for any *misdemeanor* in office. The term misdemeanor is of as accurate meaning, and of as much technical force, as any term in the law. It describes a class of offences against law, as well defined as any in the criminal code. A still stronger argument is furnished by the second section of the fifth article, which provides that for any reasonable cause, which shall not be sufficient grounds of impeachment, the governor may remove any of the judges, on the address of two thirds of each branch of the legislature. It is most manifest, that this provision would have been wholly unnecessary, had the people of Pennsylvania, in framing their constitution, considered impeachments, like the honorable managers, merely as inquests of office, by which a Judge might be removed for any cause, which two thirds of each branch might think reasonable. And the arguments derived from the constitution of Pennsylvania, have more force, in as much as the terms "misdemeanor in office," used by it for describing impeachable acts, are much less strong, than "treason, bribery, and other high crimes and misdemeanors," employed by the constitution of the United States for the same purpose.

The constitution of Delaware, sec. 22, directs, that impeachments shall lie against all persons "offending against the state, either by mal-administration, corruption, or other means by which the safety of the state may be endangered." This is a very broad description of impeachable acts. And yet it is clear from the context, that those general words were intended to express specific offences against the laws, liable to punishment in the regular course of justice. It is declared that all impeachments shall be commenced "within eighteen months after the offence committed," and shall be prosecuted by the attorney general, or such other persons as the house of assembly shall appoint, *according to the laws of the land.*" Persons found guilty on impeachment are to be disqualified, or removed "or subjected to such pains and penalties as the laws shall direct." And the term 'conviction,' whose peculiar technical force has been already remarked, is applied by this constitution to cases of impeachment.

The people of Maryland did not think fit to invest their legislature with the power of impeachment; but have directed by their bill of rights, sec. 30, and by their constitution, sec. 40, that misbehavior in office shall be proceeded against by indictment, in a court of law only; and that removal, and in some cases disqualification, shall be the consequence of *conviction*. It will not be denied, that misdemeanor and misbehavior in office are convertible terms. If there be any difference, the latter is the less strong: and yet the people of Maryland have declared, that the term 'misbehavior in office' means an indictable offence, of which a person may be *convicted* in a court of law.

The constitution of Virginia provides, that persons offending against the state by mal-administration, corruption, or other means by which the safety of the state may be endangered, "shall be impeachable by the house of delegates," in the general court according to the laws of the land: "and that if all or any of the judges of the general court, should, on good grounds (to be judged of by the house of delegates) be accused of any of the crimes or offences above mentioned, such house of delegates may in like manner impeach the judge or judges so accused, to be tried in the court of appeals." Hence it appears most clearly, that these general words "offending against the state by mal-administration, corruption, or other means by which the safety of the state may be endangered," words far more general and indefinite in themselves than those employed by the federal constitution, were considered by the people of Virginia as meaning specific crimes or offences, which might be proceeded against in a court of law, according to the usual course of criminal justice. The words "any other means by which the safety of the state may be endangered," are certainly broad enough, to embrace those reasons of political expediency and state policy, for which the honorable managers contend, that a judge may be removed by impeachment—but we find that the people of Virginia had no idea of giving them a construction, so contrary to the notions entertained in this country, respecting legal rights, personal safety, and constitutional liberty.

The provisions made on this subject by the constitution of North Carolina, breathe the same spirit. That instrument declares, section 23, "that the governor and other officers offending against the state, by violating any part of this constitution, mal-administration, or corruption, may be prosecuted on the impeachment of the general assembly, or presentment of the grand jury, of any court of supreme jurisdiction in this state." This plainly implies that impeachable acts, though described in terms the most indefinite, were neither more nor less than offences, indictable in the ordinary course of law.

In the constitution of South Carolina, article 5, we find the same idea necessarily implied. The words "misdemeanor in office," are used as the description of impeachable offences; the term conviction is applied to impeachments; and it is provided that persons so convicted, "shall nevertheless be liable to indictment, trial, judgment and punishment, according to law." It is plain, therefore, that the words "misdemeanor in office," were understood and intended by the people of South-Carolina to mean offences against the laws, for which the offender might be indicted and "convicted."

The constitution of Georgia contains no words, which can operate in any manner to define or describe impeachable offences. It merely directs who shall have the power of impeaching, who shall try impeachments, and what description of persons may be impeached. But in that of Vermont there is a provision on this subject, which, though very concise, is very strong to our present purpose. Among the powers given by it, sect. 9, to the House of Representatives, is that to "impeach state criminals." This term "criminals," which in our laws is never applied except to persons charged with offences of the highest nature, sufficiently declares that the people of Vermont considered impeachments as applicable to cases of crimes only, and not to removals for reasons of state expediency: not even to cases of smaller offences, much less of indiscretion or impropriety of behaviour, such as is alledged against the respondent in this case. For surely it would be an abuse of language to apply the term "criminal" to improper interruptions of counsel; to rude, hasty or intemperate expressions; to ridicule employed by a judge against counsel, who in his opinion conducted themselves incorrectly; or to the precipitate and ill timed expression of a correct legal opinion. No, sir. This word imports the intentional violation of some known law; the perpetration of some specific defined crime, which may admit of precise proof, which every citizen may be able to avoid, and against which, when accused of it, he may know how to make his defence.

Such, Mr. President, is the solemn exposition of impeachable offences, given by the people of the United States, through the medium of their constitutions. Though not much accustomed to talk about the will of the people, there is no man that bows with more reverence to that will, when constitutionally declared. And shall we, Mr. President, let go this sheet anchor of personal rights and political privileges, to commit ourselves to the storms of party rage, personal animosity and popular caprice? Shall we throw down this great land mark, fixed by the wisdom and patriotism of our fellow-citizens and fathers? Instead of having our best and dearest rights secured, by fixed and known principles of law, shall we leave them to be governed and disposed of by the ever varying whims and passions of the moment? No, sir, I trust not. When I look at those benches and recollect how deep a stake the members of this honorable court have in those rights which form the palladium of our safety, and are now entrusted to their care and keeping, I cannot but confidently expect that they will feel the whole importance of the great trust reposed in them by their country; that they will regard themselves as acting for future generations, as well as for the present age; and will elevate themselves above the sphere of little views and momentary feelings. They will recollect, sir, that unjust principles, adopted to answer particular purposes, are two edged swords, which often rebound on the head of him who strikes with them; and that justice, though it may be an inconvenient restraint on our power, while we are strong, is the only rampart behind which we can find protection when we become weak. They will remember that power which depends on popular favor, is of all sublunary things the most fleeting and transient; that it must from time to time change hands; and that when the change which sooner or later must arrive, shall have taken place; when those who now direct the thunder of impeachment, shall be placed, as ere long they must, in a situation to be smitten by its bolts, they will be glad to invoke, and unless they now set a great example of correct decision, will invoke in vain those constitutional privileges to which we now cry for safety.

Need I, Mr. President, urge the necessity of adhering to those principles, as it respects the independence of the judiciary department? Need I enlarge on the essential importance of that independence to the security of personal rights, and to the well being, nay, to the existence of a free government? These considerations of themselves strike the mind with a force not to be encreased by any efforts of mine. It is sufficient merely to bring them into the view of this honorable court.

But it is not to the party accused, to the nation, to posterity, and to the interests of free governments that the observance of settled constitutional principles, in cases impeachment, is alone important. It is equally so to the character and feelings of those appointed to judge. Is there any member of this honorable court, who would wish, nay, who would consent, in deciding this cause, to be set free from the restraints of the law, or more properly speaking, to be deprived of its guidance, and left to the influence of his own passions, feelings or prepossessions? Were causes like this to be determined on views of expediency, and not on fixed principles of law, to what suspicions might not the Judges be liable, of having sought the indulgence of some animosity, or the attainment of some selfish end, instead of consulting for the public good? But when they are known to be governed by the settled rules of law, and are considered as merely its organs, their motives will be more respected, and their conduct less liable to suspicion or reproach. Is any member of this honorable body prepared to relinquish the high and venerable station of the organ and expounder of the laws, in order to assume the doubtful and dangerous character of a Judge subject to no rule but his own arbitrary will?

To a Judge, too, it is the sweetest consolation in the discharge of his painful duties, that when he has doomed a fellow-citizen to dishonor and misery, he has merely pronounced the decision of the law, and not the dictates of his own will: that he is not the author of the sentence by which so much calamity is brought on others, but merely its official organ. This reflection soothes his mind under the anguish which it must feel from another's woe. And is there any member of this honorable court, who would consent to relinquish this consolation? I boldly say no. I feel that every heart will respond to the assertion. And if any who hear me be capable of entertaining a contrary opinion, or would wish in the same situation to hold a different conduct, I envy not their feelings, however highly I may estimate their intellectual powers.

In every light, therefore, in which this great principle can be viewed, whether as a well established doctrine of the constitution; as the bulwark of personal safety and judicial independence; as a shield for the characters of those whose lot it may be to sit on the trial of impeachments; or as a solace to them under the necessity of pronouncing a fellow-citizen guilty; it will equally claim, and I cannot doubt that it will receive, the sanction of this honorable court, by whose decision it will I trust be established so as never hereafter to be brought into question, that an impeachment is not a mere enquiry, in the nature of an inquest of office, whether an officer be qualified for his place, or whether some reason of policy or expediency may not demand his removal, but a criminal prosecution, for the support of which the proof of some wilful violation of a known law of the land is to be indispensibly required.

Before I proceed, Mr. President, to apply this principle to the case now under consideration, permit me to notice briefly another proposition advanced by the honorable managers, which I perfectly concur in, and shall take the liberty of using against them. They have laid it down, that the testimony of witnesses equally credible in themselves, is entitled to different degrees of credit, according to the means which they respectively enjoyed, of correctly discerning the truth, in the matter about which they testify. To this proposition I fully assent. Let the principle be applied to the case now under consideration. Look at the witnesses on each side. With some few exceptions perhaps, about which I do not feel it necessary to make any particular remarks, they are equally credible in themselves, equally disposed to state correctly the facts. But who are the witnesses on the part of the prosecution? It must be answered, that almost all of them are persons who have supposed themselves to be ill-treated by the respondent; whose resentment the lapse of four years has not been able to assuage; and who come here under the manifest influence of those angry feelings, to complain of their imaginary wrongs. It is plain that such persons, however correct in their intentions, however desirous of speaking the truth, are liable to be misled by the irritation which these events excited in their minds, and to state as facts the recollection of their erroneous impressions. It is perfectly manifest that those gentlemen were very much irritated by the transactions of which they complain, and in which they were or supposed themselves to be parties. It is equally clear their anger has not yet cooled. And I will ask whether men in such circumstances, giving them the utmost credit for correct intentions, are equally entitled to belief with persons who like the witnesses on the part of the respondent, were calm, and disinterested spectators of the events which they relate? Equally respectable with the witnesses for the prosecution; much more cool; free from that irritation which the parties in contention can hardly ever avoid; and testifying their impartiality by expressing without reserve their disapprobation of some things in the respondent's conduct; it must be admitted that in every collision of testimony, they possess the highest title to belief.

Having taken this view of these preliminary points, I now proceed, Mr. President, to consider the various charges against our honorable client, in the order in which they have been stated by the prosecutors. It is not my design to go over the same ground, which has been so recently trodden by my able colleagues. The task assigned to me, is to range rapidly over the first six articles; to present some views of the subject, which the multiplicity of the matter induced my learned colleagues to omit; and then to discuss at large the law and the facts, under the seventh and eighth articles, which have not yet been touched.

On the case of John Fries, the subject of the first charge, permit me, Mr. President, to avail myself of a distinction, laid down by the honorable gentleman who opened the case on the part of the prosecution (Mr. Randolph). That honorable gentleman, in his opening address, made a distinction between a general maxim or principle of law, such as the definition of a crime, and a particular opinion on the law, as applicable to a particular case. The former he admits to be proper in a judge, at any stage of a trial. The latter he denies to be so. He has chosen the definition of one offence to illustrate his position; I will take that of another. Suppose a man to be indicted, and put on his trial, for burglary. The crime of burglary consists in "breaking and entering a dwelling house in the night time, with intent to commit felony." This is the established definition of this offence. According to the distinction of the honorable gentleman, the judge might at the commencement of the trial, or at any stage of it, declare this general principle respecting the nature of the offence, even before counsel were heard. Nay more, he would be justified in preventing counsel from attempting, before the jury, to controvert this principle. This latter point is not expressly admitted by the honorable gentleman; but it flows from his admission, as a necessary consequence. So far the judge might safely go. But should he advance a step further, and declare before counsel had been heard, that the acts done by the person on trial did amount to burglary, then he would be culpable, and even criminal: and this, the honorable gentleman contends, was done by the respondent in the case of Fries.

I consent to be judged by the rule which the honorable gentleman has himself established; and I undertake to shew, that nothing more was done by the respondent in the case of Fries, than the honorable gentleman admits may be properly done by a judge: that he merely stated the general definition of the crime of treason, by levying war against the United States, but expressed no opinion whether the prisoner was guilty or innocent, whether the acts which he had done amounted to treason. For the correctness of this position I appeal to the opinion itself, as in evidence before the court. It is contained in exhibit No. 2, filed with the answer. In this paper the court after some preliminary observations, to shew that the questions relative to the constitutional definition of treason, were questions of law and not of fact, proceed to state as their opinion, "that any insurrection, or rising of any body of people, within the United States, to effect by force or violence, any object of a great public nature, or of public and general (or national) concern, is a levying of war against the United States, within the contemplation and construction of the constitution of the United States." "That on this general position, any such insurrection or rising, to resist or prevent by violence, the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises, or for calling forth the militia to execute the laws of the union, or for any other purpose; under any pretence, as that the statute was unequal, burdensome, oppressive, or unconstitutional; is a levying war against the United Utates, within the constitution." "That military weapons, as guns and swords, mentioned in the indictment, are not necessary to make such insurrection or rising amount to levying war; because numbers may supply the want of military weapons, or military array." "That the assembling bodies of men, armed and arrayed in a warlike manner, for purposes only of a private nature, is not treason; although the judges and peace officers should be insulted or resisted, or even great outrage committed on the persons and property of our citizens." "That the true criterion to determine whether *acts committed* are a treason, or a less offence (as a riot) is the *quo animo* the people did assemble. "That, if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, they are only guilty of a high misdemeanor: but if they proceed to carry such intention into execution by force, they are guilty of the treason of levying war; and the quantum of the force employed, neither lessens nor increases the crime." "That a combination or conspiracy to levy war against the United States, is not treason; unless combined with an attempt to carry such combination or conspiracy into execution," and that "some actual force or violence must be used, in pursuance of such design to levy war; but it is perfectly immaterial, whether the force used is sufficient to effectuate the object."

This no doubt is a long definition.—Perhaps it might have been expressed in much fewer words. But still is a general definition of the crime of treason by levying war; without application or reference to any particular case, much less to the case of John Fries. It amounts nearly to this, "that for any number of people, however small or inadequate, to rise, with intent to resist or prevent by force the execution of any general law of the United States, and to employ actual force for that purpose, amounts to levying war against the United States, although neither military weapons or military array be used." This is the substance of the opinion. All the rest is merely illustration, and in this shape it is as much a general definition, as that of burglary.

How wide a field of defence do these definitions leave open! In the case of an indictment for burglary, would any counsel peevishly or insolently retire from the prisoner's defence, because the court might, in the commencement of the trial, have stated this to be the legal definition of the crime. Would he insist on the absurd and mischievous privilege of controverting so plain and well settled a principle of law? No. Far different would be his conduct. He would enquire whether any acts had been done, amounting in law to the breaking open of a house? Whether the prisoner was the perpetrator of those acts, or a party in them? Whether the house was broken open in the night time? Whether it was entered by the prisoner as well as broken? Whether it was a dwelling house? And whether it was broken open and entered with intent to commit any crime, amounting to felony? All these questions would be perfectly open, under the general definition which has been stated; and on the result of these enquiries, would the guilt or innocence of the prisoner depend.

So in the case of Fries, it was perfectly competent to his learned counsel, under the general definition of treason given by the court, to contend that the acts proved did not amount to a rising of any number of people: that John Fries was not implicated in those acts; that they were not done with intent to resist or prevent, by force or violence, the execution of any general law of the United States; or that no force of violence was actually employed, in pursuance of such intention. All these questions were perfectly open to them, notwithstanding the general definition of treason given by the court. Not one of these questions did the court in any manner decide. These questions involved the application of the general definition, to the particular case; an application in which the true, proper and only defence of the prisoner consisted, and which the court neither made, nor intended to make.

Surely these questions offered full scope to the learned gentlemen, for the exertion of those argumentative powers, and the display of that legal learning, of which they have given in the shape of testimony, so handsome a specimen at this bar. Even that eager fondness for legal disputation, which has carried them on this occasion so far beyond the limits prescribed by the law of evidence, might have been gratified in this ample field. There was room enough for the learned and ingenious distinctions, which one of the gentlemen (Mr. Dallas) has told us that he intended to make, between the case of Fries and that of the western insurgents. It was his intention, he says, had he not been prevented by this unfortunate definition, to dwell on several circumstances, which, in his apprehension, distinguished the former of these cases from the latter. He tells us that his mind turned itself towards these distinctions, and was occupied upon them, from the moment when the court granted a new trial, after the first conviction of Fries. His mind was led into this course of reflection, by the stress which he had observed the court to lay, in the first trial of Fries, on the decisions in the cases of the western insurgents. It would surely have been very unkind in the respondent, to prevent the learned gentlemen from exhibiting the results of these long and profound reflections. But happily the respondent did not prevent him. His disappointment must be attributed solely to himself. The circumstances on which he informs us that he intended to rely, for distinguishing the case of Fries from those of the western insurgents, were the martial array at Braddock's field; the march to Pittsburg, for the avowed purpose of attacking the garrison; and, I think, the attack on Nevil's house. The first of these circumstances applied to the nature of the assemblage, whether it amounted to a rising or insurrection; the second to the intent with which the rising was made; and the third to the degree and nature of the force or violence committed. They were all open to the learned gentleman under the opinion: which did not declare what sort of an assemblage would constitute an insurrection or rising; what circumstances would be sufficient evidence of the improper intent; or what kind or degree of force or violence must be employed; but merely stated that a rising or insurrection, proceeding from such an intent, and accompanied by actual force or violence, would amount to levying war. Whether the assemblage in Bucks and Northampton, had the necessary ingredients to constitute a rising or insurrection; whether the acts done afforded sufficient evidence of an intent to resist or prevent by violence or force, the execution of the act of Congress; whether the force or violence committed were sufficient, in nature or degree; and whether, in all or any of these points of view, the case of Fries in Bucks and Northampton, was weaker than that of the western insurgents, or materially different from it; were questions not at all affected by the opinion, but left entirely open to the learned gentleman; who might, notwithstanding this opinion, have discussed them before the court and jury, at all the length into which the exuberance of his genius so much delights to shoot.

These learned gentlemen possessed, therefore, under the opinion communicated to them by the respondent, even if it had not been withdrawn, all the latitude which moderate counsel could have desired. All the questions of fact; all the questions of intention, which are questions of fact; the whole business of deciding, whether the case proved came within the general principle of law; of applying the general rule to the particular case; remained within the province of the jury, and furnished the only proper means of defence. Even if the facts had been admitted, as the honorable managers contend, still the intent remained to be ascertained, and was a question of fact solely cognizable by the jury. But it is utterly incorrect to say that the facts were admitted. It was indeed admitted, or rather it was not doubted, that certain acts had been done by John Fries and others; but whether those acts were of such a nature, and proceeded from such an intention, as to bring the case within the general rule of law laid down by the court, was a point unsettled, which formed the proper and sole ground of enquiry. And this point was not affected by the opinion communicated by the respondent to the prisoner's counsel.

And here, Mr. President, let me be permitted to notice what I deem a most dangerous error, respecting the constitutional power of juries in criminal cases. It is constantly asserted that the jury are to decide the law and the fact in criminal cases; and this is correct when properly explained; but taken in its literal and unqualified sense, it is contrary to every principle of law, and every dictate of common sense. It is the province of the court to expound and declare the law generally, in all cases criminal as well as civil. To apply the law to each particular case; to decide whether the facts proved in any case