final passage of the act of assembly of Maryland, for abolishing the supreme courts; by procuring in their several counties the election of such persons as would vote against that measure. Others are under the impression, that no such recommendation was expressly made, but was merely to be inferred from the general tenor of the charge. That such a difference of opinion should take place is by no means surprising; but the difference is immaterial. The object of the charge undoubtedly was, to dissuade the people of Maryland from adopting the measure in question; and to impress on the grand jury and the audience, the necessity of exerting themselves against it, at the election which was then approaching and was to decide its fate.

If this recommendation was not expressly given, it was plainly implied. Such was the intention of the respondent; and his defence rests on the correctness of this intention; on his right, according to the long established custom of this country, to pursue the object in this way.

Let the charge, Mr. President, be carefully examined, and it will be found to have no object in view, but to convince the people of Maryland, by arguments drawn from reason and experience, of the danger of adopting a change in their state constitution, which had been submitted to their consideration, and the object of which was to abolish all their supreme courts of law; to introduce a system entirely new and untried; and above all to destroy the independent tenure of judicial office, secured to them by their existing constitution; and to leave the judges dependent on the executive for their continuance in office, and on the legislature for their support. The respondent who had contributed largely to the formation and establishment of the state constitution, was greatly alarmed at these changes. He considered them as of the most destructive tendency to the liberty and happiness of the state to which he belonged; and he resolved to take this opportunity of warning his fellow-citizens against them. This is the whole scope of his address to the grand jury, to shew the importance of an independent judiciary, the dangerous tendency of changes already made, and the mischiefs which would result from taking this additional step in the career of innovation. He did, indeed, advert to the act of Congress for repealing the circuit court law, and remarked that it had shaken to its foundation the independence of the federal judiciary: but the manifest and sole object of this was, to shew that the spirit of innovation had gone forth, and ought to be carefully watched; that the public respect for great constitutional principles had begun to be weakened; and that by how much the security which might have been derived from an independent federal judiciary, had been diminished, by so much the more vigilantly it behoved us to guard our state institutions. No other object can be discovered in the charge, or inferred from its general tenor, or from the language in which it is expressed; neither is there any evidence which has the most remote tendency to shew, that he had any other object in view. And was not this an object which a citizen of this country might lawfully pursue? Is it not lawful for an aged patriot of the revolution to warn his fellow citizens of dangers, by which he supposes their liberties and happiness to be threatened? Or will it be contended that a citizen is deprived of these rights, because he is a Judge? That his office takes from him the liberty of speech, which belongs to every citizen, and is justly considered as one of our most invaluable privileges? I trust not. And if there could be any doubt on this point, I would remove it by referring to a recent instance of two Judges of the supreme court of Maryland, who in a late political contest, entered the lists as champions for the rival candidates, and travelled over a whole county, making political speeches in opposition to each other. Yet these gentlemen justly possess the confidence and respect of the public; their conduct in this instance has never been considered as a violation of duty; and he who espoused the interest of the successful candidate, has been far from receiving any marks of displeasure from the government of this country.

If, therefore, a judge retain this right, notwithstanding his official character; if it still be lawful for him to express his opinions of public measures, to oppose by argument such as are still pending, and to exert himself for obtaining the repeal, by constitutional means, of such as have been adopted; I ask what law forbids him to exercise these rights, by a charge from the bench? In what part of our laws or constitution is it written, that a Judge shall not speak on politics to a grand jury? Shall not advance, in a charge from the bench, those arguments against a public measure, which it must be admitted that he might properly employ on any other occasion? Such conduct may perhaps be ill judged, indiscreet, or ill-timed. I am ready to admit that it is so; for I am one of those who have always thought, that political subjects ought never to be mentioned in courts of justice. But is it contrary to law? Admitting it to be indecorous and improper, which I do not admit, is every breach of decorum and propriety a crime? The rules of decorum and propriety forbid us to sing a song on the floor of Congress, or to whistle in a church. These would be acts of very great indecorum, but I know of no law by which they could be punished as crimes. Will they who contend that it is contrary to law, for a Judge to speak of politics to a grand jury, be pleased to point out the law of the land which forbids it? They cannot do so. There is no such law. Neither is there any constitutional provision or principle, or any custom of this country, which condemns this practice.

And will this honorable body, sitting not in a legislative but a judicial capacity, be called on to make a law and to make it for a particular case which has already occured? What, sir, is the great distinction between legislative and judicial functions? Is it not that the former is to make the law, for future cases; and that the latter is to declare it, as to cases which have already occurred? Is it not one of the fundamental principles of our constitution, and an essential ingredient of free government, that the legislative and judicial powers shall be kept distinct and separate? That the powers of making the general law for future cases, shall never be blended in the same hands, with that of declaring and applying it to particular and present cases? Does not the union of these two powers in the same hands, constitute the worst of despotism? What, sir, is the peculiar and distinguished characteristic of despotism? It consists in this, sir, that a man may be punished for an act, which when he did it was not forbidden by law. While, on the other hand, it is the essence of freedom, that no act can be treated as a crime, unless there be a precise law forbidding it, at the time when it was done.

It is this line which separates liberty from slavery; and if the respondent be condemned to punishment for an act, which far from being forbidden by any law of the land, is sanctioned by the custom of this country for more than twenty years past, then have we the form of free government, but the substance of despotism.

Let gentlemen, before they establish this principle, recollect that it is a two edged-sword. Let them remember, that power must often change hands in popular governments; and that after every struggle, the victorious party comes into power, with resentments to gratify by the destruction of their vanquished opponents, with a thirst of vengeance to be slaked in their blood. Let them remember, that principles and precedents, by which actions innocent when they were done may be converted into crimes, are the most convenient and effectual instruments of revenge and destruction, with which a victorious party can be furnished. Let them beware how they give their sanction to principles, which may soon be turned against themselves; how they forge bolts which may soon be hurled on their own heads. In a popular govenment, where power is so fluctuating, where constitutional principles are therefore so important for the protection of the weaker party against the violence of the stronger, it above all things behoves the party actually in power, to adhere to the principles of justice and law; lest by departing from them they furnish at once the provocation and the weapons, for their own destruction.

I have stated, Mr. President, that the practice of introducing political matter into charges to grand juries, has been sanctioned by the custom of this country, from the beginning of the revolution to this day. Need I adduce any proof of the fact than its general notoriety? Need I refer to the charge delivered in South Carolina, in 1776, by William Henry Drayton, for which he has been so much admired and applauded? Need I refer to the recommendation of the executive council in Pennsylvania, at a period something later, in which that body, with John Dickinson at its head, enjoins it on the judges, to avail themselves of their charges to the grand juries on their circuits, for disseminating correct political information and principles among the people? Shall I refer to the case of judge Addison in Pennsylvania, who has delivered many political charges, and against whom when he was lately impeached, those charges made no part of the accusation? Shall I refer again to the charge of judge Iredell, delivered to the grand jury, which found the first indictment against John Fries, and containing a variety of political matter? It is unnecessary to dilate on these instances. They have been given in evidence, and are fresh in the memory of this honorable court. The recollection of the honorable members must furnish them with many others equally striking.

And yet have the authors of none of these political charges been censured. No mark of public or private disapprobation has been fixed on their conduct. No legislative act has forbidden this practice. From the time of judge Drayton to the time of judge Chase, it has been considered as innocent. It remained for the year 1803, after a lapse of twenty seven years, to discover its criminality. But this honorable body will not so determine. It will not forget the distinction between its judicial and its legislative character. In its judicial character it will declare, that an act, however improper in itself or dangerous in its tendency, shall not, if forbidden by no law, be punished as a crime; that the prevalence of this custom for twenty years, the countenance which it received from some governmental authorities, and the acquiesence of all, are sufficient evidence of legality; and that the criminal intent which constitutes an essential ingredient of the offence, in this as well as in every other case, and of which no direct proof is now adduced, can never be inferred from the act itself, when done in compliance with a custom so long established, and so highly sanctioned. But if the members of this tribunal should be individually of opinion that this custom is dangerous or improper, they will, after pronouncing a sentence of acquittal in the case, resume their legislative character, and pass a law to restrain the practice in future. Thus will the mischief be prevented on one hand, and the principles of liberty and justice respected on the other.

This charge, therefore, fails like the rest, and what remains of the accusation? It has dwindled into nothing It has been scattered by the rays of truth like the mists of the morning, before the effulgence of the rising sun. Touched by the spear of investigation, it has lost its gigantic and terrifying form, and has shrunk into a toad. Every part of our honorable client's conduct has been surveyed; all his motives have been severely scrutinized; all his actions have been brought to the test of law and the constitution; his words, and even his jocular conversations, have been passed in strict review; and the ingenuity and industry of the honorable managers have proved unable to detect one illegal act, one proof, or one fair presumption of improper motive.

Perceiving, perhaps, by anticipation, this desperate situation of his case, the honorable gentleman who opened the prosecution, has devised another expedient to escape from anticipated defeat, and to secure that conviction on which he seems to have set his heart. He has told us, and no doubt will hereafter insist, that in order to form a true judgement on the respondent's conduct, the whole of it must be embraced in one view; and all the particulars regarded as parts of one whole. This means, if it means any thing, that although no single act alledged in the articles should be considered as an impeachable offence, and a sufficient ground of conviction, yet all the acts taken together may constitute such an offence. That is, in other words, that many nothings may make something; that many noughts may make an unit: that many innocent acts may make a crime. What is this but recurring, in another form, to the absurd and monstrous doctrine, that judges may be removed on impeachment for reasons of expediency, without the proof of any specific offence? No, sir! This last subterfuge will not avail the prosecutors. This honorable court, adhering to the principles of the constitution, the positive rules of law, and the plain dictates of justice and common sense, will require, before it convicts, the clear proof of a criminal intent, manifested and carried into effect, by some act done in violation of the laws. Under the shield of this great principle, our honorable client stands secure. In full confidence that you, Mr. President, and the members of this honorable court will be guided by it, I cheerfully submit the case to you; and when you retire to deliberate on it, remember that posterity will sit in judgment on your conduct; that her decision will be pronounced on the testimony of impartial history; and that from her awful sentence there lies no appeal.

*A Valuable Tract of Land*

**FOR SALE,**

LAYING on the main road, leading from Charlottsville to Washington city, containing 268 acres; six miles from Cu'pepper Court House, Virginia, convenient to a number of fine merchant and saw mills. The situation pleasant and remarkably healthy, the land level, fertile and well adapted to the production of Indian corn, tobacco, wheat and other small grain, and is remarkably well watered, having the north fork of Cedar Run passing through the center of it, and sixteen bold and never failing springs on it; 140 acres of timothy meadow land on it, all of which may be put in good repair at a very small expence and a superabundance of large and lofty timber on it. The improvements are a dwelling house, three rooms on a floor, a good kitchen, a very large barn two stories high and other out houses sufficient, and which are strong and well built—2200 bearing fruit trees, principally apple trees, together with all kinds of seed and stone fruits. It is so situated as to admit of being divided into two convenient and profitable farms. I will sell it entire or divide it as may be found most convenient and give immediate possession—there is a good chance to feed a large crop of grain on it this fall. I will take negroes to the full amount of the above land or any part thereof for the accommodation of a purchaser; if the above land is not sold before the 20th of October, it will be sold on that day to the highest bidder; the sale to take place on the premises.

MORTON PANNELL,
Cu'pepper county, Virginia.

August 21—wtf

THE services of THOMAS EWELL, M. D. in the practice of Medicine and Surgery may be had by applying at the office lately occupied by Wm O. Sprigg, esq. opposite Mr. Semmes' tavern.

George-town, Aug. 16—3t.

# WASHINGTON CITY.

FRIDAY, AUGUST 23.

IN the year 1781, Mr. Jefferson, then governor of Virginia, and now President of the United States, wrote his celebrated Notes on Virginia. In this tract he gives, with characteristic openness, his opinions on a variety of topics, and among the rest on the relative character of farmers, mechanics and merchants. Carefully abstaining from any particular application of these remarks to his own countrymen, he freely and boldly avows his opinions of the farmer, the mechanic and the merchant generally. The following extracts, drawn forth by disappointment, are brought up in judgment against him.

"Let any man" says the editor of the Register, "peruse the following passages from Mr. Jefferson's Notes on Virginia with attention—let him compare them with his practice in public life, and he will perceive a bigoted attachment to opinions, that degrade the meanest capacity, and a course of action, which, in the page of impartial history, when the passions and prejudices of the day shall have subsided, *will sink the character of* THOMAS JEFFERSON *beneath that of any statesman, who has ever obtained the elevating suffrage of a free people.*

*Extracts from Jefferson's Notes on Virginia.*

"Those who labor in the earth are the chosen people of God, *if ever he had a chosen people*, whose breasts he has made his peculiar deposit for substantial and genuine virtue."

*Pa. 324, R. T. Rawle's edition.*

"The proportion which the aggregate of the other classes of citizens bears in any state to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption. While we have land to labor then, let us never wish to see our citizens occupied at a work bench, or twirling a distaff. Carpenters, masons, smiths, are wanting in husbandry: but, for the general operations of manufacture, *let our work-shops remain in Europe.* It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body."

*Pa. 325 & 326—R. T. Rawle's ed.*

"Perhaps, to remove as much as possible the occasions of making war, it might be better for us *to abandon the ocean altogether*, that being the element whereon we shall be principally exposed to jostle with other nations: to leave to others to bring what we shall want, and carry what we can spare."

"I repeat it again, cultivators of the earth are the most *virtuous and independent citizens.* It might be time enough to seek employment for them at sea, when the land no longer offers it."

*Pa. 344, R. T. Rawle's ed.*

Recollect, reader, that these are the *abstract* opinions of a *private* man, that they were avowed more than twenty years ago, that they are general remarks, and that, although in most cases correct, they may admit of exceptions, which the writer might have been the first to acknowledge, had there been any necessity for it. But no such necesssity has existed, or does now exist. There is not a philosopher of the new, or of the old world that has not most emphatically sanctioned their truth. We shall be called upon for our authority. We will give those who make the demand *their oracle*, which speaks a language of greater energy than we either could or would use. Adam Smith has, on this subject, as well as on the various and diversified subjects of political economy, accumulated the researches of all who went before him, and erected not only a monument to his own glory, but has given the world a guide which is now implicitly followed. Although a subject of what may emphatically be denominated the empire of trade and manufactures, he has dared to avow his honest opinions, and to inculcate the salutary admonitions of truth. And, what proves the solidity of the structure he has raised, is that it is every where the universal guide of the merchant and manufacturer.

Hear him then, merchants of America, and while you profit by his honest truths, do not feel indignant that your own countryman should think as he thinks, and speak as he speaks.

It is, however, in the first instance but justice to Mr Jefferson, to give the whole of what he says in his Notes on the subject referred to, instead of the mutilated passages quoted; from which it will be seen that he harbored no hostility to merchants or mechanics, and that while, as a philosopher, he was indulging himself in a free expression of his wishes, he was not insensible to the actual state of things, nor romantic enough to expect to realize them. He says:

"We never had an interior trade of any importance. Our exterior commerce has suffered very much from the beginning of the present contest. During this time we have manufactured within our families the most necessary articles of cloathing. Those of cotton will bear some comparison with the same kinds of manufacture in Europe; but those of wool, flax and hemp are very coarse, unsightly and unpleasant: and such is our attachment to agriculture, and such our preference for foreign manufactures, that be it wise or unwise, our people will certainly return as soon as they can, to the raising raw materials, and exchanging them for finer manufactures than they are able to execute themselves.

"The political economists of Europe have established it as a principle, that every state should endeavor to manufacture for itself: and this principle, like many others, we transfer to America, without calculating the difference of circumstance which should often produce a difference of result. In Europe the lands are either cultivated, or locked up against the cultivator. Manufacture must therefore be resorted to of necessity, not of choice, to support the surplus of their people. But we have an immensity of land courting the industry of the husbandman. Is it best then that all our citizens should be employed in its improvement, or that one half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labor in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue. It is the focus in which he keeps alive that sacred fire, which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phænomenon of which no age nor nation has furnished an example. It is the mark set on those, who not looking up to heaven, to their own soil and industry, as does the husbandman, for their subsistence, depend for it on the casualties and caprice of customers. Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition. This, the natural progress and consequence of the arts, has sometimes perhaps been retarded by accidental circumstances: but, generally speaking, the proportion which the aggregate of the other classes of citizens bears in any state to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption. While we have land to labor then, let us never wish to see our citizens occupied at a work-bench, or twirling a distaff. Carpenters, masons, smiths, are wanting in husbandry; but, for the general operations of manufacture, let our work-shops remain in Europe. It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners and spirit of a people which preserve a republic in vigour. A degeneracy in these is a canker which soon eats to the heart of its laws and constitution."

Again—"To this estimate of our abilities, let me add a word as to the application of them, if, when cleared of the present contest, and of the debts with which that will charge us, we come to measure force hereafter with any European power. Such events are devoutedly to be deprecated. Young as we are, and with such a country before us to fill with people and with happiness, we should point in that direction the whole generative force of nature, wasting none of it in efforts of mutual destruction. It should be our endeavour to cultivate the peace and friendship of every nation, even of that which has injured us most, when we shall have carried our point against her. Our interest will be to throw open the doors of commerce, and to knock off all its shackles, giving perfect freedom to all persons for the event of whatever they may chuse to bring into our ports, and asking the same in theirs. Never was so much false arithmetic employed on any subject, as that which has been employed to persuade nations that it is their interest to go to war. Were the money which it has cost to gain, at the close of a long war, a little town, or a little territory, the right to cut wood here, or to catch fish there, expended in improving what they already possess, in making roads, opening rivers, building ports, improving the arts, and find-