perſpicuous evidence of Mr. *Montgomery*, who is a diſtinguiſhed member of the Maryland legiſlature, and his teſtimony was corroborated by the other witneſſes.

"Mr. *J. Randolph*, on the part of the managers, produced and delivered, authenticated copies of the record of the court, in the caſe of Callender's arreſt by copies without a ſummons; and record of court on Fries's trial at Philadelphia.

"Mr. *Charles Lee*, formerly attorney general of the U. S. acts as one of Mr. Chaſe's counſel, which now conſiſt of *Luther Martin*, *R. G. Harper*, *J. Hopkinson*, *P. B. Key*, and *C. Lee*.

"*Friday, February* 15, 1805.

"The court of impeachment was opened this day at ten, and continued open until half paſt two o'clock, when the two houſes adjourned to their legiſlative chambers.

"The buſineſs of this day was wholly defenſive. Mr. *Harper* opened the caſe on behalf of the judge, but he did not, to day, go beyond a plain ſtatement of what the evidence to be produced would amount to—no argument was entered upon. The witneſſes called, were in the following order—*Samuel Ewing*, *Wm. Meredith*, and *Wm Rawle*, of Philadelphia; *E. J. Cole*, *Luther Martin*, and *James Winchester*, of Baltimore; and *Wm. Marſhall*, of Richmond.

"The teſtimony of the four firſt witneſſes related to the trial of *Fries*, and to the behaviour of Mr. Chaſe on that occaſion. Mr. *Wirchester's* evidence went to prove that a converſation, at Annapolis, reſpecting Callender, &c. was *all a joke*. Mr. *Martin's* evidence related to his under-ſcoring paſſages in the book called the *proſpect before us*.—Mr. *Marſhall's* examination and croſs examination occaſioned more than half of the whole ſitting of this day; and embraced a circumſtantial and detailed ſtatement of all the proceedings, neceſſary to the defence.

"The court adjourned, to meet at ten to-morrow."

"*Saturday, February* 16*th* 1805.

"The court of impeachment ſat this day from ten to half paſt two o'clock, when both houſes adjourned to their legiſlative chambers, and proceded on legiſlative buſineſs.

"The witneſſes examined this day, on the part of judge Chaſe, were *D. M. Randolph*, formerly marſhal of Virginia, *John Marſhall*, chief juſtice of the U. S *Edward Lee*, *John A. Chevalier*, *Robert Gamble*, *Wm. Gooch*, and *David Robinſon*, all of Virginia.

"The evidence of *D. M. Randolph* was a *point blank* contradiction of the teſtimony of col. Wm. Heath: he denied ever ſhewing the pannel of Callender's jury to judge Chaſe, that he ever took any concern in politics, and in ſhort, he declared he knew very little of political characters. The evidence of the *chief juſtice* related to the tranſactions during Callender's trial, and, in fact, amounted to very little in point, it was cautious, guarded, and forgetful. Mr. *Chevalier* proved nothing: Mrr *Gamble* was one of the jury on Callender's trial: Mr. *Gooch* was a ſpectator and gave a humorous deſcription of the trial.—Mr. *Robinſon*, a lawyer, took ſhort hand notes of the trial, and read them at length in evidence.

"It is now expected that the trial will cloſe before the end of the enſuing week. Of the iſſue it is not perhaps, proper to anticipate or to expreſs our opinion, though both ſides appear ſanguine of the ſucceſs of reſpective object."

"*Monday, February* 18*th*, 1805.

"The court of impeachment ſat this day from ten to three o'clock. All the witneſſes examined were on the part of judge Chaſe, and were as follows: *William Marſhall*, *John Wincheſter*, *William Rawle*, *Edward Lee*, *Philip Gooch*, *Luther Martin*; all before examined, now re-examined, on particular points of evidence, particularly as to forms of proceeding in courts—the only reſult that could be diſcovered, I obſerved, was a total *uncertainty*, which, of courſe, is a *glorious* circumſtance. *Gunning Bedford*, —— *Vandyke*, *Archd. Hamilton*, *John Hall*, and *Samuel Moore*, all of Delaware, were examined in chief, on the article relating to the conduct of judge Chaſe in Delaware; this is not the proper time to offer any animadverſions on evidence—perhaps, when the queſtion ſhall be decided by the topic may prove a fruitful one—Mr. *Moore*, from Delaware, however, merits, for his frankneſs and his manlineſs the eſteem of every man who poſſeſſes a ſenſe of generous honor, and whatever may be ſaid as to his politics, it would be impoſſible for a generous man not to eſteem him; the pleaſure of ſeeing and hearing an honeſt man like him repays a thouſand mortifications which muſt neceſſarily be felt in viewing the machinery that paſſes men like puppets before the eyes of the world. *W. H. Winder* of Maryland, was examined, in chief; and Mr. *Montgomery*, of Maryland, and judge *Wincheſter* re-examined.

"The ſum of all this day's evidence was intended to ſhew what the practices of the courts were, in relation to the iſſuing of *capias* or *ſummons*, caſes of miſdemeanor—from which it appeared, that, there was not only a variation in the practice in different ſtates, but that tht *practice* was different in the ſame ſtate!

On the Delaware charge the evidence was intended to prove that the judge did not do any thing more than he ought to have done.

And on the article, relative to the judge's conduct in Maryland, the evidence was intended to prove the ſame thing—that is, the ſeveral tranſactions are allowed to have occurred, but it is denied that they occurred in the *manner* deſcribed—that, where it is ſaid they were acts of intemperance and tyranny in the charge, they are maintained to have been either only earneſtly, or jocularly, or wittily or properly done. Since Mr. *Pitt's* examination in the caſe of the *acquitted felons*, I ſuſpect there never has been ſuch a *diſplay of forgetfulneſs*, as on this occaſion—you would ſuppoſe that like *Abet Drugger* they had "*a ſive like memory*."

"I am told the evidence is likely to cloſe to-morrow, and that the arguments will then proceed. The zeſt of the trial appears to have worn off, during the deſultory examination of evidence; perhaps when the *orators* begin, the ſpirit of curioſity may again awaken."

"*Tuesday, February* 19*th*, 1805.

"The court of impeachment ſat this day from 10 to half after one o'clock—when the evidence was cloſed on the part of the defendant. The managers, by the chairman, ſuggeſted their wiſh to allow the oppoſite counſel time to collect and arrange their evidence—and that the court might, for the purpoſe, be adjourned 'till to-morrow.

"This was, after a few obſervations on the other ſide and from the preſident, agreed upon.

"Judge *Chaſe* offered a ſhort addreſs to the court through his counſel, praying to be permitted to retire, as he felt ſevere indiſpoſition from the gout—which was aſſented to by the court, and he retired.

"The witneſſes examined this day were 1, *Edward Tilghman*—2, *Thomas Chaſe* 3, *Philip Moore*—4, *M. Dorſey*—5, *John Purviance*—6, *John Campbell*—10, *Wm. Cranch*—11, *Thomas Hall*—12, *T. M. Randolph*—13. *G. Hay*—14 *P. N. Nicholas*—15, *J. Montgomery*.

"The firſt witneſs was examined upon points of legal forms of proceeding; from the 2d to the 11th were examined, upon the matter of judge Chaſe's charge to the grand jury at Baltimore, 12, 13 and 14, on points of evidence and proceeding in Virginia 15 on the charge at Baltimore.

"The evidnece on the matter of legal proceeding impreſſed me with no one fact more ſtrongly than that the modes of proceeding in the courts of Maryland, are more prepoſterous than any I ever heard of any where elſe, and it ſtruck me the more remarkably, becauſe it is the generally received notion that the priſoner at the bar, is the reputed *father* and *mother* of all that diſtinguiſhes the practice of Maryland from that of other ſtates. The great object of the evidence concerning the charge at Baltimore ſeemed rather to be directed to invaildate the evidence of Mr. *Montgomery*, a diſtinguiſhed republican of Maryland, againſt whom part of the charge, it ſeems from the evidence, was directed.—However this object, which bore both an exculpatory and a political aſpect, was not accompliſhed.

"The evidence concerning proceedings in Virginia, went to explain an erroneous inference which appeared to be drawn from the evidence of Mr. *J. Meade Randolph*, that Mr. *G. Hay* had endeavoured to diſſuade the marſhal from a diſcharge of his duty; this inference