put an analogous case. He stated that a judge holding a criminal court might properly give the legal description of murder, and the circumstances and ingredients that in point of law would constitute this offence. But, says he, he may not go on to apply this definition to the overt acts laid in the indictment. This I confess is a novelty to me. I never before heard of overt acts in an indictment for murder. The general charge of the offence is laid in legal and general terms, but there is no specification of the particular facts and circumstances by which the charge is to be supported. But suppose a judge, knowing that a man was coming before him for trial, accused of going into the street with a declared resolution to kill the first person he should meet; and this judge were to say to any person or in any place, verbally or in writing, that a killing under such circumstances was murder, and a full manifestation of malice in legal construction, would this be called a prejudication of the case? Is it not a mere declaration of the law existing and established long before the case, which it was the duty of the judge to know, to obey and to declare? If the facts proved before the jury brought the accused within the law, the consequence of conviction followed, not by the will of the judge, but by the sentence of the law; and while this question was left open, the case was in no wise prejudged. To explain this point still further, I will put the case of *libelling*. This offence, like that of treason, consists of two parts;—the act and the intent. Would it be criminal in a judge, knowing that such a case was to come before him, to inform himself, if necessary, of the law of libels, to make up his mind upon the constituent parts of the offence, and to declare them to the grand jury, the council or any body else? Might he not be of opinion, and write and say, that a libel is a malicious defamation of any person in writing, in order or intending to excite their wrath, or to expose them to public hatred or contempt? Here the fact of publication must be proved and the malicious intent. And might not a judge state what in contemplation of law is a malicious and defamatory writing, and that if such an one is published with intent to injure and defame, it is in law a libel? Apply this doctrine to the case of Fries. May not a judge have an opinion and declare, that an insurrection of a body with intent or in order to resist the execution of any law of the United States, and the carrying that intent into execution by actual force and violence, is treason against the United States by levying war? There is no prejudication in either case; the facts and the intent which constitute the crime, and on which the guilt or innocence of the accused depends, are left wholly untouched, and come without prejudice or bias to the jury. I have heard the phrase "prejudging the law" repeated over and over again. Judge Chase *prejudged the law* against Fries, we are told—I confess the phrase is a very singular one to me. I know not precisely how to understand it. I can comprehend what is meant when I hear of prejudging a man's case—in prejudging the facts of any case. But as to the law, I presume it is always prejudged; always settled, certain and ascertained. It is never a question in a case of murder, whether a killing with malice prepense is or is not murder. The law has prejudged that; and so in all other cases the question is, whether the facts proved bring the case within the law. And so it was in Fries's case, and upon that point judge Chase neither gave nor intimated nor had an opinion; for as the evidence had not been heard, he could not anticipate what facts would be proved.

I hope and trust, sir, that the first specification of this article is now disposed of to the satisfaction of this hon. court, and the complete justification of the respondent. Part of it, when tested by the evidence, turns out to be wholly unfounded; and the rest which is true, has been fully justified both on principle and by precedent. If there was some haste and error in the conduct of the judge, which however I neither believe nor admit, there was certainly no criminality in the act. There was nothing impure in the motive—nothing injurious in the consequence.

Suffer me now, sir, to offer you some observations on the second specification of the first article of impeachment. I hope it will not be necessary to trespass greatly on your patience in refuting it. It charges judge Chase with "restricting the counsel for the said John Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client." This charge consists of two parts; it complains of a restriction as to English authorities, and as to American statutes. I will consider them distinctly—first, sir, permit me to remark that these allegations are made to support the general charge of partiality, oppression and injustice. But what becomes of these pretences when we bear in mind the testimony of Mr. Rawle, the district attorney, and always, and in every situation, a gentleman whose character, in all its relations both public and private, bears the first stamp of respectability, and fears no competition for credit. He has informed this hon. court that this restriction so grievously complained of, and now the subject of a criminal prosecution, was imposed upon him as well as upon the counsel of Fries. Is this the character or the conduct of partiality or oppression? Does it evince that strong appetite the judge is said to have, to drink the heart's blood of this unfortunate German, and stain the pure ermine of justice with his gore. I have always understood by partiality in a judge, a favoring bias to one party to the prejudice of the other; but where a restriction is put equally on both sides, I cannot conjecture how it can be resolved into partiality or oppression. It will be seen presently that as far as this restriction could have any operation, it was friendly in that operation to John Fries. But, sir, what was this restriction so much complained of and now magnified into a high crime? That certain English decisions in the law of treason, made before the revolution of 1688, should not or ought not to be read to the jury. And pray, sir, what were these decisions? I will take their character from Mr. Lewis himself, and no man is better acquainted with them. He says they were decisions of dependent and corrupt judges, who carried the doctrine of constructive treason to the most dangerous and extravagant lengths. True, they were so—sanguinary, cruel and tyrannical in the extreme—and could the exclusion of such cases injure John Fries? If cases which extenuated and softened the crime of treason had been rejected, he might indeed have suffered; but how he was or could be injured by keeping from the jury those cases which aggravated his offence, I am really at a loss to learn.—The restriction there was on the United States. Had they been adduced by the attorney general, no doubt they would have been ably answered by the defendant's counsel; but the ability of the counsel was not inferior to Fries's counsel; and if judge Chase had indeed a design to oppress and injure John Fries, and to convict him on strained constructions of treason, his best policy would surely have been to have suffered these cases to have come forward, and if supported by his authority and the talents of the counsel of the United States, they might have had their influence with the jury, notwithstanding the able refutations they might have received. But why and for what good purpose did the counsel desire to read these cases, operating, if they operated at all, directly against the life of their client? Why would they fatigue the court and impose upon the jury with those wicked and ridiculous decisions against a man who wished his stag's horns in the king's belly—and another, who declared he would make his son heir to the crown. Sir, there could have been but one object in this attempt. It was this, to excite such horror in the minds of the jurors by reciting these tales of tyranny and blood, as would create a general prejudice in them against all the laws of treason. The abhorrence which would be honestly given to such extraordinary cases of cruelty practised under the law of treason, they hoped would extend itself to all cases of treason, even the most just and upright. I know another and ingenious coloring and pretence has been given for this design, this strange anxiety to read cases, which so strongly support prosecutions for treason. It has been said by Mr. Lewis, not here as a witness, but in Philadelphia as counsel for John Fries, that his object in desiring to read these extravagant cases was of this sort. That many of the decisions on the law of treason made since the revolution of 1688, and which are received as authorities in modern courts, were actually grounded on the iniquitous cases decided before the revolution; and therefore, says Mr. Lewis, we wished to lay these cases before the jury that they might place no reliance on those since the revolution, which were derived from them. Could the gentleman be sincere in this pretence? How far would he carry it? To all decisions since the revolution, and are we to have no adjudications on this subject which may be relied upon as sound, legal and virtuous? I apprehend he does not mean so much. He desired I presume only to discredit such of the English decisions since the revolution, as were derived from those corrupt sources alluded to. Then most assuredly, he was premature in his attempt to read these precious cases. If the district attorney should read, and rely upon any case decided since the revolution to convict John Fries, and Mr. Lewis could trace that decision back to the horrible times spoken of, and shew that it was derived from and grounded upon the opinions of those corrupt and dependent judges, it would surely have been competent for him to do so, and no court would have attempted to prevent him. But that he is to deluge the court and jury with a mass of trash and corruption, and so declared to be by himself, by way of anticipation and when no necessity had occurred or probably would occur to justify it, could not be endured by any court knowing its duties and respecting its dignity. These cases are law, or they are not law. If the former, their operation and influence were against the prisoner; if the latter, the court should not suffer them to be read to mislead and impose upon the jury. So far, sir, and I shall trouble you no further, on the exclusion of these English statutes. Now, as to the statutes of the United States. That any such restriction was laid on the counsel of John Fries, rests wholly and entirely on the testimony and recollection of Mr. Lewis. I will, sir, first consider the nature and extent of this charge against the respondent, supposing the fact to be so. I presume it will be granted to me that a judge has some sort of authority in a court; that he does not sit there as a mere cypher, without power or command. Among the acknowledged powers of a judge, is that of regulating and directing in some degree the argument before him, and preventing the introduction of matter either grossly improper or palpably irrelevant to the issue. If then it be demonstrated that these statutes of the United States had really and truly nothing under heaven to do with the trial of John Fries, I hope the judge will not be condemned for excluding them. John Fries, sir, was indicted for the treason of levying war against the United States, and for no other offence. This crime is created and defined by the constitution of the United States. It became the duty of the attorney of the United States to shew to that court and jury, that the prisoner had been guilty of the treason charged in the indictment according to its definition and description in the constitution, or the prosecution must fail. If, on the other hand he did shew this to the satisfaction of the court and the jury, John Fries must necessarily be convicted. Now, sir, what possible influence or control could any act of Congress have over the character of a crime defined in and derived from the higher authority of the constitution. The act of Congress could not enlarge, restrict, or in way alter or affect the constitutional description. To what proper purpose then could any act of Congress be read? Why, sir, we have heard something about a legislative construction of the constitution; and that these acts of Congress defining sedition and other offences, might be used and were important to shew what was intended by the constitution in the description of treason. In the first place, sir, Congress in passing these statutes never had the most remote idea or intention of giving any sort of construction or opinion upon the law of treason; and if they had such an intention, it was beyond their powers and rights; and should be wholly disregarded, not only by that court, but by this. The construction of the constitution, in common with every other law, belongs exclusively to the judiciary, as best qualified both from its permanency and independence as well as from legal learning to exercise so important a right. The necessity of a power existing somewhere to judge of the constitution, and of the conformity or nonconformity of laws to the provisions of it, results from the very nature of a written constitution. It is in vain we have an instrument paramount to ordinary legislation, if there is no authority to check incroachments upon it, and there is no department of government with whom this power can be so safely lodged, or by whom it can be so ably and impartially exercised as the judiciary. If the legislature, the very branch of government most controled by the constitution, and intended to be so, shall be permitted to assume the wide and unlimited right of construction, the constitution will sink at once into a dead and worthless letter; moulded into various, fantastic shapes at the will of the legislature, and purporting one thing to-day and another to-morrow, and nothing at last. But Congress, I repeat, sir, in passing the sedition law, had no intention whatever of giving their construction to the constitutional description of treason, or of affecting or touching it in any way. The counsel of Fries were therefore about to use or abuse the act of the legislature to purposes never contemplated or intended. Should the court suffer a delusion of this sort to be practised upon a jury, equally disrespectful to the court and to the Congress?

(*To be continued.*)

LOST.

On board the ship Jupiter,

Capt. Law, from London bound to New York, the following certificates of United States debt, viz:

No. 11,137 for	5000	Dolls. defer. 6 per Cts.	
11,138	1000	do.	
11,139	1000	do.	
11,140	1000	do.	
11,141	1000	do.	
11,142	1000	do.	

Issued by Joseph Nourse, Esq Register of the Treasury, on the 24th May, 1799, in favor of James Heygate of London, merchant.

For the renewal of which, application will be made at the Treasury of the United States.

JOHN DAVIDSON.

May 24—ep6w

RAGS.

THE highest price CASH, given for clean RAGS, by EDGAR PATTERSON, George town, and SAMUEL STETTENIUS, near the Centre market, Washington

March 8—tf.

From a London paper.

LORD MELLVILLE'S CASE.

Mr. Whitbread having moved the resolutions of censure against lord Melville in the House of Commons, April 8, which he introduced at considerable length, an interesting discussion followed in which the chancellor of the Exchequer (Mr. Pitt) expressed his sentiments very fully on the manner in which these charges were advanced and pressed.

The Speaker having put the question on the first resolution, the chancellor of the Exchequer rose and spoke nearly as follows:

Without pretending to deny that the hon. gentleman has in a great measure adhered to the promise which he made of considering this subject with moderation and coolness, I must be permitted to say that he has not persevered in this resolution to the end. Instead of keeping strictly to facts, which ought alone to be considered in a criminal charge, he has appealed to the feelings of various descriptions of persons, upon topics that are not applicable to the present occasion. He has touched upon the public burthens, and hinted at the supposition that these burthens, required by the pressure of the times, have been aggravated by the money, the raising of which forms so heavy a tax on the people.—Sir, I am willing to allow, as every man must, that if the public money be squandered by any malversation on the part of the officers—(*hear, hear*)—then the matter becomes a subject for grave consideration and serious enquiry. But what I complain of is this, that the hon. gentleman has endeavored to mislead the public, by endeavoring to circulate the notion that great additions have been made to the public burthens, when no such additions have in the smallest degree taken place, for he knows that not a shilling has been lost to the public—(*Hear! hear!*)—that no allegation of any such loss has been mentioned, and that in fact, no mischief whatever has resulted from this transaction—(*A roar of hear! hear! from the opposition benches*)—Sir, the house must be sensible that it is very little consistent with the moderation and candor that ought to accompany a serious charge of this nature, to proceed with such violence, and interrupt a member with clamour. But they need not expect to interrupt me with such noise, which I must consider as an attempt to influence the passions of the house; and I have the less doubt on the subject, when I recollect *the numberless misrepresentations both in and out of the house on this affair*—misrepresentations which have been attended with no little mischief. It has been stated, not only that a very considerable loss has been sustained, but that our seamen have, in consequence of the transactions now before us, been prevented from receiving in proper time the money due to their valour, and their meritorious services. (*No! No! from the opposition.*) There has not been the slightest grounds for saying any such thing, for I can safely aver that the delay of an hour has never taken place in paying such money, and I do, therefore, most grievously, and justly complain, that this affair has not been treated with proper candor and moderation. But I have not only to complain that the hon. gentleman laid aside that moderation with which he commenced, but that he has given a totally mistaken view of the materials on which he founds his charge. The hon. gentleman tells us that the noble lord had an opportunity of answering for himself, as if he had been on a fair and impartial trial—that questions were put to him—that he was informed as to the nature of the charge against him, and allowed to say whatever he chose in his own defence. Now, whatever inference the house may draw from all this, it was certainly any thing but a fair and impartial trial, for it wanted those circumstances that accompany a criminal trial in all well regulated countries. The noble lord had not an opportunity of knowing exactly the charges against him. A copy of these charges had not been given him. He had no opportunity of calling witnesses in his favor, nor of cross examining those who might appear against him. Above all, it was a point attended to in every trial, that a man should not criminate himself. Now these are circumstances that clearly point out, that neither the noble lord nor the other persons who were examined, ought to be considered as having been brought to any thing like a trial, upon which a final judgment could be safely passed. They had been examined, and required to answer questions without being made acquainted with the exact view with which such questions were put, and without hearing the nature of the enquiry exactly stated to them. I do not say this, sir, with any view to give an opinion on the merits of the points before us. My object is to shew that our materials are not such as to afford a safe ground for any final decision. With respect to the matters themselves, I do not wish to deny that they are of the most grave and important nature. *I do again contend, that the public has not only sustained no loss, but that it has not even sustained any inconvenience* from the manner *in which the money was applied.* Yet, at the same time, I admit, that if the public money be even incorrectly managed by a public officer, he is responsible for his conduct. But I beg leave to say, that, from a full consideration of this report, I am convinced that all the circumstances are not before us in the full, clear and satisfactory manner, in which they ought to be, before we can give a fair and impartial judgment upon them. If this be the fact, we can much less pass any censure in the present state of the case. If I felt this to be the true state of the question before I came to the house, my opinion is much more confirmed now, from the manner in which the subject has been treated by the right hon. gentleman. He has argued from the documents now before us, but has not attended, in many cases, to several circumstances that vary the nature of some transactions, and the extent and degree of others. The conclusions which he draws are not those of the commissioners, but such as himself finds it convenient to draw from several circumstances combined together, which, from their not being fully known, cannot be completely understood.

The hon. gentleman first rested his case on three grounds, but he afterwards varied it, and reduced it to one single question. He himself, however, has admitted that the whole is so connected together, that it is impossible to pass any judgment on one part of the transaction without taking into account all the rest; and yet, after all this, he proposes that the house should come to a decision on one single part of the charge without pretending to judge of the others, which he leaves to a future occasion. Now, as to the charge of *participation*, he has not said so much as on the other two—Yet certainly it would have been much more proper that this should not have been mentioned at all, as the hon. gentleman does not mean at present to insist upon it, because, of all others, this is the charge which is most likely to wound the feelings of those who are nearly connected with the noble lord, and of all those impartial men who do not wish that an accusation of such a serious nature should be brought against a man, except under circumstances when they might be prepared to come to a decision on the point. I am desirous, however, that the matter should be examined with all that moderation, seriousness, and coolness, which ought ever to attend an affair of this nature. There are a variety of circumstances wanting that are material, as applicable to the charges;—there are many points that require explanation. Without any long delay, not much beyond the holidays, by agreeing to the motion for a secret committee, for which I shall have the honor to move, the house will have the matter clearly before them; and it is only by this mode of proceeding that the whole can be fully investigated, so as to prepare it for a just and impartial decision. Now, sir, the first charge is, that certain sums properly applicable only to the naval department, have been applied to other purposes. At present I shall not enter at large either upon this or the other charges—but content myself with shewing the necessity of some further enquiry into the circumstances. *Nothing appears here as to the motive with which the thing was done.* It is mentioned that the money was applied to other services occasionally. But as to all the circumstances relative to the motive and the precise necessity that existed for making such a loan, we are at present in the dark. Yet the house will agree, that in examining the conduct of a man with a view to pass a sentence of guilty or not guilty, it is of great importance, that the motives which led to the transaction should be known, in order to ascertain the exact degree of delinquency that attaches to it, or whether there is *any delinquency* in the case at all. Is the house prepared to deny that the transaction may be proved to rest upon such grounds as *not only to entitle the noble lord to an indemnity, but even to the highest praise for having incurred the responsibility.* I only say this much on this head, in order to induce the house to agree with me, that it would not answer the purpose of justice to come to a decision, without a further examination into the affair.

There is a statement of a sum lent to the treasury. I do not think myself at liberty at present to enter upon a particular examination of that transaction; but whether it was illegal or not; whether any share that I had in it was proper or improper, remains to be enquired into. After this enquiry it will be for the house to determine, whether I am liable to censure or punishment, and I shall submit, as I of course must do, to their decision. In the mean time, however, it is certain that the public have sustained no loss, and it may be supposed that, if any money was applied in any manner suggested in the report, it has been for great public purposes, in which, perhaps, the salvation of the country might be concerned, and which were of such a nature that they could not be executed, except with secrecy. I believe it will be found that two thirds of the sum mentioned in the report were applied in this manner. The noble lord occupied situations in which he alone was