sel that they were permitted to file their plea, which was done by Mr. Ingersoll, and read by the Secretary, as follows:

"UNITED STATES *vs.* WILLIAM BLOUNT.

"Upon Impeachment of the House of Representatives of the United States, of high crimes and misdemeanors.

"IN SENATE OF THE UNITED STATES, *Dec.* 24, 1798.

"The aforesaid William Blount, saving and reserving to himself all exceptions to the imperfections and uncertainty of the articles of impeachment, by Jared Ingersoll and A. J. Dallas, his attorneys, comes and defends the force and injury, and says, that he, to the said articles of impeachment preferred against him by the House of Representatives of the United States, ought not to be compelled to answer, because he says that the eighth article of certain amendments of the Constitution of the United States, having been ratified by nine States, after the same was, in a Constitutional manner, proposed to the consideration of the several States in the Union, is of equal obligation with the original Constitution, and now forms a part thereof, and that by the same article it is declared and provided, 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 informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.'

"That proceedings by impeachment are provided and permitted by the Constitution of the United States, only on charges of bribery, treason, and other high crimes and misdemeanors, alleged to have been committed by the President, Vice President, and other civil officers of the United States, in the execution of their offices held under the United States, as appears by the fourth section of the second article, and by the seventh clause of the third section of the first article, and other articles, and clauses contained in the Constitution of the United States.

"That although true it is, that he, the said William Blount, was a Senator of the United States, from the State of Tennessee, at the several periods in the said articles of impeachment referred to; yet, that he, the said William, is not *now a Senator*, and is not, nor was at the several periods, so as aforesaid referred to, an *officer* of the United States; nor is he, the said William, in and by the said articles, charged with having committed any crime or misdemeanor, in the execution of any civil office held under the United States, or with any malconduct in civil office, or abuse of any public trust, in the execution thereof.

"That the Courts of Common Law, of a criminal jurisdiction, of the States, wherein the offences in the said articles recited are said to have been committed, as well as those of the United States, are competent to the cognisance, prosecution, and punishment, of the said crimes and misdemeanors, if the same have been perpetrated, as is suggested and charged by the said articles, which, however, he utterly denies. All which the said William is ready to verify, and prays judgment whether this High Court will have further cognisance of this suit, and of the said impeachment, and whether he, the said William, to the said articles of impeachment, so as aforesaid preferred by the House of Representatives of the United States, ought to be compelled to answer.

"JARED INGERSOLL.
"A. J. DALLAS."

On request of Mr. HARPER, in behalf of the Managers, that they be allowed a further delay, to wit: until Thursday sennight, to file their replication, it was allowed, and the Court adjourned to that time.

JANUARY 3, 1799.

The Court being opened, and the Managers and counsel being present,

Mr. BAYARD, Chairman of the Managers, in behalf of the House of Representatives, offered a replication, which was read by the Secretary as follows:

The replication of the House of Representatives of the United States, in their own behalf, and, also, in the name of the people of the United States, to the plea of William Blount to the jurisdiction of the Senate of the United States, to try the Articles of Impeachment exhibited by them to the Senate against the said William Blount:

The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the Articles of Impeachment exhibited by them to the Senate of the United States against the said William Blount, reply to the plea of the said William Blount, and say, that the matters alleged in the said plea are not sufficient to exempt the said William Blount from answering the said Articles of Impeachment, because, they say that, by the Constitution of the United States, the House of Representatives had power to prefer the said Articles of Impeachment, and that the Senate have full and the sole power to try the same. Wherefore, they demand that the plea aforesaid, of the said William Blount, be not allowed, but that the said William Blount be compelled to answer the said Articles of Impeachment.

Signed by order, and in behalf of the House.

JONATHAN DAYTON, *Speaker*.

Attest: JON. W. CONDY, *Clerk*.

Mr. INGERSOLL, counsel for the defendant, thereupon presented a rejoinder, which was read by the Secretary, as follows:

UNITED STATES *vs.* WILLIAM BLOUNT.

In the Senate of the United States.

And the aforesaid William Blount, by Jared Ingersoll and Alexander J. Dallas, his attorneys, says, that the matter by him before alleged, which he is ready to verify, is sufficient reason in law to show that this Court ought not to hold jurisdiction of the said impeachment, and the articles therein set forth; which said matter so as aforesaid by him alleged, the said House of Representatives not having denied or made answer thereto, he prays the judgment of this honorable Court, whether they will hold further jurisdiction of the said impeachment, or take cognizance thereof, and whether the said William Blount shall make further answer thereto.

JARED INGERSOLL.
A. J. DALLAS.

JANUARY 3, 1799.

Mr. BAYARD, the Chairman, having communicated with Mr. Ingersoll, the leading counsel for the

endant, it was agreed between them, that the nagers should proceed in the argument first on part of the prosecution, and that the right reply should belong to the Managers: whereon;

Mr. BAYARD rose, and proceeded as follows:

Mr. President: The House of Representatives ng in possession of evidence of a nature to conce them that William Blount, late a Senator the United States, has been guilty of high mes and misdemeanors, conceived it to be their nstitutional duty, by exhibiting to the Senate icles of impeachment against him, to demand tice in the name and on the behalf of the peo of the United States. To the articles which e been preferred, the party impeached has apred; but, instead of answering them, has aded that the Senate has not jurisdiction to the matters which they contain. The House Representatives have replied that the plea is ufficient, and have demanded that the party be npelled to answer the articles. The point, refore, upon which we are now at issue, and ich is to be the subject of discussion, is, wher the Senate has cognizance, in this case, of matters which are charged in the articles of peachment? In the observations which I have submit upon the point in controversy, I shall tainly avoid everything of a declamatory nae, as equally unsuitable to the gravity and wisn of this honorable body, as to the dignity of t which, as one of the Managers, I represent.

Having examined the plea, the first objection urisdiction which I find relied on, is derived m an amendment to the Constitution, which vides that, "In all criminal prosecutions, the used shall enjoy the right to a speedy and pub trial, by an impartial jury of the State and dist wherein the crime shall have been commit; which district shall have been previously astained by law; and to be informed of the nae and cause of the accusation; to be confront with the witnesses in his favor; and to have assistance of counsel for his defence."

should conceive it a sufficient answer to the ection urged upon the ground of this amendnt, to say that, whatever validity it may have, regards the mode of trial, it certainly has no lication to the point of jurisdiction. The utst latitude to which the provision could be exded, would only be that a jury to try the facts issue should be brought from the district in ich it is alleged that the offence was commit. But before there can be anything for a jury ry, the articles must be answered, the facts put ssue, and then the question might be proper, ether this Court were bound to award a pros in nature of a *venire facias*, to bring a jury he bar. But surely, sir, were I to admit that elonged to a jury to try the facts which may disputed on the occasion, instead of being a und to exempt the party from answering the cles, it would be a weighty reason to prove t the articles ought to be answered for the pure of forming the issues which alone could be ects of a trial by jury.

If, sir, the objection went to the jurisdiction of the Senate, there would be an end of its judicial character. For, as the Senate has judicial cognizance only in the case of impeachment, if the right by jury be a reason why no proceedings can be had before them upon articles of impeachment, it must necessarily follow that the whole of their judicial authority is abolished; by which an important feature of their original Constitutional character is obliterated. But, sir, it is too much to say, when, in the 2d section of the 1st article of the Constitution, we find a power to impeach *expressly* given to the House of Representatives, and in the 3d section of the same article, a power to try all impeachments *expressly* vested in the Senate, and when we find in other parts of the Constitution numerous provisions on the subject of impeachment, that all this should be done away by a doubtful inference as to the intention of an amendment, the words and object of which are completely satisfied without such an operation. Sir, it is extremely evident that the amendment was solely designed to secure the trial by jury in criminal prosecutions in the courts of law, and that it never entered into the view of those who framed it, that it should produce an innovation of the Constitution, so important as the abolition of a proceeding of the first political necessity for the punishment of great offenders, and the security of the nation. But, sir, are they who say the amendment has such an extent, sensible of a consequence which must follow in regard of another proceeding equally suited to its object? If the amendment is to operate to the extreme latitude of its words, as the trials before our courts martial are of a criminal nature, it must happen that persons accused before such courts will be entitled to a trial by jury. And when this does happen, there must certainly be an end of discipline in the army and navy. Sir, for my part I can see no difficulty in the subject.

The amendment is a part of the Constitution, and as it now stands, it is the same thing as if it originally had been made a part of it. If such had been the case, what doubt could there have been as to the construction of the instrument? In one part of it we find a general provision, securing the trial by jury in all criminal prosecutions, and in another part, the 2d section of the 3d article, an express exception of the trial by jury in cases of impeachment. It is, therefore, plain, that though it was the intention to establish it as the general rule, that, on criminal prosecutions, the trial should be by jury, yet that exceptions to the rule were designed to be allowed in the cases of impeachment and of courts martial.

If the trial by jury were annexed to the jurisdiction of the Senate, it does not appear to me that it would abridge, as some may imagine, the power of the body, but, on the contrary, would increase it.

By the Constitution, no man can be convicted by the Senate without the concurrence of two-thirds of the members present; but if the power of conviction be attributed to a jury, it must result that judgment of removal from office and

disqualification may be given by a majority. Nay, sir, I think there is some question, if this amendment is to introduce a jury into the constitution of this Court, that as it appears they may convict generally of the offence, that this Court might pass a general judgment to the extent of statute or common law punishment.

I have but one observation more to make on this point, which is, that impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity. It would therefore seem, from the nature of this body, that they were peculiarly and exclusively the proper tribunal to try impeachments.

I shall now proceed to the discussion of another point, arising out of the plea of the party impeached, embarrassed, I confess, with more difficulties than the one which I have been employed in considering. The plea alleges, that William Blount, at the time of the act done, charged in the articles of impeachment, was a Senator of the United States; that a Senator is not an officer of the United States, and that no persons but the President, Vice President, and civil officers, are liable, by the Constitution, to impeachment. In answer to this objection we submit two points:

1. That all persons, without the supposed limitation, are liable to impeachment.

2. That in order to carry into effect the general intent of the Constitution, a Senator must be considered as a civil officer.

It will be found, sir, upon an examination of the Constitution, that in no place are the cases defined, or the persons described, which were designed as the objects of impeachment. I will beg the liberty of stating all the provisions which have been made on the subject. The last clause of the 2d section of the 1st article vests the power of impeaching in the House of Representatives. The fifth clause of the 3d section of the 1st article gives the cognizance of impeachments to the Senate. In the same article and section, the 6th clause, the punishment on conviction is defined. The 2d section of the 2d article takes from the President the power of pardoning, and the 4th section of the 2d article provides, that certain officers on conviction shall be removed from office. These, sir, I believe, are the only material provisions to be discovered on this subject in the Constitution. And it is very evident, that in none of these does an intention appear to declare in what cases an impeachment shall be sustained, or to what persons it shall be confined.

On this subject, the Convention proceeded in the same manner it is manifest they did in many other cases. They considered the object of their legislation as a known thing, having a previous definite existence. Thus existing, their work was solely to mould it into a suitable shape. They have given it to us, not as a thing of their creation, but merely of their modification. And, therefore, I shall insist, that it remains as at common law, with the variance only of the positive provisions of the Constitution. The same principle is scattered in every part of the Constitution. Were we to rely solely on the details of the instrument itself, we should be incapable of understanding and executing the greater part of its regulations. That law was familiar to all those who framed the Constitution. Its institutions furnished the principles of jurisprudence in most of the States. It was the only common language intelligible to the members of the Convention. It was a work too great for them not only to form a Constitution of Government, but also a code of municipal law. The members of the South would never have agreed to receive the local institutions of the North, as the common law of the States. But the first source from which all the Colonies originally derived the principles of their law, was the only point of resort to which it could be expected that all would have recourse. We accordingly find many terms which cannot be understood, and many regulations which cannot be executed without the aid of the common law of England. Thus, it is said, in the sixth section of the 1st article, that the members of both Houses shall be privileged from arrest, except in cases of treason, felony, and breach of the peace. When we inquire what is meant by felony and breach of the peace, the Constitution is silent. Again, in the second clause of the 9th section of the 1st article, it is said that the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. But the same instrument has not given us the form of the writ, nor defined the cases to which its relief shall extend, nor, in short, prescribed any of the proceedings which relate to its execution. In the third clause of the same section and article, it is ordained, that no bill of attainder shall be passed, but there is nothing which attends it which would enable us to comprehend the restriction. In the 4th section of the second article, it is provided, that the President, Vice President, and all civil officers, shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors.

The Constitution has defined treason. The abuses of the term at different periods of the English history was the inducement to fix its meaning and extent. This circumstance strongly indicates the law they had in view; to the obscurity and latitude whereof they were unwilling to commit the crime of treason, but to the certainty of which they were satisfied to leave the offence of bribery and other high crimes and misdemeanors.

The third clause of the 2d session of the 3d article speaks of a trial by jury, but the number which composes the jury, and the unanimity on which the verdict is founded, are not prescribed. The first clause of the 3d section of the same article uses the terms *overt act*, without defining them. The second clause of the same section declares that attainder shall not work corruption of blood. Surely, sir, it is in the common law alone that we find that corruption means the extinction of the heritable quality of blood. I shall trouble the hon-

able Court with but one more instance of the inciple for which I am contending. It is in the section of the 4th article, where it is provided, at the citizens of each State shall be entitled to privileges and *immunities* of citizens in the veral States. Upon these words I have known controversy in a court of law as to their extent. nd the limits which were set to them by the dgment of the Court were drawn from their nport in the books of common law.

The cases which I have cited, I humbly submit, undantly prove the proposition with which I t out, that where the Constitution has given us rms which it does not explain, or directed proedings which it has not defined, and where it plain that the regulation was viewed as preously existing, and designed simply to be modied, in such cases, we must have recourse to the mmon law, in order to ascertain the original ture of the subject which is necessarily adopted the Constitution, in consequence of being made object of its provisions. Such, sir, as I have scribed, is our situation upon the present subject.

The Constitution has said who shall have the wer to impeach and who of trying impeachents. It has also limited the extent of the punhment. But it has not described the persons who all be the objects of impeachment, nor defined e cases to which the remedy shall be confined. Ve cannot do otherwise, therefore, than presume, at upon these points, we are designedly left to e regulations of the common law. Sir, in the ery threshold, has not this law given us the undation upon which we stand? Where have e looked for the form of the pleadings, which as brought the present question before the Court? nd if, sir, a question of evidence should arise, as appened upon a former occasion, should we hesite as to the law which ought to determine its mpetency? If we were asked, whether a greater oseness in pleadings on impeachment were not lowed, than in suits at law, we should answer in e affirmative; and if it were inquired, whether e rules of evidence were more lax, we should nswer in the negative; and in such opinions, I ust, we should not be contradicted by the learned ounsel of the party impeached, and yet, sir, the pinions could alone be collected from the rules f the common law.

It is, perhaps, worthy of observation, that even s it regards those persons who are clearly liable impeachment, there is no direct provision which ubjects them to it. Thus, in the 4th section of e 2d article, which has the closest connexion ith the point, it has not said that the President, 'ice President, and civil officers, shall be liable impeachment; but, taking it for granted that ey were liable at common law, has introduced n imperative provision as to their removal upon onviction of certain crimes.

The question, therefore, is, what persons, for hat offences, are liable to be impeached at comnon law? And I am confident, as to this point, he learning and liberality of the counsel will save ne the trouble of argument, or the citation of uthorities, to establish the position, that the question of impeachability is a question of discretion only, with the Commons and Lords. Not that I mean to insist, that the Lords have legal cognizance of a charge of a capital crime against a commoner, but simply that all the King's subjects are liable to be impeached by the Commons, and tried by the Lords, upon charges of high crimes and misdemeanors. And this, sir, goes to the extent of the articles exhibited against William Blount. And for my part, I do not conceive it would have been sound policy to have laid any restriction as to person upon the power of impeaching.

It is not difficult to imagine a case in which the punishment it imposes would be the most suitable which could be inflicted. Let us suppose, that a citizen not in office, but possessed of extensive influence, arising from popular arts, from wealth or connexions, actuated by strong ambition, and aspiring to the first place in the Government, should conspire with the disaffected of our own country, or with foreign intriguers, by illegal artifice, corruption, or force, to place himself in the Presidential Chair, I would ask, in such a case, what punishment would be more likely to quell a spirit of that description, than absolute and perpetual disqualification for any office of trust, honor, or profit, under the Government; and what punishment could be better calculated to secure the peace and safety of the State from the repetition of the same offence?

Upon this point, I have nothing further to urge, but shall proceed to support the second point, which I stated, that supposing the power of impeachment limited by the Constitution, to the President, Vice President, and civil officers, "in order to carry into effect the general intent of the Constitution, a Senator must be considered as a civil officer."

Sir, it is extremely strange to say, that a Senator, who participates in all the general powers of the Government, is not an officer. We see him acting as a Legislator, an Executive Magistrate, and a Judge, and yet we are told he is not an officer. May I ask, what an office is? I have ever understood it to mean the exercise of some authority. It is not material whether the authority be public or private; the only consequence would be, that the office would follow the nature of the authority. In common parlance, there could be no doubt, but that a Senator, whose public functions reach every authority of Government, would emphatically be considered as an officer. And I consider myself warranted in saying, that the legal intendment of the word office does not materially vary from its received meaning in ordinary speech. It is in my power to show that it has legislatively been used to comprehend the members of a Representative and Legislative body. And for this purpose, I will refer the honorable Court to an ordinance of Congress, passed the 13th of July, 1787, to be found in the 12th volume of the Journals of Congress, page 88; the object of the ordinance was, to establish a Government northwest of the river Ohio. I shall be excused for reading some passages.

"The Representatives thus elected, shall serve

for the term of two years; and in case of the death of a Representative, or removal *from office*, the Governor shall issue a writ," &c.

Again, "The General Assembly, or Legislature, shall consist of the Governor, Legislative Council, and a House of Representatives. The Legislative Council shall consist of five members, to continue in *office* five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as Representatives shall be elected, the Governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the Council, by death or removal from *office*, the House of Representatives shall nominate two persons qualified as aforesaid, for each vacancy, and return their names to Congress," &c.

In page eighty-nine, it is said, "The Governor, Judges, Legislative Council, Secretary, and such other *officers* as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, *and of office*," &c.

This exposition of the word office is cotemporary with the use of it in the Convention. On the day that ordinance passed, the Convention were sitting in this city. And when we reflect, sir, that both those bodies were composed of members from the several States, all appointed in the same manner, by the Legislatures of the States, and that both were employed upon the same subject of forming a Government, I apprehend that the sense in which an important term is used by the one body, may properly be allowed to be strong evidence of the meaning attached to it by the other. I have further proof in this case, of the extent to which this word was supposed to reach at the epoch referred to, which, however, is perhaps, more curious than authoritative. Sir, it is remarkable, that the party impeached, was a member of the Congress which passed the ordinance which I have cited, and that his assent to it stands recorded.* He was then acting under the solemn obligation of a Legislator; his opinion was probably the result of a disinterested and unbiased judgment; but now, when his crimes have subjected him to a national prosecution, he seeks to shelter himself from the punishment he has merited, by attributing an interpretation to a term opposed to that which he himself has deliberately given to it. Such contradiction usually attends the conduct of a man, who, departing from the path of integrity, yields to the seductions of a treacherous and inordinate ambition.

I am sensible, Mr. President, that I have not yet touched the point of the argument which, on this subject, will be relied on.

*Journal of Congress, vol. xii, page 93.

I presume it will be said, that the question is not whether a Senator may be considered as an officer in common or legal parlance, but whether he is an officer within the contemplation of the Constitution. I will readily agree, that if the question can be settled by the light of the Constitution alone, we shall not be warranted in having recourse to any other, but if that light still leaves the question in darkness, every ray of information should be collected which can assist our view of the subject, though derived from other quarters. I do not know, however, sir, that I need despair of success in being able to convince this honorable body, that, in the just, constitutional exposition of the word officer, it embraces the trust of a Senator. I presume the learned Counsel will not differ from me, when I lay down the true rule of construction to be, so to interpret an instrument as to give the fullest effect to all its parts. If there be apparent contradiction, we must attempt to reconcile; and if there be absolute repugnancy, we must reject that part which can be rejected with the least violence to the general intention. If these principles be correct, I humbly apprehend that an attentive examination of the different parts of the Constitution must be followed by the opinion, that a Senator must, according to it, be deemed an officer. I shall not affect to disguise, that there are passages in the Constitution, the aspect of which is opposed to the opinion I state; but what I expect to show is, that there are provisions of greater importance which must be partly frustrated upon a different principle. In the discussion of this point, I shall beg the liberty, in the first place, of considering those grounds which I presume will be relied on to show, that a Senator is not, by the Constitution, considered as an officer.

The first ground I find referred to in the plea, is the 4th section of the second article. It is there provided, that the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment and conviction of certain crimes there specified.

There is nothing in this provision which can affect the immediate question under consideration. For the question is, whether a Senator is a civil officer. If he be, which is the point I am contending, he is within the express words of the section. The same answer applies to the 7th clause of the 3d section of the first article, a second ground I find relied on in the plea—the substance of which is, that judgment on impeachment shall not extend further than removal from, and disqualification to hold, any office of honor, trust, or profit, under the United States. It is very plain that there is nothing here which can affect the question whether a Senator be an officer. There are two clauses in the Constitution, which, though not stated in the plea, I do presume more stress will be laid on than upon those referred to in the plea. The first of these is the 3d section of the second article, which declares that the President shall commission all officers of the United States; and as it is clearly not designed that he should commission a Senator, it will be

;red that a Senator is not to be considered as officer.

humbly trust I can show, that it was not the ation of the Constitution that these words ıld take effect in their full extent; and I shall nit that they ought to be understood accord- to the subject to which they apply.

commission is simply an evidence of author- lelegated to a particular person. And surely proper that that evidence should show from same source from which the appointment is ved. By the Constitution the President is le the fountain of office. The officers, prop- speaking, under the United States are all ap- ted by him; and it was right, therefore, as the eral power of appointing was given to him, that hould also have the general power of commis- ing.

is certain that it was intended that the power ommissioning should not exceed that of ap- ting; because the President does not commis- any one whom he does not appoint. The ision in question was not intended to define should be considered as officers, but to intro- e a plain and just rule of policy that the er of appointing and commissioning should de in the same person. The practice under Constitutional regulation, explains its mean- and extent. It is clearly not true that he nmissions *all officers* of the United States. is an officer himself, and so expressly denomi- ed throughout the 2d article, and yet he has no nmission. It is equally clear that the Vice sident is an officer, and yet not commissioned. in, the Speaker of the House of Representa- s is an officer, as I shall have occasion to show eafter, but has no commission. And there also a variety of subordinate officers, appoint- by Heads of Departments and Courts of Just- whom the President does not commission. I therefore, justified in concluding that it does follow, because a person has no commission n the President, that, therefore, he is not to be sidered as an officer.

There is another objection of a similar nature, ing from the provision in the 6th section of 1st article, of which it is probable much use be made. That section declares, *that no per- holding an office under the United States ll be a member of either House during his con- ıance in office.* It will, therefore, be said, if place of a Senator is an office, this clause is ignant and absurd.

This provision, I humbly apprehend, has the e limits with the one which I have just ad- ted to. The intention of it was to erect a rier between the Executive and Legislative de- tments; to prevent Executive patronage from uencing Legislative councils. It was designed, refore, to apply solely to the officers of Execu- e appointment. I am not much disposed, sir, place reliance in an argument upon so great a ject, upon nice distinctions or verbal criticism; I think I shall be excused for paying some at- tion to the peculiar language of the clause in stion. The regulation is, that no person hold- ing an office *under* the United States shall be a member of either House during his continuance in office. The United States here means the Government of the United States, for the United States grants no office but through the Govern- ment. Now, it is clear that a Senator is not an officer *under* the Government. The Government consists of the President, the Senate, and House of Representatives, and they who constitute the Government cannot be said to be under it. Be- sides, a Senator does not derive his authority from the Government. The senatorial power is an emanation of the State sovereignties; it is co- ordinate with the supreme power of the United States; in its aggregate, it forms one of the highest branches of the Government. Giving every effect to this section, it would only prove that a Senator is not an officer *under* the Govern- ment of the United States, but still he may be an officer *of* the United States; and, give me leave to say, that the distinction which I have here taken, is supported by the variance of language to be found in another part of the Constitution.

The 4th section of the 2d article provides, that the President, Vice President, and all civil officers, not under, but *of* the United States, shall be re- moved from office on impeachment and convic- tion, &c. It would seem, therefore, that it may plainly be collected, that the power of impeach- ment extends further than to officers *under* the United States. But, sir, let me confess that I un- willingly place any confidence upon an argument derived from mere verbal criticism. In constru- ing the charter of a Government, our view should comprehend all its parts, and our aim should be to execute it according to its general and true design.

The argument which I have submitted must be taken hypothetically. Supposing we are pre- cluded from considering a Senator as an officer under the United States, he may still be deemed an officer of the United States. For, sir, I mean to contend that the 4th section of the 2d article is confined to officers of Executive appointment; and I shall be able to show, by a Legislative ex- position, that a member of the Legislative body has been considered as an officer under the United States; and although so considered, it has never been supposed to follow that the seat was va- cated.

The Constitution has given a power to Con- gress, in case of a vacancy in the office of Presi- dent, by the death or resignation of the President and Vice President, to provide, by law, what officer should fill the vacancy. Under this power, Con- gress, on the 1st of March, 1792,* by law enact- ed, that in case of such a vacancy, the Speaker of the House of Representatives should exercise the office. The power being confined to the designa- tion of an officer of the United States, a person not an officer could not have been appointed by the act of Congress to fill the vacancy.

I have, then, a legislative opinion that the Speaker of the House of Representatives is an

* Acts of Congress, vol. ii. p. 25.

officer of the United States; and, if the interpretation of the section under consideration is to be restrained only by the extent of the words, it must follow that the House, in choosing a Speaker, disqualify him as a member of the House. But, sir, the case, in fact, is not so; it cannot be so, from its nature. And I have, therefore, a high authority for saying that these sections are not considered as embracing all the officers of the United States, and that the generality of the words must be restrained by confining them to the officers of Executive appointment. When the Constitution provided that all officers under the United States should be commissioned by the President, and that no person holding any office under the United States should be a member of either House, it is extremely manifest, from the object designed to be accomplished, that the terms used were intended to reach officers only of Executive appointment. Such being the single view, the term office was certainly incautiously used in relation to other subjects. Notwithstanding the words, all officers are not commissioned by the President; nor is it more a universal truth, that no person holding an office under the United States can be a member of either House. This provision was designed to preserve the purity of the Legislative body, to exclude Executive influence, as a barrier dividing the two great branches of Government; and its end is completely answered when restrained to offices filled by the President.

I have submitted, in the course of my argument, that the sound principle of construction to be adopted in relation to the construction of an instrument, having in view the vast object of settling the powers of the Government, and the rights of the people, is to give it such an interpretation as is best calculated to give effect generally to all its parts according to its true design. If I am supported in this principle, I shall be able to show, by strong cases under the Constitution, that its undeniable intention must be frustrated if a Senator be not considered an officer of the United States.

I find it provided in the 7th clause of the 3d section of the 1st article, that conviction on impeachment disqualifies the party convicted from holding any office of honor, trust, or profit, under the United States. If a seat in the Senate be not an office, the disqualification does not extend to it. And yet, can it reasonably be contended that the policy which incapacitates a citizen, if convicted on impeachment, from holding an office the most mean and humble, does not apply to the case of a Senator? The wisdom of the Constitution, sir, has considered a conviction as an evidence of moral unfitness for public trust. It never can happen but in the case of a great national offence. And shall such an offender, degraded from the capacity of even being doorkeeper of this Chamber, yet retain the capacity of being a member of a body of the most dignity, trust, and power, in the country? This is a solecism in politics, an absurdity in reason, which I trust this honorable Court will not willingly, by their act, attach to an instrument so highly and justly revered as the Constitution of our Government.

I find, also, a provision in the 7th clause of the 9th section of the first article, that "no person holding any office of profit or trust under the United States, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any King, Prince, or foreign State." If a Senator holds no office of profit or trust under the United States, it is lawful for him to accept a present, title, or office, from any King or foreign State. Can it be possible that a public functionary, of all others, the peculiar object of this jealous restriction, is, in fact, the sole object of exemption from its operation? Can it be imagined that a Senator, upon whom the Constitution has heaped the powers and trusts of Legislator, Judge, and Executive Magistrate, is the only person who is left exposed to the seductions of foreign influence? It can never be admitted that a situation which, from its trust and importance, most invites corruption, is the only one which the Constitution has not guarded against. If, sir, a Senator be not an officer under this clause, it might happen that the Senate of the United States might become a House of Lords. It would be in the power of any King in Europe to change our free Government, and to convert one branch, at least, from a republican into an aristocratic form. You will not suffer an Ensign in your army to accept the humble title of Chevalier, and yet you will allow an integral part of the Government to be composed of Earls and Dukes. And let me pray the honorable Court to remember, at the same time, that the Constitution has provided that a member of either House shall not be allowed to retain his seat and hold any commission, civil or military, under the United States. The President has no titles to grant, nor offices of great emolument to confer; and yet the chaste republicanism of the Constitution will not allow a Senator to feel the influence of his patronage; and yet, at the same time, he may lawfully be the pensioner, or the titular noble of a foreign Power. Such a doctrine is not simply absurd, but infinitely dangerous. It is ever wiser to protect men from temptation, than to trust their resisting it. The party impeached is an instance that the confidence and honors of his country could not secure his fidelity. He is also a proof that unprincipled men may insinuate themselves into popular favor, and be seated in this body, beside men of the best and purest character in the country. Is it compatible with the dignity of this body to say it shall be liable to such impurity? Are you bound to receive into your bosom a character degraded by political crimes, or stained with moral turpitude? And, even if you expel him, must you open your arms to receive him, if returned, a second time? And can it be affirmed that the Senate of the United States is the only body exposed by the Constitution to this shame and degradation! If you cannot disqualify him, the very delinquent against whom the common voice of the country calls for justice, and whom we are now prosecuting, may again take a seat in this honorable body, and exercise the high trust which already he has so grossly abused, and of which he has shown

so unworthy. The consequences, I hum- mit, must ever silence the construction eclares a Senator not an officer of the Uni- es. By considering him as an officer, you e with the strict letter, but you commit nce upon the true intention of the Con- ; on the contrary, by considering him not er, you frustrate different provisions of the itical importance.

President, I am sensible of some embarrass- opening the argument on the part of the tion, arising from the difficulty of foresee- points which will be most relied on, or ressed by the counsel for the party im- l. On this subject I have nothing to direct the objections which appear on the face plea.

rtainly furnishes other points than those discussed; deeming them, however, sub- e, and which, possibly, may be either aban- or relied on, I shall not trouble the honora- urt with any observations in respect of

erve, it is stated in the plea, that William was not an officer of the United States at e of the act done charged in the Articles of hment. This objection is removed if either grounds which we have taken be maintain- 1st, That impeachment is not confined to , but extends to every citizen; 2d, That a r is an officer of the United States.

also alleged in the plea, that the party im- d is not now a Senator. It is enough that a Senator at the time the articles were ed. If the impeachment were regular and inable, when preferred, I apprehend no sub- t event, grounded on the wilful act, or by the delinquency of the party, can or obstruct the proceeding. Otherwise the by resignation or the commission of some which merited and occasioned his expul- night secure his impunity. This is against the sagest maxims of the law, which does ow a man to derive a benefit from his own

further insisted in the plea, that the act id not regard the office of the party.

not in the first place admit the truth of this ion. For I conceive that a plain violation trust reposed in the party may be discover- he matter alleged in the articles. I shall owever, trouble you, sir, by going through icles with a view to this point. The charges fore the Court, and every honorable mem- n easily satisfy his own mind as to a ques- ther of fact than law. But I conceive that ot material whether the objection be, in fact, groundless. Because there is not a sylla- the Constitution which confines impeach- to official acts, and because it is against the dictates of common sense, that such restraint be imposed on it. Let me suppose that a of the United States, forgetting his duty e gravity of his situation, instead of using thority, in case of an insurrection, to quell surgents, should aid them in their violence. Surely this would not be a Judicial act; and shall I be told, for that reason, that he shall not be lia- ble to impeachment? How else is he to be re- moved? He may be called upon to try the very men whose crimes he was accessary to; and would he be fit in such case to pass sentence? Common sense tells us he ought to be removed. His office was granted during good behaviour, and the ten- ure has expired by his ill conduct. But I am at a loss to know how the fact is to be ascertained, and the end accomplished, but by conviction on im- peachment.

But one other point remains, which I can dis- cover from the plea. It is alleged that the com- mon law courts have competent jurisdiction to punish the party for any offence he has commit- ted.

I will observe, first, that this suggestion is not true; because there is no court of common law which can give judgment of disqualification, which power exclusively belongs to this honora- ble body, and is a just punishment for the offences committed by the party impeached. In the second place, if the suggestion were true, it would not be effectual; because by the seventh clause of the seventh section of the first article of the Constitu- tion, delinquents shall be liable both to the pun- ishment upon impeachment, and that inflicted in the courts of common law. It is no objection to say that the courts have cognizance of the offence, because it is expressly provided that the one pun- ishment shall not be an exemption from the other.

Mr. President, I have gone through all the ob- jections to the jurisdiction of the Court, which I can discover in the plea. I shall not trouble you with a recapitulation of the matters which I have urged against the sufficiency of the plea. I have already consumed much time, and am indebted for much attention. I conclude with praying that the plea be overruled, and the party ordered to answer the articles of impeachment.

On motion, by Mr. INGERSOLL, in behalf of the defendant, for further time to reply, it was allow- ed, viz: until to-morrow morning at 11 o'clock, to which time the Court adjourned.

JANUARY 4.

The Managers and Counsel for the defendant attended.

The VICE PRESIDENT notified the counsel they might proceed; and Mr. Dallas, in behalf of the defendant, spoke in support of the plea, as fol- lows:

Mr. DALLAS premised that he was conscious that he must fail in any attempt to imitate the elo- quence of the honorable Manager, who yesterday addressed the Court; but he trusted that he should, at least, be as successful as that gentleman in ad- hering to the rule which had been proposed for the present discussion, by abstaining from all de- clamatory matter.

He thought that the consideration of the two general propositions would embrace all that was necessary to be said, either in maintenance of the

plea to the jurisdiction of the Senate, or in answer to the adverse arguments. He should, therefore, endeavor to establish,

1. That only civil officers of the United States are impeachable; and that the offences for which an impeachment lies, must be committed in the execution of a public office.

2. That a Senator is not a civil officer, impeachable within the meaning of the Constitution; and that, in the present instance, no crime or misdemeanor is charged to have been committed by William Blount, in the character of a Senator.

1. That only civil officers of the United States are impeachable; and that the offences for which an impeachment lies, must be committed in the execution of a public office.

The necessity of discussing the first branch of this proposition could hardly have been anticipated; but as the honorable Manager had contended that the Constitutional grant of a power to institute and try impeachments extends *ex vi termini*, to every description of offender, and to every degree of offence, a just respect for the high authority which he represents, as well as for the talents which he has displayed, compels the defendant's counsel to follow him in the wide field of controversy that he has unexpectedly chosen. A claim of jurisdiction so unlimited, embracing every object of the penal code, annihilating all discriminations between civil and military cases, and overthrowing the boundaries of Federal and State authority, ought surely to have been supported by an express and unequivocal delegation: but, behold, it rests entirely on an arbitrary implication, from the use of a single word; and while the stream is thus copious, thus inundating, the source is enveloped (like the sources of the Nile) in mystery and doubt.

The Constitution declares, that "the House of Representatives shall have the sole power of *impeachment;*" and that "the Senate shall have the sole power to try all *impeachments:*" Hence, it has been urged, that as there is no description of the offenders or the offences in the Constitution itself, where the power is vested, every offender and every offence, impeachable according to the common law of England, must be deemed impeachable here; and, it is alleged, that the common law power of impeachment extends to every crime or misdemeanor, that can be committed by any subject, in, or out of office. But, Mr. Dallas insisted, that this doctrine is contrary to the principles of our Federal compact; that it is contrary to the general policy of the law of impeachments; and that it is contrary to a fair construction of the very terms of the Constitution.

1. That the doctrine is contrary to *the principles* of our Federal compact, he deduced from the design with which the Government of the United States was established: For, although it is in some of its features Federal; in others it is consolidated; in some of its operations, it affects the people as individuals, in others it applies to them in the aggregate as States; yet, in every view, all the powers and attributes of the National Government are matter of express and positive grant and transfer; whatever is not expressly granted and transferred, must be deemed to remain with the people, or with the respective States; and as the motive for establishing the Federal Constitution arose from the want of a competent national authority in cases in which it was essential for the people inhabiting the different States to act as a nation, so far the people gave power to the Federal Government; but the delegation of that power is evidently limited by the reason which produced it. Thus, in the creation of a national Judiciary, we find that in criminal as well as civil cases, no authority is vested in the courts, but upon the appropriate subjects of national jurisprudence. *Const. Art.* 1, *Sec.* 1. *Art.* 3. Crimes and misdemeanors, which have no connexion with national objects, are left to be prosecuted and punished under the laws of the State in which they are committed. And yet it is asserted, that for any crime or misdemeanor which could only be thus the object of State jurisdiction, which could not be tried upon an indictment, in any Federal Court, a State officer or a private citizen may be impeached before the Senate of the United States. The mere investment of a power to impeach and to try impeachments, is considered as an instrument destined to carry the Government beyond its natural sphere; and to give to the censorship of the Senate, a scope and efficacy of which the general Judicial authority of the Union does not partake.

But the honorable Manager having referred to the English common law, for an exposition of the import and operation of the power of impeachment, Mr. Dallas contended that the United States as a Federal Government, had no common law in relation to crimes and punishments, and cited the opinion of a Judge of the United States on the subject. The crimes punishable under the authority of the United States, can only be such as the Constitution defines, or acts of Congress shall create, in order to effectuate the general powers of the Government. How, he asked, did the Government of the United States acquire a common law jurisdiction in the case of crimes, and by what standard is the jurisdiction to be regulated? When the Colonies of America were first settled, each Colony brought with it as much of the common law as was applicable to its circumstances and it chose to adopt; but no Colony adopted all the common law of England, and there was great diversity, owing to local and other circumstances, in the objects and extent of the common law which the different Colonies adopted. The common law is, therefore, the law of each State so far as each State has chosen to adopt it; but the United States did not bring the common law with them. There are no express words of adoption in the Constitution; and if a common law is to be assumed by implication, is it to be the common law of individual States, and of which State? Or, is it to be the common law of England, and at what period? Are we to take it from the dark and barbarous pages of the common law, with all the feudal rigor and appendages; or is it to be taken as it has been ameliorated by the refine-

modern legislation? Would it not be refer us to the ancient common law of ? And if we are referred to it in its im- ate, do we not rather adopt the statutes common law of that country? And is non law to fluctuate for ever here as it tuate there?

Mr. Dallas cited a variety of cases to extravagant length to which the an- mmon law doctrine of impeachments extended, and insisted that there was occasion to go to the volumes of the law for a glossary on the impeach- wer, than for an exposition of the felony," "breach of the peace," &c., &c., hich were in use, and perfectly under- the different States, before the present ion was established. The different States, in the same language, make use of the ns to express a similar idea; but, in in- numerable, particularly on the subject of nd punishments, though their theories same their practice was widely different, with the practice of England, but with ice of each other. Mr. Dallas then rep- and illustrated, the pernicious and ab- sequences that would ensue, either by the penal common law of England, or laws of the respective States, as the rule ederal Government. In the former event, very State in the Union had rejected or the common law of crimes and punish- l its rigor will be revived and enforced; ne latter event, the principle of uniformi- iously sought after by the framers of the tion, and so essential to the administra- istice, would be effectually destroyed.

ne object of the Constitution to establish al Government, independent in its opera- d with powers adequate to self-preserva- ıt, Mr. Dallas observed, that the doctrine e Managers contended for was at war t object, and rendered the Government ıt upon the laws and usage of a foreign Nor was there the slightest necessity interposition of the doctrine, since the tion itself provides a means for carrying achment power, as well as every other nto effect; and if the cases and objects or impeachment are not sufficiently de- the Constitution, Congress may pass a efine and ascertain them.

onorable Manager has asserted, that the ent of the impeachment power is absolute. ouse of Representatives shall have the sole impeachment;" "the Senate shall have power to try all impeachments." And, nds, that the language of the fourth sec- ne second article, so far as it speaks of the ent, Vice President, and all civil officers of ed States," is merely a recital, not to de- he objects of impeachment, but to point ss of persons who, imperatively, "*shall ed from office* on impeachment for, and n of, treason, bribery, or other high nd misdemeanors." But if this argument is just, it will equally apply in the case of the Executive and Judicial Departments; for, the phraseology of the articles, with respect to the investment of their powers, is precisely the same; and the same common law code, to which we are referred for an exposition of the impeachment power, would also supply a political, and technical, exposition of the Executive and Judicial authority. Thus, in article the 2d, it is generally declared, that "the Executive power shall be vested in a President of the United States of America;" and the subsequent provisions may, with equal propriety, be denominated mere recital; designating a form of election, an oath of office, and some of the Executive attributes. Again: in article 3d, it is generally declared, that "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;" but, surely, it was never thought that the power of the Federal Courts extended beyond the enumerated cases, though those cases are as much matter of recital as the cases prescribed for the exercise of the impeachment power.

2. But the doctrine is not only inconsistent with the principles of the Federal compact, it is, also, inconsistent with the general policy of the law of impeachments. The system of criminal jurisprudence is co-extensive with all the ordinary objects of prosecution and punishment; but the jealousy that power might be used to protect official delinquents, gave rise to impeachments even in England. In the 2d vol. of *Woodeson's Lectures*, page 596, the fact is asserted. "It is certain (says that author) that magistrates and officers entrusted with the administration of public affairs, may abuse their delegated powers to the extensive detriment of the community, and, at the same time, in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents, and the nature of such offences, may not unsuitably engage the authority of the highest court, and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, became suitors for penal justice; and they cannot, consistently either with their own dignity, or with safety to the accused, sue elsewhere but to those who share with them in the Legislature. On this policy is founded the origin of impeachments, which began soon after the Constitution assumed its present form." The author, in a subsequent page, (p. 601,) states, "that all the King's subjects are impeachable in Parliament; but with this distinction, that a Peer may be so accused before his peers of any crime, a Commoner (though, perhaps, it was formerly otherwise) can now be charged with misdemeanors only, not with any capital offence." This position, however, must be understood in coincidence with the general policy previously stated; and then all subjects are impeachable, because all subjects may be magistrates and public officers. The instances specified in *Woodeson* are all of an official nature; and no other description of impeachment by the Commons can be traced in the English books.

Mr. D. proceeded to argue, that the policy of the law of impeachments being thus ascertained in England, any departure from it in the practice of that country ought not to be made a precedent in America. Wherever the appointment to office is independent of the people, the policy is the same, whatever may be the form of the Government; but the reason of the law shows and limits its extent. It is not within the reason of the law of impeachments that any man, who is not a public officer, should be so prosecuted; nor any public officer for an offence which has no relation to his public trust.

3. The doctrine, in fine, is inconsistent with a fair construction of the terms of the Constitution. The operative words are express: "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."—Art. 2, sec. 4. The previous clauses are only descriptive of the power and distributive of its exercise; declaring that the sole power to institute, and the sole power to try, impeachments, shall belong to the branches of the Legislature respectively. They contain no description of the persons liable to impeachment, nor of the offences for which the impeachment may be brought. To suppose that they include a jurisdiction over all persons, for all offences, is to annihilate the trial by jury where a punishment more severe than death, to an honorable mind, may be inflicted; it is to overthrow all the barriers of criminal jurisprudence; for every petty rogue may be tried by impeachment before this High Court for every offence within the indefinite classification of a misdemeanor.

The reason of the thing, as well as the expression, shows, however, that the offender must be a civil officer, to vest the jurisdiction of impeachment. For every other offender a competent punishment is provided in the ordinary tribunals; but, in the case of a public officer, no sentence strictly judicial, in any common law court, can affect the tenure of his office. In the business of offices, to appoint, to re-appoint, or to abstain from re-appointing, are attributes and exercises of Executive authority; the ordinary judicial authority cannot exercise them, nor restrain or regulate their exercise by the proper magistrate. Hence arose the necessity of the judgment in case of a conviction on impeachment; which, by declaring that the delinquent officer shall be removed, and that he shall never be re-appointed, affixes, in effect, a check, or limitation, to the general power of the Executive.

But, if civil officers are not exclusively contemplated, why limit the judgment on impeachment simply to a removal and disqualification? The common law maxim says, that no man shall be twice tried for the same offence; and if the Senate may, on any charge against any offender, try the whole merits of the accusation and defence, why restrain them from pronouncing the whole judgment? Why multiply trials, and parcel out jurisdictions, when one trial, one jurisdiction, would accomplish every purpose of justice? There is an appearance of absurdity in the doctrine that cannot be overlooked. A private citizen, who holds an office, may be impeached, on the speculation that, at some period of his life, it is possible he should be appointed a public officer. And, if any sentence is pronounced, it must, in his case, be a perpetual disqualification; whereas, in the case of a man actually in office, the sentence may only extend to a present removal.

Again: if the bare designation of the party who should impeach, and of the party who should try impeachments, creates a jurisdiction over all persons for all offences, why should the subsequent clause specially name the President, Vice President, and all civil officers of the United States? They would, certainly, be included in the general authority; and it can be no answer to say, that it was with a view, imperatively, to command their removal on conviction, because the restricted judgment of the Senate points emphatically at their case—a removal from office and a perpetual disqualification. Would not those officers be removed or disqualified for any offence for which a private citizen might be disqualified on impeachment, though it is not one of the enumerated offences? It is here, likewise, to be remarked, that the persons subject to removal, are to be "civil officers of the United States," excluding all idea of affecting the station of State officers; and yet State officers, as well as private citizens, are liable to impeachment before this Senate, according to the present claim of jurisdiction.

And here Mr. D. again asked, if the general investment of the power of impeachment created so unqualified a jurisdiction, by what law are we to be guided, in instituting, conducting, and concluding the process? There is no act of Congress adopting or prescribing a rule; and if it is a matter referred, by implication, to the English code, whence will the Senate derive a discretionary power to adopt the modern and reject the ancient law; to select the doctrine as it relates to Peers, or the doctrine as it relates to Commoners? No; the words do not permit this latitude of jurisdiction;—the reason of the case does not require it. On the contrary, the Constitution presents a complete and consistent system:—it declares who shall impeach, who shall try, who may be impeached, for what offences, and how the delinquents shall be punished. Finding all these arrangements in the Constitution, finding everything that was necessary to suit the means to the design, to introduce a practice in conformity with the policy of impeachments, it would be unjust and unreasonable to suppose the framers of that glorious instrument meant more than they have expressed, or left in doubt and ambiguity so important a part of their work. The power, as it relates to the civil officers of the United States, is expressly given; it is not expressly given as relates to any other description of citizens; and, therefore, it is enough to observe, that it cannot be assumed or implied. Here Mr. D. added, that if the power was assumed under the general terms of the in-

ment, it would equally embrace the case of tary and civil officers; and the imperative se, as it has been called, only demands the reval of civil officers on a conviction; whereas policy, if it operates in the way contended for, ld apply as much to military as to civil offi-.

roceeding to the second branch of the first eral proposition (that the offence for which mpeachment lies, must be committed in the ution of an official trust,) Mr. Dallas observed, the argument had necessarily been, in a great sure, anticipated. The ordinary penal law courts of justice can punish every offence, ether it is committed by public officers, or private citizen; but as official offences can be committed by public officers and as it ld be a dangerous encroachment on the Ex-ive power, to authorize the Judges to pronce a removal from office, a provision has wisely superadded, which is at once calcula-to preserve the independence of the Depart-nts of Government, and to secure the people n an abuse of the Executive authority. It is lent, however, from the description of persons offences impeachable, and the qualified nature he punishment to be inflicted on a conviction, official offences and offenders were alone con-plated. This opinion is fortified by the ex-s provisions of the Constitutions of the indi-ual States. [Here Mr. Dallas read extracts n the Constitutions of New Hampshire, Mas-husetts, New York, Pennsylvania, North Car-a, South Carolina, Georgia, Vermont, Ken-ky, and Tennessee, all of which restricted the ver of impeachment to the case of offences mitted in office.] And he remarked, that this g the sense of the States individually, it may ly be presumed to be their sense collectively. politics, as well as in mathematics, all the parts equal to the whole; and when we find all the ts pursuing this policy, we must, in order to be sistent, ascribe the same policy to the whole, en acting on the same subject. But, it may added, that even the House of Representatives ns to have entertained the opinion, that an im-chable offence must be an offence committed an officer, in the execution of his office; since s stated, as the gist of the charge in the arti-s of impeachment, that the defendant was a nator, (which the prosecutors contend is an ce,) and that the misdemeanors imputed to n, were committed contrary to the duties of his ion.

. That a Senator is not a civil officer, impeach-e within the meaning of the Constitution; and t, in the present instance, no crime or misde-anor is charged to have been committed by lliam Blount, in the character of a Senator.

n entering upon the discussion of this general position, Mr. Dallas thought it necessary to ice a verbal criticism, to which the honorable nager, in a state of evident embarrassment, condescended to resort, in maintenance of the im of jurisdiction. It had been seriously urged, t there was a distinction between officers *of*, and officers *under*, the United States; the former designating the officers forming the Departments of the Governments, Executive and Legislative; the latter designating the officers appointed by the Executive Department. But a moment's consideration will incontestibly show that the expressions "officers *of*," and "officers *under*," the United States, are indiscriminately used in the Constitution. Thus, in the very section on which the controversy turns, it is said, that "the President, Vice President, and all civil officers of the United States, shall be removed on conviction," &c. Will it be admitted, that the Executive and Legislative Departments are alone liable to be removed, under this provision, and that it does not extend to officers *under* the United States, appointed by the President? But the very judgment to be pronounced excludes such a construction; for, "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."

Again: The Constitution declares, that "no person holding any office of profit, or trust, *under* the United States, shall, without the consent of Congress, accept of any present," &c. May the President, Vice President, and members of either branch of the Legislature, being, as it is said, officers *of* the United States, accept a present, or a title, without the consent of Congress?

Again: The Constitution declares, that "the President shall appoint all other officers *of* the United States:" does this give him no power to appoint officers *under* the United States? If it does not, whence does he derive that power, which he daily exercises? By the 6th article of the Constitution it is provided, that "the Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both *of* the United States, and *of* the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office, or public trust, *under* the United States:" Now, is it reasonable to interpret this article, so as to require the *political test* only from officers *of* the United States, that is from the President and members of the Legislature, and not from officers *under* the United States, that is from persons appointed by the Executive? Or so as to exempt officers *under* the United States, that is, officers appointed by the Executive, from the *religious test*, while such a test may be exacted from the President and members of the Legislature, under the description of officers *of* the United States? This cursory analysis is a sufficient refutation of the distinction, which has been attempted on a mere quibble, or play of words.

Mr. Dallas then proceeded to observe, that there were no words in the Constitution, that extended the impeachment power to the case of a Senator. The fourth section of the second article contains the only Constitutional description of persons liable to impeachment; and it does not

expressly name a member of either branch of the Legislature. To involve a legislator, therefore, in the operation of the power, it must be by implication, either including his case in the general terms of the investment, or in the description of civil officers. But why, he inquired, insert the President and Vice President, and omit the Senator, if the Senator was equally intended to be affected by the provision? Under the general designation of "civil officers," it would surely have been much more natural to include the President and Vice President, than the members of the Legislature. If the President and Vice President are named as a department of the Government, so ought the Senators and Representatives. It is a rule of law, that by naming an inferior officer, a superior cannot be affected. The Legislative department is, in all free Governments, considered as the sovereign; and those who compose it cannot be properly classed with civil officers, the subordinate functionaries of the State. There is another rule of law, *expressio unius exclusio alterius;* and therefore, by naming the Executive, the Legislative department, not being named, is excluded. But Mr. Dallas urged, at considerable length, the great inconvenience which would arise from an opposite construction, by destroying the independence of the two branches of the Legislature, by enabling the House of Representatives to drive a Senator from his seat, by arming a majority with the instruments of personal vengeance against their political opponents, and by rendering Senators the judges in their own cause. And he contended, that to include the Senators in the description of "civil officers," would generate endless absurdity and inconsistency in the Constitution itself.

The 2d section of the 2d article provides, that "the President shall nominate, and, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." The President having then power to appoint all the officers of the United States, including military as well as civil officers; the 3d section of the same article, declaring that "he shall commission all the officers of the United States;" and the 4th section, providing for the removal of all civil officers, excluding military officers, on impeachment and conviction; it would seem inevitably to result, that no man is an officer of the United States, unless he has been appointed and commissioned by the President; and that, therefore, unless he is so appointed and commissioned, he cannot be an object of impeachment. Here Mr. Dallas requested that it might be remembered, that the provision respecting impeachments was a part of the Executive article of the Constitution; and was immediately connected with the arrangements for making appointments, and issuing commissions, under the authority of the President.

Then Mr. Dallas proceeded to inquire, does the President nominate or commission Senators or Representatives? No: nor does the Constitution, in any part of it, term them officers, or call their representative station an office. But the honorable Manager has said, that the latitude to which this position extends would render it necessary that the President should issue a commission to himself, to the Vice President, and to the Speaker of the House of Representatives, since they are all expressly denominated officers. The Constitution, however, is not chargeable with this absurdity. The President and Vice President have their commissions from the Constitution itself; and the Speaker of the House of Representatives is emphatically an officer of the House, not of the United States. But the objection affords an opportunity to illustrate the meaning of the Constitution. It is provided that the President shall commission all officers, and that all civil officers shall be removed on impeachment and conviction; but the President does not commission himself and the Vice President, and, therefore, as it was intended to affect them by the impeachment power, it became necessary expressly to name them. The President does not commission Senators and Representatives; but it was not intended to affect them by the impeachment, and, therefore, they are not named.

Mr. Dallas continued to analyze various parts of the Constitution, and argued from the operation of them that a legislator never was considered as an officer of the United States, in the ordinary or Constitutional acceptation of the term. The 6th section of the 1st article contains the following passage: "No Senator or Representative shall, during the time for which he was elected, be appointed to any *civil office* under the authority of the United States, *which shall have been created,* or *the emoluments whereof shall have been increased* during such time; and *no person holding any office under the United States shall be a member of either House during his continuance in office.*" Nothing could more strongly mark the discrimination between a legislator and an officer than the language which is here used. It is declared that no member holding any office shall be a member of either House while he continues in office. If a member was deemed an officer, the phraseology would, doubtless, have been, "no member holding any *other* office." Again: let it be supposed that, previously to the amendment of the Constitution, (which merely provides that no law varying the compensation for the services of Senators and Representatives shall take effect, until an election of Representatives has intervened,) the pay of Senator had been increased by an act of Congress, could not a Representative, who had assisted in passing the act, be chosen a Senator before the expiration of the two years for which he was originally elected? Again: let it be supposed that a new State was erected and admitted into the Union;—if a Senator is an officer, the office of Senator for the new State would be created during the time for which Congress, who created it, was elected; and yet might not a member of that Congress be chosen a Senator for

new State, before the expiration of the time which he was elected a Representative? en, for instance, Kentucky was separated Virginia, and erected into a State, was not epresentative elected for Virginia, residing in the boundaries of Kentucky, eligible imately as a Senator of Kentucky, though he ned his representative seat before the term of lection had elapsed?

he first section of the 2d article, likewise, edly distinguishes between a legislator and a c officer, declaring, "that no Senator or Rentative, or person holding *an office* of trust ofit under the United States, shall be appointed lector." If Senators or Representatives were dered as persons holding offices of profit or under the United States, it was superfluous ecify them at all; or, if named, it would have correct to say, "no Senator or Representaor person holding any *other* office of trust or ," &c. But it is important also to remark, here, where the Constitution intends to work qualification, as to Senators and Representa- they are expressly named; and no sound n can be offered why they should not have equally named, if the Constitution had ind to subject them to impeachment.

t the 8th section of the 1st article contains a fication, which is calculated to demonstrate ery candid understanding that the framers of Constitution uniformly distinguished between ators and officers. It is there provided that ress shall have power "to make all laws h shall be necessary and proper for carrying execution the foregoing powers, and all other rs vested by this Constitution: 1st, in the rnment of the United States; 2d, or in any rtment thereof; 3d, or in any officer thereof." furnishes a key to the meaning of the Conion. The Government of the United States aces all the Departments; and the Legislas a Department. It is true that the Execuand the Judicial powers likewise constitute rtments of the Government; but they are in nature and operations characteristically disishable from the Legislative Department. Legislature always conveys to the mind the of numbers; the Judiciary and Executive al- convey to the mind the idea of individuals; ormer acts by majorities; the latter act by ns. Hence we find the Legislature is chosen, Executive and Judiciary are appointed; the s called a trust, the others are called offices. mmon parlance, as well as in technical pre-, the Legislature is denominated a body, of h each Representative is a member. The bers of the Legislature have no responsibilit to their constituents; and what they do as ators can nowhere else be questioned. But utive and Judicial Magistrates are responsior all their acts, in the ordinary course of inal prosecution, as well as in the extraordi- course of impeachment.

is distinction is not a novelty; it has been n in the Articles of Confederation, it exists e present Federal Constitution, it is recognised in many of the Constitutions of the individual States, and even the recent acts of Congress sanction and enforce it. Mr. Dallas, having read the extracts to support his assertion, animadverted particularly on the oath of office prescribed in the Constitution (Art. 2, sec. 1) to the President, though none was prescribed to Senators or Representatives; and on the act of Congress to certain oaths which exacted from Senators and Representatives more than an oath to support the Constitution; but to the Executive, Judicial, and all the subordinate officers of the United States, prescribed an additional oath of office.

But, Mr. D. contended, that, independent of all precedent and authority, the distinction was founded upon the very nature of a free Government. The Legislature is, in theory, the people: they do not themselves assemble, but they depute a few to act for them; and the laws which are thus made are the expressions of the will of the people. Over their Representatives, the people have a complete control, and if one set transgress they can appoint another set, who can rescind and annul all previous bad laws. But the power of the people is only to make the laws; they have nothing to do with *executing* them; they have nothing to do with *expounding* them; and hence arises the diversity in the modes of remedying any grievance which they may suffer from the conduct of their Representatives or agents. If a legislator acts wrong, he may be expelled before the term for which he was chosen has expired; he may be rejected at the next periodical election; and the laws which he has sanctioned may be repealed by a new representation. But if an Executive, or a Judicial magistrate, acts wrong, the people have no immediate power to correct; prosecution and impeachment are the only remedies for the evil. Then, it is manifest, that, by the power of impeachment, the people did not mean to guard against themselves, but against their agents; they did not mean to exclude themselves from the right of reappointing, or pardoning; but to restrain the Executive Magistrate from doing either with respect to officers, whose offices were held independent of popular choice.

The subject is made more plain by two considerations—1st, that although either House may expel a member, they cannot (on the principles of the Constitution, without any express prohibition) expel him twice for the same cause: 2d, that the President is not empowered to pardon in cases of impeachment. In the case of expulsion, the member is sent to the people, but if they choose to return him again, he has a perfect title to his seat. In the case of an impeachment, the delinquent officer is dismissed. On the general power of the Executive, he might be reappointed; but to guard against the abuse of that power, the Constitution superadds a sentence of perpetual disqualification.

It has been said by the honorable Manager, that every person who executes an authority is, in fact, an officer; but this definition is certainly too vague and extensive. Here Mr. D. exemplified the general principle of his argument, by the analogies to a corporation, which has a power of making by-

laws, appointing its own officers (being members of the corporation) and acting by proxy. The proxies appointed by the members (one proxy, perhaps, for many members) he compared to Senators and Representatives; but, surely, the proxies were never called the officers of the corporation. When the president and directors of the corporation are chosen from its members, they are called the officers of the institution; so, when the Speaker of the House of Representatives is chosen, he is called the officer of the House, but the rest of the Representatives remain its members: the language of the Constitution, indeed, is pointed on this subject: "The House of Representatives shall choose their Speaker, and *other* officers." The Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring *what officer* shall then act as President." Now, the latter expression, *what officer*, without saying "of, or under, the United States," seems to be employed to admit the very case of the Speaker of the House of Representatives, who is an officer (an officer more confidential than any appointed by the Executive) but yet he cannot be called an officer of the United States. The act of Congress, which was passed to effectuate this Constitutional provision, preserves the same guarded and appropriate language. The title is, "An act, &c., declaring the officer who shall act as President, &c.," and the 9th section provides, "that in case of removal, death, resignation, or inability both of the President and Vice President of the United States, *the President of the Senate pro tempore*, and in case there shall be no President of the Senate, then *the Speaker of the House of Representatives*, for the time being, shall act as President, &c." The President of the Senate *pro tempore*, and the Speaker of the House of Representatives, are merely the officers of their respective Houses; and it is only by being chosen to the Chair, that they acquire the denomination of officers, contradistinguished from the character of members.

Mr. D. repeated, that from a just consideration of the principles of our Government, it was thus manifest, that the moment there was a departure from the immediate choice of the people, the law of impeachment became necessary to secure them from the favoritism, or perverseness of the Executive Magistrate. *Impeachment*, he observed, is, with respect to Executive and Judicial officers, what *expulsion* is with respect to the members of the Legislature. As expulsion enables the people to decide whether they will restore the evicted member to their service, a conviction on impeachment enables the Representatives of the people to decide whether the delinquent shall be partially or totally excluded from the honors and emoluments of public office. But the very circumstance of declaring that a pardon shall not avail in cases of impeachment, though a re-election shall avail in cases of expulsion, demonstrates (as was before intimated) that the people did not mean to guard against the exercise of their own sovereignty, but against an abuse of the power delegated to their agents. Nor is there any legal force in the objection, that a Senator or Representative, convicted upon impeachment, should be rendered ineligible; for the people are the best judges to whom they ought to confide their interests; and it is no uncommon thing in the law, that persons disqualified to act for themselves may be qualified to act for others. A minor and a married woman may be an executor or executrix. A person outlawed or attainted may be an attorney. And it appears from the case of *Wilkes*, and many other cases, that conviction of a misdemeanor, is no bar to an election as a member of the British Parliament.

Here Mr. D. entered into a general recapitulation of the points of his argument, urging that the reason on which the law of impeachments was founded, did not apply to the case of a legislator; that impeachments were intended as a check on the Executive power, in the business of appointing to office; that the power of expulsion, by returning an offending member to his constituents, was sufficient to enable each House of Congress to preserve itself from pollution; and that the general penal law, applying as much to Senators and Representatives as to any other class of citizens, was competent to every purpose of punishment, as well as to warn the people against unworthy candidates for their favor. But, besides these considerations, there are precautions taken in relation to the popular choice, which are not taken in the ordinary appointments to office. The candidates must have attained a certain age; they must be qualified by citizenship and long residence; and they are exposed to the ordeal of frequent elections. Under these circumstances, the great security, after all, is, that the people will only trust those citizens with Legislative power who will employ it with wisdom and fidelity.

There is, however, one topic connected with the present discussion, to which the honorable Manager (perhaps from motives of delicacy) has not adverted, though in almost every conversation abroad, it is treated as of some importance. Mr. D. said, he meant the distinction between Representatives and Senators, as objects of impeachments, owing to the participation of the Senate in the Executive business of making treaties, and appointing officers; and on which distinction alone, a Senator has sometimes been regarded as a civil officer. But the objection is susceptible of a full and satisfactory answer. The Constitution declares, where the Legislative, and where the Executive power shall be deposited, and to each depositary it allots certain attributes; but it no where calls, or considers, the Senate as an Executive body. The omnipotence of the people in choosing their form of Government, and in modifying its powers, will not be denied. They might have established a despotism instead of a Republic when they ratified the existing Constitution; and they had a right to regulate and limit, as they pleased, the jurisdiction of the great departments of the State. They have, in fact, exercised this absolute authority in a variety of instances. If they have enlarged the sphere of Senatorial authority, as a Legislative power, in the cases of treaties and offices, they have abridged it in the

money bills. If they have abridged the
ntial authority, as an Executive power, in
es of treaties and offices, they have enlarged
he case of the qualified negative on laws;
deed, the President might as well, for that
be called a member of the Legislature, as
tor may, for the preceding reason, be called
officer.

what is the nature of this Senatorial parti-
n in the business of the Executive? It is
g more than a privilege to approve, or to
rove; to expres a Legislative sentiment,
n Executive proposition. The right to
ate, to commission, and to remove public
, remains, exclusively, in the President.
not the people, however, have given to the
ture, or to either of its branches, an entire
over offices, without changing or destroy-
e Legislative character? In Pennsylvania,
te Treasurer is always appointed by the
l Assembly; and that body may appoint
other officers in the department of accounts.
as the case, likewise, when the Legislature
nsylvania consisted of only one House;
t it never was thought that the Represent-
for this reason, became Executive magis-
r civil officers. If the people might invest
epresentatives with the whole power, may
ot invest them with a part? But if this
pation, in what is termed Executive busi-
hanges the character of a legislator into
racter of a civil officer, how will the rule
, when we find Congress is empowered to
var, to grant letters of marque and reprisal,
late weights and measures, to coin money,
te courts, &c., all attributes of Executive
ty, according to most political theories, and
ally so, according to the Government of
untry from which our ideas of politics and
udence are derived? Surely, then, the dis-
on of power is no criterion on the occasion;
e participation of the Senate, in the busi-
f appointments, may as well be called a
tive as an Executive authority: it is a part
jurisdiction alloted to the Senate as a Le-
e body. The general reasoning is equally
ble to the Senatorial participation in mak-
ties. And this additional remark occurs,
treaties are, under our Constitution, a con-
part of the supreme law of the land, they
seem more properly to be classed with Le-
e than with Executive acts. Why, like-
may fairly be asked, should not a Senator
idered as a civil officer, on account of the
pation with the Judiciary, in matters of im-
ent, as well as on account of the participa-
th the Executive, in matters of office and
? And, in that point of view, the House of
entatives, acting in the character of the
Inquest of the nation, may also be denom-
civil officers. But the truth is, and it can-
too often repeated, that the people have a
o deposite any power, in any form, in any
nent; and an arbitrary definition of the
will not alter the character of the depart-

Mr. Dallas here observed, that he had so greatly trespassed on the time and attention of the Senate, and was so much exhausted with the debate, that he should leave it to his colleague to dilate upon the remaining points involved in the discussion. It would be permitted to him, however, cursorily to remark, that the articles of impeachment do not charge William Blount with any crime or misdemeanor committed in the execution of his office, with any act which might not have been committed by any other citizen, as well as a Senator; that there was room for argument, whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion; and that the honorable Manager had misunderstood the object of the plea, when he supposed it asserted a right to a trial by jury, in cases properly impeachable; since the clause to which he referred was merely inserted to show that, unless this was a case in which an impeachment would lie, the party was entitled to a trial by jury, in the ordinary courts having cognizance of the matters charged.

Upon the whole, Mr. Dallas expressed his hope, that for the sake of the principle, as well as in favor of his client, the plea to the jurisdiction of the Senate would be sustained, and the impeachment dismissed; but, whatever should be the result, he was confident it would be produced by deliberation, wisdom, justice, and impartiality.

The Court adjourned until to-morrow-morning at eleven o'clock.

JANUARY 5.

The Court being formed, and the Managers and counsel having attended, Mr. INGERSOLL spoke as follows:

Mr. President, and Gentlemen of this Honorable Senate:

A cause involving the construction of an important part of the Constitution of the United States, the dignity and independence of the Senate, and the rights of the House of Representatives, offers for consideration.

Motives of such high import secure to me the attention of this honorable body, while I attempt the discussion of a question, novel, curious, and interesting to every citizen of the Union.

I shall class my observations under these three particulars, to wit: The *nature*, the *extent*, and the *objects* of the power of impeachment, as designated by the Constitution of the United States.

The honorable Chairman of the Managers has told us that the Constitution has adopted the word impeachment, as well as many other technical terms, and has sent us to the common law for its exposition; that, by following the guide to which he refers us, we shall find that this power is universal and without exception, pervades every part, indefinite as to offenders and offences, restricted only in the punishment to be inflicted.

This suggestion gives to the cause an importance, the weight of which oppresses me. I now

feel a zeal beyond the line of the mere advocate. This is the first and last opportunity to pause and consider before the irretrievable step is taken. The interest of my client is lost in the consideration, how the event of this hearing may affect the public.

Sir, when I turn, as directed, to the books of the law, to know the nature of the proceeding by impeachment, what do I find of it there? Little good, and much ill; and while the energy of the English language, copious as it is, is exhausted in eulogiums on trials by jury in criminal cases, I read of none on proceedings by impeachment. The best English writers content themselves with stating, coldly, that the most proper and the most usual instances of proceeding by impeachment, are against the Ministers and other great officers of State, who, surrounded by the imposing splendor of royal favor, are too great for the grasp of law, administered by courts and juries; and from the special nature of the alleged crimes, sometimes a knowledge is requisite not always possessed by juries.

Sir, I find in those books, that the trial by jury in criminal cases, is the palladium which has preserved the liberties of the British nation during the shocks of conquest from abroad, the convulsions of civil wars within, and the more dangerous period of modern luxury.

My impression or my sentiments upon this subject, are not entitled as such, to the notice of this honorable body; but when I can cite in their support such names as Hale, Hume, Blackstone, and Woodeson; when I can add the expressions of the first great charter of American freedom, the Declaration of Independence, in which I find it assigned as one reason for the dismemberment of the Empire, that the King had given his assent to laws, for depriving us in many cases of the benefits of trial by jury; I trust what I have observed in this particular will not be stigmatized as declamation.

Since the honorable Manager has put me in this course, I will pursue it a little further. And I ask, is proceeding by impeachment the genuine offspring of that Constitution whose very end and aim, in the view of Montesquieu, was civil liberty; or is it an excrescence on the body politic, a necessary evil to cure a greater mischief; a balance to counterpoise the weight of monarchy? I read in *Blackstone's Commentaries*, vol. i. pp. 244, 249, 250, 251, 252, 257, 258; and *Blackstone's Commentaries*, vol. iv. 259, 260, that the King, *all perfect and immortal* in his royal capacity, can do no wrong; and hence the necessity of a check by impeachment upon his ministers, and those subjects who are entrusted with the administration of public affairs, who may infringe the rights of the people, and be guilty of such crimes, as the ordinary magistrate either dares not or cannot punish—a part of these reasons, surely, cannot operate in a republican system.

I read in *Magna Charta* that no man shall be condemned but by the lawful judgment of his peers, or the *law of the land.* What was this law of the land? What other mode of proceeding in criminal causes was then in practice, except trial by jury? Hale, eminently great and equally good, expresses it to be by the common law of the land. A learned English historian explains the expression, as alluding to those methods of trial which originated in the presumptuous abuse of *revelation* in the ages of dark superstition. The trial by ordeal, of fire or water, the *corsned* or morsel of execration, and the trial by battle. I add informations originally reserved in the great plan of the English Constitution, and attachments for contempts. Was the proceeding by impeachment within the exception? *Magna Charta* bears date A. D. 1225; the first instance of impeachment mentioned in the judicial history of England (as far as I can find) was on the 3d of February, 1388, or at least 1327, in the reign of Edward III., more than one hundred years after *Magna Charta;* unless, indeed, it be the proceedings against the two Despensers in 1321, which were so irregular that it was made void in Parliament the subsequent year.

Appeals in Parliament had been practised and their inconvenience became intolerable, and by the fourteenth chapter of the 1st Hen. IV. A. D. 1399, they were abolished; after which the proceeding by impeachment became frequent.

Supposing its origin to be as clear as it is doubtful, has not its history been marked with injustice; and is it a mode of trial as safe and useful as the trial by jury?

"It is sufficient," says the celebrated Montesquieu, as quoted by Justice Blackstone, "to render any Government arbitrary, that the laws on the subject of treason are indefinite;" for this reason, the statute of 25th Edward III. attempted to render the law on this subject definite and clear. The House of Commons, in order to destroy an object of their vengeance, attempted to introduce a new species of treason, *constructive*, and to support the charge by a new species of evidence, called *accumulative:* can any man read without the strongest sensibility the defence made on that occasion? Penalties are imposed previous to the promulgation of the laws, and the defendant is tried by maxims, unheard of until the moment of the prosecution. Who can recollect without horror the cruel manner in which the defendant was treated on his trial, as described by *Woodeson*, vol. ii. pp. 608, 609? Personal animosity and violence, and the implacability of determined enemies, marked their proceeding, until it ended in a bill of attainder, which a subsequent Parliament *repealed, erased*, and *defaced.* Let me add, in the words of the same author, *Woodeson*, vol. ii. p. 620, from this, or a more particular survey of the proceedings on impeachment, we shall find occasion to observe, that though great is the utility of the public ends, which they are designed to answer, they have been too often misguided by personal and factious animosities and productive of alarming dissensions between two branches of the Legislature. The incompetency of a court and jury sometimes to decide, from the greatness of the offender and the nature of the crime, is urged against me. I do not believe that at present

fender is too great for the grasp of law as istered by our courts and juries; but what appen, in our eventful history, I know not, erefore I confess it to be proper that a pro- of this kind should find a place in the Con- on, as far as respects the *Executive and its* s; but further than this I contend there is y necessity that it should be carried, and ch extension of this proceeding would be ely dangerous to the citizens. Might not fluence, the weight, and the protracted na- such proceedings by impeachment, endan- ven innocence? Have we not seen, in our ays, an impeachment continue seven years? he defendant possessed no other means of e than innocence, the prosecution would occasioned his ruin in one-seventh of the

erever a proceeding in a criminal matter es from the course of the common law by whether such proceeding be introduced by e or by a constitution, such statute and such ution ought to be strictly construed. If ne thinks I have dwelt too long on this pre- matter, let him read the encomium on trial y, by Mr. Justice Blackstone; let him read s *History of England*, vol. i. p. 98, and *Com.* vol. iii, p. 349, and *Black. Com.* vol. 349, 414; he will not find trials by jury of in those qualifying observations which *son* applies to the trial by impeachment.

s far I urge the argument and no farther. onstitutional power of impeachment is to ctly construed. If the question that now be involved in doubts, those doubts ought to *isive* in favor of the accused. The power e extended only so far as is expressed, or to rly inferred, by a fair and clear, if not ne- y, implication from what is expressed.

knowledge that the trial by jury, like every institution, is liable to abuse; but I con- at it is less so, infinitely less so, than trial peachment. The demon of faction most ntly extends his sceptre over numerous of men.

nceive that it was this retrospective view history of impeachment that was in the f the Convention who framed the Consti- of the United States. Hence, the salutary tion, as I understand it, not as contended opponents, an introduction upon the in- e ground on which it is placed in England; a restricted manner, in a narrow channel, ersede the trial by jury only in certain The malignant suggestions of envenomed y have no access to my breast. I do not improper motives anywhere. I ask only nable construction to ascertain its extent. ght proper to consider its nature as exem- in the juridical history of that country whose system of jurisprudence we have d it. Let us obtain an exposition of our Charter according to its true and genuine g. It is surely our duty to examine and erstand, as well as to revere and to defend onstitution. Previous to the formation of the present Constitution of the United States, this subject had been under consideration in forming State Constitutions; and in New York, whose Constitution was made in 1777, and in Massachusetts, whose Constitution was made in 1780, the practice of proceeding by impeachment was, in these and every instance, where the power was allowed, restricted to the Executive and its officers for malconduct in office. A strong indication of the sentiment that was generally entertained upon the subject; and such was the situation of the private citizen, that he could not be condemned on any criminal charge, but by the unanimous consent of a jury of his neighborhood.

I consider myself as having now prepared the way for a discussion of the second point, the *extent* of the power of impeachment under the Constitution of the United States; which power and proceeding I shall endeavor to show is restricted to the President, Vice President, and *civil officers* of the United States, for malconduct in office. I shall afterwards endeavor to make it appear that Senators are not the objects of this power, not being comprehended under the designation of *civil officers* of the United States.

Art. 2, sec. 4, is thus expressed: "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."

To construe an act of Parliament, it is necessary, we are told, to know what was the common law previous to passing the statute. For a similar reason, let it be recollected, that previous to the present Constitution of the United States, Congress had not any judiciary power; it was exclusively in the States separately—of both kinds—criminal and civil. The 12th amendment, now considered as a part of the original Constitution, declares that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." It was not in contemplation that either the Legislative, Executive, or Judiciary powers of Congress should be indefinite. The first section of the first article declares, not that *all Legislative* powers shall be vested in Congress, but "that all Legislative powers *herein granted* shall be vested in a Congress," &c. The Executive is to execute the laws made by the limited Legislature. The Judiciary is to extend to all those *causes* which arise out of the laws of the United States—to those which concern the execution of the provisions contained in the Articles of Union—to those in which the United States is a party—to those which involve the peace of the Confederacy—to those which originate on the high seas—and those in which the State tribunals cannot be supposed to be impartial.

That the Constitution of the United States, limited in its Legislative and Executive powers to certain enumerated objects, as well as in its Judiciary, where a jury constitutes a part of its administration of justice, should be left without bounds in this hazardous proceeding by impeachment only, is grossly improbable, and, I trust, un-

founded. Contrary, I am sure, to the spirit, and, I think, also to the letter of the Constitution. Let us trace the operation of this principle. A State officer is liable to impeachment in the Senate of the State. Is he liable at the same time, and for the same offence, to impeachment in the Senate of the State and of the United States? Will an acquittal in one be a bar in the other? In disputes between the powers and relative jurisdictions of State and United States, the same reasons may induce an acquittal in the former and a condemnation in the latter. Would not this occasion a Babel, a confusion of Constitutions, a monster of jurisprudence? In jurisdictions not emanating from the same authority, where a party had not his choice, the citizen is liable, it is said, to successive trials, and contradictory determinations for one offence. The distant inhabitant is amenable, we are told, at the bar of this Court, for every species of offence, at the distance of a hundred, or a thousand miles from his vicinage, to whom the prosecution itself would be ruin, and here must submit to the awful *discretion* of the Senate whether he shall retain his honor or be doomed to disgrace, recorded and transmitted to posterity, upon your archives, as unworthy the offices of Government, and, in part, reduced from the rank of a citizen.

I have said, sir, to the discretion of the Senate; because it is perfectly well known that, not only in the delineation of the offence by the prosecutors, but also in the construction of it by the Judge, a Court of Impeachment is not tied down by such strict rules as, in common cases, before a court and jury, give personal security.

Improvident citizens! They have taken care that they shall not be subjected to a fine of one shilling, nor to imprisonment of their bodies for one hour, but, in consequence of a verdict of the neighborhood, at the same time that it is suggested, their honor they have not secured with equal precaution. The suggestion, I undertake to say, is unfounded. The mistake is not in the people, but in those who impute to them so great an inadvertency.

I recur, then, fortified by these general reflections, to the words of the 4th section of the 2d article. My position is, that the clause in question was intended, and operates for the purpose of designating the *extent of the* power of impeachment, both as to the *offences and the persons* liable to be thus proceeded against. It will be of use here to recollect, that the Constitution had previously provided for the purity of the Legislature, in the 2d clause of the 5th section of the 1st article by empowering each House to punish its members for disorderly behaviour, and, with the concurrence of two-thirds, to expel a member. No clause similar to that which is introduced into some of the State Constitutions (that a member expelled and then returned, is not liable to be expelled again for the same offence) is to be met with in the Constitution of the United States; and, therefore, the Senate has an unlimited power to expel any member they shall deem unworthy their society.

Here, then, I flatter myself, the dispute admits of a clear solution—is reduced within a narrow compass, and brought to a point.

It is a rule of construction, that every part of an instrument be, if possible, made to take effect, and every word operate in some shape or other.

There are but two constructions suggested as possible; the one for which the honorable Managers contend, to wit: that the 4th section of the 2d article was intended as an imperative injunction upon the Senate, that when judgment was rendered against a civil officer of the United States, it should be for removal from office; the other, that for which we, as counsel for the defendant, insist, that is, that it was intended to designate the extent of the practice of proceeding by impeachment, specifying who are the persons to be proceeded against, and for what offences. If, then, I am able to show that the words of the 4th section of the 2d article will not have any effect or operation at all, unless they receive the construction for which I contend; if I establish these premises, the inference will necessarily follow, that the construction for which the honorable Managers contend is not well founded, and that the construction for which we contend is the true meaning of the Constitution in this particular. To this fair, short, and decisive test be the appeal.

In a previous paragraph, to wit: the 7th clause of the 3d section of the 1st article, it is provided 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; that is, judgment must be either—1st. Removal from office; or, 2d. Removal and disqualification; or, 3d. Disqualification without removal, where the person convicted is not an officer. I have spoken of a judgment of disqualification, where the conviction was of a person not in office, because I am now endeavoring to show the weakness of the reasoning against me; and, as the question of the liability of all persons, those not in office as well as those in office, depends for its answer upon the construction of this 4th section of the 2d article, I am not at present authorized to consider this position of my opponent's, of its comprehending all citizens, as refuted; and I acknowledge that the argument is connected with its respective principle on each side, and that unless there is a restriction of the power of proceeding by impeachment by this 4th section of the 2d article, it is without limit both as to offenders and offences.

What do the honorable Managers mean by saying that this section is imperative? Is not every part imperative in the same sense that this section can be said to be imperative? If a person is impeached before the Senate, they must try him; it is not a matter of choice. Duty is imperative. If they try, they must acquit or convict; if they convict, they must pronounce judgment. It is imperative, also, in the 1st article previous to the clause in question, what the judgment shall be. For I trust that it will not be said, that, although the judgment may not extend *further* than removal from and disqualification for office, the Senate may

stitute other punishments by fine or imprison-
nt, which in their opinion shall not be greater
n removal and disqualification. This would be
ng upon a principle inconsistent with every
of criminal jurisprudence; it would render
people slaves to the magistrate, to the Senate,
there would be no security for the citizens. In
sentiment I am supported by that safe guide,
Justice Blackstone, in his 4th vol. p. 377. "The
ies, though not always the quantity or degree
unishment is ascertained for every offence; for
udgments were to be the private opinions of
Judge, men would then be slaves to their ma-
rates." Such a principle has not, and I pre-
e will not be suggested by the honorable Man-
s. It is also observable here, that by the 2d
ion of the 2d article, cases of impeachment are
epted out of the President's power of pardon.
punishment being thus limited, the Constitu-
was imperative upon the Court to remove be-
as much as since the introduction of the clause
uestion; for I defy the honorable Managers to
v that it is *possible* for the Senate, on convic-
of an officer, not to remove from office, because
dgment of disqualification is a removal when
ounced against a person in office; it is a re-
al and more. It is impossible to pronounce a
ment that a man shall be incapable of holding
office and not remove him. The incapacity
s effect immediately. It is coeval with the
ment. There is not any interval between the
ment pronounced and the disqualification and
pacity. It is of course ridiculous to say, that
th section of the 2d article was introduced to
e it imperative upon the Senate to remove
office on conviction, when it was previously
e so imperative that it was impossible to avoid
ouncing a judgment that would operate a re-
al from office. As it is thus clear beyond the
bility of doubt, that the 4th section of the 2d
le was not introduced for the purpose suggest-
y the honorable Managers, which I have con-
ed; and, as no third construction has been at-
oted on either side, I infer that the construction
ended for by the counsel for the defendant is
founded, to wit: that the 4th section of the
rticle was intended for the purpose of desig-
ng the extent of the power of proceeding by
achment, at least so far as respects the *per-*
liable to be thus proceeded against.

rther, if anything further be necessary upon a
er so very plain; if, as the honorable Managers
, all persons are within the extent of this
e of proceeding, why make it imperative on the
te to remove civil officers only? Why make
solutely imperative to remove the marshal of
rict, whose sphere of influence is comparative-
considerable, and leave a general at the head
army or an admiral in the command of a
? Would not the public security be much
endangered by leaving a man convicted of
crimes and misdemeanors in these situations
those of many civil offices? It may be said,
these military characters are liable to be pro-
d against by courts martial. Be it so; that
deration is a good reason why they should not
be considered as within the power of impeachment,
as we assert to be the case; but none at all for not
removing them on conviction, if they are within
the provision of the Constitution in this particular.
And if Senators were within the power of proceed-
ing by impeachment, would it not also have been
made imperative upon the Senate to remove them,
who have a veto upon every bill proposed to be
passed into a law and every nomination for ap-
pointment to office?

I add, that I conceive the proceedings by im-
peachment are restricted not only to civil officers
but that the only causes cognizable in this mode
of proceeding are malconduct in office.

Treason, it is true, is not necessarily a crime of
office. In respect, however, to the President, he is
considered as so constantly in the exercise of his
office that it would be difficult to disconnect the
crime in which alone treason consists under the
Constitution of the United States, from his official
character. Why is it that this section passes im-
immediately from treason to bribery, a crime
necessarily referring to the duties of an office? Why
are the intermediate grades of offences passed by
and omitted in the enumeration.

I will not however, pursue this subdivision of
the subject, as it is not necessary to the support of
the defendant's plea. I will leave it after submit-
ting a few additional observations.

The punishment is official, if I may be allowed
the expression, and therefore peculiarly adapted
as a punishment for malconduct in office; and
surely a civil officer of the United States ought not
to be deprived of a trial by a jury of the vicinage
in criminal cases, but by express words or neces-
sary implication. Whoever examines the Consti-
tution of the United States with critical attention,
and compares it with the State Constitutions, will
find that many of the principles of the latter are
adopted and introduced into the former, where the
proceedings by impeachment were confined to
crimes and misdemeanors alleged to have been
committed by officers in the execution of their offi-
ces. Such I conceive, was the general sense of the
country as to the proper limits of this proceeding,
and that to give it a greater extent was both dan-
gerous and unnecessary. Offences not immediate-
ly connected with office, to obtain the purpose of
essential justice, are best decided in the courts of
the States or the United States, where party, and
witnesses, and jurors, are known to each other.
Nor can adherence to this principle be productive
of inconvenience; if the civil officer hold a com-
mission at the pleasure of the Executive, his remo-
val cannot be a matter of any difficulty. If such
officer, holding a commission during good beha-
viour, be convicted of a crime and misdemeanor,
such conviction would be *ipso facto* a removal and
disqualification; or a transcript of the record of
conviction would be a sufficient ground for remo-
val, and a concurrence of the Senate in a reap-
pointment of such offender is scarcely expecta-
ble. Is the charge against William Blount within
the extent of the power of impeachment, as I have
deduced it from the Constitution of the United
States? Is it for malconduct in office? The ar-

icles do not charge William Blount with treason, oribery, or other high crime and misdemeanor, committed while acting in the character of Senator. A Senator sometimes is a Legislator; at other times he exercises a Judicial power, as on occasions like the present. Sometimes he participates in the Executive power, concurring with the President in appointment to office. The articles do not suggest that William Blount acted or claimed to act in either of these characters when he committed the offences alleged against him. It is alleged only to have been done, contrary to his duty as a Senator; so is every impropriety. Eminent station makes faults as virtues more conspicuous, and the evil example more extensive and pernicious. On which of his Sentorial capacities were these offences breaches of his duty? No discrimination is made in the articles. For anything said or done in his Legislative capacity, he cannot be questioned out of this House, otherwise the whole power is vested in the most numerous branch, already sufficiently powerful. The offences charged are not more a violation of his Senatorial duty in his Executive than in his Judicial and Legislative capacity.

It is true that in England this power is upon a very indefinite footing. In theory it is constitutional to proceed against a Peer for any crime, against a Commoner for any misdemeanor. In practice this power is not carried into execution, nor would the present instance be endured.

All writers speak of this power as intended only as useful in charges against officers for malconduct in office. It is said by Blackstone, in the 4th volume of his Commentaries, pages 260, 261, "that a subject entrusted with the administration of public affairs may infringe the rights of the people, and be guilty of such crimes as the ordinary magistrate either dares not or cannot punish."

Montesquieu, in his *Spirit of Laws*, volume i. p. 327, expresses himself in a similar manner. A late learned English writer, Woodeson, volume 2d of his Lectures, pp. 601, 602, and 612, repeats the sentiment, and adds, "that the abuse of high offices of trust, are the most proper, and have been the most usual grounds of this kind of prosecution. The power of the delinquents, and the peculiar political nature of their crimes, pointing out this mode of proceeding as best calculated to answer the purposes of justice." History supports the position of these elementary writers. The Duke of Suffolk was impeached for neglect of duty as an Ambassador; the Earl of Bristol, that he gave counsel against a war with Spain, whose King had affronted the English nation; the Duke of Buckingham, that he, being Admiral, neglected the safeguard of the sea; Michael de la Pole, that he, being Chancellor, acted contrary to his duty; the Duke of Buckingham, for having a plurality of offices; and he whom the poet calls the greatest, brightest, meanest, of mankind, for bribery in his office of Lord Chancellor; the Lord Finch, for unlawful methods of enlarging the forest, in his office of assistant to the justices in Eyre; the Earl of Oxford for selling goods, to his own use, captured by him as Admiral, without accounting for a tenth to others. My argument is, that what in England is said to be the most proper, and has been the most usual, in this particular, is, by the Constitution of the United States, the exclusive ground of proceeding by impeachment; at least, that none but civil officers of the United States are liable to be thus proceeded against. I do not say, that it is equally clear that the power is limited also to malconduct in office.

Allow me here to notice an objection made by the honorable Managers, which has been much relied upon, and which, as it apears to me, is easily obviated. It has been said, the 4th section of the 2d article is only affirmative. I answer, so are all the powers of Congress, Legislative, Executive, or Judiciary. Congress has power, in the 8th section of the 1st article, to lay and collect taxes, to borrow money, &c. &c. There are no negative words except when applied to the States. From the nature of the compact, as well as by the 12th section of the Amendments of the Constitution, already noticed, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. I find by the Constitution, that civil officers are amenable to justice by impeachment, and I do not find that any other citizens are, and I therefore confidently presume that this will be the boundary by which this honorable Court will limit its proceedings. Whatever offences Mr. Blount may have committed, or is said to have committed, it is not expedient to break down the barriers of the Constitution in order to reach him. From all the preceding considerations I infer, that the power of proceeding by impeachment under the Constitution, extends only to the civil officers of the United States.

In the third place, who are the *objects* of this power of impeachment? Or, in other words, are Senators *civil officers* of the United States?

Ideas derived from English jurisprudence are ingrafted into all our Constitutions. Hence the propriety of reasoning by analogy from the books of the law. Thus far I agree with the honorable Chairman of the Managers. In Great Britain, says Mr. Justice Blackstone, in his Commentaries, vol. i. p. 271, 272, the King is the fountain of honour, of *office*, and of privilege. What is the definition of an office? It is thus defined, 2d *Black. Com.* p. 36; "a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging:" a definition much more accurate, I conceive, than that given by the honorable Chairman of the Managers.

If an officer is excluded from office, he may have a mandamus for admission or restoration. Will these remedies apply to a Senator? A writ of quo warranto, or an information in nature thereof, will lie against him who claims or usurps any office, to inquire by what authority he supports his claim? May it issue against a Senator? Will or will not the same particulars distinguish an officer of the United States? I mean the mode of appointment, the means to obtain admission or restoration, and the manner in which he may be called upon to show how he supports his claim to the office he ex-

es. No; it will be said, expulsion, and the pow" the Senate to judge of the elections of their bers, render such proceedings unnecessary. , that is, the Senator is to be removed, corrected, stored, by methods adapted to the member of egislative body, not to the officers of Execuppointment. The President is as much the pa of office here, as the King is in England. second clause of the 2d section of the 2d ar- declares, "that the President shall have power, nd with the advice and consent of the Senate, point Judges of the Supreme Court, and all officers of the United States, whose appoints are not herein otherwise provided for." expression is not, that the President shall ap all officers holding *under* the United States, ll officers *of* the United States. The excep- is immediately explained, and does not affect resent question. "But Congress may, by law, the appointment of such inferior officers as think proper, in the President alone, in the s of law, or in the Heads of Departments." lows in the next section, the third of article nd, "that the President shall commission all fficers of the United States." I infer that are within the expression of civil officers of Jnited States, unless so appointed and so comioned.

ere is the text and its comment. To be an er of the Government, you must receive a comion from the Executive of that Government. Constitution proceeds without the interven- of a single line, after declaring that the Presi- shall commission all the officers of the United es. As if so to connect the two circumstances, it should not escape notice, it selects out the ident, Vice President, and one class of those are to be commissioned, to wit, the civil offi- and subjects them to impeachment and its equences.

here then is the distinction suggested by the rable Chairman of the Managers, between who hold *under*, and those who hold *of* the ed States?

is objected that the President is surely an im- ant officer of the United States, and yet not missioned, and therefore, that our definition is ccurate. To this we answer, that the Presi- in the Constitution is always designated by appropriate term of office, and never included r the expression of officer of the United States, ny generic term.

ow is it possible to darken what is thus clear, ob- what is thus plain, and render doubtful what us exempt from all ambiguity? Three char- ristics distinguish the objects of impeachment ides President and Vice President, who are ially designated, instead of being included un- any general denomination;) 1st. They are inted by the President, with the advice of Senate. 2d. They are commissioned by the ident. 3d. They are civil, in contradistinc- to military officers.

erbal criticism laid aside, let us attend to the t and meaning, the scope and design of the stitution, in this particular. In the 5th section of the 1st article, the purity of the Legislature had been provided for, by giving to each House a power to punish and expel its members. Impeachment is afterwards introduced for the Executive, and its officers.

Who is the Senator? How appointed? To whom ought he to be amenable? Does he fall within the former, or the latter class? And which of those provisions is most applicable to him?

They are appointed by the State Legislatures —each has one vote—they are the representatives of the portion of sovereignty remaining in the individual States—they are sent as guardians to preserve the remaining limited sovereignty of the States. Do the reasons which show the propriety of rendering the Executive and its officers liable to impeachment, apply to these characters? Official neglect may be a pretence, Legislative firmness the real cause of offence. Firmness in the discharge of his duty might subject a Senator to impeachment. It is a power of ostracism in the hands of the most numerous branch, already sufficiently powerful, which would enable them to remove from his seat any member of the Senate who dares oppose their favorite measures.

As a further indication how little analogy there is between the character of a Senator, and that of an officer of the Executive of the United States, let it be recollected, that if a Senator resigns, or dies, in the recess of the State Legislature, the Executive of the State, not of the Unied States, supplies the vacancy. The small State of Delaware has the same number of Senators as the large State of Massachusetts. Why? Because the Senators are the representatives of sovereignty. Refine as we please, this proceeding aims at the Legislative character of the Senator. The impeachment destroys his influence as such. Common fame is a sufficient foundation for this mode of proceeding; its immediate effect, let the opinion of the House of Representatives determine, who, on this occasion, even before the articles were presented or prepared, requested that the accused, merely on an intimation from them that they had resolved to impeach him, might be suspended from his seat in this House.

The Senator has a Judiciary and Executive as well as Legislative character, we are told; and, in the old quaint law Latin, *quo ad hoc*, he is *quasi*, an officer of the United States. Can you remove him in that or those capacity or capacities? How will the judgment be rendered? The civil officers contemplated by the Constitution, by necessary implications in the articles and sections so often read to this purpose, were those who had received their appointment from the President and Senate, commissioned by the President. If the Senator is in any respect a civil officer, he must, in the same respect, be thus appointed and thus commissioned, or he is not comprehended under the Constitutional definition of a civil officer of the Government of the United States. Is the Senator, in his Judicial and Executive character, appointed by the President and Senate, and commissioned by the President? Or does his Judicial and Executive character also emanate from the same

source as his Legislative, to wit, from the States? A member of the House of Lords, no writer, no speaker ever denominated an officer of the Crown or Government. Compare the Judiciary powers of a member of the House of Lords with those of the Senators of the United States. Here, a rare instance, of perhaps half a century, an impeachment. In England, the House of Lords is the dernier resort for the ultimate decision of every *civil action.* Then certainly it is not the Judicial part of the Senatorial character that denominates them civil officers of the United States.

It remains to consider their power in appointment to office. They can only advise and *consent.* They cannot either appoint or execute. Is this any incident of a civil office? Being appointed is; but not appointing, except the first Civil Magistrate. The civil officer is the patient, not the agent of appointment. The President, indeed, is not *appointed;* but, as I said before, he is not comprehended under the generic term of civil officer; but specifically described by the term of his *office*, as is the *Vice President.*

If the Senator rarely judges, and sometimes appoints, but generally legislates, in the Constitution, as in laws and common language, does the general nature of the character give the determination, or the incidental?

The President is the Executive of the United States; but does he not take a part in legislating? He has *a qualified negative upon every law;* and yet *all* Legislative power is vested in a Congress of Senate and House of Representatives.

If the Senator is liable to be proceeded against by impeachment, because he acts as a Judge sometimes, or joins the Executive in appointments, the reason of the law shows its extent, and *cessante ratione legis cesset et ipsa lex.* He is liable to impeachment only for what he did in the Judicial or Executive part of his character, then he would be prosecuted in one character, disgraced and punished in another.

There is not any charge in the articles against the defendant for malconduct, with peculiar reference to the exercise of his Judicial or Executive Senatorial character. If it be said, that his being a civil officer of the United States in two respects, renders him an object of impeachment for any crime and misdemeanor, then you include offences in his Legislative character, confound all the distinctions in the Constitution, destroy the independence of the Senate; and the most numerous branch, like *Aaron's* serpent, swallows up the whole. To obviate this objection, should any one say that his conduct as a legislator is exempt from this course of proceeding—I say no, unless that, as civil officers only may be impeached, it implies for malconduct in office, or that the Senator is not a civil officer of the United States. I defy ingenuity to suggest any but one of these two reasons, or make a third distinction. The 6th section of the 1st article declares, "that for any speech or debate in the Senate, the Senator cannot be questioned elsewhere;" but suppose that he is guilty by act, takes a bribe to vote for a law or against a law, if he is a civil officer of the United States, there is not anything to prevent his being liable to impeachment as any other civil officer; and if as to others, it is not confined to malpractice in office, but includes every crime and misdemeanor, so will it as to him also. It is asked, shall a Senator escape punishment? Must the Senate associate with an unworthy member? I answer, the Constitution has provided that the offender may be prosecuted by indictment, he may be expelled; after which, it is not very probable, that he will be appointed to an office of the United States, with the advice and consent of the Senate. If William Blount, however, is convicted, may he not be returned a Senator again? I mean to ask, will the judgment on conviction disqualify? The Senate, it will be said, can expel him again. Be it so; but, until expulsion, is he not a Senator, at least in his Legislative capacity? Can he be so by parts? Does not this show that a Senator is not an officer of the United States, nor an object of the proceeding by impeachment? Would a judgment on conviction remove him as a Senator? Would it be a disqualification, as to part of his character, and not as to another part? Such subtle refinements, opprobrious niceties and inconsistencies result from classing Senators under a denomination not intended by the Constitution.

Senators and members of the House of Representatives have one set of words appropriated to them in the Constitution — civil officers, other terms. As thus, *office, appointment, commission, removal; Senator, or one* of the House of Representatives, *member, election, expulsion, seat vacated.*

What interpretation shall we give to the 6th section of the 4th article? "No person holding any office under the United States, shall be a member of either House, during his continuance in office;" and yet a Senator is, *ipso facto*, it is said, an officer of the United States. Identity is incompatibility. The exception of a Senator is implied, say the honorable Managers; but how do they show it? Is not this section to be understood as importing that the character of a member of either House, and that of an officer of the United States, are, by the Constitution, distinct and incompatible. The distinction is observed throughout. Can the Clerk of this House, or the Clerk of the other House, be proceeded against by impeachment? I conceive not; because they are not appointed nor commissioned by the United States Government, or by the Executive thereof, but by the respective Houses. I believe that not an instance can be found in the Constitution of the United States, in which a Senator is classed under the denomination of an officer, or civil officer of the United States.

Some observation was made on the 9th section of the 1st article of the Constitution of the United States, "that no person holding any office of profit or trust under the United States, should, without the consent of Congress, accept of any present from any King, Prince, or foreign State." Might a Senator, one in so important a public situation, accept of a present from a foreign State? No, I answer. The power of expulsion is a sufficient check. The impropriety of the measure would

ufficient guard. The laws, in consonance he Constitution of the United States, dis-h between the members of the Legislature e officers of the United States, and also of veral States.

ne first volume of the laws of the United , p. 18, sec. 3, it is provided "that all mem- the State Legislatures, and the Executive udicial officers of the several States, shall n oath to support the Constitution;" and by n 2, it is provided "that the members of the e and House of Representatives," and by n 4, "that all officers of the United States ake the same oath, distinguishing between embers of either House and the officers of nited States." In the Constitution of the of Pennsylvania, of New York, of Massa-ts, and of New Hampshire, the same dis-n of language is observed. The distinction ally familiar in the English law. In the 1st f *Blackstone's Commentaries*, p. 368, it is that the oath of allegiance must be taken by *rsons* in any *office*, trust, or employment;" embers of either House are not considered uded. In p. 374 of the same volume, it is ed "that no denizen can be of the Privy il, or either House of Parliament, or have *fice* of trust, civil or military." Such, I be-has been the universal understanding of the sions, until the present prosecution.

a rule of construction, that when a law is doubtful, arguments *ab inconvenienti* are powerful. The rule will apply, with equal ety, to the construction of a Constitution. most numerous branch, already, I repeat it, ently formidable, may proceed by impeach-against a Senator—at their will, doom to rary disgrace any member—this would form gine of immense additional weight in their . I know that it is not always an objection t entrusting power that it may be abused; hen it is unnecessary to make the trust, and nger great, the risk ought not to be incurred. among the less objections of the cause, that fendant is now out of office, not by resigna-I certainly shall never contend that an offi-ay first commit an offence, and afterwards punishment by resigning his office; but the lant has been expelled. Can he be removed e trial, and disqualified at another, for the offence? Is it not the form, rather than the nce of a trial? Do the Senate come, as Mansfield says a jury ought, like blank pa-without a previous impression upon their ? Would not error in the first sentence ally be productive of error in the second in-? Is there not reason to apprehend the bias of a former decision would be apt to nt the influence of any new lights brought rd upon a second trial?

now I am endeavoring to support what in all is generally unpalatable doctrine. I am ng for a decision against the exercise of ju-ion requested by the honorable Managers. rs, however, says Lord Coke, which over-heir limits, are apt to lose their channel, *est boni judicis ampliare justitiam non jurisdictionem.* I thank you for the patient attention with which I have been heard. I hope and believe that your deliberations will end in a proper decision of this most important question. I conclude in the dying words of the famous Father Paul to his country, as quoted by Mr. Justice Blackstone, and which he has, I conceive, with less propriety, applied to the Constitution of Great Britain: I say of the Constitution of the United States, in its true sense and genuine exposition, *Esto perpetua!*

Mr. INGERSOLL having closed his observations, Mr. HARPER replied as follows:

And I, too, Mr. President, say of the Constitution of the United States, *Esto perpetua!* In this prayer I most devoutly join the honorable counsel for the defendant; nor will I yield to that honorable gentleman, or any other of America's sons, in the warmth or the sincerity of my wishes for the perpetual duration of our free and happy Constitution.

But the question between us does not relate to the duration of the Constitution, which we all equally desire, but to its construction, about which doubts may well exist among its sincerest friends. To fix this construction in the case now under consideration, will, therefore, be the sole object of those remarks, which, as one of the Managers of the impeachment against William Blount, I shall address to this honorable body. To this object I shall strictly confine myself; leaving in the fields of rhetorical embellishment, to which they properly belong, all the other topics whereon the learned counsel for the defendant have so eloquently descanted.

The arguments urged against the jurisdiction of the Senate, in this case, naturally divide themselves under two heads: first, that no person except an officer of the Government of the United States is liable to impeachment under the Constitution; secondly, that, according to the force and true meaning of the Constitution, a member of the Senate is not such an officer. It was in this order that my learned colleague considered the subject. On the first point nothing can be added by me to the very able and conclusive argument which he delivered; nor shall I attempt anything more than merely to remove the principal objections which were urged by the learned counsel in reply; but, on the second, which was more lightly touched by him, I shall insist at greater length.

My honorable colleague, under the first head, contended that the power of impeachment being given by the Constitution to the Senate and House of Representatives, without restriction or explanation, its nature, its objects, and its extent, must be sought for in the common law of England, from whence it is derived. This principle was warmly combated by the learned counsel for the defendant who replied to him, but who did not condescend to inform us to what source we are to resort for the explanation of the term "impeachment," after we shall have rejected, pursuant to his advice, what he is pleased to term "the dark and barbarous volumes of the common law."

What, he exclaims, shall we, in order to decide on questions respecting our dearest rights, have recourse to the "dark and barbarous volumes of the common law!" This, Mr. President, reminds me of the "worm-eaten volumes" of the law of nations, about which we formerly heard so much in our dispute with the French Republic. The former Minister of that nation, when he found himself hard pressed by the authorities from the law of nations, which the American Secretary of State very ably adduced against him, had recourse to the same ingenious expedient whereto the learned counsel for the defendant, in similar circumstances, has resorted. He denied the authority of Grotius, Puffendorf, and Vattel, and called their works "worm-eaten volumes," whose contents, he thanked God, that he had long since forgotten.* With equal prudence and dexterity, the ingenious counsel for the defendant, hard pressed by the authorities adduced from the common law, and unable to answer or evade them, gets rid of them at once, by a *coup-de-main à la Genet*, and consigns them to oblivion, as "dark and barbarous volumes," unworthy of the light of the new philosophy; which, in law, it seems, as well as in politics and morals, can dispense with the aids of long experience, soars above the wisdom of all former ages, and, in the mouths of its new-fledged votaries, is all-sufficient, by its own light, to regulate not only our civil institutions and our moral conduct, but also the laws which protect our property, our lives, and our reputation. The "dark and barbarous volumes of the common law," which have been the boast of ages, and in which our simple ancestors thought that they could find the maxims of truth, discovered by reflection, and confirmed by experience, are now, according to the learned counsel for the defendant, to be banished, along with the "worm-eaten volumes" of the law of nations, into the regions of mere antiquarian curiosity, or of total oblivion. And yet, Mr. President, our courts and juries do not seem to be yet illumined by this new light; for to these "dark and barbarous volumes" do they perpetually recur on questions of the highest importance. If a man be indicted for murder, and a question arise whether the matter alleged in the indictment amount to the crime of murder, whither does the court resort for a decision on this question? I answer, to the "dark and barbarous ages of the common law." If the indictment be sufficient, and it become a question whether the facts proved are sufficient to support the indictment, whither, I ask, is recourse had for a decision on this point? Again, I answer, to the "dark and barbarous volumes of the common law." If the testimony, offered in support of the indictment, be objected to as improper, how is this question decided? By a recurrence to those same "dark and barbarous" volumes. If a man, being defamed by his neighbor, bring an action for damages, and it be objected that the words spoken are not sufficient to support an action of slander, how is this question decided? I answer, by recourse to the "dark and barbarous volumes of the common law."

Do these volumes, which have so unfortunately incurred the displeasure of the learned counsel for the defendant, possess less influence upon our property than upon our life and reputation? By no means; for should a man claim an estate by inheritance from his ancestors, or by the will of a person deceased, and a question were to arise respecting the legal effect of the words made use of in the will, or the circumstances necessary to constitute a descent in law, by what standard would the decision be regulated? By the rules, I answer, which are contained in the "dark and barbarous volumes of the common law." Should I bring my action of trover for the recovery of any part of my personal property, whereof another person had obtained possession? By what authority should I support my action? By what rules would the recovery be governed? Still, I answer, by the "dark and barbarous volumes of the common law."

It appears, indeed, that our Legislatures are as destitute as our courts and juries, of that new light which might enable them, like the learned counsel for the defendant, to dispense with the "dark and barbarous volumes of the common law;" for they perpetually refer to those volumes for the explanations of the most important terms used in their Legislative acts. Suppose, for instance, that the Legislature of any State should pass an act providing that any person *convicted* of such or such an offence, should suffer the punishment of *felony*, without *benefit of clergy*. Similar acts are frequent. Would the Legislature, in this case, explain, in the act, itself, what is meant by the terms *conviction*, *felony*, and *benefit of clergy*? Certainly not. For the explanation of those terms, which constitute the very essence of the act, recourse would be had to the "dark and barbarous volumes of the common law." So, if it were to be enacted, that lands held in fee simple, should no longer pass by descent to the heir at law alone, but should be equally divided among all the heirs of the whole blood, in equal degree, there would be found in the act itself, no explanation of the terms *fee simple*, *descent*, *heir at law*, heirs of the *whole blood*, *&c.*, but recourse must be had for their meaning to the "dark and barbarous volumes" which are so unsightly in the eyes of the learned counsel for the defendant.

I should never conclude, Mr. President, were I to enumerate all the instances of this kind which might be drawn from our systems of jurisprudence and our Legislative proceedings. Every day and every hour do our courts of justice found their decisions, and our Legislators rest the explanation, of their acts on those "dark and barbarous volumes" of the common law, for attempting to draw from which an explanation of the nature and extent of the power of "impeachment," my learned colleague has incurred the censure of the honorable counsel for the defendant.

But if my colleague were not thus supported by the universal practice of our Legislative bodies, and our courts of justice, in his recurrence to

* See the correspondence in 1793, between Mr. Jefferson and Mr. Genet.

mmon law for an explanation of a term de- solely from that law, what could be more able in itself than such a recurrence? Is common, is it not necessary, in every day's ce, to use terms drawn from particular arts ences? And when doubts arise about the ng of these terms, to what do we resort for explanation? Surely to the art or science whence they were borrowed. Let us take stry for an example. Suppose it were en- by a law that men should not profess chem- or should not perform certain operations in stry, without a previous license from the nment; and a question were to arise before t of justice about the meaning of the term nistry," or of the terms employed in describ- ose particular operations; on what author- ould this explanation, the decision of this on, be rested? Surely on the approved of chemistry; on the writings of those au- who have obtained the greatest reputation s science—of Lavoisier and Priestley, for in- . I trust the learned counsel for the defend- ould not stigmatize the writings of these il- ous chemists, of these new lights in science, ark and barbarous volumes." To me, they l be "dark," for I do not understand the sub- whereof they treat, but I should never pro- ce them "barbarous." On the contrary, I d submit implicitly to their authority, ac- ng to the maxim which, in my unenlighten- inion, is not the worse for being old: *cuique rte credendum.* Not so the learned counsel e defendant. To him the volumes of the non law are not "dark;" and yet, after hav- successfully employed himself in extract- eir rich treasures, he, rather ungratefully, I say, consigns them over to worms and ob- , with the epithet of "barbarous."

e learned counsel who first replied to my gue took great pains, and displayed much y, to show the pernicious and absurd conse- es which would result from adopting the common law of England, or the penal code y State, as a rule of conduct for the Federal rnment. But this was merely fighting a tom; for my colleague contended for no such , nor is it in the least necessary for our pur- We do not wish the Federal Government opt the penal laws of England, or of any par- r State in the Union; but we contend that a term, borrowed from the law of England, roduced without comment or explanation into Constitution or our statutes, every question re- ing the meaning of that term must be decided eference to the code from whence it was drawn; e same manner as a term in chemistry, or any science, being introduced into one of our sta- or Constitutions, must be explained by a ref- e to the writers on that science. Surely this ifferent thing from adopting the penal code ngland, or of any particular State, as a rule of uct for the Federal Government.

therefore, it be proper and necessary to recur ery art and science for the explanation of s which have been borrowed from it, where shall we search, but in the common law of England, for the nature and extent of the "power of impeachment," which our Constitution has borrowed from that law? It is answered that we must recur to the Constitution itself. This, Mr. President, I would most readily admit—nay, most earnestly contend for—did the Constitution contain any explanation on this subject. But is that the case? Let the Constitution answer.

In the last clause of the 2d section of the 1st article, the Constitution declares that "the House of Representatives shall have the sole power of impeachment."

1. The two last clauses of the 3d section of the 1st article declare that "the Senate shall have the sole power to try all impeachments;" that, "when sitting for that purpose, they shall be on oath or affirmation." That "when the President of the United States is tried, the Chief Justice shall preside." That "no person shall be convicted without the concurrence of two-thirds of the members present." That "judgment, in cases of conviction, shall not extend further than to removal from office, and disqualification to hold any office of honor, profit, or trust, under the United States." And that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law."

And, finally, the 4th section of the 2d article provides 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 is every word that that the Constitution contains on the subject of impeachment.

In these clauses there are provisions for three distinct objects, and, as it appears manifest to me, for nothing more. First, by whom impeachments shall be preferred; secondly, by whom and in what manner they shall be tried; and, thirdly, what shall be the punishment, in case of conviction. The power of punishment, indeed, is restricted. In no case shall it go beyond removal from office and disqualification; and in the case of the President, Vice President, and all civil officers, it shall not stop short of removal. But as to the persons who shall be impeached besides the President, Vice President, and civil officers; or as to the offences for which they may be impeached, not a word is to be found in the Constitution. The sole power of impeachment, in all its latitude, and with all its properties and incidents, is given to the House of Representatives.

Where, then, Mr. President, are we to look for these properties and incidents? Where shall we find the measure of this latitude? Not in the Constitution, surely, which says not one word on the subject; but in the common law of England, from whence the Constitution borrowed the term "impeachment," as it did so many other terms, without explanation or restriction.

It cannot, then, I apprehend, be doubted that the term "impeachment" in our Constitution has, and was intended by the framers of the Constitution to have, precisely the same meaning, force, and

extent, as in the English law. And it being perfectly clear that in the English law the power of impeachment is unlimited, and extends to every person and to every offence, it follows, undeniably, that the positions of my learned colleague remain unshaken, and that the defendant, in the present case, is liable to impeachment for the offences charged against him by the House of Representatives.

The learned counsel who first replied to my colleague has, indeed, denied that the power of impeachment is unlimited in the English law. According to him, it is restricted, by what he calls "the policy of impeachments," to mere official offences, committed by people in office. It is somewhat singular that the author cited, in support of this doctrine, (*Woodeson*, pp. 596, 601,) flatly and expressly contradicts the doctrine. After explain the circumstances from which, in his opinion, the practice of impeachments in England first arose, he goes on to state what the law on that subject actually was, at the time when he wrote, a very few years ago. "All the King's subjects, (says *Woodeson*, p. 601) are impeachable in Parliament; but with this distinction, that a Peer may be so accused before his Peers, of any crime; a Commoner (though perhaps it was formerly otherwise) can now be charged with misdemeanors only, not with any capital offence." I confess I cannot understand how it is to be inferred, from this authority, that the power of impeachment in England is restricted to official characters and official offences. To me it appears that the very contrary is expressly established. As to the position that all the instances specified by *Woodeson* are of an official nature, I cannot contradict it; but surely the learned counsel must have forgotten the case of Dr. Sacheverel, impeached for preaching an improper sermon, before he asserted that no impeachments, except of persons in office, and for official offences, are to be found in the English books.

As to the principles of the Federal Government, and the general policy of impeachment, whereby the learned counsel for the defendant have informed us that the power of impeachment under our Constitution ought to be restricted, I confess, Mr. President, that I do not perceive the force of such arguments in a question of this kind. Our business is to ascertain the meaning of the Constitution, and not to discuss the policy of its various provisions; to inquire what the law of impeachments is, not what, according to its policy and its uses, it ought to be. Such arguments would have been very proper in the Convention which framed the Constitution, or in any of those by which it was ratified, but are wholly inapplicable in a court of justice, whose business it is to expound the law, not to judge of its policy or impolicy. Nor can I conceive how the universal extent of the power of impeachment, contended for by my honorable colleague, is contrary to the spirit, the objects, or the policy, either of the law of impeachment, or of the Federal Constitution. The use of the law of impeachment is to punish, and thereby prevent, offences which are of such a nature as to to endanger the safety or injure the interests of the United States; and the object of the Federal Constitution was to provide for that safety and to protect those interests. Such offences may be committed, as well by persons out of office as by persons in office; and although the punishment can go no further than removal and disqualification, which restriction was, perhaps, wisely introduced in order to prevent those abuses of the power of impeachment which had taken place in another country, yet it may often be extremely important to prevent such offenders from getting into office, as well as to remove them when they are in; and it is, therefore, as consistent with the policy of impeachments, and the principles of the Federal compact, to punish them in the one case as in the other. This doctrine, it is further said, would enable Congress to interfere with the State Governments, by impeaching their officers, But those impeachments must be founded on offences against the United States; and if such offences were committed by State officers, I cannot see why they ought not to be punished, as well as in any other case. Surely they would not be less dangerous. If the convictions in such impeachments could remove men from State offices, or disqualify them for holding such offices, there might be something in the objection; but that could not be the case, since the removal and disqualification apply to offices under the General Government alone.

The learned counsel for the defendant have adduced many of the State Constitutions, to show that the States have, in their own Constitutions, restricted the power of impeachment to official persons and official offences; from whence, according to them, it ought to be inferred that the States, in ratifying the Federal Constitution, intended that the power of impeachment which it contains, should be restricted in the same manner. But, Mr. President, I cannot discern how this inference is warranted. The very contrary, I should suppose, ought to be inferred. It must be remembered that in the State Constitutions the power is expressly limited; and that terms are employed very different from those to be found in the Federal Constitution. This proves that where the States intended to limit the power, as in their own Constitutions, they employed express words for that purpose: from whence it may, surely, be inferred that when they took the Federal Constitution, without any such express words, they intended to take the power of impeachment alone with it, without any such limitation. It must also be remarked, that the Convention which framed the Federal Constitution was composed of members from each State, who must have understood their own State Constitutions, and the limitations on this subject, which they contain. Had they intended to limit the power of impeachment in a similar manner, they would no doubt have done it by express words, as in their respective State Constitutions.

But the learned counsel for the defendant have told us that the power of impeachment is limited in the Constitution itself, by the restriction which it imposes on the power of punishment. The power of punishment on conviction by impeach-

, is restricted, say they, to "removal from , and disqualification to hold or enjoy any of honor, trust or profit, under the United es;" and it would be absurd to impeach, try, convict a man, who held no *office* from which he l be removed, and could, of consequence, be therwise affected than by a disqualification to in future, offices which he, perhaps, never a prospect of obtaining. Of this absurdity the stitution cannot be supposed to be guilty; and efore it could not have intended to subject to power of impeachment any persons except e who actually hold offices, and may be pun- l by removal.

it where, Mr. President, did the honorable sel for the defendant learn that disqualifica- to hold any office of trust, honor, or profit, r the Government of our country, is no pun- ent? Would either of those honorable gen- en think it no punishment in his own case? e are, no doubt, many men indifferent as to es of profit, and not ambitious of those of r or trust. But to be held up to our fellow- ens as a person unworthy of trust, undeserving onor; to be stigmatized by a solemn sentence e law, pronounced by the highest and most l judicature known to the Constitution; to cluded, by the voice of our country, from all of participating in those rights, privileges, dvantages, which are open to our fellow-citi- ; to be disowned by our common mother, as nerate and unnatural sons, unworthy of her dence; to be deprived, not only of her kind- and her favors, but even of the right which a citizen holds dearest of all, the right of de- ig ourselves to her service, of defending her e hour of danger and distress. Are these not shments? I know not where the learned sel learned that they are not; but this I v, that they did not learn it in their own ts. Yes, Mr. President, a sentence of disqual- ion, pronounced by this honorable body, in ace of the whole American nation, and on a ge of high crimes and misdemeanors by the resentatives of the American people, is a pun- ent; and as this punishment is applicable to ons who are not officers as well as to those are, it follows that the power of impeach- t, if its extent be measured by that of the er of punishment, is applicable to all persons, her officers or not.

it admitting, Mr. President, that the power of eachment is restricted by the Constitution to *ers* of the Government of the United States; I contend that a Senator of the United States, ember of this honorable body, is an *officer* of Government, in the Constitutional meaning of word, and consequently liable to impeach- t, on the doctrine of the learned counsel them- es.

he learned counsel have, indeed, contended, heir plea, and in their arguments, that none but officers are liable to impeachment by the stitution; but in this they are plainly contra- ed by the Constitution itself. They found argument on that clause which provides "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." But this clause is, evidently, not restrictive, but imperative. It does not point out what persons, or what officers, shall be liable to impeachment; but expressly orders, that such and such officers, when convicted on impeachment, shall be punished to the extent, at least, of removal from office. The former clause had declared, that "judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold or enjoy any office of honor, trust, or profit, under the United States;" leaving the Senate to apportion the punishment, according to its discretion, within those limits. They might censure the person convicted, suspend him for a limited time, or disqualify him perpetually for certain offices, or for all offices during a certain period. But beyond absolute removal, and perpetual disqualification for all offices, they could not go. This was fixed as the utmost limit of their power, and of their discretion.

It was judged, however, that in case of the President, Vice President, or any *civil* officer, the punishment ought not to be less than removal; though it might be more, according to circumstances. This provision was, therefore, inserted. Its object, manifestly, is, not to designate the persons who shall be liable to impeachment, but to prevent the Senate, in the exercise of their discretion, from retaining in a civil office, a person convicted of "treason, bribery, or other high crimes and misdemeanors." As to the distinction here made between *civil* officers, and other officers, there is no need to examine or defend it. It may, however, be supposed to have arisen from an opinion, certainly well founded, that, under certain circumstances, there might be danger, or great inconvenience, in removing from his command, a *military* officer, whom, nevertheless, it might be very proper to censure or suspend, or even to disqualify for some particular offices. As to military officers, therefore, a complete discretion was left to the Senate; but not in the case of civil officers, to whom the same reasons could not apply. They, on conviction, *must* be removed. Military officers *may* be removed, or not, according to circumstances.

The honorable counsel for the defendant, who immediately preceded me, viewed this provision in a very different light. He discussed it at considerable length, and made it the principal groundwork of his argument. According to him, it is not to be considered as merely imperative on the Senate, and restrictive of their discretion in apportioning the punishment; but as a designation of the persons who may be impeached: because, as an injunction on the Senate, not to reduce the punishment, in the cases which it mentions, below removal from office, it would be wholly useless and superfluous; and therefore must either become nugatory, contrary to the maxim which requires an instrument to be so construed as to render

every part of it operative, or must be taken as a designation of the persons who alone are liable to impeachment. But with deference to the learning and discernment of that honorable counsel, I conceive that his opinion, on this point, is founded on a total misapprehension of the provisions respecting the punishment of impeachment. Every part of the Constitution, he says, is imperative on the Senate.* If the House impeach, they must try; and if they convict, removal and disqualification must follow. Therefore, to say that, in such and such cases, they shall remove on conviction, when removal and disqualification must be the necessary consequence of conviction in every case, would be nugatory and ridiculous. But is it true, that every part of the provisions respecting punishment on conviction is imperative? Is it true, that removal and disqualification must be the necessary consequences of conviction in every case? "Judgment, in cases of impeachment, says the Constitution, shall not extend *further* than to removal from office, and disqualification to hold," &c. Does this mean that the Senate shall always punish to the extent of removal and disqualification, whatever be the nature and mitigation of the offence; or that, within the limit of removal and disqualification, they may graduate the punishment according to circumstances, but never shall exceed that limit? If the latter be, as I contend it is, the plain and necessary meaning of the provision, the whole argument of the honorable counsel falls to the ground.

"The President, Vice President, and all civil officers," says the Constitution again, "*shall* be removed from office on impeachment," &c. Is there no difference between these two passages? Is it the same thing to say that certain persons *shall* be removed on conviction, and that judgment in no case shall extend further than to removal and disqualification? Is it not manifest, that one is imperative, and the other restrictive? That one prescribes limits to the exercise of a power supposed to exist, leaving it discretionary within those limits; while the other declares that, in certain cases, it shall be exercised to a certain extent, and thus curtails the general discretion before given? To me this construction appears so obvious, that I am almost tempted to repeat the phrase, rather hastily used by the honorable counsel, and declare, that a contrary construction would be perfectly ridiculous.

Had the Convention intended by this clause to restrict the power of impeachment, by designating the persons who should alone be liable to it, would they have employed expressions so awkward, so unapt, and so liable to doubt? Instead of saying, "the President, Vice President, and all civil officers, shall be removed from office on impeachment for and conviction of treason, &c.," would they not have said, "the President, Vice President, and all civil officers, *and no other persons*, shall be liable to impeachment, and on impeachment for and conviction of treason, &c., shall be removed from office? Had such been their intention, this, I conceive, would have been their language, for then their intention would have been clearly expressed.

The restriction, therefore, of the power of impeachment, is to be sought for in other parts of the Constitution, not in this clause. In what part? I answer in that which restricts the power of punishment.

"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." It is this clause, and this alone, that restricts the power of punishment, and that is said to restrict, by implication, the power of impeachment also. The power of punishment, it is contended, is restricted to *officers* by this clause; and it would be absurd to extend the power of impeachment beyond the power of punishment. The former, therefore, must be considered as restricted to *officers*, as well as the latter.

This reasoning has been already combatted, and, I think, entirely overthrown; but admitting it, for the present, to be perfectly well founded, let us, Mr. President, inquire how far it will aid the plea relied on by the defendant. Admitting that none but *officers* of the United States can be impeached; let us inquire whether a Senator be not an *officer* in the sense of the Constitution? This is the second great question in the cause. If I can prove that, in the true sense of the Constitution, a Senator of the United States is an *officer*, and that a seat in this honorable body is an *office* under the United States, it will follow that the defendant, in this case, is liable to impeachment, and that his plea must be overruled.

It is to be remarked, that the term "office," in that clause of the Constitution which, restricting the power of punishment, is said to restrict thereby the power of impeachment also, is used in the most general sense. The clause does not speak of a civil office, a military office, or any particular species of either; but of any "office of honor, trust, or profit," which is *genus generalissimum*, and includes every possible designation of office, of what nature or kind soever. It is, therefore, into the signification of the word "office," in its most comprehensive sense, that we are now to inquire.

In order to ascertain the meaning of a term, we may have recourse to its derivation, to its definition by writers of authority, who have had occasion to employ it, and to its established acceptation in common use. Let me be permitted, Mr. President, to try the meaning of the term "office" by these three standards. As to the derivation of this term, it is derived from the Latin word *officium*, which signifies duty, charge, or employment. As far, therefore, as its meaning can be inferred from its derivation, it must signify "a post, place, trust, or employment, which requires the performance of certain duties." Where those duties are of a public nature, the office is a public office.

It is in this sense that the term "office" is used among us. In common language, in legal proceedings, in public acts, when we speak of an "office," we mean "a post, place, or employment, which requires the performance of some duty of a public nature." These duties may be of various

kinds. They may relate to the civil Government, and then the office is a civil office. They may relate to the public defence, to the superintendence and direction of the public force; and then the office is a military office: but still it is an "office." in the general and universally received sense of the word. Where these duties relate to the civil Government they may also be of various kinds. They may appertain particularly to the enaction of the laws, which is the highest department of the civil Government, and then the office is a Legislative office. They may appertain to the execution of the laws, and then the office is an Executive office. They may appertain to the administration of justice, or the application of the laws to individuals, and then the office is a Judicial office. They may appertain to the relations between the nation and foreign nations, and then the office is a Diplomatic office. But still, in every case, it is an office, and a civil office. Wherever a man holds a place which requires from him the performance of a duty of a public nature, we call him an officer. We apply the term to a constable, or the cryer of a court, as well as to the Chief Justice of the United States; to a midshipman in the Navy, an ensign in the Army, or a weigher in the custom-house, as well as to the President of the United States. It is the official obligation to perform a public duty that constitutes the office in one case as well as in the other. There is no difference, except in the importance and nature of the duties.

I admit, indeed, Mr. President, that the application of the term to members of the Legislature is less frequent, in common language, than to persons employed in the Executive or Judicial departments; but, that it is frequently so used and so understood, I shall hereafter prove by the most authoritative examples. Its being less frequently used in that sense, is by no means an argument to show that it does not bear that sense. It is not very frequently used in application to persons employed in the diplomatic department. We do not commonly say of a foreign Minister or Consul that he is an officer; and yet there can be no doubt that the post of foreign Minister is an "office," in the strictest sense of the word. The term officer is more frequently and appropriately applied to persons holding military commissions, than any others; and yet nobody supposes, on that account, that a General in the Army is more an officer of the United States than the Secretary of State. The question is not, how the word is most frequently used, but to what extent its common and received acceptation will justify its use? There can be no doubt that, in its common and received application, it includes all persons holding posts which require the performance of some public duty. Surely a member of this honorable body holds a post which requires the performance of public duties, and those of the most important kind; for he participates in the enaction of the laws, by his share in the Legislative authority; in their execution, by his control over Executive appointments; and in the administration of justice by his power of impeachment. He, therefore, if any person, is to be considered as peculiarly an "officer under the United States."

He is even a civil officer: for we have seen that "civil offices" are contradistinguished from "military offices" by the nature of their duties; being "those posts which require the performance of some duty, of a public nature, relating to the civil Government." They constitute one general division of offices; and include, as subdivisions, offices Legislative, Executive, Judicial, and Diplomatic; all of which require the performance of duties relating to the civil Government. Hence it appears, that the argument of the learned counsel, who immediately preceded me, would avail him nothing, even were it well founded. He contends that the clause declaring that "the President, Vice President, and all civil officers of the United States, shall be removed on impeachment, &c.," is restrictive of the power of impeachment; and that, consequently, none but civil officers can be impeached. Be it so: but still the plea cannot be supported, for a Senator is a civil officer.

These elucidations also furnish us with a reason for the distinction made, in the clause relied on by the learned counsel, between the President, Vice President, and civil officers. Upon the construction of the learned counsel, this distinction would, to use his own expression, be nugatory and ridiculous; for, according to him, the term "civil officer" includes the President and Vice President: upon our construction, it is operative and necessary; for we contend, and I think have proved, that it is the relation of the duties to particular departments of public business, that produces, and defines, the division of offices into civil and military; and of civil offices, into Legislative, Executive, Judicial, and Diplomatic. Now as the duties of the President are not confined to the civil or military department, but comprise both, it follows, that his office is neither exclusively civil, nor exclusively military, but includes both characters; so that he would not have been included in the designation "civil officer," and it was necessary to name him expressly, which is accordingly done. The same reasoning applies to the Vice President, who is also expressly named.

I would not, however, be understood, Mr. President, to rely solely on this division of "offices" into civil and military; and of "civil offices" into Legislative, Executive, Judicial and Diplomatic. I think it perfectly well founded. It satisfies my mind; but it is not essential to the argument. Whether a Senator be a civil officer, or not, is immaterial. To prove him an officer is sufficient for my purpose. For the only clause in the Constitution, which can, with any appearance of reason, be said to restrict the power of impeachment, speaks not of "civil offices," but of "offices" in general, of all "offices of honor, trust, or profit." That a seat in this honorable body, is an office of honor and trust, cannot, I think, be denied by any who consider the nature of the post, and the derivation, force, and universally received signification of the term "office." It is even an office of "profit;" for however inadequate the sum allowed for the maintenance of the members may be, yet

very public post, which entitles to receive a compensation, great or small, from the public, is considered, in the proper legal sense, as an office of profit."

The manner in which the term "office" is used y legal writers, and their formal definitions of it, upport the interpretation which I have drawn rom its received and common acceptation. Without going into a detail on this point, which might e tedious, let it suffice, Mr. President, to refer to Blackstone, who has been justly relied on by the earned counsel for the defendant, as a standard uthority on subjects of this kind. Speaking of offices," in the second volume of his Commentaies, page 36, as cited by the learned counsel who receded me, that great writer lays it down, that offices are a right to exercise a public or private mployment, and to take the fees and emoluments hereunto belonging." Now let me ask, is not a eat in this honorable body "a public employnent?" Has not the member "a right to exercise his employment," and to receive the emoluments hereunto belonging?" Surely, to answer in the egative, would be a strange abuse of language.

The learned counsel who immediately preceded ne, has contended that a Senator cannot be conidered as an "officer," because there could be no uo warranto to remove him from his place, if he eld it improperly, nor mandamus to place him n it, if unjustly kept out. But surely this cannot e a well founded argument, for, if it be, it applies s well to the President, the Judges, the Secretaies, and the Commander-in-Chief of the Army, as o a Senator. Not one of them could be removed y quo warranto or replaced by mandamus. Did ny one ever hear of a quo warranto to remove a Colonel of a regiment? Was a quo warranto ever rought in England against the Chancellor of the Exchequer, or a Secretary of State, or a Lord of he Admiralty? Certainly not, and yet that these re officers, will not be denied. The truth is, Mr. President, that the doctrine of quo warranto and nandamus, as far as it relates to officers, is conined exclusively to certain local municipal officers, of a subordinate nature, who are placed, by he common law of England, under the superinendence of the Supreme Court of Justice; to which, from the nature of their offices, recourse ould most conveniently and effectually be had, or their punishment, their removal, or their reintatement. But this reason did not extend to the reat officers of the State, of the Army, or the Navy, or to any of their subordinates. They could est be punished, removed, and replaced, in a diferent manner, and by a different authority. To hem, therefore, nobody ever dreamt of extending he power of the Supreme Courts by quo warranto nd mandamus; and yet nobody ever, on this acount, thought of denying that they were "officers," which, however, would be just as reasonable as o contend that a Senator of the United States is ot an "officer," because he cannot be removed y a quo warranto, or admitted by mandamus. I dmit that it would be absurd to talk of an office rom which a man could not be removed, howver flagitious his conduct; or into which, when entitled to it, and improperly kept out, he had no means of obtaining admission. But a Senator may be removed by a vote of expulsion; and if duly elected, but not returned, may obtain his seat by a petition to the Senate.

I conceive, therefore, that no argument can be more destitute of foundation, than that which would divest a seat in this honorable body of the quality of an "office," because it is not within the scope of writs of mandamus and quo warranto.

If from Blackstone, Mr. President, we turn to our own laws, our own writers, and even our own Constitutions, we shall equally find that a seat in the Legislature is considered as an "office."

Let us begin with the laws of the United States. In the 3d section of the "act to regulate the time and manner of administering certain oaths," it is provided, "that all members of the several State Legislatures, and all Executive and Judicial officers of the several States, who shall be chosen or appointed before the 1st day of August next, and who shall then be in *office*, shall take the same oath or affirmation, which may be administered by any person authorized by the law of the State in which such *office* shall be held, to administer oaths." Here it is most manifest, that the expressions "shall then be in *office*," and "in which such office shall be holden," are applied to members of the State Legislatures, as well as to the Executive and Judicial officers of the several States; which not only proves, incontestably, that Congress, acting immediately under the Constitution, and making provision for carrying it into effect, considered a seat in a Legislative body, as an "office;" but also marks, in the plainest and strongest manner, the division of "offices" into Legislative, Executive, and Judicial.

The same section then goes on to provide, that "the members of the several State Legislatures, and all Executive and Judicial officers of the several States, shall, before they proceed to execute the duties of their respective *offices*, take," &c. Here the station of a member of the Legislative body is expressly called an "office," and the same distinction between officers Legislative, Executive, and Judicial, is kept up and enforced.

Not less explicit on this point are the Constitutions of the several States. When I refer to those Constitutions on this question, I refer to them as I would to the writings of Marshal Saxe or Frederick the Third, on a military question; or of Lavoisier, on a chemical question; or of Blackstone or Lord Coke, on a question of law. I refer to them as authorities for the meaning of a Constitutional term. And, surely, when a question arises about the meaning of a term used in the Constitution, we can refer for an explanation to no better authorities than the Constitutions of those States, by whose delegates the instrument was framed, and by whose Conventions it was ratified.

To begin with New Hampshire; we find in the 8th section of the Bill of Rights, prefixed to the Constitution of that State, these words: "All power residing originally in, and being derived from, the people, all the magistrates and *officers* of Government are their substitutes and agents;

t all times accountable to them." Here we hat the term "officer" is used in the general for which I have contended, and means any t of the people, any delegate of public trust or ority; a description plainly including mem- of the Legislature.

he next section is still more express. "No or place whatsoever, in Government, shall reditary;" making the word "office" synony- with the term "place in Government."

in the 11th section. "All elections ought free; and every inhabitant of the State, hav- he proper qualifications, has equal right to or be elected into *office*." This evidently des members of the Legislature, who are fore said to be elected into "office."

hen we come to the form of Government, nd a provision under the head of "Senate," h comes expressly to the point. "The Sen- hall consist of 13 members, who shall hold *office* for one year. This requires no com- .

der the head of oaths and subscriptions, &c., is an expression no less conclusive. "Any n chosen Governor, Councillor, *Senator*, or *esentative*, military or civil officer, shall, be- he proceeds to execute the duties of his *office*, and subscribe the following declaration." it is expressly declared that a Senator or Re- ntative holds an "office."

the Constitution of Massachusetts the au- ies are not so numerous; but there is one h is full and express to the point. It is found e Bill of Rights, section 5th. "All power ng originally in the people, and being de- from them, the several magistrates and 'offi- of Government, vested with authority, whe- *Legislative*, Executive, or Judicial, are their tutes and agents, and are at all times ac- able to them." Here we see members of the lature expressly included in the term "offi- " and the distinction between Legislative, utive, and Judicial officers, clearly laid down. 8th and 9th sections go also to the same point, h less clearly.

he subsequent part of this Constitution, chap. rt. 1st, it is provided that "any person cho- overnor, or Lieutenant Governor, Council- *enator*, or *Representative*, and accepting the shall, before he proceed to execute the du- f his *place* or *office*, take and subscribe the ving declaration." Here the place or trust Senator or Representative is called an *office*, he words place, trust, office, are used as sy- nous, according to the definition which I endeavored to establish. The declaration to s taken is equally explicit.

e article then goes on to direct that "every per- hosen to either of the places or *offices* afore- the place of Governor, Lieutenant Governor, cillor, Senator, or Representative,) shall, be- e enters on the discharge of the business of ace or *office*, take and subscribe," &c.—still "place" and "office" as synonymous, and ing them to the post of Senator and Repre- ive.

In the Constitution of Rhode Island, which consists merely of an ancient charter, I see nothing on this subject; nor in that of Connecticut, which is also an ancient charter; but, in an account of the manner of holding elections in the latter State, I find that the writer constantly applies the term "office" to members of the Legislature; from whence we may infer that it is so understood in that State.

In the Constitution of New York, sec. 25th, the term "office" is applied to members of the Legislature, and especially of the Senate. "The Chancellor and Judges of the Supreme Court," says that section, "shall not hold any other office except that of Delegate to the General Congress, upon special occasions; and the first Judges of the County Courts in the several counties, shall not, at the same time, hold any other *office*, except that of *Senator* or Delegate to the General Congress.

The Constitution of New Jersey, sec. 4th, prescribes the qualifications which shall entitle a person to vote "for representatives in Council and Assembly; and also for all *other* public *officers* that shall be elected by the people of the country at large"—thus recognising the principle that members of the Legislature are public officers.

In the Constitution of Pennsylvania, art. 8th, we find mention of the *offices* of members of the General Assembly. "Members of the General Assembly," says the article, "and all officers, Executive and Judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective *offices* with fidelity." The same idea is expressed, though less pointedly, in the 4th and 7th sections of the 9th article.

The Constitution of Delaware, after declaring that one branch of the Legislature shall be called "the General Assembly" and the other "the Council," and prescribing the manner of their election, proceeds (art. 4th) in the following manner: "And this rotation of a Councillor (a member of one branch of the Legislature) being displaced at the end of three years in each county, and his office supplied by a new choice, shall be continued," &c. Nothing I apprehend, can be more expressly to the point than this passage.

In the Constitution of Vermont, chap. 1st, sec. 6th, it is declared "that all power being originally inherent in and consequently derived from the people—therefore, all officers of Government, whether Legislative or Executive, are their trustees," &c. The people of Vermont, therefore, as well as those of so many other States, understand the term "office" as we do, and consider it as applicable to the members of a Legislative body.

These instances, Mr President, are the result of a hasty glance over our Laws and Constitutions. Had there been time for a more accurate and extensive research, I have no doubt that a much greater number might have been adduced from the Constitutions and codes of the various States. These however, seem to me most fully to establish the point for which we contend, as far as any point can be established from authority of the highest

nature, viz: that the term "office" as used in our Constitution, and universally understood by those who framed and ratified it, extends to Senators of the United States

Although I am sensible, Mr. President, that this point is now fully established, yet there is one authority more which I cannot forbear to cite, and which I am persuaded will have great weight with this honorable body. It is taken from a book of high authority in this country, the production of a very accomplished writer, whose style is no less remarkable for precision and correctness, than for beauty. This wrtier, in the year 1783, prepared the "Draught of a fundamental Constitution for the Commonwealth of Virginia." in which I find the following passage: "The General Assembly (that is, the Legislature, to be composed of a Senate and a House of Delegates) shall meet at the place to which the last adjournment was, on the forty-second day after the day of the election of delegates and thenceforward, at any other time or place, on their own adjournment, till their office expires." What office? The office, I answer, of Senators and Delegates—of members of the Legislature—whose posts are thus declared to be offices, by the derivation of the term, by its universal acceptation in common language, by the definitions of the greatest law writers, by our own statutes and the Constitutions of the States, and by our most distinguished authors. All this body of testimony, speaking with one voice, it might have been expected, would be sufficient to convince the learned counsel for the defendant and induce them to abandon their plea. But no; far from it. They still tell us that this explanation of the term "office" is repelled by the Constitution itself, several clauses of which they cite to prove that it does not consider the term as extending to members of the Legislature, however that term may be understood elsewhere

To this authority, Mr. President, I readily acknowledge that we must submit. If the Constitution do in fact explain the word "office" differently from our explanation, our explanation must fall to the ground. Let us, therefore, examine this point. Let us view and consider those clauses which are said to contain the explanation. I believe it will be found that they do not warrant the inferences which have been drawn from them by the learned counsel for the defendant.

The first of these clauses which has been relied on, is found in the 2d section of the 2d article of the Constitution, where it is provided, that "the President, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers, and Consuls, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." But does it follow from this that none are to be considered as officers of the United States except those whom the President appoints? So far from it, that the clause expressly speaks of officers who are not to be appointed by the President, and whose appointment is otherwise provided for by the Constitution itself. The clause, therefore, proves nothing; for, as there are officers who are not appointed by the President, it cannot be inferred that Senators are not officers because the President does not appoint them.

As little can the objection be supported by that clause (in the 3d section of the 2d article) which declares that "the President shall commission all officers of the United States." It cannot be hence inferred, that a Senator is not an officer, in the sense of the Constitution, because he is not commissioned by the President; for, at that rate, the President himself would not be an officer; nor would the Vice President, since neither the one nor the other are commissioned by the President. It is plain, therefore, that this clause is not to be understood in its unlimited sense, in which it would be a manifest absurdity, and would require the President to commission himself, but, in a limited sense, applying to those officers only whom the President appoints. A commission, indeed, Mr. President, is nothing more than the certificate of an appointment; the evidence that a post, office, or employment, has been conferred by the proper authority. This certificate, it is perfectly proper, that the authority making the appointment should give. It is evidence of the fact, and the authority which made the appointment is the most authentic source from whence this evidence can be derived.

Nothing, therefore, could be more proper than to provide that the President should commission all those officers who derive their appointments from him. But there are officers whom he does not appoint, and whom he does not, nor can commission; among the rest, himself and the Vice President. The clause, therefore, when rightly understood, proves nothing; for, as there are officers who, notwithstanding this clause, are not commissioned by the President, it cannot be inferred that a Senator is not an officer, because the President does not give him his commission.

A clause from the 6th section of the 1st article, in the following words, has also been relied on:

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office."

I am ready to admit, Mr. President, with my honorable colleague, who opened the case, that this clause wears an aspect more hostile to our construction of the term "office," than any other part of the Constitution; but I contend with him, that the Constitution, like all other instruments, must be construed in each separate part of it, *secundum subjectam materiem*, according to the subject matter of each part; and in such a manner as to effectuate every part, and render the whole consistent. These rules of construction will not be denied. When this clause comes to be analyzed and tried by these rules, it will, I think, appear satisfactorily, that our construction is not infringed by it.

What is the object of this clause? It is threefold: first, to prevent a blending of the different

partments of Government, the Legislative, Executive, and Judicial, by uniting their functions the hands of the same individual; which would contrary to the spirit of the Constitution; secondly, to prevent the Executive from acquiring undue influence in the Legislature, by appointing its most active and able members to offices which must be held at his pleasure; and thirdly, take away from aspiring or avaricious members, the temptation to create offices, or increase their emoluments, which might arise from the expectation of speedily filling those offices themselves. What description of officers was it necessary to exclude from the Legislature, in order to ect these three objects? First, those whose duties might be incompatible with a strict and regular attendance in the Legislature; secondly, those who derive their appointments from the Executive; and thirdly, those whose offices are of a nature to be considered as lucrative, to be sought er on account of their pecuniary emoluments. is evident, that some one or other of these characteristics belongs to every description of officers, cept "legislative;" to military, to executive, dicial, and diplomatic. It is to be presumed, it the Constitution here used the word "office" that sense, and that only, which was necessary order to effectuate its intentions; and, consequently, that the clause extends to those officers ly, whom it was the intention of the Constitution to exclude from the Legislature. The clause, erefore, is to be understood, as if, instead of the neral expressions, "any civil office," "any office," it had said, "any other civil office," "any her office." This will render the whole Constitution consistent with itself, and with the well-ablished meaning of language. In the clause ative to commissions, we have an instance here, in order to prevent the Constitution from onouncing a palpable absurdity, it was necessary explain the general term "all officers," so as to ean "all officers appointed by the President." the general expression may be controlled by the bject-matter and intent, in one case, it may in other; and certainly the subject-matter and intent could not speak more strongly against the neral expression, in the former, or any other se, than in this.

If this reasoning be well founded, it follows, at the clause in question proves nothing against r doctrine of a Senator being an officer, in the ise of the Constitution: it only proves that the nstitution, being obliged to use the same word application to different matters, and for different purposes, has used it generally, and left it to be plained by a reference to the intent and subject-matter, instead of explaining it by express modifications. The object here was, to exclude certain icers from the Legislature; and the term is used nerally; but it by no means follows, from thence, at members of the Legislature are not themselves officers.

A clause in the 1st section of the 2d article is ewise adduced, as distinguishing between "members" of the Legislature and "officers," by declaring that "no Senator, or Representative, or person holding *an office* of trust or profit under the United States, shall be appointed an Elector." This proves, indeed, that the words, "Senator and Representative," have been repeated from abundant caution, and in order to prevent doubts on so essential a point as the qualifications of an Elector. But has it ever been heard before, that two words or two phrases cannot mean the same thing, because they are used together in a legal instrument? Do we not, on the contrary, know that it is common, in such instruments, to use a number of synonymous terms, in order to express more plainly and precisely the same idea, and to remove all danger of uncertainty? How frequently do we meet with the expression, "any deed, instrument, or writing?" And yet nobody ever supposed, on this account, that a "deed" was not a "writing" and an "instrument." Which, however, would be quite as reasonable as to infer, from the above-cited passage in the Constitution, that a Senator or Representative is not an "officer."

In the 8th section of the 1st article, it is provided, "that Congress shall have power to make all laws which shall be necessary and proper for carrying into effect the foregoing powers vested by this Constitution in the Government of the United States, or in any *department or officer thereof.*" This has also been relied on, as proving that the Constitution does not consider a member of the Legislature as an "officer." A distinction, it is said, is here drawn between a "department" of the Government, and an "officer" of the Government; and a member of the Legislature, which is a "department," cannot, therefore, be considered as an "officer." But this reasoning, if well founded, would prove that the Secretary of the Treasury is not an "officer;" for the Treasury is a "department," and he is a member of it.

Such are, Mr. President, the clauses of the Constitution which have been opposed, by the learned counsel for the defendant, to our construction of the term "office." It has, I trust, been proved, that when rightly understood, they afford no solid ground of objection.

The learned counsel, who immediately preceded me, urged an objection, derived from the inconvenience of this construction. The consequence of an impeachment, he says, is a sequestration of the member from his seat, until the trial is over: and if a Senator may be impeached, the consequence is, that a factious majority in the House of Representatives may, by an unfounded and vexatious impeachment, remove from his seat, for an unlimited time, any Senator, whose talents, influence, and courage, may have rendered him the object of their dislike or dread. This objection, if founded in truth, would, I confess, have considerable weight: but, with all deference to the learning of the honorable counsel, I apprehend that it is wholly unfounded. According to the law and practice in England, for which I appeal to all the precedents of impeachment, a member of the House of Peers is not removed from the House in consequence of an impeachment. The sequestration from his seat does indeed take place, but it means nothing more than his being prevented from sitting when any-

hing relative to the impeachment is under consideration.

An objection has also been drawn from the supposed intention with which the power of impeachment was established by the Constitution. The sole object of this power, it is said, was to provide a remedy against the favoritism or obstinacy of the Supreme Executive Magistrate, by affording a means of removing from office improper persons, whom he might be inclined to retain in place, to the detriment of the nation. This necessity does not exist, we are told, with respect to members of the Legislature, who are removable by the people themselves, at stated periods; and to whom, consequently, the power of impeachment ought not to extend.

But this cannot be the sole object of the power of impeachment, because the President himself is liable to be impeached, as well as the officers whom he appoints. So also is the Vice President. And yet these two great officers are appointed by the people themselves, in a manner far more direct and immediate than Senators, and removable at shorter periods. If the power of impeachment be, as the learned counsel insist, intended as an aid to the control which the people, by the right of election, have over their public servants, or to supply the place of that control where it does not exist, surely there is much stronger reason for its extending to Senators than to the President or Vice President; for Senators are much further removed from the power of the people and the control of elections than those officers. They are elected for a much longer period: their election being made by Legislative bodies, who are chosen by the people for other purposes, and, for a considerable time, is far less influenced by popular opinion or popular feelings than that of the President, who is chosen by electors, elected for that sole purpose, and selected, in almost every instance, according to their known attachment to the favored candidate. The election of the President and Vice President, therefore, partakes far more of the nature of a popular election than that of Senators. Indeed, of all the component members of our Government, the Senate, both in the mode of its appointment and the term of its duration, is intended to be, and actually is, the most permanent and independent—the furthest elevated above the region and the influence of those storms whereby a popular Government must sometimes be agitated. God forbid, Mr. President, that I should find fault with these ingredients in the composition of the Senate, or do anything which could tend in the least to diminish their efficiency. I consider them as among the most valuable principles of the Constitution. I consider this honorable body as the sheet-anchor of our vessel of state; and if we escape (as I trust we shall) from those tempests which await all popular Governments, and have overset so many, it will be to the stability, the independence, the firmness, of this honorable body, that we shall be indebted for our escape. With these sentiments, it cannot be supposed that I would, intentionally, attempt to weaken the moorings by which alone we can be held in our station. But this very independence of the Senate, in its duration, and the mode of its appointment; this very removal from the influence of popular opinion and popular influence, furnishes a strong argument in favor of extending the power of impeachment to its members; for, in proportion as the controlling power of the people, by means of election, is weakened and diminished, other means of control ought to be increased.

We have heard much, Mr. President, respecting the nature of those offences to which the power of impeachment was intended to apply. They are said to be merely official offences. If by this be meant offences committed by an officer, it proves nothing, or is, at best, no more than begging the question; for a Senator, according to our doctrine, is an officer. But if, by *official* offences, the learned counsel mean offences committed by an officer, and relating solely to the duties of his office, I must intreat them to reflect on the extent to which their doctrine would lead. Suppose a Judge of the United States to commit theft or perjury; would the learned counsel say that he shall not be impeached for it? If so, he must remain in office with all his infamy; for there is no method of removing a Judge but by impeachment. Many other cases, equally strong, might be supposed. It seems to me, on the contrary, that the power of impeachment has two objects: first, to remove persons whose misconduct may have rendered them unworthy of retaining their offices; and, secondly, to punish those offences of a mere political nature, which, though not susceptible of that exact definition whereby they might be brought within the sphere of ordinary tribunals, are yet very dangerous to the public. These offences, in the English law, and in our Constitutions, which have borrowed its phraseology, are called "high crimes and misdemeanors." Now, let me ask, Mr. President, whether offences of this nature may not be committed by a Senator? Let me ask, whether he may not commit them to an extent far more dangerous than any other man; or, if gentlemen please, than any other officer? Placed as he is on the very pinnacle of the Constitution; touching the Executive power with one hand, the Judicial with the other, and partaking fully of the Legislative; secured in his seat for six years—a longer period than any other known to the Constitution—and depending for his re-election, not on the people, or on electors chosen by them for that sole purpose, but on a Legislative body, where a party may be formed to support him: whose "high crimes and misdemeanors," let me ask, can be more safely committed, or more dangerous than his? What an inconsistency to say that the collector of the most petty custom-house, or a person standing in the lowest grade of military commission, may be impeached for offences dangerous to the State, and therefore requiring his removal from office, and that a Senator of the United States is not impeachable!

But the effect of an impeachment, it is said, may be produced in another manner, more conformable to the dignity of the Senate. The same majority of two-thirds which can convict on an impeach-

ment may also expel; and thus an improper person may be driven from the Senate. But, in the first place, he cannot be thus kept out in future; for, though the Senate may expel, it cannot disqualify. And if we suppose the case (which may very well happen) of a great and wicked man, supported by a strong party in the Legislature of his own State, he may return again, after being expelled, and may go on in the commission of "high crimes and misdemeanors," in the very station which gives him the greatest means of committing them with effect.

In the second place, an offender has a much better chance to escape from an expulsion than from an impeachment. Where the offence is of a very dark and complicated nature; consists in transactions or plots carried on at a distance, or in many places at once; and, of consequence, cannot be brought to light, and fully substantiated, without a laborious, long-continued, and systematic inquiry; it must be admitted that the aid of a prosecutor will be necessary: and that the Senate, of itself, and for the mere purpose of expulsion, will be little disposed to undertake so tedious and disagreeable a task.

As to the dignity of the Senate, about which much has been said, I trust, Mr. President, that I shall always be as anxiously tender of it as any other person; and I do most solemnly and seriously believe that I am, at this moment, laboring for the dignity of this honorable body, in attempting to render its members liable to impeachment. For which line of conduct is most dignified; to wrap one's self up in legal inviolability, and thus avoid an inquiry into our conduct, or, conscious of rectitude, to brave investigation, and offer ourselves to the strictest scrutiny? The awful station which this honorable body holds in our system; the high and all-important trust assigned to it by the Constitution, no less than to regulate all the movements, both Legislative and Executive; to serve as both the ballast and the anchor of the political vessel; require that its members should inspire the utmost degree of confidence into the nation—should not only be free from guilt, but free from suspicion. Will they be more likely to escape suspicion, to inspire confidence, by declaring that they will avail themselves of a doubtful construction of the Constitution, to screen their own conduct from all inquiry, except by themselves, or by boldly standing forth to the light, and extending to their own persons and actions that power of investigation, by the representatives of the nation, which the Constitution has appointed for those who exercised its powers? I confess, Mr. President, that feeling, as I do, for the dignity of this honorable body; deeply impressed, as I am, with the awful nature of its trust, and the essential importance of its inspiring the nation with the most unlimited confidence, I tremble to think of its declaring, by a solemn decision, that the conduct of its members shall be exempt from inquiry by impeachment.

I have now, Mr. President, gone through the various heads of this very important argument, to which I am far from supposing that I have been able to do justice. It is satisfactory to me, however, to reflect that my deficiencies are amply supplied by the cause itself, by the talents of my learned and eloquent associate, and, above all, by the wisdom of this honorable body; to whose decision I now submit the subject, with an entire conviction that its determination will be worthy of the exalted station which it holds in our Government, the confidence reposed in it by the Constitution, and the veneration wherein it is held by the American people.

After Mr. HARPER had closed his observations, the VICE PRESIDENT inquired of the Managers if they had any further observations to offer? On which,

Mr. BAYARD, in their behalf, requested permission to withdraw for a few minutes; and, returning into the Court, he replied in the negative.

On motion that the Court adjourn, it adjourned to 12 o'clock on Monday next.

MONDAY, January 7.

On motion to agree to the following resolutions:

"That William Blount was a civil officer of the United States, within the meaning of the Constitution of the United States, and, therefore, liable to be impeached by the House of Representatives;

"That, as the Articles of Impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a Senator of the United States, his plea ought to be overruled:"

After debate, on motion, the Court adjourned till 12 o'clock to-morrow.

TUESDAY, January 8.

The Senate resumed the consideration of the motion made yesterday, on the impeachability of William Blount, late a Senator of the United States, by the House of Representatives; and, after debate, the Court adjourned till 12 o'clock to-morrow.

WEDNESDAY, January 9.

The Senate again resumed the consideration of the motion made on the 7th instant, on the impeachability of William Blount, late a Senator of the United States, by the House of Representatives; and, after debate, on motion, adjourned to 12 o'clock to-morrow.

THURSDAY, January 10.

The Court proceeded in the debate on the motion made on the 7th instant, and which had been under consideration every day since; and, on the question to agree thereto, it was determined in the negative—yeas 11, nays 14, as follows:

YEAS—Messrs. Chipman, Davenport, Goodhue, Latimer, Livermore, Lloyd, Paine, Ross, Sedgwick, Stockton, and Tracy.

NAYS—Messrs. Anderson, Bingham, Bloodworth, Brown, Foster, Greene, Gunn, Hillhouse, Howard, Langdon, Marshall, Martin, Mason, and Read.

On motion, the Court adjourned to 12 o'clock to-morrow.