TRIAL

OF THE

CASE OF THE COMMONWEALTH

versus

DAVID LEE CHILD,

FOR

PUBLISHING IN THE MASSACHUSETTS JOURNAL

A LIBEL

ON THE

HONORABLE JOHN KEYES,

BEFORE THE

SUPREME JUDICIAL COURT,

HOLDEN AT CAMBRIDGE, IN THE COUNTY OF MIDDLESEX.

OCTOBER TERM, 1828.

REPORTED

BY JOHN W. WHITMAN.

Boston:
DUTTON AND WENTWORTH, PRINTERS, EXCHANGE-ST.

1829.

TRIAL.

COMMONWEALTH *vs.* CHILD.

PRESENT

HON. MARCUS MORTON, *Justice.*

COUNSEL FOR COMMONWEALTH,

HON. DANIEL DAVIS, *Solicitor General.*

COUNSEL FOR DEFENDANT,

RICHARD FLETCHER & WILLIAM H. GARDINER, ESQ'S.

ON the 12th day of January, A.D. 1829, DAVID LEE CHILD was arraigned before the Supreme Judicial Court of Massachusetts, holden at Cambridge, in the County of Middlesex, upon the following Indictment:—

Commonwealth of Massachusetts,

MIDDLESEX ss. At the Supreme Judicial Court, begun and holden at Concord, within and for the said County of Middlesex, on the second Tuesday of April, 1828. The Jurors for the said County upon their oath present that David L. Child, of the city of Boston, in the County of Suffolk, Esq. being a person of a malicious disposition, and wickedly intending and contriving, as much as in him lay, to injure and vilify the good name, fame, credit and reputation for honesty, and integrity, of one John Keyes, Esq. a member of the Honourable Senate of the General Court of Massachusetts aforesaid, and Chairman of the Committee of Accounts, duly appointed thereto by the Legislature of the said Commonwealth, and maliciously intending to deprive the said John Keyes of his offices aforesaid, and the confidence of the people of his senatorial district, on the 29th day of March, 1828, with force and arms, at Acton, in the County of Middlesex aforesaid, a certain false, scandalous and malicious Libel, of, concerning, and against, the said John Keyes, falsely, wickedly and maliciously, did frame and make, and did then and there cause the same false, scandalous and malicious libel to be printed, in a public newspaper, called the Massachusetts Journal, wherein under a paragraph headed "The new nomination in Middlesex," among other things, the said false, scandalous, and malicious libel, of, and concerning the said John Keyes, is set forth in the words, and to the effect following, to wit; "People of Middlesex, we have gone through these troublesome details to prepare you for the fact which we are now to state. In this Committee of Accounts (meaning the Committee of the Legislature aforesaid) which had advertised for sealed proposals for the contract of printing, the Honor-

able Chairman, Mr. Keyes (meaning the said John Keyes) proposed before a seal was broken, that the contract should be given to the Boston Statesman (meaning to the Proprietors of that Paper) provided their proposals were not more than $500 higher than any others. This was no more nor less than a proposal to give $500 from the Treasury of Massachusetts to that reprobated Jackson Press. And that the said David L. Child, on the day and year last aforesaid, with force and arms, at Acton aforesaid in the County aforesaid, the aforesaid false, scandalous and malicious Libel, so as aforesaid framed, printed and published, did utter and publish, to divers good citizens of the said Commonwealth, in different towns in the said County of Middlesex to the great damage, infamy, and discredit of the said John Keyes, in evil example to others in like case to offend against the Peace of the Commonwealth aforesaid, and the laws thereof in such case provided.

To this Indictment the Defendant pleaded NOT GUILTY; and the following Jurors were empanelled and sworn to try the issue.

AMOS HILL, FOREMAN, . .	*West Cambridge,*
CALVIN BROWN, ...	*Waltham,*
SIMON BARNARD, ...	*Woburn,*
SAMUEL C. BUCKMAN, . .	*Woburn,*
ELIAS CRAFTS, ...	*Charlestown,*
LEONARD EMERSON, . .	*Malden,*
JAMES T. FLOYD, ...	*Medford,*
NATHAN GROUT, ...	*Sherburne,*
JONAH HOWE, JR.	*Marlboro'*
SAMUEL HAZEN, ...	*Shirley,*
HEMAN SEAVER, ...	*Marlboro'*
THOMAS SPAULDING, . .	*Billerica.*

Solicitor General. You perceive, Gentlemen, by the indictment just read, that David L. Child has been indicted, by the Grand Jury of Middlesex, for a libel on the Hon. John Keyes. The part which is derogatory to Mr. Keyes is inserted in the indictment. I am disposed to conduct this prosecution with liberality and fairness towards both of the respectable individuals. It involves important consequences. I have had no conversation with the prosecutor upon the subject; but I am persuaded that if he had not been a Senator, and one of the eyes of the Legislature, or if the publication had touched only his private character, he would have viewed it in the same light as highminded men do the libels, which are strown from one end of the country to the other. You will agree with me that if Mr. Keyes is conscious of innocence he could hardly delay one hour to vindicate himself. He is a man occupying a station, where public money, to a vast amount, much more than I had any idea of, depends upon the

honesty and intelligence with which he conducts himself therein.

I do not know that this is a time to speak to you of the pernicious tendency and consequences of political libels; but if I were a candidate for a popular election, I should expect to have my character ripped and torn all to pieces by lawless writers for the public press. I do not speak of the editor of the Massachusetts Journal in particular. He is a gentleman for whom I have a high respect for his talents, his integrity, and his standing as a member of the community.

I will now state the grounds on which I am going to rest this prosecution. I hold in my hand a paper, called the *Massachusetts Journal*, of which Mr. Child was, and, as he has done nothing in the dark, I presume he will admit that he is, the editor

You are aware, gentlemen, that in the last spring there was in the county of Middlesex a sharply contested election. Mr. Keyes among others, and he in particular, was the object of newspaper attack; and the whole artillery, I may say tremendous artillery, of the Massachusetts Journal was levelled at him. Within two days of the publication of the libel, Mr. Keyes did what a gentleman and a good citizen should do. He waited on Mr. Child, and told him that this piece was utterly false, and called upon him to disavow it. He stated to him, that as to other matters he did not care, and should not trouble him; but in respect to that part which touched his official conduct, he should not permit it to pass with impunity, unless it were publicly retracted. For some reason Mr. Child did not choose to comply with the demand; but by making it, Mr. Keyes has put himself on as good ground as a gentleman and a good citizen can stand upon in a like case.

The publication is a charge of corruption. It purports to be a libel on the face of it. It amounts to a charge of corruption. If it be true, it is not a libel; if it be false, it is a libel. You will observe, that it is contained in a publication, of the 29th of last March, which I will now read.

"THE NEW NOMINATION IN MIDDLESEX.

The proceedings of this county become daily more interesting. We have had the presumption to offer some remarks heretofore upon a certain hasty, ill advised, (and as has abundantly appeared by the conclusive testimony of General Rutter), *illegitimate* meeting, which nominated, on the 12th of this month, all the old Middlesex list except Mr. Jewett, who declined.

Almost every hour some new fact is brought to us in relation to this meeting. It now appears that there were *at least three* decided and active *Jackson men* on the Committee which reported Messrs. Parker, Keyes, &c. for the candidates. One of those Jacksonians, was, as we have stated, the famous *Cunningham;* another was from *Charlestown*, and the third from *Groton*, thus making a majority of Jackson men on the *nominating* Committee.—There is a further fact, which we wish to ascertain, viz:—who was the person that called this same illegitimate meeting? who was it that thus attempted to steal a march upon the people of Middlesex? We hear that a written notice of the meeting was stuck up in Concord, on the day that it took place; we should like, if it is not a secret, to know who wrote, who put up, and who instigated that notice. We understand that Mr. *Keyes* authorized and requested a Concord delegate at the meeting on Thursday evening, to say that he regretted that meeting, and *had intended to decline the honor of a nomination at their hands.* It is unfortunate for Mr. Keyes, who no doubt is sincere and honorable in this declaration, that he did not think of expressing his intention immediately, when nobody would have attributed to necessity, or fear, that which he wishes them to attribute to virtue and a love of the people.

Contrary to our wishes and hopes, though not to our expectations, Mr. Keyes has been put upon the ticket nominated at Concord on Thursday evening last.

We are gratified at this result, not for its own sake, but on account of the means by which it was produced. Mr. Keyes was obliged to call in *Administration men*, to vouch for *his* administration attachments, and, if one may so say, to *endorse him.* When, after three years of as fierce contention as was ever carried on in any country, without actually coming to blows, a man's opinions and intentions are so far unknown that he is obliged to bring certificates and vouchers for them, we think it *certain* that *he* is *uncertain.* We understand that Mr. Keyes came out on the evening of the meeting at Concord, for the purpose of choosing delegates to the Convention, with a vehement Administration speech!

We shall oppose to this *important* fact, a single question. When was Mr. Keyes ever known to come out either in public or private with a decided declaration in favor of the Administration, until such declaration became necessary for his re-election to the Senate? Was it when we were struggling to get an able, nay, a decent man for United

States Senator? Was it in the gloomy months of December and January last? Was it when the republican friends of the Administration were invoked and entreated so far to abandon the system of *proscription*, as to take Daniel Webster to represent the mother of New England, the mother of all these fair sisters, in the august Senate of the United States? No, no, it was on none of these occasions that he showed this decision; but it was precisely when it was necessary for his *own* re-election, that he came out so warmly! Such *friendship* is more dangerous than open hostility! From all such friends "Good Lord deliver us." We do not doubt that Mr. Nathan Brooks, Mr. Keyes' witness, testified in his favor with the best intentions, but we must be permitted, as public journalists, to judge for ourselves, and not take Mr. Nathan Brooks's opinions, in preference to facts, which we ourselves *do know*.

Mr. Keyes was reputed *to be on the fence*, all the past winter; we never once heard him spoken of except as a "FENCEMAN."

But this is a trifle. Mr. Keyes has long been a member, and chairman of the Committee of Accounts, for which service he has received an annual compensation, in addition to his *per diem* as *Senator*, his *per centum*, as *post-master*, and his $800 as *County Treasurer*. This Committee of accounts, has to make the contract for the State printing.

The STATESMAN printing office had had this contract for some two or three years previously to the last year; and although it was generally believed that the printing was done at that office at an extremely low rate, still we have been assured, that the fact was *not* so; and that while some items of no great importance were far too low, other and *heavy* items, under which, the quantity of printing was quite uncertain, were a great *deal too high;* and that it was by this sort of stratagem that they continued to do the State printing *very low*, and yet to make money.

In June last, the *Statesman* again put in *sealed* proposals, as did a score of other printers. Mr. *Keyes* and Mr. *Ellis* (who has been dropped in *Norfolk*, as a doubtful, i. e. a Jackson man,) were the Committee on the part of the Senate; Mr. *Palfray* of Salem, Mr. *Robbins* of Plymouth, and Mr. *Perkins* of Becket, composed the Committee on the part of the House. Messrs. Keyes and Ellis, from having been long of that Committee, and being of the Senate, had a preponderating influence.

People of Middlesex: We have gone through these troublesome details to prepare you for the fact which we are now to state.

In this Committee of Accounts, which had advertised for sealed proposals for the contract of printing, the Hon. Chairman, Mr. Keyes, proposed, before a seal was broken, that the contract should be given to the Boston Statesman, provided that their proposals were not more than five hundred dollars higher than any other.

This was no more nor less than a proposal to give $500 *from the Treasury of Massachusetts to that reprobated Jackson press.* How this motion of the Hon. Chairman was disposed of, we are not informed. We presume it was rejected. When, however, the printers' proposals were opened, Mr. Keyes, referring to half a dozen unimportant items, pronounced the Statesman's proposals to be the *lowest;* and if another member of the Committee had not resisted, and showed beyond all doubt, by a reference to other, and *heavier* items, that the proposals of the *Statesman* were $1100 higher than others, that well deserving press would again have had the State printing! Mr. Keyes' feelings in its favor were, however, so strong, that he would not remain in the Committee, and give a vote upon the question who should be printer. To vote for the Statesman, was more than he dared to do in the face of demonstration; and to vote against it was more than his *feelings* would permit him to do; and he therefore left the chair and the room—fairly bolted, and did not vote at all! We should suppose that such an Administration man would need certificates and vouchers; and by bringing them, Mr. Keyes shows a consciousness of his case."

When John Mills, as President of the Senate, appointed Mr. *Williams* of New Bedford, and *then known to Mr. Mills to be a Jackson man,* a member of the Judiciary Committee, we knew that Mr. Mills himself was a Jackson man, because he passed by administration men of equal, and some say of *greater* legal attainments. Mr. Mills' *unmasking* in Faneuil Hall on the "eighth of January," confirmed our suspicions.

When Mr. Jarvis appointed Mr. *Baylies*, of Taunton, Chairman of the Judiciary Committee in the House of Representatives, passing by Saltonstall and Fuller, we then thought, but not for the first time, that he was in *reality* a Jackson man. *We remain of that opinion.* We can assure the voters of Middlesex that he has talked in favour of Adams and Jackson by *turns*, according to the known opinions of those with whom he has conversed. We can call Jackson men to prove the fact. In one word, we consider and have long considered Mr. Jarvis as ready to take either side

according as events were favourable or not, to the administration cause; and thus, rely upon it, it will continue to be with him.

This is plain speech; and it is time to be plain, when the partizans of the General in his own state will not employ even *neutral* printers, but dismiss them, and drive them from their neutrality or from the state.

We hail the convention at Lexington, as the beginning of a new era in Middlesex. Let that Convention act boldly and firmly, and they have nothing to fear."

This is a direct allegation that Mr. Keyes, without any regard to his duty, or the purposes for which the public money is placed in the treasury, was in favor of giving it away for private, political and corrupt purposes. The Committee of Accounts sat under the eye of Mr. Child, and he never made a suggestion of corruption or fault until the Saturday previous to an election, in which Mr. Keyes was a candidate.

Court. It was eight days before.

Solicitor General. I shall first prove the publication by Mr. Child. [The defendants Council here admitted the publication.] And I shall in the second place prove that Mr. Keyes waited on Mr. Child and asked him to disavow it. I understand that the defence is to be that the facts are true; we are prepared to meet it, and to fight the battle on that ground.

I will now state my view of the law of libel. A libel is a false and malicious publication in printing or writing, or by signs and pictures tending either to blacken the memory of one dead, or the reputation of one who is alive, and to expose them to hatred, contempt, or ridicule. That this is the tendency of the publication which I have read, there can be no doubt. And I presume that the only question will be whether Mr. Keyes did make the proposition to give True and Greene a preference of $500 over others as State Printers. I do not mean to make a great display of learning, but I will read you a little law on the responsibility of printers.

"Printing a libel is publishing it. The printer gives a body and activity to the poison, which is mixed up in private, and would be in a quiescent state, if no persons could be found to put it into that form which is best suited to give it publicity. Printers and booksellers have therefore been justly deemed the instruments of crime. Whatever be the motive of the printer and publisher if an injury be done to the public or an individual, he must and ought to

be answerable for it. The law presumes guilt from every act of public mischief, and imputes a malicious intent to an act which is injurious to another. But facts or circumstances may enhance or mitigate that implied guilt and vary the degrees of it. Like every other presumption of law it may be rebutted by contrary proof, and shown to be innocent and accidental." *Holt, L. L.* 293.

If a libel be false the law implies a malicious intent, but this presumption may be rebutted by showing that there was no malice. There is no such thing as a libel unless it be maliciously fabricated, but legal malice means no more than willfulness; a publisher shall not be permitted to say that he made a mistake. He who "scatters firebrands," &c. shall not be permitted to say "am I not in sport."

Subsequent publications may be given in evidence of malice.

The Solicitor General then read an extract from the Journal of the Senate purporting to be an order appointing Mr. Keyes Chairman of the Committee of Accounts; also an order giving him leave of absence on the eighth of June 1827 for the remainder of the session after the day following; also an order for the Committee on accounts to contract with a printer to do the printing for the Commonwealth.

Mr. Gardiner. May it please your Honor and you Gentlemen of the Jury.

This Defendant, whose character has been hitherto unimpeached, stands here for the first time in his life, charged with a criminal offence; and it is for you Gentlemen, to estimate the amount of his criminality. It is of little importance that he is personally unknown to all of you. So far as his private character is concerned, it is enough that the learned gentleman who conducts the prosecution has felt himself bound to assure you of the respect which is entertained for his virtues and his talents. In his public character he is doubtless known to you by reputation as the editor of a respectable journal, which has maintained with ability and independence the principles and interests of the political party to which he has been attached. Whether his zealous support of the cause of the present administration may have been to you a subject of gratification or of regret, he must at least be entitled in your judgement to the reputation of an honest conductor of the public press; bold it may be in his exposition of public abuses; free to discuss the qualifications of candidates for public office; and prompt to communicate to the people

what they were concerned to know regarding the official conduct of men in trust. But he has never abused the power of the press by making it the vehicle of vulgar slander; he has not invaded the sanctuary of domestic life to expose its follies and foibles to the gaze of the censorious and uncharitable; neither has he laboured to heap unfounded calumnies upon the heads of his political opponents, or turned the current of just animadversion into a torrent of scurrility and personal abuse. On the contrary he has throughout his editorial career strictly confined himself to legitimate objects of newspaper discussion, the official conduct of public men, the character of public measures; and in the discussion of such topics if he has sometimes found occasion for severity he has never forgotten to clothe it in the language of decorum. Yet this man is now arraigned at the bar of this County as a state criminal, and is described in the Indictment as a malicious and evil disposed person, who with wicked intent to injure and defame an Honorable Senator of this Commonwealth, has published of him, a certain false, scandalous and malicious libel.

The defendant has laboured under the effects of this presentment of the Grand Jury of the county, for a term of nine months. You will readily imagine how deeply injurious to his feelings and his interests, has been the pendency of such a charge. He is now formally required to answer to the Commonwealth, as a disturber of its public peace, by the malicious uttering of false and wicked calumnies; which he denies; and you are asked upon your oaths to record this sentence of condemnation against him.

The suit is to be sure in the *name* of the Commonwealth, but you will perceive that it is in truth the prosecution of the individual against whom the supposed libel is directed. It is at his suggestion that the power of the Commonwealth is arrayed against the defendant. Upon his complaint and his evidence before the Grand Jury this presentment is founded. It is he who urges this issue to trial, which it is in his power at any moment to arrest. And it is he who sits by the prosecuting officer to instruct and direct him in the conduct of his cause.

Considering it therefore as an issue between the Hon. Senator of Middlesex, and the humble individual who is arraigned to answer him, I trust I shall not be considered as deviating from the beaten path of duty in the remarks which I may find occasion to make upon the prosecutor. The defendant, however, and his Counsel disclaim

all intention to assail the general character of that honorable gentleman. The defendant has at no time been actuated by personal enmity or private malice towards him; and does not therefore either propose or desire to make the present occasion, a pretext for diminishing his value in your estimation. His character and general conduct, we are not called upon either to eulogize or condemn; and it would be presumptuous to do so, before you, who are among his constituents, and have doubtless had abundant opportunity to form your own estimate. Indeed the defendant stands here simply upon his defence; he comes not to assail others, but to vindicate himself; and therefore does not ask your attention to the character or conduct of the prosecutor, excepting so far as they are immediately connected with this prosecution, and the subject matter of the alleged libel.

Neither in regard to his conduct as connected with this prosecution, do we mean to complain of the course which he has seen fit to pursue. He has chosen to institute a criminal prosecution, and he had undoubtedly a legal right to do so. Yet it cannot but suggest itself that he might have adopted a course more consonant to the dignity of his official station; more accordant to the practice and principles of our republican government; and better adapted to the end which he should have had in view, the only end which can justify him in this prosecution,—an honest desire of self vindication. For the charge of which he complains relates wholly, as you will remember, to his official conduct, his conduct as a Senator and Chairman of the Committee of Accounts. It does not touch him in his private character; it does not affect his professional standing. It is upon this very ground that he professes to proceed. But for the offices that he held, says the Solicitor General, a Senator, a Chairman of the Committee of Accounts, "one of the eyes of the Commonwealth," and had not the attack been upon his official character, he would have overlooked this, as he had other newspaper libels, and would have treated it as other highminded citizens had treated similar assaults, with silent contempt. Now I apprehend that the very reverse of this is the just rule of conduct for men whom the people have elevated to stations of confidence and power. If their private reputations are wantonly assailed by the tongue of calumny, let the aggressor be visited by them, as he would be by any other citizen, with the weightiest infliction of the law; but let not the servants of the people presume to entrench themselves behind such barriers when their public administration is called in

question. It is not for them to close the door against official investigation, or check the spirit of free inquiry into public abuses, by threatening to bring down the strong arm of the law upon all who allege ought against their political merits, which the truth may not strictly justify. There is something of a suspicious character which lurks about great sensitiveness in great men to charges of official delinquency. Do you find it to be so with the truly great and distinguished candidates for the voice of the people? Do you find that Adams and Jackson and Clay, and others whom I could name, upon whom every species of political abuse has been heaped by their political opponents in every newspaper which has found its way into the world for these five years, have thought it necessary for the salvation of their characters as statesmen to go to law about it? Do they consider an Indictment in these cases to be the legitimate remedy for the representative of a free people? If they did where would be the end of Indictments? What Editor would be safe? Or who would venture hereafter, at the peril of an Indictment, to advise the people of the fitness and qualifications of opposing candidates? No, the course which they have pursued, the only course becoming public servants in a republican country, is to invite scrutiny; to suffer popular inquiry and complaint to take their course free and unrestrained; and if any thing is charged against them worthy of their notice, to meet the charge where it is made, and answer it as it is made, through the agency of the public press. The public press is the only tribunal for such men upon such charges. The prosecutor should have selected that tribunal for his defence before which he was arraigned. He should have vindicated himself directly to his constituents. His appeal should have lain to the country—the whole country—and not to a few individuals who may happen to be called out of a single section of it, competent to investigate only according to the rigid rules of law, and bound to decide upon such evidence only as may be admitted to their notice in a process of judicial inquiry. If his reputation was at stake—his hard earned political reputation—he should have given it into the hands of the people to whom it belonged—the people who created the office which he held—who prescribed the rules of official conduct upon which it should be administered—who elected him as one competent to discharge that high trust. This he should have done, instead of squeezing his official reputation which has been aggrieved, into the narrow pre-

cincts of a single court house in the corner of a county, there to seek justification and redress. Will it be said, that before the people he would not have stood on equal ground with his assailant? This cannot be pretended. In the progress of public discussion, before an enlightened and liberal community, the truth will always prevail;—or the prejudices of the community, if there be any, will naturally operate in favor of the man whom they have elevated to an official station, and whom they are accustomed to look upon with confidence and respect. There is no danger of injustice on that side; but in every political controversy the advantage, if there be any, is for him. It was a course then which he might have pursued in safety, if he has been wronged; and it would have been a course best according with the principles of our free republican institutions, and with the practice of those whom the people have most loved to honor.

In resort therefore to legal remedy, we have a right to look for some deeper motive than the pure desire of self-justification. And in construing the motive, we cannot but advert to the previous interview of the prosecutor with the defendant, to which the Solicitor has alluded. He has informed you, that before proceeding to harsher measures, the prosecutor, upon the appearance of the offensive publication, took the first step of a gentleman and a christian, in calling upon the defendant peaceably for an explanation, informing him of the error which he had committed, and asking for justice at his hands, which, it is said, was denied him. The character of that interview, gentlemen, it is hoped, may be in evidence before you, though the defendant did not,as the prosecutor did, take the precaution to have a friendly witness at his side. You will find, that the only step, taken by the prosecutor, was to charge the defendant with the publication of a falsehood, and to demand an instantaneous retractation, under the menace of the law. You will find, that the defendant proposed to inquire farther of the person from whom he had received his information, and that he professed his readiness to correct the error, if he should find he had unintentionally committed one, and to do it in his very next paper. And what was the answer of the complainant to this reasonable proposition? It was "No, Sir--that will not do--I will not wait so long—you must retract *forthwith—upon the spot*, if you do not—I will commence an action against you—I will bring it *in my own county—where I am known*, and where I hope to make you better known. And to this, the only

reply of the defendant, was that he should be happy to become known to the good men of Middlesex.

He is happy, gentlemen, in the opportunity which is now given him. He is happy to address himself to the impartial judgment of *twelve* good men of Middlesex; and though he is a stranger to all of you—though he is brought to answer to an indictment in the prosecutor's own county—and though you are the friends, the neighbours, and the constituents of the man of power, who brings him before you, he confides in your judgment and the right of his cause. And he asks you whether this was the course most proper for your representative to have taken? Should he not rather have offered to the Defendant some explanation of the facts from which the error, if there was one, had sprung? Should he not have pointed out to him the means and sources of information from which the truth might be derived? Should he not at least have allowed him time for investigation into a matter which if true it was his duty as an editor to publish to the people, and which if false it was equally his duty to correct? We find nothing of all this; we find only a peremptory demand of instantaneous retractation, and a menace of the perils of the law. Yet says the Solicitor the prosecutor does not fear an investigation;—he thought it his duty to have an investigation; and it is merely for the purpose of a legal investigation into his own official demeanour, that he has caused this Indictment to be found against the defendant. Still it does so happen that the course pursued has been the very course to avoid investigation at the time and in the mode and for the purpose, which would have been most useful to himself if the charge were false, and to the public if it were true. The publication was on the eve of an election at which the prosecutor was a candidate for office.

This is one cause of complaint, one of the indications of malice in the defendant which the Solicitor has pointed out to your notice; that although the official misconduct charged against the prosecutor is alleged to have happened months before, no fault is found with him until just at the moment when he is offered again as a candidate for the votes of the people; and then the charge is industriously circulated by the defendant for the very purpose of defeating his election. As if that were not the very time when and the very purpose for which it was the duty of the defendant to speak, if he were possessed of a fact showing the disqualification of the candidate for the office which he asked! As if the defendant had anything

to do with the conduct of Mr. Keyes except as regarded his being a candidate for the renewed favour of the people! As if that were not the very moment for the discussion and investigation of this question; the very moment for the defendant to have met and answered the charge. For until the charge was either established or removed, how should the electors know for whom their suffrages should be cast? Yet such was the prudent course which the prosecutor chose to pursue, in the midst of his anxiety for an investigation of his official conduct, that the question of the result of the election has been decided in his favour these nine months, and this suit, involving the question how far he was entitled to that result, is yet to be tried.

But his only motive in urging on this prosecution is to make an investigation. If he did not choose to meet that investigation where it was proposed, and vindicate his character to the people through the medium of the public press, if he preferred a judicial investigation according to the forms of law, the law gave him yet another remedy than that which he has elected to pursue. He might have brought a private action, and recovered a compensation in damages for the injury which his reputation has sustained. If it is said that no pecuniary compensation is adequate to repair the loss of an injured reputation, it is granted. But is a conviction of the offender upon an Indictment more so? The value of the verdict to the party aggrieved in either case is the same; it is the opinion of twelve impartial men upon the facts which are brought to their notice that he is innocent, and that his accuser is guilty. Why then, having no other motive, as he professes, than to vindicate his reputation, and proposing, as the Solicitor informs you, to pursue the course of a gentleman and a christian,—why does he hang an Indictment over the head of the defendant, and pursue him as a criminal, instead of calling upon him to answer in a private suit for a private injury? If he had brought such a suit in his own name he would not have been a witness in his own cause, but would at least have had the merit of wiping off the stain upon his fair fame by the testimony of others; whereas in his present suit, prosecuted in the name of the Commonwealth, he may if he pleases, conduct the investigation into his official conduct upon his own testimony, and clear away the imputations against him, when all other resources fail, by his own oath. This is one reason at least why a public man who is anxious to stand fair with his constituents should prefer the remedy by Indictment. For such is

one of the rules which regards this remedy in the law of libel.

In the opening of the defence, it may be proper for me, as was done by the Solicitor, on the part of the Government, to state the legal principles which, according to the view of the defendant's Counsel, should govern in prosecutions of this nature. There is no topic of the law, perhaps, more abundantly discussed in and out of Court, than the Law of Libel, as connected with the liberty of the press; and none perhaps of which the true principles are less generally understood. I do not propose, gentlemen, to utter a common place eulogium upon the liberty of the press, so often pronounced the Palladium of our civil liberties. The people of this free republican country have, at all times, been sufficiently sensible of its value. Our State Constitution declares it to be among our inalienable rights; and by the terms of our federal compact, it is not in the power of Congress to abridge it. It is a blessing which exists, as it does here, in no other country upon earth. There is no other country, if not in this, in which the freedom of the press can be truly said to be protected and regulated by any fixed and settled principles of law. In all other countries it is restrained, not so much by certain salutary and well known rules, as by the policy of governments; while it is cherished and fostered, as far as those governments permit, not so much by the protection of the law, as by the power of public opinion. I mean to apply these remarks, so far at least as regards political libels, even to that land whence we ourselves derived the origin of our principles of civil liberty and of law. The other nations of Europe, generally speaking, have not yet dreamed of the liberty of the press; for nothing can be published among them, without the express approbation of the government, indicated by the imprimatur of a public censor. The distinction in England is, and it is a glorious distinction, that no such previous license is required; every man there has a right to publish what he thinks, at his pleasure; but he does it at his peril; and this is the English definition of the freedom of the press. But surely this is no definition. It declares a fact; but it does not define the right of publication, or show in what this right consists. The proposition contains no distinction between right and wrong; it sets no boundary between the liberty and the licentiousness of the press. It does not separate the use from the abuse of it. It does not instruct the author what sort of publication is innocent and what is criminal.

The law only says, you shall ask no man's leave; you may publish what you will; if you publish that which no mortal can take offence at, it is well; but if you publish that which any man can take offence at it may be a libel, and you must take the consequences. But how is the subject to know what is a libel? If the liberty of publication is unbounded, and the author himself is to be the only judge beforehand of what he may safely publish, and what he may not, does the legal notion of a libel aid his judgment in this particular? On the contrary, nothing can be more vague and indeterminate than the definition of a libel, as read to you, from an English book of authority, by the learned Solicitor. Apply it to the case of a political libel, and what is it? why, any thing which *tends* to bring the Government, or any of its officers, in respect of their official conduct, into hatred, contempt, or ridicule. What can be more indefinite? Surely all censure, remonstrance, or complaint, according to this definition, is libellous; for all such language must have more or less of *tendency* to bring the person complained of into odium or ridicule. If then neither the definition of the freedom of the press, nor the definition of a libel, according to the English law, informs the subject what writing is safe and what is perilous, is he better informed by practical exposition in the decisions of the courts? To follow out the terms of the definition, in all its consequences, and apply it to all cases, would be a complete shutting of the mouth of the press upon all matters of great public concern. But this is more than public opinion, in so free and enlightened a country as Great Britain, at the present day, can endure. There are topics which the people must and will discuss freely; and in these, so long as the government is not jeopardized, the letter of the law is made to yield to the necessity or expediency of the case. Hence the decisions of the English Courts, upon the law of libels, are from the beginning to the end full of contradictions and inconsistencies, being the results of a perpetual conflict between the fears of the government and the wants of the people; an unceasing struggle between public opinion and state policy. And the effect is, that no man can tell, when he puts pen to paper, upon a matter of political interest, whether what he writes will turn out to be a libel or not. However excellent his motives, however admirable his ends, however true the facts which he asserts, however unanswerable the inferences he may draw, his publication may still be a libel. The position in which he stands then is this. The

law tells him that the press is free, perfectly free, he may publish what he pleases, but under the peril of being a convicted criminal, though he publish nothing but truth, with good motives and for excellent ends. For write what he will, of a political character, it may tend to bring somebody into odium; the officer of the crown may file an information against him; the sheriff may summon a special jury, such as he may think fit to try a case of libel; and the Court will instruct the jury, that if the writing have the tendency imputed to it, it is legally a libel, and that the criminal design of the writer must be inferred from the fact of his having voluntarily made the publication. Where then can he find a defence? if the matter published be false in any particular, he must be convicted of course; for nothing can be more malicious and criminal than to publish falsehood for truth; and if the matter published be true, the law says it is so much the worse; for the greater the truth the greater the libel, and the writer must be convicted of course, by reason of the greater provocation that he has given, to a breach of the peace, by publishing that which was true, and which tended to bring some person into merited disrepute. Such is the liberty of the press, and the certainty of the law of libel, as they now exist in Great Britain.

It cannot be admitted that these principles of law are applicable to the state of things existing in our own country. Still the common law of England is in general the common law of these United States. It was our law before the Revolution and it continues to be our law with some changes resulting from the change of circumstances consequent upon that event. It may be useful therefore to take a cursory glance at the origin of this anomaly in the English system of criminal jurisprudence; the principles upon which the existing law of libel was founded; the progress of public opinion concerning it in that country, and the gradual melioration of its judicial character which has followed; and then to mark the modifications in this branch of the law belonging to our own political institutions, and the gradual developement of the public mind on this subject here, exhibited in a series of judicial constructions and legislative declarations leading to the final recognition of the true principles of the criminal law of political libel; which if we have been slow to perceive are not the less essentially a part of the atmosphere of freedom which we breathe.

The criminal law of libel, as now known and practised in England has been said to be no part of its old common

law, but a branch from the stock of the imperial law of Rome, suddenly transplanted into English soil, in days of despotism by the authority of the High Prerogative Court of Star Chamber, who doubtless found it a most convenient addition to the supports and defences of an arbitrary government. This Court for a long time had almost the exclusive cognizance of libels; especially against the government, and great officers of state. As a specimen of its administration of justice upon this class of offenders we may advert to the case of one Wrennum, which occurred in the time of James the II. He was a gentleman of education, character and fortune, who was so unlucky as to have a suit in Chancery; in which, as he believed, an unjust judgment had been corruptly rendered against him. If this were true there was but one officer in the realm who had power to grant adequate redress. That was the King, at whose pleasure the judge of that Court is appointed or removed. He therefore presented a humble petition to the King stating his grievance and suing for redress. The matter was referred by His Majesty to the Court of Star Chamber; and the learned Judges of that Court held this humble petition for the redress of a grievance to the only power in the realm competent to grant it to be a libel, and sentenced the culprit, for so heinous an offence, to be put in the pillory, cropped of his ears and consigned to perpetual imprisonment.

Such a Court, so administering the law, could not be expected to live long. But although the Star Chamber with its summary justice and arbitrary punishments, fell into disfavour and was abolished, still the legal principles which this Court had introduced in relation to libels, had become incorporated into the general system, and established by precedent in the contemporaneous Courts of common law. It was still held, against the general principles of English jurisprudence which makes the Jury in all criminal matters judges of the law as well of the fact, that in prosecutions for libels theJury should be permitted to find nothing but the fact of the publication, leaving the Court to infer its construction and intent, the malicious character of which is the very essence of the charge; and it was not until the middle of the reign of the late King that the law was amended in this particular by statute. Since that period Juries have the right, or at least the physical power, to pass upon the intent in this as in all other criminal cases; but they are still instructed by the Courts, that a libel is anything which tends to bring any officer of the Government, or

other person into disrepute; that the crime or malicious design of the writer is to be inferred from the single fact of his publishing; and that the truth of the matter published cannot be admitted as a defence; so that Jurors, under these instructions, are daily constrained either to convict those whom they do not in their hearts believe guilty of a crime, or else to violate their own oaths by acquitting them against the plain rules of law. The Judges themselves are so sensible of this absurdity, and have been so far swayed by the public voice in cases not likely to conflict with the interests of the Government, that they have been compelled to establish by their own authority, or rather to declare as common law, large classes of exceptions to these rules. I may mention by way of example the unbounded liberty which is given to literary criticism. What manner of ridicule and contempt is not brought daily upon respectable authors who write very sensible books, which happen to fall into the hands of hostile reviewers! Yet the Court hold these criticisms however harsh or satirical, nay even unfounded and unreasonable, to be no libels; and the reason they give is, because it is a matter of public expediency that these topics should be freely discussed; because the people are concerned to know the merits and demerits of authors; and it is only in respect of their literary characters, and in their public capacity as authors, that they are in danger of being brought into ridicule and contempt. It is not however, in their view, equally a matter of public expediency that affairs of state and the political character of its officers should be freely canvassed; although the people are far more concerned to know the political character of their governors than the literary character of their writers. Yet where is the distinction in principle which requires the Courts to adopt one rule in relation to literary libels, and another rule in relation to political libels? If there is no distinction in principle the necessary inferrence is that a practical distinction is, forced upon them by the combined operation of state policy and public opinion. State policy compels them to adhere to ancient rules in respect to political libels; public opinion compels them to adopt new ones in all other matters of public concern not endangering the vitality of the government.

Absurd as the distinction may be it is the law of England, and of course was the law of this country before the revolution; and still is except so far as a new common law was born to us, or a still older common law revived to us by that event, or so far as changes have been introduc-

ed by express legislative enactment. The common law is nothing more than the principles of common right and common justice applied to the particular condition and circumstances of a political community. In making that application courts necessarily establish rules, which form precedents for the government of future cases; binding however no farther than they are consistent with the principles from which they originate, and liable to change with the political condition and circumstances of the people to whom they apply. Our political condition has undergone a great change. From a poor colonial dependency we have become a free and independent nation. We have adopted a popular form of government, with a system of equal representation. And from this necessarily results a new application in some particulars of the fundamental principles of the common law adapted to this new political existence; and new rules of judicial construction must consequently arise. Among them we contend is an entire alteration of the law of political libel. The same principles which admit perfect freedom of literary discussion in England, must admit perfect freedom of political discussion in America. The people govern themselves by their representatives. The representatives of the people are mere servants, exercising an agency for a limited period, and then returning to their constituents to render an account of their stewardship. Their official conduct is liable to be scrutinized and canvassed at all times by those under whom and for whom they are acting; that is by the body of the people, and of course in the most public manner. The people have a right to be fully informed upon this topic. They have a right to be advised not only of what is certainly known, but of what is reasonably suspected as to the misconduct of their agents; and it is not only the right but the duty of all persons, and more especially of the editors of public newspapers, to disclose to the people whatever they know or reasonably believe, respecting the delinquency of those who either hold office, or are candidates for office at the hands of the people. For it is as necessary to the people that proper subjects of inquiry should be suggested, agitated and discussed, so that the truth may be made to appear, before them as that ascertained facts within the certain knowledge of the writer should be communicated.

The most perfect and unlimited freedom in discussions of this sort lies at the very foundation of our civil institutions and is essential to the existence of a popular government. The people have never borne and will not bear a

manifest infringement of this privilege; and if Courts have sometimes doubted whether they were not bound by the English rules of law in relation to the offence of libel as applied to political discussions, those doubts have been uniformly removed by a declaration of the supreme will of the people. One evidence of this we find in the law of 1798, designed to give jurisdiction to the federal Courts over libels upon the Government of the United States and its principal officers. That law declares the offence to consist in the *intent* to defame and vilify the Government or its officers, or excite the hatred of the good people of the United States. And it further declares it to be lawful to give the truth in evidence, and that the Jury have a right to determine both the law and the fact, as in other cases; thus recognizing principles, as the common law of this land, wholly adverse to the doctrine of the English Courts. Yet even with these accompaniments the law itself was very commonly considered unconstitutional and oppressive; because its natural tendency was to repress public inquiry into public abuses, by prohibiting all censure of the Government or suggestion of delinquency until absolute proof of the fact were obtained. For this reason it was stigmatized by the people under the contemptuous term of the Gag Law, and at the end of three years was suffered to die its natural death, nor has there ever since been an attempt to revive it.

Long before this indeed the people of Pennsylvania, had inserted this as an article of her constitution; "that in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, or where the matter published is proper for public information the truth thereof may be given in evidence;" and in this respect her example has been followed in many if not most of the States of later origin. But even this was soon found not to be a sufficient declaration of the perfect freedom which should prevail in this country upon all political discussions. A case arose in which Duane, an editor of a newspaper, was indicted for a libel on Governor M'Kean in his official capacity; and not having competent evidence to prove strictly in a Court of law the truth of his charges he was convicted; but a motion was made in arrest of judgment; and pending that motion*, the people of Pennsylvania by an act of their Legislature declared, that no person could be liable to prosecution by *indictment* for the publication of papers examining the proceedings

* 1 Binn. 601.

of the Legislature or any branch of Government, or for investigating the official conduct of men in publie capacity. He shall not be liable by indictment; he shall not be treated as a criminal; though he may be held to answer civilly in damages for the injury he occasions to a public man as well as to any other individual.

The questions which have usually arisen in courts, have been upon the admissibility of the truth in evidence, and upon this point therefore, we most frequently find the declaration of the sense of the people. Because the truth is inadmissible, by way of answer to prosecution for libel, by the common rule of English law, judges have doubted how far it was admissible here. A case occurred in New-York five and twenty years ago. Crosswell, an editor of a paper, was indicted for a libel on Mr. Jefferson, then President of the United States, charging him with having paid one Callender for calling Washington a traitor, a robber, and a perjurer; and for calling Adams a hoary headed incendiary. This, if false, was a gross libel; if true, it showed Mr. Jefferson to be unworthy of the office which he held, and was proper information for the people who were asked to re-elect him. Crosswell proposed to prove the truth of the allegation, and moved for a postponement of the trial with that view, which was refused. When the question came before the full court, the judges were equally divided upon the point of its admissibility.* But before any judgment was rendered, the Legislature interposed, and declared that in *all* prosecutions for libel, it was lawful to give the truth in evidence.

All these legislative acts, so far as regards political libels at least, so far as regards the perfect liberty of discussion upon public affairs, and the competency of candidates for office, are not to be regarded as new enactments, but simply declarations by the people of constitutional principles. We have the evidence of this in the opinion of our own Supreme Court, pronounced more than twenty years since, by that great luminary of the law, who was then the Chief Justice of this Court. The question in the case of the Commonwealth *vs.* Clapp, was upon the right to prove the truth of the allegations;† and it was held, not by virtue of any statute of the Commonwealth, but as the common law of this land, the necessary consequence of our political institutions, that the truth might be given in evidence against candidates for office by popular election; and that the publication of the truth respecting the fitness

* 3 John. Ca. 337. † 4 M. R. 163.

and qualifications of candidates for office is not a libel. "For it is unreasonable to conclude," say the Court, "that the publication of truths, which it is the interest of the people to know, should be an offence against their laws." This doctrine has been often revised and recognized, and so far as regards the publication of absolute truth, has become our daily and familiar law. But in the recent case of the Commonwealth *vs.* Blanding,* the same doctrine has been yet further extended. The Court there say, that "the right of complaining to any public constituted body of malversation, or oppressive conduct of any of its officers or agents, with a view to redress for actual wrong, or the removal of an unfaithful officer, may be justified, because the case will show that the proceeding does not arise from malicious motives, or if it does, because the common interest requires that such representations should be free." Still it was held that whether the truth were admissible or not, the Court were to judge; and although the question there arose upon the humble case of an innkeeper, the principle of such a reservation was deemed important enough for the intervention of the people; and it was accordingly declared, by the very next Legislature, that in all prosecutions for libel, the truth might be given in evidence, and that it should be a sufficient justification, if published with good motives and for justifiable ends.†

This statute it will be observed relates to all prosecutions for libel, civil as well as criminal. It declares that the truth may always be given in evidence. But it does not follow that it is indispensable; or that the publisher must be necessarily convicted in a criminal prosecution, if he fail to prove the truth of his publication. It is not always possible to arrive with certainty at the truth of official misdemeanours. But, are not the people to inquire? Is not the subject to be freely discussed? And is an editor to be held criminally liable, for informing the people of any supposed misconduct in their public agents, which he truly believes, and has reasonable ground to believe? This certainly would be inconsistent with the very end of our government.

At common law, malice is the essence of the offence. To constitute crime there must be criminal intent. This is not the peculiar law of this country. It is so in England. "To constitute a libel," says Lord Kenyon, who was one of the most learned of the English judges, "the mind must

* 3 Pick. 314. † St. 1826, Ch. 107.

be in fault, and show a malicious intention to defame*;"— "if published inadvertently it would not be a libel." And so more recently, says Lord Ellenborough; "Though that which is written may be injurious to the character of the party, yet if it be done *bona fide*, as with the view of investigating a fact, in which the party making it is interested, it is not libellous."† The mischief of the English law is, that malice is held to be a necessary inference from the mere act of voluntary publication. Whereas that is at most but one symptom of malice; and whether the act were criminal or not is to be judged of, as in other cases, by all the circumstances. It was always the law of England, as well as in this country, that without malice there is no libel. Whether the matter published be true or not, they hold to be wholly immaterial. We have amended the English law, by declaring that the truth may be shown as one circumstance from which the jury are to judge. But it is not here, any more than there, a justification, unless published from good motives and for justifiable ends. And if the matter published be untrue, still if published from good motives, and for justifiable ends, it is not a criminal libel here certainly; for it would not be so there; and we have not altered the law in this particular.

The distinction which I contend for as one of common law is this; that wherever a man publishes, with an honest intent, that which he believes to be true, to those only who have an interest to know the fact, or to be put upon inquiry, this is no criminal libel, although the information communicated should turn out to be untrue. But if, on the other hand, the publication should be a mere pretext for the circulation of an idle calumny, which the writer either does not believe, or has no reasonable ground to believe, or which those to whom it is communicated have no substantial interest to know, then the publication is clearly a malicious libel. This principle is abundantly recognized even in the English cases. Thus if one write the character of a servant, charging him with a crime which he never committed, but which the writer honestly believed him guilty of, and communicate this to those only to whom the servant proposes himself for employment, this is no libel. So a letter to a friend, informing him that he must abstain from giving credit to a certain merchant, because he was on the eve of bankruptcy, is no libel, although the information were false, because the motive for

* King *vs.* Abington. 1 Esp. 226. † Delany *vs.* Jones, 4 Esp. 191.

the communication was an honest one, and the writer sincerely believed it to be true. And upon the same principle stand the cases which admit perfect freedom of literary criticism. Hence too arises a large class of cases regarding the official conduct of public men. Here indeed from plain reasons of state policy, we cannot look for English cases to bear us out. Yet the general principle applied even to political discussions, is admitted by the very writer on the English law of libel, whom the Solicitor cites to you as authority.

"The laws cannot be duly executed unless a wide door be open to public accusation, and it is the policy of every wise code not to press upon public accusers the heavy responsibility of establishing under all circumstances, the truth of their charges." *Holt.* 24.

"Every Englishman has a clear right to discuss public affairs freely, inasmuch as, from the renewable nature of the popular part of our constitution, and the privilege of choosing his representatives, he has a particular as well as a general interest in them. He has a right to point out error and abuse in the conduct of the affairs of state, and freely and temperately to canvass every question connected with the policy of the country. *Holt.* 114.

That such was always the law here, especially in regard to free discussion of the character of candidates for office, appears from the case of the Commonwealth *vs.* Clapp, before cited. And although that case does not expressly sanction the publication of any thing but absolute truth, because whether that should be given in evidence or not was the only question before the court, yet the principle upon which it rests, goes equally to justify the publication of matter, which may not turn out to be absolutely true, when there is probable cause to believe it, and the author publishes from an honest motive and for a justifiable end.

The principle contended for is, however, admitted to its full extent when it is judicially holden, that all matters of complaint or investigation respecting official delinquency, may be made to the constituted body, whose duty it is to inquire and redress the grievance; and that the party preferring the complaint, or moving the investigation from honest motives, shall not be held to answer for a libel although the matter charged should be false. And this point has been abundantly settled both here and in England. It was so held in the case of Remington *vs.* Congdon,* in regard to a complaint made to the church of misconduct in one of its members. "The law is," says the present Chief Justice of the Court, "that accusations made to a body,

* 2 Pick. 314.

competent to try the offence, cannot be made the subject of an action for slander." In the case of the Commonwealth *vs.* Blanding, before cited, the same doctrine is applied to criminal prosecutions. "The right also of complaining, to any public constituted body, of the malversation or oppressive conduct of any of its officers or agents, with a view to redress for actual wrong, or the removal of an unfaithful officer may be justified, because the case will show that the proceeding does not arise from malicious motives, or if it does, because the common interest requires that such representations should be free." This law is still more strongly laid down in the case of a false complaint of a school-mistress, deeply affecting her character, made to the committee of a school district. The Judge there instructed the Jury, that if they "believed the defendant wrote and published the supposed libel under the belief that the charges were true, and with an honest intent, to cause the plaintiff to be removed from the school for a want of chastity, the verdict should be for the defendant; that it was necessary to prove the libel malicious as well as false, and that if the plaintiff did not prove the malice beyond any reasonable doubt, such doubt should operate in favour of the defendant."* These instructions were held by the whole Court to be correct, and the doctrine of the New York case of Thorn *vs.* Blanchard,† it was said, might be admitted to its fullest extent. That case, gentlemen, which is the last with which I shall trouble you, was a false complaint to the Council of Appointment in New-York, of misconduct in a district attorney. The Court there say,

"There is a certain class of cases, wherein no prosecution for a libel will lie, when the matter contained in it is false and scandalous; as in a petition to a committee of parliament; in articles of the peace, exhibited to justices of the peace; a presentment of a grand jury; in a proceeding in a regular course of justice; in assigning, on the books of a quakers' meeting, reasons for expelling a member; in an exposition of the abuses of a public institution, as in the case of the deputy governor of *Greenwich* hospital, addressed to the competent authority to administer redress. The policy of the law here steps in and controls the individual right of redress. The freedom of inquiry, the right of exposing malversation in public men and public institutions, to the proper authority, the importance of punishing offences, and the danger of silencing inquiry and of affording impunity to guilt, have all combined to shut the door against prosecutions for libels, in cases of that, or of an analogous nature."

Upon the analogy of these cases we contend, that no criminal prosecution can be maintained in this country for a

* Bodwell *v.* Osgood, 3 Pick. 379. † 5 John. R. 530.

political libel, against a candidate for office by popular election, founded on a publication honestly complaining to the people of his supposed ill conduct in office, and mismanagement of public affairs, even although the subject matter of the complaint, honestly believed, upon probable grounds, should turn out to be entirely erroneous. For the people are the only legitimate tribunal, recognized by our political institutions, before whom such a complaint can be justly preferred, and honest error in the ground of complaint, however injurious its consequences, is certainly no crime. I cannot close these remarks better, than by using the language addressed by the Chief Justice to the Jury, in the recent case of the Commonwealth *vs.* Lyman.

"It has been truly said, that no country, where there is a free press and an educated people, can remain long under a despotic government; and I believe that no country, without such a press, however popular may be its forms and institutions, can long remain free. It is the sustaining, vital principal of freedom—it proclaims the vices and abuses of government—the rights of the citizen—the merits and demerits of rulers—and these are its proper and legitimate offices. He who would restrain it in the exercise of these functions commits treason against the fundamental principles of civil liberty.'

If these views are not wholly erroneous, the result is, that we have in this country a definition of the freedom of the press, adapted to our political institutions; one which distinguishes the legitimate use of this great moral engine, from a destructive and baneful perversion of its power; one which is plain and intelligible to the minds of all men. It is substantially the same definition which was given by Alex. Hamilton in the case of the People *vs.* Crosswell, extended only so far as to include cases of honest error in estimating the character and qualifications of the representatives of the people. It is "the right to publish the truth of any person; and to publish concerning the official conduct of an elective officer, who is a candidate for the votes of the people, whatever the publisher honestly believes, and has reasonable grounds to believe; provided, in either case, that the publication be from good motives, and for justifiable ends."

And hence it follows that the true definition of a libel is "a written publication injurious to the reputation of an individual, whether in public or private life, made from malicious motives, for a bad purpose or an unjustifiable end."

Now the matter charged in the present case as libellous, purports to be information to the people of Middlesex, re-

specting a certain contract for the State Printing, and the official conduct, in relation to it, of their representative in the Senate, who was then a candidate for re-election. It states substantially that, in the Committee of Accounts, the Chairman, Mr. Keyes, proposed to give this contract to the proprietors of a certain newspaper, called the Statesman, provided their terms were not more than $500 higher than those of any other printer. This is the fact stated. Supposing it to be true, were the people of Middlesex concerned to know the fact? and was it, or not, the right and duty of the defendant to disclose it? Or supposing the defendant honestly believed it to be true, upon reasonable and probable grounds of belief, was it or not in this case, his right and duty to disclose it?

This Committee of Accounts, consists of two Senators and three of the House of Representatives. They are admitted to hold a high and responsible trust. They regulate the expenditures of the Commonwealth. It is their business to make certain contracts, and to inspect all accounts against the Commonwealth, which they have power to pass, and allow almost at their pleasure.

They are, as the Solicitor tells you, the eyes of the Commonwealth, set to watch over its treasures. If the public money is wasted, or misapplied, the direct consequence is an increased taxation, and the effect is felt, more or less, by every citizen in the Commonwealth. So that the people, at large, have a deep and direct interest in the proceedings of this body.

Its constitution is such, moreover, as to afford peculiar facilities to the designing. It is a fluctuating body, chosen annually from the Legislature, which is itself chosen annually from the people. Its members, of course, are not ordinarily speaking, much skilled in accounts, or conversant with the details of the various subjects which come before them; and they usually go out of office just as they have acquired a little practical acquaintance with its duties. It is manifest, that a body so composed, however honest the intention of its members, is miserably adapted to its end. From the want of a permanent auditor grievous losses have doubtless been sustained by the Commonwealth, and more or less of depredation, which passed unnoticed by the Committee, is probably yet unknown. The people are deeply concerned to be made acquainted with such mischiefs, since the loss is theirs, and withthem only lies the remedy.

The contract for the State Printing is one important item. It amounts to an annual expenditure of some thousands. In

relation to this, much dissatisfaction existed at the time of the defendant's publication. Formerly printers were employed upon an avowed system of favoritism. The party in power used, as a matter of course, its own agents; and the Commonwealth probably paid twice as much as it should have paid for the services rendered. To correct this abuse the system of underbidding was introduced. The Committee were directed to advertise for proposals, and to accept the lowest which should be offered by responsible and competent persons. Under this system the proprietors of the Statesman got possession of the contract, and held it for a series of years. Suspicions were abroad, however, of secret favoritism. It was believed by many that their terms were not in fact so low as were offered by others; that their proposals were of a deceptive character, calculated to mislead the Committee in their estimate of terms; and that their bills as allowed, were larger than the proposals would warrant. Their continual re-appointment, under these circumstances, was supposed to result from negligence and ignorance of the subject, on the part of most of the Committee, aided by the influence of one or two, supposed to have some partiality for these printers. Mr. Keyes had been Chairman of the Committee for a series of years, in which the Statesman printers had enjoyed this contract. In June, 1827, the appointment for the year was pending. As it happened, one of the Committee was a printer by trade, and consequently thoroughly conversant with the nature of printers' charges, and competent to perceive the effect of their proposals. This member was satisfied, upon examination, that the proposals of certain other printers were, in truth, lower than those of the Statesman. When this was stated one of the Committee immediately said that he should not be for taking the contract from the old printers unless it would make a difference of more than $500; to which Mr. Keyes expressly assented. This was communicated by one of the Committeee to an Honorable Senator, who told it to the defendant, with some immaterial variations. Here was such evidence as we are all accustomed to act upon. It regarded the official conduct of a Senator proposed for re-election. The defendant was a public editor, bound to advise the people according to his knowledge of the fitness of candidates. He was besides a zealous supporter of the administration and Mr. Keyes was suspected of being either a luke warm friend or a covert enemy. Believing so it was the unquestionable right and clear duty of the defendant to oppose his election by all honest means.

The political principles of a candidate are certainly a fair subject of speculation. To argue that he is attached to one or the other of the two great political parties may place him in an uncomfortable posture, but no man will say it is a libel. Now this whole publication taken together will be found to be of this character. It is a common electioneering article, the general scope and design of which was, to show that Mr. Keyes was not worthy of the votes of Middlesex, because he was not a staunch friend of the existing administration; and among the symbols of adhesion to the opposite party it adverts to the preference which he had avowed in the Committee of Accounts for the editors of an opposition paper. The fact then was not only in itself proper to be made known, but the occasion and purpose for which it was used were perfectly legal and justifiable.

Is there then any thing objectionable in the manner of the statement? It contains no personal abuse; no language of vituperation; not an epithet applied to Mr. Keyes from beginning to end. The only harsh phrase is that of the "reprobate Jackson Press." This may be a libel upon that press; but surely it is no offence to Mr. Keyes. The statement imputes no corruption, It does not undertake to assign a motive. It simply states the fact as evidence of Jacksonism.

This cannot be a libel. It wants upon its face the stamp of malice. The matter was proper information for the people. It exposed a public abuse which it was for them to know and remedy. It suggested the inquiry respecting misconduct in office to the competent tribunal. It was not an idle and unfounded calumny. There was a real interest at stake, a beneficial purpose in view; and the fact rested upon evidence not lightly to be questioned. It was given too in a form as unexceptionable as its nature would permit. It was therefore employing the liberty of the press according to its most restricted use for the lawful purposes of a popular government. Under such a government it cannot be that this is a crime. If it is, the press is effectually silenced where it is most bound to speak, and no one will hereafter dare to question the conduct of men in power.

According to the view which has been taken it is not material to the defence that you should be satisfied of the truth of the charge. The defendant however still believes it to be true; and we shall now proceed to offer proof, which if it fail to produce conviction of its truth, will at least convince you of the defendants innocence.

Warwick Palfray. I was a member of the Legislature in 1827, and was one of the Committee of Accounts, appointed in the June Session. The Hon. Mr. Keyes was Chairman. He obtained leave of absence about the middle of the session and returned on the last day Conversations occurred in the Committee several times before he went away respecting the printing.

Solicitor General. Are you sure that Mr. Keyes was present at these conversations.

Palfray. Yes, Sir. The printing was mentioned as an important subject on which we must act. And much praise was bestowed by Ellis and Keyes on True and Greene. They thought that those printers ought to have the contract if their terms were as low as any.

Solicitor General. Are you sure that Mr. Keyes expressed himself so.

Palfray. Yes, Sir.

Mr. Keyes expressed himself in their favour, and on the last day he spoke against the principle of underbidding. The proposals were opened several days before the end of the session. Nothing material was done until Mr. Keyes returned.

Question by Gardiner. Then I am to understand that they were opened during Mr. Keyes' absence but not acted upon.

Answer. Yes, Sir.

Question by the Same. Are you a Printer.

Answer. I am Sir.

Question by the Same. You think yourself capable of judging of printer's charges.

Answer. I dont know how far I am a judge; I have an opinion.

Question by the Same. Had you received complaints.

Answer. Yes, Sir. I met a person in the State House, who told me that he believed there was unfairness.

Solicitor General. I object to this unless Mr. Keyes was present.

Fletcher. Our object is to show that his attention was particularly drawn to this subject.

Morton Justice. Then ask him the question directly.

Gardiner. Now state what took place in the Committee in relation to the contract for printing.

Witness. I made a table of rates before Mr. Keyes returned. He returned on the last day, Mr. Hoyt was in the Chair, Mr. Keyes asked Col. Hoyt to remain, and finish the business but Mr.Hoyt declined. I presented to Mr. Keyes

my table, and some one of the Committee observed that True and Greene's, and Dutton and Wentworth's proposals were the lowest, Mr. Keyes said that certain items of True and Greene's proposals were lower than Dutton and Wentworth's; but I pointed out to him others, which were more important and much higher. Mr. Keyes made some remarks against the principle of underbidding. He said that he thought that we ought not to encourage this system of underbidding among the printers. He thought it derogatory to the Commonwealth. He also said that he thought True and Greene's terms upon the whole were about as low as Dutton and Wentworth's. After Mr. Keyes had made these remarks, a gentleman of the Committee said, that he should not be willing to change the printers unless the Commonwealth would make a saving of $500 by the change. That gentleman was Mr. Robbins. He proposed it; he said that he for one should not be willing to have a change made, unless the difference in favor of the Commonwealth would be more than $500; upon which Mr. Keyes said,—"*Nor should I*"—There was no other remark except that Mr. Perkins said that that would be against the very principle of the order. There was no doubt about the responsibility of Dutton and Wentworth. The Committee had much testimony in their favor. The Chairman, Mr. Keyes thought True and Greene's proposals were as low as any. Mr. Robbins went and got the bills from the Treasurer's office, and I showed that the proposals of True and Greene were at least $1000 higher than those of Dutton and Wentworth. The Chairman thought that upon the whole the average of the rates would be about the same in both; but the items in True and Greene's which were lower and were pointed out by the Chairman were very unimportant. The difference on these would not amount to more than $12 or $15. The difference on those which were lower in Dutton and Wentworth's bill was $1296. If Dutton and Wentworth's bill had been charged at the rates of True and Greene, it would have made a difference of 1200 and odd dollars.

After the gentlemen appeared to be satisfied that the difference was great, the question was put first to me, then to Mr. Perkins, then to Mr. Robbins; Mr. Keyes said, that a majority of the Committee were in favor of Dutton and Wentworth. The question was not put to Mr. Ellis. Mr. Keyes said that a majority had voted, and signed the contract, and then immediately left the room. I mentioned these circumstances to Mr. Sprague and to a man in my

office. I do not recollect any intimations of dissatisfaction among the printers until I came to Boston.

On being shown a book, the witness said that it contained the original proposals of True and Greene, and of Dutton and Wentworth. Among the items of True and Greene pointed at by Mr. Keyes were blanks for auctioneers. Dutton and Wentworth's terms for printing these were ten cents higher, being 50 cents per quire, while True and Greene's were 40 cents. The amount of the work, under this item, would be from 18 to 30 quires; not more than two reams making a difference of from $1 80 to $3 60. Another item was "Treasurer's Statements;" but under this no work is done. Another item was warrants for non-commissioned officers, and under this not more than ten dollars worth was printed in a year.

Morton, Justice. For what reason do you call the attention of the jury to this? There is no dispute that Dutton and Wentworth's proposals were the lowest.

Gardiner. We wish to show, that the items lower in True and Greene's were of no importance.

Morton, Justice. Well, I wont stop you if you please to go on.

Witness. The whole amount of all the items, lower in True and Greene's than in Dutton and Wentworth's, was not above 12 or 15 dollars, while on one item of "Bills and Reports," in Dutton and Wentworth's, the difference in favor of the Commonwealth, was $1100. There were charges in True and Greene's bills, higher than their proposals. I recollect particularly election sermons. Those were charged double. There was no evidence before the Committee of the manner in which True and Greene executed their work, except from Mr. Willard, the Clerk of the Senate, and what was said by Mr. Greene, himself, who came into the Committee Room several times. Mr. Greene did not offer written proposals for 1827-8; he came to the Committee Room and stated, that he had just arrived from Washington and New York, and had not had time to prepare them, and referred the Committee to his proposals of 1826, as those which he wished to be considered as offering in 1827.

CROSS EXAMINED.

Solicitor General. Showing witness a number of the Massachusetts Journal, containing the following statement, witness answered, that he was the author of it.

SALEM, APRIL 2, 1828.

D. L. Child, Esq. Editor of Mass. Journal.

DEAR SIR. In reply to yours of the 1st inst. requesting of me a statement of facts relative to the proceedings of the Committee on Accounts last Summer, in regard to the contract for the State Printing, which you appear anxious to obtain, "in order to correct or substantiate the statement made in the Journal of the 29th ult." I have first to observe, that it was with exceeding regret I perused your publication on this suhject, as it contained some material errors, and I thought did much injustice to Mr. Keyes. But when I learnt, to my surprise, that the statement was founded in part on some casual remarks made by me to a friend, at the time the transaction took place, I regretted it still more, as I never mentioned any of the proceedings of the Committee with a view to bring the subject into public discussion, or to impeach the conduct or motives of any gentleman of the Committee. And it is due to Mr. Keyes, the Chairman, to state, explicitly, that during my intercourse with him on that Committee, I had reason to respect him for his gentlemanly deportment, and his usually correct, intelligent and scrupulous discharge of his official duty. With regard to the proceedings relative to the State Printing, although I was deeply impressed with the belief, at the time, that he and one or two other members of the Committee discovered too strong an inclination to give the contract to the former printers, notwithstanding lower terms were offered, I had no reason to believe, and never drew the inference, that it was owing to any particular regard for the publishers of the Statesman, or sympathy in their political sentiments, but attributed it rather to their reluctance to dismiss, from the public service, men whom they believed to have given more than ordinary satisfaction in the execution of their work, and also an indisposition to encounter the displeasure of the Statesman concern, and the consequent abuse which might reasonably have been anticipated.

With these feelings, I submit the following statement of the circumstances, as near as I can at this time recollect them—not having charged my memory with the particular transactions on this occasion, it is possible they may prove in some respects inaccurate. I hope sincerely that I shall do no injustice to any individual, and those who know me, I am confident will acquit me of having "set down aught in malice."

The subject of the proposals and contract for the State

Printing, was talked about a good deal in the Committee of *Accounts*, from time to time, during the session, and a decision on the various proposals was postponed until nearly the close of the business before the Committee in the June Session of 1827. In the conversations upon this subject, Messrs. Keyes and Ellis spoke frequently of the great merits of True and Greene, as printers, and of the great satisfaction which they had given by their manner of executing their contract, and I thought that a strong disposition was manifested on the part of these gentlemen, and one other, to give the contract to those persons. Towards the last of the session, one of the three gentlemen expressed himself against making a change of printers, unless the difference, or saving to the Commonwealth, by such change, would exceed five hundred dollars.—To this suggestion, Messrs. Keyes, Ellis, and one other gentleman, according to the best of my recollection, gave their assent, and as they formed a majority of the Committee, it was considered by the minority as settled, that a preference to the above amount would be given to the printers above named; and the next object of the minority was to show that the proposals of True and Greene were more than five hundred dollars higher than the lowest of the others.

On examining and comparing the proposals, Mr. Keyes called the attention of the gentlemen to several items of True and Greene's, which he observed were lower than the corresponding ones, in any other proposals, particularly those of Dutton and Wentworth; and although he observed that there were some items of the latter which were lower, yet, upon the whole, he doubted whether the average of True and Greene's was not as low as Dutton and Wentworth's, and appeared to favor the idea that the contract should be given to True and Greene. Another member of the Committee then suggested, that some of the heavier and most material items, were higher in True and Greene's proposals than in Dutton and Wentworth's, by *precisely one half*; and the bills of True and Greene for the last year were procured, by which it appeared, that the expense of the printing, on the terms of True and Greene, would not be less than 1000 dollars more than it would according to the terms of Dutton and Wentworth. This fact being shown, there still appeared to be a strong reluctance on the part of Messrs. Keyes and Ellis to reject the proposals of True and Greene. The third gentleman, on seeing the result of the comparison, no longer hesitated, and left Messrs. Keyes and Ellis in the minority.

During all the conversations upon this subject, much was said of the merits of True and Greene, as printers, and a variety of objections started to Dutton and Wentworth; such as that they were unknown, and perhaps irresponsible; and much pains was taken by a gentleman of the Committee to have the testimony of the most respectable booksellers of the city in favor of those printers presented to the Committee, which left no doubt of their respectability. When the Committee came to vote, and *three* had voted in favor of Dutton and Wentworth, Mr. Keyes observed that a majority had voted, and that it was not necessary to proceed farther. Mr. Ellis did not vote, and Mr. Keyes himself expressed no opinion.

Yours, &c. W. PALFRAY, Jr.

Henry W. Dutton. Witness is a printer, and had compared True and Greene's rates of 1826 with the bills for printing in 1827, and found that those bills, had they been charged according to the proposals of True and Greene, would have been 1290 and odd dollars higher. He had compared True and Greene's proposals and bills of 1825 with those of the same printers in 1826, and found that the latter were as high, and if anything a little higher. There were other proposals rejected in 1826, which were *ten per cent* lower than True and Greene's in 1825. Had examined the proposals of True and Greene in 1828, and compared them with his own of the same year, and found that the latter were, in the whole, *forty dollars* higher.

Witness had been at an expense of about 700 dollars to procure the materials for doing the State printing. The difference between the proposals of True and Greene and Dutton and Wentworth in 1828 amounted to about $40 only in favour of the former. The printing that year was taken from us and given to them.

Col. House, is a printer, and put in proposals in 1826, went up to the Committee's room and found them in.

Solicitor General. Was Mr. Keyes there?

Witness. He was; he and all the Committee were standing in the room. Mr. Greene was sitting at the table, writing. When I went out he followed me to the door. Mr. Greene then said——

Solicitor General stopped the witness and asked if Keyes was there.

Witness. He was not at the door.

Morton, justice. I cannot let you state that.

Fletcher. We wish to show that Greene did an act at this time: his words are of no importance.

Witness. Mr Greene altered his proposals.

Solicitor General. How do you know that?

Witness. By his proposals themselves—by the record, and by his declarations. He altered the rate for printing the Resolves from 1-7 to 1-8 of a cent per page. There had never been any distinction between the price for printing the Laws and that for printing the Resolves before. This year Mr. Greene put the Laws at 1-7, and the Resolves at 1-8.

William Beals, is a printer, and part owner of the Commercial Gazette. Put in proposals for the State printing in 1825, and 6; did not obtain the contract in 1825. In 1826, put in ten per cent lower than True and Greene's contract in 1825. Being asked what his motive was, he said he had an impression—but he did not know as it would be proper to state it—After some conversation, and being further interrogated, he said that he kept lowering his proposals and True and Greene got the printing. After 1826 witness gave it up; and had not put in proposals since.

[Here the orders of the Legislature to the Committee from 1822 to 1828, to contract with the lowest good and responsible printer to do the State Printing, were read by Mr. Gardiner, as evidence in the case. They are all the same except that in 1823, and afterwards the requisition of sealed proposals was omitted.]

Hon. Sherman Leland, was not a member of the Legislature in 1822. If it had not been otherwise stated he should have said that the order for the *auction* mode of contracting for printing was passed in 1821. Witness was a member in '21 and '23. He knew that Mr. Keyes was in favour of the system of underbidding. He had no doubt that Mr. Keyes advocated it. He did not recollect, particular conversations with Mr. Keyes upon the subject Witness was always of a different opinion. He thought that the Legislature should appoint their printers, and let them bring in their account, and be allowed a fair compensation for their labour and materials. My belief is that it was generally understood, that no great regard was paid to these orders, and for that among other reasons, I was against them.

Hon. Jonas Sibley, was a member of the Legislature in 1822. Did not recollect that Mr. Keyes introduced, or supported the order for taking the lowest.

Hon. Joseph E. Sprague, had communications with Mr. Palfray respecting the State printing in June 1827, I communicated to Mr. Child all that Mr. Palfray communicated

to me. I stated to Mr. Palfray, or Mr. Palfray stated to me, I do not recollect which, that there were complaints of unfairness in giving the contract for printing.

Solicitor General. Was Mr. Keyes present.

Witness. No.

Solicitor General. Then I object to this.

Morton Justice. It makes no difference if Mr. Sprague communicated it to Mr. Child, whether it was true, or not, for the purpose that the Counsel for the defendant use it.

Witness. The facts which I communicated to Mr. Child, were that Mr. Keyes often said that True & Greene were excellent printers; that all the Departments were satisfied with their work, and that Mr. Keyes was in favour of giving $500 preference; and that Mr. Palfray examined the bills and found that the difference was at least $800, and that Mr. Palfray said that Mr. Perkins agreed with him; that Mr. Palfray considered it settled, that the printing would be given to True & Greene unless he could show that the difference was more than $500. I communicated it to Mr. Child in his office, there were other persons present, and the conversation when I went in was upon the Middlesex Election then pending.

Minot Thayer, Esq. was in the Legislature in 1822. I think Mr. Keyes was in conversation with me, and was in favour of the project of giving the printing to the lowest bidder. It was long ago and I did not charge my mind with it.

Hon. Micah M. Rutter. I was a member in 1822. My impression is that Mr. Keyes did at some time introduce such a proposition unto the House.

William Hayden, Esq. City Auditor. Some bills of Messrs. True & Greene against the Commonwealth for printing were put into my hands by Mr. Child, and I made a general examination of them; but could not make it thorough because I had not the work before me which they had executed. I compared their charges with their contracts. I found that in charging, there was a general disregard of the rates in their proposals. There was a charge of $150 for printing 1500 election sermons, which should have been $75. There was a deduction by the Committee of $25; but the charge was still $50 too high. There was a charge for blank leaves put into Rules and Orders in each year. In 1826, the proposal in the contract was Rules and Orders at so much per copy "complete," and yet the extra charge was continued. In general the bills of True and Greene

were made out without much reference to their contracts.

Cross examined, by the Solicitor General. I never called on True & Greene, nor on the Committee for explanations of these bills. Mr. Child did not apply to me first. I asked him whether he had ever compared True and Greene's bills with their proposals observing, that if they served the Commonwealth as they had done the city, they paid very little regard to their contracts.

Gardiner. What observation did Mr. Greene make to you respecting the allowance of their charges by the Commonwealth.

Solicitor General objected unless it was in explanation of these accounts.

Witness. I cannot say that it was in explanation.

Morton Justice. I cannot receive it.

Witness. Mr. Child gave me these copies of True and Greene's bills and I did what I should have done for any gentleman. True and Greene have had the city printing but not in the two last years.

[Here the order of the Legislature of 1826, directing the Committee of accounts to take the lowest among the good and responsible printers; also the proposals of *Howe* and *Norton*, and of *Beals* for that year, were given to the jury; and are in the case.]

Gardiner. You will recollect gentlemen that True and Greene had the printing in 1826; though their proposals were, if any thing, rather higher that year, than in 1825.

Benjamin C. Perkins, Esq. I was a member of the Committee of accounts in 1827. Mr. Keyes was chairman. Mr. Keyes had leave of absence, and said that he might come back the next Saturday. There were conversations about the printing before Mr. Keyes went away. I dont know that there was any thing particular about it. The committee were satisfied that the printing was done well. Mr. Keyes said that the work had been well done, and cheaply. After Mr. Keyes came back, he asked Col. Hoyt to keep the chair; but Col. Hoyt declined. Some one said that the competition would be between True and Greene and Dutton and Wentworth. Mr. Keyes put his finger on this, and this, and this item, and said they were lower in True and Greene's There was a proposition from some one, to give $500 in preference to True and Greene. Mr. Robbins was the one that made it. It was observed that this would be doing away with the order of the Legislature. I don't know but it was I who made the observation. The Chairman did not put the question to Mr. Ellis. I don't know why. He said that either the

Committee, or a majority of the Committee were in favor of Dutton and Wentworth.

Cross Examined by the Solicitor General. I don't say that Mr. Keyes was present when the proposition of the $500 was made. He might be or he might not. Such conversations were had several times. It was suggested once when Col. Hoyt was in the chair, I believe.

Fletcher. Mr. Keyes said the work was well done, and cheaply.

Witness. Yes, Sir, he did say that.

Amos Quimby, had examined a file of the Massachusetts Journal from the beginning, and had found no mention of Mr. Keyes except in one instance, until the publication of the supposed libel. The paragraph in which Mr. Keyes had been previously mentioned was then read by Gardiner as follows :

"Yesterday in the Senate of this Commonwealth, Mr. Tufts of Worcester, asked leave of absence, to appear and testify before the Committee on Manufactures, in Congress, in obedience to a summons from said Committee. Several Senators among whom we understand were Messrs. Welsh, Gray, Lincoln, Sturgis, and Keyes, objected to granting leave, on the ground that there was no power in the House of Representatives of U. S. to require the attendance of witnesses, for the object for which Mr. T. was summoned. Leave was finally granted as a matter of favour, but not of right; and with an understanding that Mr. Tufts was at liberty to obey the summons or not."

[The proposals and bills produced at the trial are in the case.]

Here the defence rested.

Hon. Elihu Hoyt, called by the government. On Saturday the 9th of June Mr. Ellis a member of the Committee of accounts stated in his place, that Mr. Keyes, the Chairman was absent, and requested that his place might be filled. I was appointed and received an order to advertise for proposals, and contract for the state printing. I prepared an order for sealed proposals, and it was printed on Tuesday morning. Four or five proposals were put in. They were laid in our desk until Thursday. The subject was postponed until the last business of the session. We had nearly completed our roll of accounts, when Mr. Keyes returned and asked me to continue in the chair, I declined because I thought it was improper.

Mr. Keyes took the chair and I left the room. The principle of the order was to give the printing to the lowest. We generally refer particular subjects to individuals who

know most about them; the printing was referred to Mr. Palfray. Mr. Greene came into the room, and stated or I dont know but he wrote, that he wished his proposals of 1826, to be considered as his present ones. We had not come to any definite result, when Mr. Keyes returned. No proposition was made. I called the attention of the Committee to it, and Mr. Palfray had made a table. It was said generally that Mr. Keyes might return at the close of the session. I chose that he should take the responsibility of deciding upon the printing contract.

Solicitor General. Do you say that you received *sealed* proposals.

Witness. That is my impression.

Solicitor General. There cannot be a seal without an *impression.*

Cross examined, by Gardiner. I heard some one say that True & Greene's proposals ought to be accepted, if they were as low as any. It was Mr. Ellis or Mr Robbins who said this. I have been on this Committee several years. It was our general object to conform to the orders. As to the proposals of 1826, I believed and it was understood at the time, that True & Greene's were lower than Beals' although the latter were put 10 per cent lower than True & Greene's in 1825. I did not know it of my own knowledge, it was so understood by the Committee at the time. Being shown the Committees book containing the original proposals, and requested to show by what process the Committee came to that conclusion; he said he could not at once, but would endeavour to if he had time allowed him. The Committee might have erred, but it was believed at the time, that True & Greene's were the lowest. The bills of the preceding year were sent for once, while I was in the chair. They were then sent for, for the purpose of settling the printers Bill of that year. I was present at all the meetings of the Committee during Mr. Keyes absence. There never was a proposition made while I was in the Chair to give a preference of $500 to True & Greene.

[Witness was then requested to take the proposals of 1826, and show how it appeared that those of True & Greene were lower than Beals; and took them for that purpose and made some calculations, but was unable to show it.]

Hon. William Ellis. I was one of the Committee of Accounts in 1827 with Mr. Keyes and the other gentlemen. I recollect Mr. Keyes got leave of absence on the same day that Mr. Dwight offered the order for printing, which

was the 8th of June. Mr. Keyes came into the Committee on the morning of Saturday the 9th, and said he was going to Concord. As he left the room he said he would return on Saturday, if his business would possibly permit. I saw no more of him until Saturday. Col. Hoyt was placed on the Committee in his room, and advertised for proposals for printing. Sealed proposals were received on Wednesday. All were sealed except one or two. The subject of printing was mentioned a number of times before Mr. Keyes return, but nothing was decided. On Saturday when Mr. Keyes returned, the Committee were closing the pay roll. He requested Col. Hoyt to remain in the Chair. Col. Hoyt declined to act further. Mr. Keyes left the room for a few minutes and then returned, and took the Chair. Col. Hoyt left the Committee. I stated to Mr. Keyes that we had examined, and came to the conclusion that True and Greene's and Dutton and Wentworth's proposals were the two lowest. Mr. Robbins made one or two remarks to the same effect. Mr. Keyes took the proposals and held them side by side. But he said, however, that it would not be necessary to examine them much, if we had examined them thoroughly; it would not be necessary for him to go into a very particular comparison. When he had got about one-third of the way down, he said that there were some items of Dutton and Wentworth's that were higher than True and Greene's. Mr. Palfray said that there were some of True and Greene's that were higher than Dutton and Wentworth's. Mr. Palfray said that they would be five or 600 dollars higher. I never heard of the $1100 until long afterwards. I never heard any other sums mentioned for any purpose. Mr. Keyes then said it was right, and put the question first to Mr. Palfray, then to Mr. Robbins, then to Mr. Perkins. I remember where they sat. They sat on each side of me. They were in favor of Dutton and Wentworth.

Solicitor General. Did you ever hear of such a proposition as that of giving a preference of $500 to True and Greene?

Witness. Never, no how. Mr. Keyes then said, "we adopt Dutton and Wentworth." I am sure he used the word "we." I thought we were unanimous. The question was not put to me; but I thought it was understood that we were unanimous. While Mr. Keyes was making the entry, Mr. Palfray and Mr. Perkins left the room. I had been three or four years on the Committee of Accounts.

Cross Examined. I dont recollect how the ten per cent was in 1826. I know it was understood that Beal's proposals were not so low as True and Greene's. Mr. Rantoul said so, and he was the great gun in these matters. He examined and said that the ten per cent being taken off, Beals' proposals were still higher than True and Greene's. I understood that all the departments were well satisfied with True and Greene, except that the paper was sometimes bad. Sometimes certificates of the amount of work done were furnished and sometimes not. In 1827, we made no inquiries as to the manner in which their work was done. I suppose that Dutton and Wentworth were appointed unanimously. Only three of the Committee were asked. Mr. Keyes said " we accept." He did not say " the Committee," as some gentlemen have said, nor did he say "a majority." I heard somebody say that True and Greene's proposals of '26, were lower than theirs of '25. Keyes and others told me so. I never examined them myself. Mr. Keyes told me that there was something in the Journal against the Committee of Accounts; he did not tell me what it was, nor that it was against him in particular. I supposed it was against the whole Committee. I told him I would meet it. Being shown a hand-bill, witness said he wrote the statement signed by him, which was printed therein.

Fletcher. Did you write it?

Witness Yes; I wrote it.

Fletcher. Where did you write it?

Witness. In Boston, at Earle's.

Fletcher. Was Mr. Keyes present?

Witness. No; he was absent. I found the libel piece. Mr. Keyes said there was something in the Massachusetts Journal. I wrote my piece without any influence.

Fletcher. Where was Mr. Keyes when he told you that there was something in the Journal?

Witness. At Dedham; he came to Dedham, and staid some time. He came to my house.

Fletcher. When was that?

Witness. I dont recollect.

Fletcher. Did he not bring the paper with him?

Witness. No.

Fletcher. Nor tell you what it was?

Witness. No.

Fletcher. Nor that he was attacked?

Witness. No. I thought it was the Committee. The Committee had been attacked for years before in the Galaxy and the Commercial Gazette.

Fletcher. And you agreed to write something to meet it?

Witness. I agreed to meet it if there was any thing wrong. I told him I was not fond of appearing in the newspapers, still I was ready.

Fletcher. Where did you agree that you would write something to meet it?

Witness. I told him I should be at Earle's.

Fletcher. Did you and he agree to meet there?

Witness. No.

Fletcher. Did you agree to go there?

Witness. I told him I should be there.

Fletcher. Did he agree to be there at the same time?

Witness. I understood that he would be there.

Fletcher. Then you agreed to be there, and he agreed to be there; but both of you did not agree to be there! Did you go to Earle's?

Witness. Yes, I went there.

Fletcher. And you wrote your piece there?

Witness. Yes.

Fletcher. Was Mr. Keyes with you?

Witness. Yes, he was there some of the time, he was in and out.

Here the witness being asked whether any other person was present, said there was, but he did not know who; if he could see the person again he should know him. He was introduced to witness at witnesses house, and was at Earle's, but witness could not recollect his name.

Fletcher. Did Mr. Keyes see the piece when you wrote it?

Witness. He saw some of it.

Fletcher. Did he tell you any thing to write?

Witness. He might tell me a small part. I know it was all true. When there was any thing I could not recollect, I asked Mr. Keyes, and he furnished it.

Fletcher. What did you ask him?

Witness. I asked him a great many questions, when I could not recollect the facts myself. I wanted to give the general facts. I might ask him whether it hit right, or whether it was shaped right.

Fletcher. Then you did not trust to your own recollection, but to Mr. Keyes' whether it hit right or was shaped right?

Witness. I intended to state the facts and nothing more. I intended to meet the piece.

Fletcher. Then you consulted Mr. Keyes whether it hit right, or was shaped right or would meet the piece?

To this there was no answer.

Fletcher. Now, sir, please to tell me what part of your statement was dictated by Mr. Keyes.

Witness. I dont know. I writ a little and then showed it to him and asked if it was right.

Fletcher. Did Mr. Keyes write none of it?

Witness. I dont know but he writ a little. He might write a sentence towards the last of it.

Fletcher. Take the piece and say, what part did he write, and what part did you write?

Witness. Took the piece, I dont know as I can tell, it might be towards the last. I wanted to get it in a right shape, and asked him if it was right.

Fletcher. What did you do with it when you had got it shaped right?

Witness. I carried it to the Patriot Office, and I sent one to the Lowel Journal.

Fletcher. Did Mr. Keyes take a copy?

Witness. Yes.

Fletcher. Did Mr. Keyes send a copy to Mr. Perkins?

Witness. I dont know. I rather think Mr. Keyes took six copies, and sent them to other papers; but I cannot certainly recollect. The table of Mr. Palfray was shown to Mr. Keyes. Some one said 5 or 6 or 700 dollars was to be saved. This calculation was made before the last day of the session. I do not recollect what the difference in the calculation of Mr. Palfray was, between the proposals of Dutton and Wentworth and True and Greene. I only know that I believed that Dutton and Wentworth's were the least. There was no previous calculation in the Committee; the previous accounts of the printers were not then sent for. On further cross examination, witness did not know, upon the whole, how much Mr. Keyes had dictated the letter, which witness had signed, but he believed the statement true.

Here a question arose between the Court and the defendant's counsel, whether Mr. Hoyt had testified that True and Greene's bills of the preceding year were sent for while he was in the chair.

Mr. Hoyt, being called again, said that the bills were sent for while he was in the chair, for the purpose of settling an account of True and Greene, but not for any other purpose to his knowledge. It might have been used also in comparing the proposals, but he did not know that it was so used.

Hon. Josiah Robbins. I was one of the Committee of

Accounts in 1827, when Mr. Keyes was Chairman. He obtained leave of absence, and Col. Hoyt was appointed in his place. Col. Hoyt advertised for proposals for the printing. There were a number of sealed proposals. True and Greene did not send in sealed proposals. Mr. Greene came in and said he had not time to make them out but wished us to consider his last years contract as proposals for the present year. The sealed proposals were opened by the Committee when the time for receiving proposals had expired, this was on Wednesday. There was considerable conversation in the Committee about the State printing before Mr. Keyes left. Mr. Palfrey once said he should like to see the contract of the last year. Mr. Ellis said if you will look in that desk, you will see all the contracts in a book. Mr. Palfray examined it very minutely indeed and said that it was very cheap, and that it was impossible for any body else to have the contract because True and Greene's terms were so low. I never heard a proposition to give $500 or any other particular sum to one printer more than another. It was suggested and I don't know but by myself that we should give a preference to True and Greene. I should like to explain the principle. I did not care so much about the sum as about the responsibility and fidelity of the contractor. I said perhaps the Committee would be justified in giving one printer more than another if they had more confidence in him. I don't know that any particular sum was named. It might have been $500 or perhaps $1000. But that was the only ground of it. I considered it the opinion of all the Committee, that True and Greene had given satisfaction, and that if their terms were as low as any they ought to have the contract. We had the opinion of one of the Department in favour of True and Greene. I went to the Clerk of the House myself. Mr. Palfray manifested to us that the proposition of Dutton and Wentworth, was lower by 10 per cent, than the last year's contract and that they were the lowest. This took place in the absence of Mr. Keyes. I placed all confidence in Mr. Palfray's opinion. I looked over the proposals and compared them with him. I went and got True and Greene's bills from the Treasurer's office myself, and compared them with the contract and the proposals. It was generally considered that Dutton and Wentworth's and True and Greene's were the two lowest, and that Dutton and Wentworth's were lower than True and Greene's. Mr. Palfray and I compared the two very critically. Still I wanted to be satisfied as to the responsibili-

ty of Dutton and Wentworth; and I made inquiries, especially of some of the principal booksellers. They furnished their recommendations the next day. I was perfectly satisfied after that, and I thought the Committee generally were, that they ought to have it. This was the whole of it during the absence of Mr. Keyes. He came in about 11 o'clock on the last day, while we were about concluding the pay roll. He asked me how near we were to a close. I told him the business was all finished except the printing contract. He asked how that was to be disposed of, and one of the Committee said Dutton and Wentworth's proposals were the lowest. I told him that after a critical examination, the Committee had come to that conclusion. Mr. Keyes looked at Mr. Palfray's statement, and the two proposals and pointed out some items of True and Greene's that were lower than Dutton and Wentworth's. Mr. Palfray showed him others that were higher and of larger amount. I think the difference was six, seven or eight hundred dollars. Mr. Keyes said he had not time to examine them minutely, and if the Committee were satisfied that Dutton and Wentworth's terms were the lowest they should be accepted, and he accordingly wrote upon them "accepted."

CROSS EXAMINED.

There was no vote taken. I don't remember that my opinion was asked, though I concurred in the decision. I thought the Committee were unanimous. Mr. Keyes was not in the room more than twenty minutes. I never heard a proposition to give $500 preference to True and Greene. The Committee unanimously assented though there was no vote. The ground of preference for True and Greene in the outset was their responsibility and fidelity. I might have said something myself about a preference to the amount of $500, but not as I recollect. A number of proposals were sent in. In consequenee of the cheapness of Dutton and Wentworth's, I thought they should have recommendations as to responsibility. The proposals were compared on Wednesday evening or Thursday morning. There were no written proposals from True and Greene, but Mr. Greene came and referred us to his old contract as a proposal, on Wednesday, which was the last day for receiving proposals. I am certain the examination was before Saturday. I relied upon Mr. Palfray's estimate, I made no calculation myself. We ascertained the difference by comparing the proposals item by item, and estimating the amount of work. The conclusion of the Commit-

tee to give the printing to Dutton and Wentworth, was before Saturday. Mr. Perkins had come to that opinion by Saturday, I had also, and so had Mr. Palfray, I don't know as Mr. Ellis had, I had not said a word to him.

(Here a newspaper and a handbill were shown witness.)

I wrote the article in the Plymouth Memorial; and also wrote that in the handbill and signed it. All the Committee were of opinion that from recommendations of the several Departments, True and Greene ought to have the printing. I had no particular preference for them. The piece published by me in the Plymouth Memorial was written by me at Plymouth, and shown only to the editor before publication. I sent a copy of it to Mr. Keyes. Mr. Jacob H. Loud, was the Editor. Previous to that I had addressed the letter quoted in the handbill to Mr. Keyes. I had before received a letter from Mr. Keyes. I have not got it with me, I left it in Plymouth. I meant to have brought it, but forgot it.

Hon. John Keyes. In the June session of 1827, I was Chairman of the Committee of Accounts, and had been for two years before. The Committee was called together on Monday. On Friday, of the same week, I had leave of absence. On Saturday I left the board. On Friday the order relative to the state printing passed the Senate and went to the House for concurrence. I left before its return and it never was in my hands. I went home in the stage on Saturday, calculating to return, if I could get through with my business at Concord, before the adjournment. I judged that the Legislature would rise the following Saturday. The reason I returned at all on that day was, that one of my neighbours was going to Boston alone in a chaise, and offered me a seat. I calculated to return the same afternoon or evening. When I arrived, the Committee were completing the Pay Roll. I requested Col. Hoyt to keep his seat, but he declined. He was chairman in my absence. I asked how far they had gone upon the business of the state printing, and was informed that the only question was between the proposals of True and Greene and Dutton and Wentworth. These were shown me. I have never seen any of the other proposals to the present day. There was no difference in the Committee; the only question was which of these two should be returned. It was said Dutton and Wentworth's were the lowest. I said if the Committee was satisfied I was. Some of the Committee wished me to look at the items. I did so. I laid them side by side, and came to the conclusion

that Dutton and Wentworth's were lower by 5 or 600 dollars. This was gathered from the present proposals and those of True and Greene, of a former year, found in the desk of the Committee. I at first was not satisfied that the proposals of True and Greene were not the lowest; but as the Legislature was about rising, I trusted to the examination of my brethren of the Committee. The business of this Committee being arduous, was generally apportioned among the members. In the appointment of the state printers I used no other formality as Chairman than in other cases. In fact there was no great formality in the Committee. It consisted of only five. I asked their opinion. The general custom was to use no great formality, unless there was a decided opposition. I did not put the question as to accepting Dutton and Wentworth's proposals, but I understood the Committee were in favor of them, and wrote "accepted" on the back of them. At this time nothing was said of any preference by any one of the Committee. No sum for a preference was named. I was with the Committee at this time only 15 or 20 minutes.

CROSS EXAMINED.

The business was placed on the ground that the Committee were to adhere to the order, and adopt the lowest terms. Something might have been said about the responsibility of the printers—but if so, it was before I came. I have no recollection of any conversations on the subject before I went away. There might have been such. I had no conversation about the recommendations. I saw those of Dutton and Wentworth at this time. There was no complaint as to the manner in which True and Greene had executed the state printing. Their work was well executed and promptly furnished. The same rule of adhering to the order was adopted in 1825 and 1826. The Committee were unanimously of opinion, in 1826, that the offer of Mr. Beals to do the printing 10 per cent lower than True and Greene had done it the year before, was not so low as the offer of True and Greene for that year. I never proposed to give them a preference of $500, at or before or after the time specified, and I never heard such a proposition made by any other person at any time. I saw the libel on the day it came out. I thought it an unjust attack, and submitted it to some legal friends and took advice. This was on Saturday. On the Monday following there was an election pending, at which I was a candidate for Senator. I did not regard the result of the election, excepting as my reputation was at stake. I went

immediately to Boston and called at Mr. Child's office, as one gentleman should upon another, and told him this:— that the publication as to me as Chairman of the Committee of Accounts was false; that my reputation would be injured by it, unless the accusation was retracted in as public a manner as it was made; that I should not trouble him as to his previous attacks on my character, as they were merely electioneering matters; but that this was of a different character, and had no foundation in truth. Mr. Child admitted himself the editor of that paper, and the author of the obnoxious piece. I then required an absolute retraction, and said that if it was not given I should take another course. To which he replied, that if I had intended to say that he had told an untruth, there must be an end of all further communication. There was no disposition shown, on the part of Mr. Child, to have any explanation or make any. He said little, but walked the office and seemed agitated. No assurances were given that he would retract. Mr. Pritchard asked him whether, if he were satisfied that the charge was untrue, he would not retract. Still, however, I got no satisfaction, and it was not until I was going out of the door, that he said yes. I then went to Dedham for the purpose of seeing Mr. Ellis, and found him at home. I told him of the attack, which I had seen, first I believe at Concord, in a half newspaper. I looked at the subsequent numbers of the Massachusetts Journal and found no recantation. I waited some time after my interview with Mr. Child, and then finding that he would do nothing, laid the case before the Grand Jury, and stated to them what I have now stated.

[Defendants Counsel showed witness a file of papers containing the proposals of the printers for 1826, with the following endorsement "Proposals not so low as those of True and Greene and therefore rejected."]

The endorsement is in my hand writing. It was made in the winter of 1827, in consequence of some complaints in the Boston Gazette soon after the June session of 1826, about the State Printing. I made a communication to the Patriot on the subject, and examined the proposals at that time and made that endorsement in order that the file might be found for examination by any person. Mr. Beal's proposals to do the printing 10 per cent lower than it was done the year before, were among them. It was not accepted because True and Greene's was lower still. I can't say that the Committee were not mistaken in that conclusion. I can't say that Beal's proposals was not lower in

fact than True and Greene's, I can't say that it was not 10 per cent lower. The Committee were unanimously of opinion that it was not lower. I cannot upon examining the Proposals tell how they came to that conclusion.

[Defendant's Counsel showed witness a handbill]

After my return from Boston and my interview with Mr. Child I wrote to Mr. Robbins at Plymouth, asking him to state the facts relative to the matter charged against me; to which I received a reply, part of which was published in this handbill. I had also written to Mr. Perkins. Mr. Palfray's statement had appeared. Part of his letter had been published in another handbill which was circulated against me. I had little regard to the election; I was actuated by the attack on my character as Chairman of the Committee of Accounts. I had received the letters of Messrs. Ellis and Robbins on Friday previous to the election. As extraordinary means were taken on the part of my opponents, my friends judged it best to publish this handbill to meet the other. As that did not contain the whole of Mr. Palfray's letter it was concluded to be but fair to give the remainder in this handbill. I furnished the extracts from the letters. I saw the handbill immediately after it was printed. Some of them were sent to my house. I can't say how many. There was a number. Several friends came to my house to see me about them. It was in the evening, I believe a neighbour of mine prepared the handbill. I understood that one was to be prepared. I do not recollect that the proof sheet was brought to my house. The handbills at my house were divided and some of them sent away by mail. The intention was to counteract the other handbills; not for the purpose of influencing the election so much as to vindicate my character. I do not recollect whether the extract from Mr. Palfray's letter in the other handbill purported to be the whole letter or not; but from the two handbills together the whole letter would be seen. I had no other agency in the publication.

It was on a Monday that I saw Mr. Child. It was in the evening of the same day that I went to see Mr. Ellis.

[Defendants Counsel here cross examined the witness by taking the statement of the interview as published by the defendant in a number of the Massachusetts Journal which is in the case and reading the same sentence by sentence and asking witness from time to time whether it were true. The substance of the witnesses answers were as follows.]

I assured Mr. Child on the honor of a gentleman that the charges were untrue, and that if he doubted it I would give him references. He said that if I meant to charge him with falsehood he could hold no farther communication with me. I then explained by saying that the subject matter was false;—still I obtained no satisfaction or assurance. When I asked him if he would retract if he was convinced of his error, he said if you accuse me of a wilful falsehood I shall say no. I then notified him that he must retract his statement as publicly as he had made it, or I should commence an action against him, or hold him to answer to a judicial tribunal. He said that if his information was incorrect he should be willing to state that for his own sake as well as for mine; and that he would endeavour to ascertain the facts. Mr. Pritchard who accompanied me, then asked him whether if he were convinced the statement were untrue he would not retract in his next paper? I said if he did not I should have him before a jury of the County of Middlesex where I was better known. He said that he should be happy to become acquainted with the good citizens of Middlesex, for he believed there were *some* good people there.

[Several articles from newspapers which are in the case were then read by the Counsel on each side. Mr. Keyes was then called again.] See Appendix.

I attended eleven days at the June session of 1827. The Pay Roll was always made up from the Journal of the Clerk. I first wrote to Mr. Perkins from Concord the same week that I saw Mr. Child, and enclosed a copy of Mr. Ellis' statement I also wrote to Mr. Robbins, and Mr. Hoyt. I received $30 pay for attendance at that session. If I have received too much it was the error of the Clerk and not mine.

Witness is Postmaster of Concord. Does none of the business of the office; receives no emolument except the privilege of franking. Does not usually stamp or write the date on the outside of his free letters. There is no law for it.

[The certificate of the Clerk of the Senate, which is in the case, showed that he had received pay for 14 days and travel, making $32.]

[The defendant's Counsel called the following witnesses in reply to the testimony on the part of the Government.]

Mr. Secretary Bangs. I was not consulted in 1827 by the Committee of Accounts, as to the satisfaction given in my Department by True and Greene, as State Printers. I was not called upon to furnish certificates of the work

done by them for that Department, in order to enable the Committee to settle their bills. The Committee have not usually called for such certificates. Such a certificate was called for and given the last year.

William Tufts, Clerk of the Adjutant General's Office. No inquiries were made in that office, to my knowledge, by the Committee of Accounts, in 1827, as to the satisfaction given by True and Greene. No certificates were furnished of the quantity of printing done for that office, in 1827. Such certificates may have been given the first year or two that True and Greene were State Printers;—none since. We had some difficulty with them about getting proofs; but their work as to type and paper was good. In 1826 no certificates were issued; and on inquiring whether they had got their pay without them, I was informed they had. The amount was six or seven hundred dollars.

Mr. Coffin, of the Land Office. No inquiries were made at my office, either for the certificates of the work done, or as to the satisfaction given them.

Mr. Foster, of the Treasurer's Office, gave similar testimony, adding that since True and Greene had been State Printers certificates had not been called for by the Committee more than half the time.

Mr. Warren, Clerk of the House of Representatives. I have an indistinct recollection that some member of the Committee did inquire of me as to the quantity of work done by True and Greene in 1827. I generally certified the quantity by order of the House.

John Thomas, Esq. About the first of April last on a Thursday Mr. Robbins called at my office in Plymouth to borrow the Massachusetts Journal, containing the article about the Committee of Accounts. I had a conversation with him at that time relative to the alleged libel on Mr. Keyes. I asked him whether it was a fact that Mr. Keyes did wish to give a preference to True and Greene, and whether the statement in that paper were true. He said that there was a wish in the Committee, and on the part of Mr. Keyes to give a preference of $500 or thereabouts to that firm; giving as a reason that they had been at great expense in purchasing types, and had been prompt and faithful in their work. I understood from Mr. Robbins as well as from the piece itself that the general drift of the charge was Jacksonism. He wanted the paper for the purpose of answering the charge if he should be satisfied that it was injurious to Mr. Keyes. This was before his com-

munication in the Memorial. Mr. Robbins and myself are on very good terms. He is a friend and client of mine. I had another conversation with Mr. Robbins on the Friday previous to the Governor's election. Mr. Robbins said he thought Mr. Child had done more hurt than good to the Administration by his paper. I asked him again if Mr. Keyes did wish to give a preference of $500 to True and Greene. He said he did, or about that sum, he could not say whether it was not a little more or a little less. I remember it distinctly because it struck me with great surprise from the proportion it bore to what I supposed to be the whole amount of the work. I did not suppose at that time that the whole State Printing amounted to more than 10 or 1200 dollars a year. He said that this preference was to be given them on account of the excellence of their work, and that the Committee had certificates from the several Departments of the Government of the great satisfaction they had given. I never heard Mr. Robbins allege this superior responsibility as a reason for the preference. I understood from Mr. Robbins that he himself was in favour of such a preference, and that Mr. Keyes assented to it, and that the Committee in general were in favour of it.

Allen Danforth, is a printer ; is publisher of the Plymouth Memorial. Had a conversation with Mr. Robbins on the subject of the State Printing. Mr. Robbins brought Mr. Child's paper to his office, and complained of Mr. Child's manner of supporting the Administration. Witness read the article containing the supposed libel :— read on until he came to what was said about the $500, and then asked Mr. Robbins if it was true. Mr. Robbins replied that he was in favour of a preference, but he did not know whether it was more or less than that sum. Witness asked him if Mr. Keyes was in favour of it, Mr. Robbins replied that Mr. Keyes did assent to it.

Jacob H. Loud, Esq. Mr. Robbins called at my office in Plymouth, on the Friday before the last Governor's election, with a communication for the Memorial a newspaper edited by me. [Witness here read the communication which was in the case.] In conversation upon the subject Mr. Robbins stated to me that Mr. Palfray had said in the Committee that True and Greene's terms were as low as could be afforded ; but that he himself was in favour of giving them more than any other person, and that Mr. Keyes assented to it. We were talking in reference to Mr. Keyes. It was ascertained however, Mr. Robbins said, that there was $1000 difference in favour of Dutton and Wentworth's proposals, and they were therefore accepted.

Charles H. Warren, Esq. On the day of the last Governor's election I met Mr. Robbins at New Bedford, and asked him if he had seen the publication in the Massachusetts Journal. I knew nothing of the matter except through the newspaper, and I introduced the conversation in that way. I then asked him how far the statement was true? He stated that it was not correct so far as it concerned Mr. Keyes, for Mr. Keyes was not called upon to vote, as the Committee had decided upon a preference to True and Greene of $500 without his vote. He (Robbins) was of opinion that such a preference ought to be given them, for they had been at great previous expense in making preparations and arrangements. Their politics were not an objection. From a previous conversation with Mr. Palfray, Mr. Robbins was convinced that the propositions of Dutton and Wentworth were less than True and Greene's by a difference of more than $500. He stated nothing that could inculpate Mr. Child, as having given a wrong statement of facts as it regarded the Committee.

Moses Pritchard. I was present at the interview between Messrs. Child and Keyes at Mr. Child's office. Mr. Keyes called upon him to retract what he had said of him as Chairman of the Committee of Accounts. Mr. Child did not. Mr. Keyes said he did not care respecting the previous communications; but as to this charge it was not true. Mr. Child then said, that if he intended to charge him with saying that which was untrue, it would preclude further speech upon the subject. Mr. Keyes answered, that he did not mean to say that Mr. Child had knowingly uttered a falsehood; but that the piece to which he referred was false. Mr. Child to that observed, that he would make further inquiry on the subject, and see the person who gave him the information, and would correct it if it was erroneous. He said he would retract, if he was satisfied that it was false. I do not particularly remember whether any thing was said about its being in the next paper. But I am certain that Mr. Child said he would hold no farther communication with Mr. Keyes if he intended to charge him with falsehood; that Mr. Keyes said he meant only that the matter charged against him was false; and that Mr. Child said he would inquire and correct the error if there was one. Mr. Keyes told him that he would not wait; that he must retract forthwith—immediately. Mr. Keyes appeared to be a little in a passion.

Daniel Shattuck. I have seen this hand-bill (the same

which was shown to Mr. Keyes) before. I helped to get it up. Mr. Keyes had no hand in the preparing of it. I carried the hand bills, when printed, to his house. Last of them were put in circulation from there. I wrote a part of it, and Mr. Brooks the rest. I ordered it to be sent to Mr. Keyes' house. Mr. Keyes furnished us with the letters. There was a mistake in heading the extract from Mr. Palfray's letter "a letter from Mr. Palfray," instead of "an extract of a letter."

Mr. Robbins, being called again on the part of the Government, repeated the history of the proceedings in the Committee nearly as before, and stated that he was misunderstood by the gentleman who had understood him to say, that either he or Mr. Keyes was in favor of giving to True and Greene a preference, over anybody else, to the amount of $500. The inquiry how far the Committee would be justified in a preference, was based upon the ability of the contractor to perform his contract. If the other proposers were not sufficiently able to do what they offered to contract for, then the Committee in my opinion, and in the opinion of other members, might give a preference of $500 to those who were able. The gentlemen, with whom I conversed, entirely misapprended me. Mr. Palfray had said, that if True and Greene's terms were as low as any, they ought to have the contract, and I thought so too. I never did state either to Mr. Danforth, Mr. Warren, Mr. Loud, or Mr. Thomas, as they have testified.

Mr. Thomas, called again by defendant's Counsel.

I never heard from Mr. Robbins before the explanation which he now gives of the grounds of preference. I always understood him to say that True and Greene were to be preferred, because they had been at great expense in preparation, and had done the work well, and other similar reasons. I never before heard from him any thing about their responsibility as a ground of preference.

Mr. Palfray, being called again, stated, that it was true that he and Mr. Robbins had compared the proposals with the bills for the last year's printing during Mr. Keyes absence. It was in that way that he had made up his table, showing the difference in the rates of True and Greene and Dutton and Wentworth. But that this examination was by himself or with Mr. Robbins only. Nothing was done by the Committee until after Mr. Keyes' return. That it was true also that he at first thought the terms of True and Greene low; because most of the items in their proposals were so;—but when he came to look at the bills he

found the amount of work, under those items, very small; while the amount of work, under the higher items, was large. That made the great difference between their terms and Dutton and Wentworth's. When the subject came before the Committee, after Mr. Keyes return, were called again in order to show that result.

The witness then repeated his former testimony substantially as above.

WEDNESDAY JANUARY, 13th.

The Solicitor General, put in the case The Commonwealth *vs.* Clapp; The Charge of Chief Justice Parker in the case of Commonwealth *vs.* Lyman; and the case of Root *vs.* King.

Gardiner. Your Honor will observe that the last is a civil case for damages.

Morton Justice. I have noted that.

Mr. Fletcher read from Erskine's speeches as follows.

"In the case of the King against Almon, a magazine containing one of Junius's letters, was sold at Almon's shop; —there was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew his name was inserted as a publisher; and that this practice of booksellers being inserted as publishers by their correspondents without notice, was common in the trade.

Your Lordship said, "Sale of a book in a bookseller's "shop, is *prima facie* evidence of publication by the mas- "ter, and the publication of a libel is *prima facie* evidence "of criminal intent: it stands good till answered by the "Defendant: it must stand till contradicted or explained; "*and if not contradicted, explained, or exculpated,* BECOMES "*tantamount to conclusive, when the Defendant calls no witnesses.*"

Mr. Justice Aston said, "*Prima facie* evidence *not an-* "*swered* is sufficient to ground a verdict upon: if the De- "fendant had a sufficient excuse, he might have proved it "at the trial: his having neglected it where there was no "surprise, is no ground for a new one." Mr. Justice Willes and Mr. Justice Ashhurst agreed upon those express principles.

These cases declare the law beyond all controversy to be that publication, even of a libel, is no conclusive proof of guilt, but only *prima facie* evidence of it till answered; and that if the Defendant can show that his intention was not criminal, he completely rebuts the inference arising

from the publication; because, though it remains true, that he published, yet according to your Lordship's express words, it is not such a publication of which a Defendant ought to be found guilty Apply Mr. Justice Buller's summing up, to this law, and it does not require even a legal apprehension to distinguish the repugnancy.'

'As to the second, viz. that even if the Jury had believed from the evidence, that the Dean's intention was wholly innocent, it would not have warranted them in acquitting, and therefore should not have been left to them upon Not guilty;—that argument can never be supported. For, if the Jury had declared, "We find that the Dean published "this pamphlet, whether a libel or not we do not find: and "we find farther, that believing it in his conscience to be "meritorious and innocent, he *bona fide*, published it with "the prefixed advertisement, as a vindication of his char-"acter from the reproach of seditious intentions, and not "to excite sedition:" it is impossible to say, without ridicule, that on such a special verdict the Court could have pronounced a criminal judgment.

If, upon reading the paper and considering the whole of the evidence, they have reason to think that the Defendant did not believe it to be illegal, and did not publish it with the seditious purpose charged by the indictment;—he is not guilty upon any principle or authority of law, and would have been acquitted even in the Star-chamber: for it was held by that Court in Lambe's case, in the eighth year of King James the First, as reported by Lord Coke, who then presided in it, that every one who should be convicted of a libel, must be the writer or contriver, or a *malicious* publisher, *knowing* it to be a libel.

"In all crimes," says Lord Hale in his Pleas of the "Crown, the intention is the principal consideration: it is "the mind that makes the taking of another's goods to be "felony, or a bare trespass only: it is impossible to prescribe "all the circumstances evidencing a felonious intent, or "the contrary; but the same must be left to the attentive "consideration of Judge *and Jury;* wherein the best rule "is, *in dubiis*, rather to incline to acquittal than convic-"tion."

This principle is illustrated by frequent practice, where the intention is found by the Jury as a fact in a special verdict. It occurred not above a year ago, at East Grinstead, on an indictment for burglary, before Mr. Justice Ashhurst, where I was myself counsel for the prisoner. It was clear upon the evidence that he had broken into the

house by force in the night; but I contended that it appeared from proof, that he had broken and entered with an intent to rescue his goods, which had been seized that day by the officers of excise; which rescue, though a capital felony by modern statute, was but a trespass, *temp. Henry VIII.* and consequently not a burglary.

Mr. Justice Ashhurst saved this point of law, which the twelve Judges afterwards determined for the prisoner; but, in order to create the point of law, it was necessary that the prisoner's intention should be ascertained as a fact; and for this purpose, the learned Judge directed the Jury to tell him, with what intention they found that the prisoner broke and entered the house, which they did by answering, "To rescue his goods; which verdict was recorded."

In the same manner, in the case of the King against Pierce, at the Old Bailey, the intention was found by the Jury as a fact in the special verdict. The prisoner having hired a horse and afterwards sold him, was indicted for felony; but the Judges doubting whether it was more than a fraud, unless he originally hired him intending to sell him, recommended it to the Jury to find a special verdict, comprehending their judgment of his intention, from the evidence. Here the quality of the act depended on the intention, which intention it was held to be the exclusive province of the Jury to determine, before the Judges could give the act any legal denomination.

My Lord, I am ashamed to have cited so many authorities to establish the first elements of the law, but it has been my fate to find them disputed. The whole mistake arises from confounding criminal with civil cases. If a printer's servant, without his master's consent or privity, inserts a slanderous article against me in his newspaper, I ought not in justice to indict him; and if I do, the Jury *on such proof* should acquit him; but it is no defence to an action, for he is responsible to me *civiliter* for the damage which I have sustained from the newspaper, which is his property.—Is there any thing new in this principle? so far from it, that every student knows it as applicable to all other cases; but people are resolved, from some fatality or other, to distort every principle of law into nonsense, when they come to apply it to printing; as if none of the rules and maxims which regulate all the transactions of society had any reference to it.

If a man rising in his sleep, walks into a china-shop, and breaks every thing about him; his being asleep is a complete answer to an *indictment* for a trespass; but he must answer in an *action* for every thing he has broken.

If the proprietor of the York coach, though asleep in his bed at that city, has a drunken servant on the box at London, who drives over my leg and breaks it, he is responsible to me in damages for the accident; but I cannot indict him as the criminal author of my misfortune.—What distinction can be more obvious and simple?

Let us only then extend these principles, which were never disputed in other criminal cases, to the crime of publishing a libel; and let us at the same time allow to the Jury, as our forefathers did before us, the same jurisdiction in that instance, which we agree in rejoicing to allow them in all others, and the system of English law will be wise, harmonious, and complete."

Mr. Fletcher then spoke nearly as follows.

May it please your Honor and you Gentlemen of the Jury.

I should have esteemed it fortunate in a case of this importance, if I could have appeared before you under circumstances somewhat more favourable. You must be aware that from the unusually late hour of adjournment last evening there could be little time to make arrangements for the duty of this morning. My condition is that of the poor soldier with a heavy pack, and with no time for food or repose; and my efforts like his must be feeble and nerveless. I am cheered by the hope that you will sustain me in battling for a good cause and for my country.

Libels are of three kinds. They are against religion, government, or individuals. It was an observation of Dr. Campbell that if he believed the Christian Religion needed the stripes of the Magistrate, it should be no religion of his. A libel on a public man is a political libel; this is fully of that class; and although it weighs and has weighed like a millstone upon the defendant—yet he feels that he is struggling for the public as well as for himself. That man takes a fearful responsibility, who tampers with the public press. I know it is fashionable to declaim upon the public press; I know too that whatever we have that is valuable, is owing to the press. That admirable spirit which called into being our happy institutions we owe to the press. But it is said the press will be free, there is no danger to the liberty of the press. Listen not to those who tell you there is no danger in prosecutions to the liberty of the press. You have been told that the liberty of the press consists in publishing without a previous license! This is the liberty of the press in China. A man in China made a Dictionary, and because he defined some words

touching government and its functionaries, in a manner displeasing to them, he was sentenced to be cut in pieces, and his family and near relations with him, and to have his property confiscated! but out of special grace and favour the punishment was in part commuted, and his relations were only ordered to be banished for life, and the libelier and his family to be cut in pieces, and have his property confiscated.

In the time of the French Directory, it was decreed that every man might publish what he pleased, if he did not publish any thing against Government; but they found every thing against the Government, and the author fared like the man in China.

The liberty of the press consists in the right to publish any thing with good motives, and for good purposes. This is the liberty of the press. But it is said that the licentiousness of the Press is Pandora's Box. Gentlemen this has been said for two hundred years; nothing can be more stale. The press is not now so licentious as it was in the Augustan age of English literature. The common style of public discussion by means of the press, is more moderate and decent than the writings of Dryden, Swift, Pope, Burke and Johnson. But it is asked shall a man stand and see himself abused without making one effort in self defence? It was a good saying of Oliver Cromwell that if his Government would not stand paper shots, it was not worth preserving. There never was a better or truer saying; there never was a sounder maxim uttered upon this subject. So with character; his must be excessively weak, which could not withstand such blank cartridges—give truth a fair field for action, and it ever would prevail against error in the contest—give them an even ground, and victory was ever on the side of truth. Where character was assailed in the public prints, *there* was the ground and field for defence. It was a departure from the spirit of our institutions, from the customs and habits of our land, to call in the aid of a public prosecuting officer to defend the reputation of a man in public office—he needed not such factitious aid; if his character was assailed in the public prints, there was his field for reply; and he, instead of being on the weaker side, was upon the vantage ground. If he was untruly or wrongfully attacked the public sympathies were enlisted upon his side—he would be entitled to a full, fair, and impartial hearing—the verdict of public opinion was a greater security to him than that of a jury, under the direction of a public prose-

cutor—a portion of that public, who had elected him to office, already were in his favour; and his character and standing in society gave him an infinite support against an individual who should, before that public, attempt to substantiate the charges he had made against him. He should meet the allegations before the same tribunal at which they were made. If he was supported by the truth in his defence, he was sure to prevail. But here the artillery of Government was called in to aid the cause of the prosecutor, and levelled, not only at the defendant, but at the freedom of the press. The public prosecuting officer was called in to aid the cause of the individual, who thought himself to be injured.

As to the law on this subject, it was certain that in England nothing was so vague, indefinite, uncertain. The Jury were left only to ascertain the fact of publication; there was no definition, which could be relied on with any certainty what should constitute a libel. The best which he could now recollect was, that it "was any thing published, upon any matter, of any body, which any one was pleased to dislike." [Here the Solicitor called upon him for his authority. Mr. Fletcher replied, that it was Jeremy Bentham. Mr. Solicitor rejoined, that he was not a legal authority in our Courts.] He did not mean to refer to the writings of the gentleman, who had given the definition which he had used, as a legal authority, but merely to show how vague and uncertain were the opinions of British writers of the definition of what constituted a libel. This uncertainty had led to various and great struggles between their Courts and Juries on the subject, until the Court had gradually withdrawn all agency and interference on the part of the Jury, except that of finding the fact of publication, and the correctness of the innuendoes. This was settled by an Act of Parliament, and giving the Jury the right to return a general verdict; but it was now held there to be law, that the truth could not be given in evidence as a justification of a libel; every thing which tended to vilify the Government, or prejudice the reputation of an individual, whether true or false, was a libel; neither were to be censured in any form. The prosecuting officer filed his information of the fact, the Jury are to determine whether it was published, and if it was true, so much the worse for the libeller. But there was some protection left to an alleged libeller, even by an English Jury; the uncertainty of the law, the intentions of the defendant in his publication, that these were not criminal, the lati-

tude which public opinion had allowed to the public press; these in some instances protected the people from the car of the English Judiciary, which otherwise would roll on over the bodies of her citizens, prostrating and crushing in its course those whom the government had marked as obnoxious by their writings.

In this country the law of libels stood upon different grounds, as a principle it was early said that the press was free. In the year 1798 a law however was enacted called the gag law. Though educated in a school which would lead him to view with favour the men who enacted that law, protecting the arm of Government by restraining the public press, instead of leaving public opinion to protect the Government itself, he thought its repeal was auspicious for our land. He thought the best protection to a Government was public opinion, rather than to leave that task to the functionaries created by the public to enforce the same object by pains and penalties. So with the characters of public men; it did not seem consonant with our free institutions to employ our public functionaries to build up at our common expense, their characters when they were assailed, instead of leaving them to the tribunal at which they had been attacked, to confess their guilt or prove their innocence. In fact the old English law had been ameliorated in many of the states, and this had most often been done on account of individual cases; wherever this ancient law had been acted upon in its rigour by the Courts, the several states had felt themselves bound through their Legislatures to step in and relieve their citizens from its severity; particular prosecutions which were repugnant to the feelings of the public, called forth especial enactments; for instance in Pennsylvania the prosecution against Duane, a printer, for a publication which was true of a public man, called for an alleviating statute, for in his case at that time the truth could not be given in justification. In fact a public man might rely on his reputation with safety, and did not need a statute or law of pains and penalties to protect it. An honest man any where and every where, held his character from public opinion, and this if he continued honest was the most secure of all tenures; he had only to appeal to the integrity of his own conduct and he was always safe. In New-York twenty-four years since there was a case against a printer for libel, wherein the Court were decided according to the English law of libel.—The people took the subject into their own hands and decided what their own safety and interest required, and pas-

sed a statute that the truth might be given in evidence as a justification of a charge, if it was made from good motives and for justifiable ends. This not only regarded public men but all cases. In 1827 this Commonwealth passed a similar law, that the truth might be given in evidence as a justification. Here however public prosecutions against individuals were rare, and far hence be the day when the authority of the Government should be arrayed against the freedom of the press; in former years these instances had been unusual and rare; the officers of Government had thrown the shield of their own integrity between themselves and the public attacks of the press, and the infrequency of public prosecutions upon the law of libel had been the reason that no more definite enactments had been made upon the subject. In New-York after their statute the Jury could acquit if the charge was proved to be true and published from good motives and justifiable ends; the effect of this was to place the subject where it ought to be, in the hands of the people for their decision; the press was their protection, it was the safe guard of the whole people, it was for them to determine whether it was properly used, it was for them to determine whether the motives of the publisher were good and his ends justifiable. Even in the case of the Commonwealth *vs.* Clapp, decided long previous to the passage of the statute to which he had referred, the learned Judge had decided that the truth might be given in evidence to rebut the presumption of malice, and this was done upon the principle that the nature of our institutions were such as to allow a free discussion of the characters of those who have rule over us. In the habit of all our courts, he had confined his decision to the case immediately before him, and had not gone beyond it into a discussion of the whole subject of libel; he had only decided the matter in issue. But the whole fabric of our freedom would tumble to the dust, unless free discussion of the motives and acts of our public men in their public capacities was allowed, and any one from good intentions should have the right of this examination. If by mistake he should be led into error, is he to be condemned as a libeller? If an editor of a paper from mistaken information should publish that which is in strictness not exactly a fact, must he be convicted? If this be true who would serve the public in that capacity? It surely could not be fallible man who is so liable to be deceived; none but Omniscience itself can always ascertain what he states to be absolutely true; should a Jury require it? For instance, the Jury

themselves are bound by their oaths to judge by the law and evidence of the innocence or guilt of a prisoner at the bar; judging by this, they condemn him, and he is deprived of life. Afterwards they find that they were mistaken—misled, still they believed at the time that the prisoner was guilty; is the blood of this man upon their heads, and would it be required here or hereafter at their hands? and why should it not? because they had integrity in their hearts. Apply this principle to the Editor of a public newspaper, he makes inquiry with extreme caution, he acts as every fair man would, and does not proceed upon slight grounds, does all that his bounden duty would require of him as a public servant, and publishes from good motives the result to the world; afterwards it is ascertained that he was mistaken in his information—is he criminally to be convicted and sentenced for such mistake? such law would be in violation of all the principles of human action. But it might be asked shall the character of an individual be injured by mistake? No—let the reparation be made before the public, or in damages in a civil action; to indict a man for a mere mistake, or to punish criminally a person who had even taken the life of his friend by a calamity or mistake, was novel in our judicial proceedings. Even in this most fatal of all mistakes, the party committing the act was held to be innocent: he was acquitted not only by men, but by his Maker; human frailty was not human guilt, and error did not of necessity embrace a criminal intent.

Reputation it would be said, was property; but if a neighbours property was injured by mistake, the injury must be repaired; but if it was felloniously injured then the transgressor was to be punished as a felon; so with reputation, if with a criminal intent reputation was injured, the assailant was to be punished as a criminal; if on the other hand he had done it through a mistake, he was no criminal. The same principle applied in either case, and the felonious intent was equally to be proved; to prove a malicious intent a rottenness at the heart must be exhibited. The law of libel was founded upon common sense, and must be so considered by the Jury.

Another principle would well apply here. When a man applied to a public body for redress from a real, or imaginary evil, and for a process to issue thereon, no representation thus made by him could be deemed libellous, or criminal. When an evil existed relative to a public man, chosen by the public, there was no tribunal to which an individual, or body aggrieved could apply with so much

propriety as to the public itself. In the case of a Representative from a town ; to remove an obnoxious Representative from the office, the town alone could be consulted in his removal. So of a Senator, the District must alone be cousulted in the removal of a Senator ; such measures as were taken from good motives, for this purpose, were to be sanctioned by Juries and by the laws. Whatever representations were made to the constituents of a Representative from good motives, were justifiable, if there was no especial malice proved in the case, or if the party making such representations had a reasonable ground to believe them to be true.

The law of libel was not perfect yet, it was in a state of progression. The decision, in the 4th of Massachusetts, was an improvement upon it, and Courts now were perfectly warranted in carrying the principles there laid down still further, even without Legislative enactment. It would be a sound and salutary application of principles already settled and recognized.

He would now proceed to consider the facts of this particular case. The piece complained of was that which might be called a political electioneering piece, a small part of which had been considered to be libellous. There had been no particular hostility between the parties. Once previously the prosecutor had been placed by the defendant in honourable company, and honourable mention made of him ; so far there had been no evidence of ill will or malice. What had occurred, since the publication complained of, would not even by the Government be offered as an evidence of previously existing malice. [The Solicitor here observed, that he certainly should rely upon all the previous and subsequent events to prove malice on the part of the defendant.] Mr. Fletcher proceeded, that the Solicitor would find this to be an unsound reliance—would the Jury charge the defendant with previous malice for any observations which had escaped him, after he was bearded in his own office, insulted to his head, after the prosecutor had required of the defendant to retract forthwith, he would not do the Solicitor General the injustice to suppose this. But, if he does, said Mr. Fletcher, I challenge him to come on with such a charge, and thus founded. I challenge him to the field. I throw myself on the good sense of you gentlemen of the Jury, that an irritation, produced by the conduct of the prosecutor, after the publication should be placed in the cause as proof of a previous malicious intent to defame the

prosecutor. What is malice? especially, what is malice as it relates to the law of libel? mere wilfulness! he should like to know from the English book offered by the gentleman, where that English author got his authority; what is malice? Is it one thing in one case, and another in anther? Was malice in murder different from malice in libel? What is, or what is not malice; and can it be inferred from subsequent as well as previous acts. Mr. Child had never spoke concerning Mr. Keyes previously. [Here the Judge interrupted Mr. Fletcher, and said, that he distinctly understood, from the witness, there were other pieces concerning Mr. Keyes, either previous to the libel complained of.]

Mr. Fletcher continued, that he only understood that the charge against Mr. Keyes was that of Jacksonism; for himself he could say, that he abjured all politics; he was neither for Jackson or Adams, nor was he on the fence; he trespassed upon no man's political inclosure the charge of Jacksonism, if it had come against Mr. Keyes a little later, at this day when the good General had succeeded, his would have been a slight accusation: in future even Mr. Keyes or any other person would not feel themselves insulted at the name of Jackson men; as to that part of this unlucky paper, had it been a little later there could have been no malice in it. In relation to the preference, [he here read the alleged libel] it was worthy of remark, that there was no libel inasmuch as there was no *corrupt* preference alleged. Again there was a question, whether this preference was given before the seals were broken; he should not be strict as to a letter; but True and Greene's proposals were never sealed; but beyond this, the preference ascribed, on the part of Mr. Keyes, to the Boston Statesman, was not charged as a corrupt preference; there was no epithet, the simple fact was stated, and no character given to the fact; it was an indifferent statement; it might have been meritorious in Mr. Keyes to have given the Statesman that preference, for they perhaps deserved it; if an innocent meaning could be given as easily as a libellous translation, it was certainly as well not to presume any thing wrong to be intended; the simple publication of the fact was not of itself a libel. [Mr. Fletcher was then proceeding to show the right of individuals to comment on the opinions of others, and to prove that there was no charge of corruption, when the Judge suggested to him that he should charge the Jury, that if it was proved that the publication was published by the defendant

and was untrue, he should then instruct them that a charge of corruption was made in the alleged libel; if he was wrong in his opinion, the defendant could afterward have a remedy for his (the Judge's) error; he also suggested to Mr. Fletcher, whether or not, at that period of the case, it would be well to dwell long upon that part of the subject.]

Mr. Fletcher said, that he would pass from this point under the circumstances suggested by the Court, with but a few remarks. In his view the libel complained of only stated a fact for the public information, that Mr. Keyes in his public capacity was in favour of giving a preference of $500 to True and Greene; if this could be as well construed one way in favour of the defendant, as not having made a charge of corruption, as it could against him, he did not think that the import of the charge should be strained for the purposes of conviction. If the course of forcing the meaning of a publication in order to make it libellous were adopted, there could not a paper issue from the press but what might be made libellous. Here a simple fact only was stated, and if the Jury after a fair and liberal view of the whole matter, were convinced there was no corruption imputed to Mr. Keyes, then there was an end of the prosecution. If they considered on the other hand, that a charge of corruption had been made, then their duty would be to inquire into the intent of the defendant in publishing it. The prima facie evidence of malice in a libel might be rebuted by circumstances, such as if the libel should be true; and he should further maintain in this cause that if the defendant believed that what he said or published was true, and had good reason to believe it to be true, this might be admited to rebut the presumption of malice; the intent, the innocence of the heart is the same in the one case as the other. The defendant had published a fact of a public man which the public had a right to know, the particular matter of which the article in the paper spoke of was concerning the State Printing, which generally he believed had been considered a political favour—a *sop* to a favourite. But the Legislature having economy in view, had passed an order that there should be advertisements published offering the state printing to the lowest bidder. In the Committee, at sometimes there seemed to be a wish to get rid of this order, and to go back upon the old ground, and there seemed to be an universal belief among the applicants and the public, that the lowest terms offered did not always get the printing. Mr.

Beals had kept reducing and reducing until he gave it up in dispair. In 1826 Howe and Norton, had offered 10 per cent lower than True and Greene, but did not obtain it. Mr. Hayden of the City Government, said that True and Greene would agree to take one price, and when the bills were brought, a higher would be charged; that reductions were perpetually to be made. In individual affairs when a man did not live up to his contract, the employer was very likely to say to him, "I am tired of making deductions from your bills, if you do not charge me as you agreed I will have done with you." There were some grounds of complaint against them in 1827.

Mr. Palfray a man of unblemished reputation and character, had heard in the Committee a preference openly spoken of in favor of True and Greene to the amount named of $500. He himself had made the communication of this fact to the person, also communicated it to Mr. Child the editor of the Massachusetts Journal. It came from one of that very Committee on accounts. Who under the ordinary circumstances of life would hesitate to believe the fact thus attested to? that Mr. Keyes as Chairman of the Committee of accounts was willing to give a preference of $500 to True and Greene? this fact, which Mr. Palfray as one of the Committee, had ascertained, he communicated to Mr. Sprague of Salem, and Mr. Sprague to Mr. Child; and this communication was made to Mr. Sprague immediately after the facts occurred: and to Mr. Child while Mr. Keyes was before the public as a candidate. Mr. Child felt it his duty to communicate it to the public; it was important to the rights of the people of this State for him to communicate it. But it was said that it was on the eve of an election of Mr. Keyes to the office of senator that this publication of facts was made; then it was argued that it affected his merits as a candidate. Suppose Mr. Keyes was not before the public as a candidate for office, what then would have been said? suppose that the interests and suffrages of the people were not about to be placed in his hands; then it would have been said, why drag Mr. Keyes before the public at such an hour. Why bring him to a public trial when he and the public have nothing to do with each other? Why assail in a public newspaper a private individual, with whom the public have no concern? This, in such case, would have been the argument and for it the prosecutor would have claimed and justly claimed heavy damages. But in the present case the prosecutor was a candidate for public office. Mr. Child as

an editor, was in possession of what he believed to be facts, derived from an authentic source, which nearly touched the qualifications of this candidate for public office. These he gave to the public without comment. It was done so clearly, as strongly to rebut any presumption of malice; he was acting upon information which he believed to be true; and on the eve of an election of a Senator for Middlesex, he made a communication to the public of the facts thus obtained from one of the members of that Committee of which Mr. Keyes was chairman. Within the narrowest limits of the rights of the press to speak of public men, Mr. Child had a right to make the communication complained of: it was within the most restricted, guarded, and confined rights of the press. This was not said by Mr. Child behind the back of Mr. Keyes; but said openly, and in relation to his public conduct relative to public business. If the duties of the press could in any case be well and rightly discharged, they had been correctly done here. He would appeal to the Jury upon this head, if blame could possibly be attached to the defendant; if he had for an instant overstepped the line of his duty, as an editor of a public newspaper. If he had, woe be to him who hereafter should put pen to paper and paper to press in any case; there was a sword continually sus pended over the press by a single hair, and no one could say aught of any public man however corrupt, without the danger of judicial punishment.

But he should take one more point, *that the charge was true*—legally and substantially *true*, and he should prove it to be *true*. It was not necessary that it should be proved to be true in every part, but only to prove it to be substantially true. It was with the most heartfelt grief that among so many respectable witnesses, men of such high standing in society, he observed such strange and contradictory testimony; he hoped the Jury would be able to reconcile it. But it was the duty of the Jury, the Court, and himself, to compare witness with witness, and to weigh it in the just balance. The defendant stood on the ground of approved evidence; and of approved innocence; on his part there was no conflicting testimony: on the part of Government, the public prosecuting party was a witness; the prosecution was unsupported, unsustained and as he should shew, unsustainable except, by the prosecutor himself, Mr. Keyes; he had derived no support whatever from any other person. Messrs. Robbins and Ellis had totally failed him, and he should set out with the assertion that

the whole case rested solely on the prosecutor, Mr. Keyes, who, if he could not bear down the defendant by his own oath, could not accomplish it at all. It was Mr. Keyes himself, and no one but Mr. Keyes, who was to obtain a conviction, or it could not be obtained.

He would here assert that he entertained personally no feelings of hostility toward Mr. Keyes, for he had been acquainted with him for a long time; he had always known him, and was never unfriendly to him; so far he had a knowledge of his conduct, he should place the reliance on his testimony in a civil action; yet in a criminal prosecution of this nature, where the prosecutor was allowed to swear, Mr. Keyes never should have opened his lips under such circumstances. And why? because he had a deep stake in the issue; although he was not strictly excluded by law, though he was not incompetent, yet if he did swear in his own case; the Jury were bound to regard him with a scrutinizing eye. There were many in the community who would not assume this fearful responsibility of testifying in their own case. In a recent case of Webster and Lyman, the prosecutor would have seen his cause sunk to the centre of the earth before he would have volunteered his services to swear to his own innocence, and to the guilt of the other party. But in that case the prosecutor was called upon the stand by his adversaries; not by the Government—he was requested by his opponents to testify, and did not volunteer for himself. But Mr. Keyes had seen fit to testify in his own behalf, and did negative in broad terms the allegations charged by Mr. Child in the Massachusetts Journal; let his testimony be weighed in the scale under the circumstances of the case.

From the facts of this trial he should not be willing to say that the prosecutor, Mr. Keyes, wished or intended to attempt to change truth into error; but he honestly believed, that in some instances, the feelings of a man might sometimes overthrow his judgment; that he would see things through the medium of a jaundiced eye; and then, though he intended to speak truly, yet his very nature rendered the intention impossible to be carried into effect. He then alluded to the hand-bill, which had been spoken of, in which Ellis and Robbins had been concerned, in which also was that which *purported to be* an entire letter from Mr. Palfray. Mr. Keyes was the godfather of this hand-bill, and he was responsible for it; it was got up under his eye, he produced the materials for its formation, and brought it into the world; it was in his

keeping before it ever saw the light; it was in his nursing; he knew even of its creation; it was in his own house before it walked. He would now ask, what other man would have, under any circumstances, have perpetrated such a palpable fraud upon the public. The letter of Mr. Palfray, in the hand-bill, purported to be the whole of that letter; yet an extract is made, all of it in terms of praise toward Mr. Keyes, leaving out its material parts, and saying not a word of the charges of a preference, on the part of Mr. Keyes, for Messrs. True and Greene; yet that extract is palmed upon the public as the whole of the letter; not a single thing in the extract is said of the subject of preference of $500; and Mr. Keyes aids in the distribution of that hand-bill; he says, however, he *cared nothing for his election*, it was only *to vindicate his character;* to vindicate his character, he circulates, and has gotten up under his own eye and inspection, and caused to be brought to his house a spurious, fraudulent hand-bill, to support his own election as Senator. This fact alone, would be sufficient to bring home to Mr. Keyes the charge of a preference to the Statesman. He *cared nothing for his election;* but on the eve of it was willing to furnish the materials for hand-bills, and have them sent to his house, and aid in their circulation, when he knew that he had put a part, for the whole of a letter, into the hand-bill, pretending it was the whole, and thus give a circulation to a coin he knew to be spurious; *but it was for the vindication of his character*, and *not for his election!* Next comes an interview of Mr. Keyes with Mr. Child; there was something marvellous about this, it distressed him (Mr. Fletcher) to think of it; a demand was made upon Mr. Child, to retract what he had said of Mr. Keyes, by the prosecutor. In order to prove this demand, Mr. Keyes had taken a witness with him, Mr. Pritchard, and also to tell what took place on the occasion. But Mr. Keyes had seen fit to thrust himself forward as a witness, to tell what took place instead of calling Mr. Pritchard. Mr. Keyes dared not trust Mr. Pritchard with a relation of the facts, wherefore he never called him. Why did he not call him on the stand in this case, when he had once called him specially to be a witness at the time and place of interview? Because he dared not trust him: and why? Because he was afraid that he would not testify as the prosecutor wished him to do; wherefore Mr. Keyes volunteered his services, and never called Mr. Pritchard at all, but left it to the defendant himself to call him. The testimony

and conduct of Mr. Keyes was to be weighed like that of all other men; the Jury would weigh him. What did Mr. Pritchard say when called? that Mr. Keyes was manifestly in a passion; he accused Mr. Child of stating that which was false, and demanded of him to retract forthwith; to this Mr. Child replied, that if he intended to accuse him of an intentional falsehood, there must be an end of the conversation; there was no decent man, but would have said the same, when such an assertion was made to him in his own office. Mr. Keyes then said, that he did not mean to say that he had been guilty of a falsehood; but that the piece itself was false, and then demanded of Mr. Child to "retract it now, forthwith, he should not wait." But what says Mr. Keyes about this; does he not give the interview a different air and colouring, and does he not make a material difference in his statement? does he not give a palpable evidence of strong feeling? He, Mr. Fletcher, as Counsel for the defendant, rejoiced that such an illustration, of almost a providential nature, had been given of the power of interest and feeling over testimony, as was evidenced by comparing the testimony of Pritchard and Keyes. The Jury, in the evidence of the latter, could see a strong feeling, a *deep, deep interest*, in colouring and distorting facts; there was much in this for censure. In the interview the prosecutor was wrong and the defendant right. Mr. Keyes demanded an immediate retraction; Mr. Child said that if upon investigation he found he was misinformed, he would retract. Mr. Keyes assures him, upon his word, that Mr. Child is wrong; that his statement was not true; indeed! He seizes him by the throat, and demands of him, RETRACT. Glorious freedom of the press this! if a man did not retract a statement of that which he believed to be true, and do this without investigation, he was to have his throat cut! this code of laws would do honour to China. If one came to an editor, and, without any other evidence, stated, *upon his word*, that what the editor had printed upon good authority was not true, and if the editor did not retract, he was forthwith to be criminally prosecuted; if it was the law that such editor was to be criminally punished, where was our boasted freedom of the press? It was in inquisitorial hands. Such principles were not to be tolerated here. He (Mr. Fletcher) for one, remonstrated against such principles; more than this, he demanded that none such should be recognized; he had a right as a citizen and as a lawyer to do it. Was

this the course for a public man to adopt? No; he should not only meet, but challenge investigation; he should say to his accuser, "go on, Sir, I will meet you, when I am assailed in my public capacity; I will disprove your evidence." To call upon the public prosecuting officer, to prop a prosecutor's public reputation, was in violation of the spirit of our institutions; and for an individual assailed for an alleged aberration from public duty to do this, was full as bad as to be willing to give $500 preference to True and Greene as public printers, when the order of the House had already given the printing to the lowest bidder. But Mr. Keyes in the interview had gone further; he had said, "retract immediately, or I will have you before a Jury of Middlesex, my own county, where I am known;" as much as to say, that the good citizens of Middlesex would do more in his favour than those of any other county; a threat in the very outset; but for the defendant in this case, he would be willing to trust the citizens of any and every county, as to the truth of this charge of preference.

As to the first witness called to back up this alleged libel, Mr. Ellis, he could not add to or detract from his testimony the weight of a hair. It certainly was out of his power to diminish it. He, Mr. Ellis, stated that Mr. Keyes had told him at Dedham, that there was an attack upon the Committee on Accounts in the Paper of Mr. Child, called the Massachusetts Journal, he was not informed whether it was upon any body in particular; he thought it was upon the committee and declared that he was willing to meet the attack; he did not see the paper containing the attack; then, when he was questioned whether there was an agreement between him and Mr. Keyes at Dedham, to meet in Boston at a certain place the next day, the answer was, no. Did you say to Mr. Keyes that you would be there at eleven o'clock the next day? Yes. Was you there? Yes. Did Mr. Keyes say that he would be at the same place and at the same time? Yes. Did you both agree at Dedham, to be there together? No,—were you both at that place, and at that time? Yes. On further question he (Mr. F.) had asked whether he (Mr. Ellis) had written the piece in the handbill, to which the reply was that he had; but in further examination it had turned out that both he and Mr. Keyes had written the piece. Mr. Ellis had written paragraph by paragraph and shewn them to Mr. Keyes, and then asked, of Mr. Keyes whether he (Mr. Ellis) had recollected right and when he had not, Mr. Keyes, inform-

ed him what was right, and when he did not know whether it would hit right, Mr. Keyes took aim for him ; he wrote a little, and showed a little, and then Mr. Keyes wrote a little, [Loud and continued laughter in all parts of the Court room ;] and yet Mr. Ellis had sworn that he was not under the influence of Mr. Keyes. Neither did he (Mr. Fletcher,) suppose that Mr. Ellis thought that he was under the influence of Mr. Keyes ; he had no idea that Mr. Ellis then thought that he and Mr. Keyes were one and the same in this prosecution. Still however the fact must be apparent that they were one and the same, and that Ellis was influenced by Keyes, who had called him to defend his own reputation ; and that he acted in the handbill and testified in Court, under a bias, and that Mr. Keyes the prosecutor acted and testified under a similar and greater bias. The Jury were to judge from the facts submitted.

He should now take Mr. Robbins. Mr. F. then went into a minute examination of the evidence relative to the correspondence between Robbins, Perkins and Ellis. Mr. Robbins soon after the receipt of his letter from Keyes came out in the Plymouth Memorial, but, it would be regarded as a remarkable circumstance, without denying one tittle of the accusation of the Journal as to the preference stated to have been had by Mr. Keyes of $500 for the Statesman over all other applicants. It did not [Mr. F. here read the piece] negative it in any shape. Messrs. Thomas, Danforth, Loud and Warren had each and all stated that Mr. Robbins, one of the same Committee on Accounts, had expressly stated to them that Mr. Keyes as well as himself were in favor of giving the preference of about $500 to True and Greene, over all other printers ; they were unbiassed, and in particular Mr. Thomas was a friend, and neighbour of Mr. Robbins, and he (Mr. Robbins) was a client of Mr. Thomas. This preference was not given in consequence of the lack of responsibility of other applicants, but it was expressly testified that it was on the ground of the promptness and fidelity of True and Greene that the preference of $500 was to be given ; to Mr. Warren he had admitted the same facts, but had only stated that Mr. Keyes was not called upon to vote. Mr. Keyes at his election then wants a handbill ; he applies to Mr Robbins for a letter as part of the materials, and he furnished them ; the jury would consider the testimony of Mr. Robbins, that no one of the Committee were in favor of any one in preference to another, unless the one was more capable or

responsible than another; was not this definition of his meaning palpably forced? No doubt of it. There were four disinterested, respectable, and three of them professional men, who had declared upon the stand what Mr. Robbins had said to them; they were not likely to be mistaken or from their professional habits to forget. From the manner of the testimony of Mr. Ellis, and from what had been proved relative to Mr. Robbins, the whole testimony in the case rested upon the prosecutor Mr. Keyes, with the exception of the *two very small* parts of himself, Mr. Robbins and Mr. Ellis. On the other hand Mr. Palfray, a man of unblemished purity, unwilling to be dragged before the public, upon whom no censure ever had been cast, had testified fully and fairly as one of the committee. A printer himself, he had heard complaints of the doings of the committee and Messrs. True and Greene, and had heard expressed in the Committee and by Mr. Keyes, a preference to True and Greene, as State printers, and from his situation was peculiarly watchful. Mark this further; on this subject he was particularly confided in; mark still further, on the very day after he had heard this preference declared by the Committee, he had stated the circumstances to Mr. Sprague at Salem, and before that he had declared to the same gentleman that there was a decided inclination to prefer those printers, and that a majority were in favor of it. It was not in the power of man to mistake such testimony. This was early in the session. Messrs. Keyes, Ellis and Robbins were in favor of it, and for the fidelity and merits of True and Greene. Then at the last day of the session, when Mr. Keyes had returned, he thought on the whole that True and Greene's proposals were as low as those of Dutton and Wentworth; the censuring of the principle adopted by the Legislature as to tieing down a Committee to the lowest terms, corroborated the fact of preference; Mr. Keyes said that it was derogatory to the State. Mr. Palfray was contradicted by no one but Mr. Keyes. It seemed to him (Mr. Fletcher) upon all rules touching the weight of testimony, he had proved the charge alleged to be true; one circumstance which was material to shew the truth of the charge came from Mr. Perkins; which was, that when it was proposed to give a preference, he objected because "it would do away the rule," as the order was to give it to the lowest bidder; this also went to shew that there was such a preference agitated in the Committee. Again there was proved the fact that the accounts of True and Greene had been allowed amounting to from $2000

to $5000 in the State Departments by the Committee without a single voucher. But he would detain the Jury no longer; the ground of the truth of the accusation had been fully proved and the Jury might be fully justified in returning the Defendant to his useful and arduous labours which had been so ably fulfilled as innocent of a malicious libel; and if they should yet hold a doubt in their minds, they must acquit him.

The Solicitor General on the close for the Government observed, that he should make no apology for the imperfect manner in which he should discharge his duty for the Commonwealth, for the fatigue which both Court and Jury, and himself had undergone in this protracted trial would readily suggest the adequate apology. He should endeavour to make the view plain to the Jury, and to clear this cause from the rubbish and varnish with which the defendants Counsel had endeavoured to incumber it. The path of the Jury was plain, and it would be the duty of the Court to guide them in it. Mr. Keyes a citizen of that County, of unblemished reputation and integrity, possessing the confidence of its citizens; once deputed to assist in the formation of a constitution for the state, a member of the Senate of Massachusetts in whose hands were some of the most important of the public duties; having the confidence of those who had been intrusted with the administration of the Government, when the defendant was "muling and puling at his mothers breast," had dared to appeal to the laws of his country, when his well earned reputation was assailed. If there was any situation in which a man's character was to be protected, it was such as that of Mr. K. This man with this character, and thus situated, had made his appeal, and the Jury could see how this appeal had been treated. He had applied to the person who had injured him for reparation, and for this he was reprobated and reproved by the defendants Counsel; the manner which the defendants Counsel had adopted in the management of his case had been portrayed before them, and it was pronounced, after no satisfaction had been given by the defendant, disreputable to apply here for redress. It was also said by them both, that another tribunal should have been resorted to; the one at which the prosecutor was attacked, that of the public newspapers; it was there that he should have prosecuted his claims, and there fought his battles! before a newspaper tribunal, the star chamber of the mob! the contest there must surely have been unequal,

they had no means of judging of the rights of the parties. Of the two, for himself he would far prefer the ancient star chamber of the English Court, to a newspaper tribunal for the protection of his own character. If there was no other Court but such a one, he should pity those who had to resort to it. This was the first time in his life, that he had ever heard of a rebuke to an individual for appealing to the laws of his country for redress, when his character was assailed; such a doctrine could not be glanced at here,—not even for a moment. First, was it disgraceful to appeal to the legal tribunal of the country in a case like this; and second, to apply here in preference to a newspaper tribunal? was it right to substitute newspaper and political profligacy for the wholesome laws of our land? such a step would produce a political chaos over them, it would be a government of men not of laws. It was not an exaggerated picture when he averred that such a course would break up our happy institutions, and subvert all order and law in this land; none of the distinguished or honourable would administer the laws, if such was the course to be adopted. In this case one of the first citizens in the County, had been abused and insulted and his character portrayed in the blackest colours; he had availed himself of his legal rights, and his appeal had been treated with scorn. It was said and he well recollected it, that an unblemished character which the complainant had been forty years in acquiring, had been spueezed into a little corner of a Court House, in the corner of Middlesex; he had one remark more to make. In order to prostrate the cause of the Government in this case, the characters of those hitherto unblemished for truth and integrity were impeached; those of previous unquestionable credit were to be doubted for their veracity; their reputations were called in question, and the Jury were asked to disbelieve them! this was no exaggeration on his part; the facts were apparent.

Having made these previous remarks, he would now offer such observations as would tend to bring the Jury to a correct result in their deliberations on the subject before them; they would be astonished, perhaps, after so long an examination, to find only two questions before them for decision. In the first there could be no difficulty; it was simply this: whether, on the day alleged in the indictment, there was a statement *published* against Mr. Keyes, and whether the matter contained in it was libellous. It was admitted that the matter was published, as alleged in the

indictment, by Mr. Child; this was the corner stone of the prosecution. If the matter was libellous, and was published by the defendant, and there was no defence, the author was amenable to public justice. The second question was, is this libel justifiable? if libellous, is it false or true? these were the only questions before them; they were of such a nature that there could be no uncertainty about them; and on this part of the case he should not detain them by a long discussion. The statement of the witnesses was, that the allegation was untrue: the accusations were of a direct charge of corruption by Mr. Keyes in favoring, as Chairman of the Committe on Accounts, two printers, viz. those of the Statesman, a reprobated Jackson paper, to the amount of $500, in preference to all others, and to misappropriate and squander that sum from the public Treasury: to embezzle the public property for private purposes. The first point of publication being established, the next inquiry was, whether the charge alleged was an accusation of an offence against the laws or not, on the part of Mr. Keyes.

The publication spoken of, related to Mr. Keyes as Chairman of the Board of Accounts; it accused him of an act of corruption in that office, and on this head the law was clear. The only remaining question could be, whether the charge was true or false; the matter or offence charged was of itself libellous unless true. The Court had expressed an opinion on this head, that if the charge was untrue as to Mr. Keyes, the Judge should direct that the matter was libellous. An examination was then to be had of the evidence, to ascertain whether the allegation in the alleged libel was true or not; or rather into the justification held up by the defendant's Counsel. Before proceeding to this part of the case, he would remark, that the position taken by the defendant's Counsel was a novel one, viz. that if the publisher was ignorant of the falsehood of the allegation, it was no malicious libel; or if he had reasonable ground to believe that there was a foundation in truth for his charge, he was no libeller. There was no such position laid down in the law, either in England, America, or in any other civilized land: when such a position was taken, he had called for their authority, and none could be given; it was not the law of the land; the defendant could not be justified by any of the modes adopted by his Counsel; if the allegations were false, and of a criminal nature in their accusations, they were malicious and libellous.

Much had been said by them in relation to a late statute of this Commonwealth. On this statute there could be no great question; there was no legal position which could authorise a man to publish a falsehood; no principle could sanction such a doctrine; the charge must be true to justify it, and it must be made from good motives and justifiable ends; if it is false, the maker must answer at all events.

To constitute a libel, malice was a principal ingredient; there must be an evil intention; the term malice was not here used in its common and moral sense, but in a legal sense, that the party accused must have voluntarily and wilfully published that which was false, in relation to another, which held him up to public ridicule and contempt; this, whenever it was done, was done at the risk of the author. It was absurd in the transgressor to say, that he did not know any better; the law never would permit a person to plead ignorance in such a case; what remuneration was it to the injured party, for such a public excuse to be offered? was he less injured, in consequence of the lack of knowledge in the defendant, of the falsehood of the charges?

But, in this case, had the defendant proved the truth of his accusations? and had not the Government proved the malice of the libel? In all cases where the libel was false, malice was to be inferred from the falsehood itself; and when the defendant failed to prove the truth of his charge, the Jury were bound to convict, if the publication was false, and served to hold up the prosecutor to public ridicule and contempt. The time of the Court had been taken up by the defendant yesterday, in an examination of facts wholly immaterial to the issue on trial; the whole of this testimony, he might call it rubbish, which then was thrown into the case, ought to be thrown out of it. The charge made by the defendant against Mr. Keyes was, that he, as Chairman of the Committee, was willing to squander $500 of the public money for the purposes named in the Massachusetts Journal, and recited in the indictment; that he had stated this as Chairman, and of necessary consequence, in the presence of the Committee; any loose conversation, which might have happened among the members of the Committee, relative to the personal merits of the several candidates for State Printers, were of no consequence on this trial. The only essential point was, did the defendant charge Mr. Keyes with corruption, or not, as Chairman of the Committee on Accounts; of this there

was proof from the publication; and the defendant had resorted to the testimony of two of the Committee to prove the truth of his allegation. It seems that early in the June session of 1827, Mr. Keyes, then Chairman of that Committee, asked for and obtained leave of absence; this was on the 8th; on the 16th he returned; every thing relative to State Printing was done in his absence; the proposals were issued, the applications received, and the seals broken in his absence, and he was never present upon this subject, to have heard or said any thing about it, except for about 15 or 20 minutes, at the time he was called on to declare the vote. In the Committee there was no conversation about any preference of $500 to Messrs. True and Greene. Mr. Palfray, who was called upon to prove the truth of the libel, corroborated the fact of the absence of Mr. Keyes, it therefore followed that it was impossible for Mr. Keyes to have committed the offence charged, or in other words, for him, as Chairman of that Committee, to have done it. Mr. Palfray said, that nothing had been said in the Committee, about the printing, before Mr. Keyes went away; there was a loose conversation about it among several of the members: then if Mr. Keyes was guilty at all, it was not previous to his departure; this was confirmed by Mr. Perkins; he could not be guilty in the manner charged, unless it was after his return, which was on the last day of the session; the seals were broken in his absence, and during the whole of his absence Mr. Hoyt was Chairman of that Committee. If there had been no agreement or proposition from Mr. Keyes, previous to his departure, to give a preference of $500 to Messrs. True and Greene; that which happened during his absence could not affect him, (Mr. Keyes,) and there certainly was no proposal made by him, after his return, which had been proved, then it was inevitable that the libel must have been false in all of its material parts: it was impossible that it could be true. But how was the truth of the libel supported by Mr. Palfray? that Mr. Keyes proposed to make a preference to True and Greene of $500? He only stated that, in conversation, one gentleman of the Committee, not Mr. Keyes, had said that Messrs. True and and Greene ought to have a preference of $500 on account of the prompt manner and excellence of their work, to which Mr. Keyes had assented. This was no proposition of Mr. Keyes, but of another gentleman. No part of Mr. Palfray's testimony went to prove the facts charged in the libel, but to negative its truth and show its falsehood.

The second witness called to prove the truth of the libel was Mr. Perkins. Did the defendants position derive any support from his testimony? none at all: he stated the same facts relative to the absence of Mr. K. and the proceedings of the Committee; and it was the opinion of some members of the Committee that they ought not to change True and Greene as printers unless there was a difference of as much as $500; this proposition was made by the witness. (The Judge here observed that this proposition was made by Mr. Robbins.) Mr. Davis observed that Messrs. Perkins and Palfray were the only two witnesses brought to prove the truth of the libel; it was to be argued from this that no others existed to prove it. If the truth of the libel could not be established by these it could not be at all: he should not trouble the Jury with remarks relative to the bills of True and Greene; they had no reference to this cause and were foreign from it. So also was the testimony of Dutton, House, Beals, and Mr. Leland as to the order of 1821; as also that of Mr. Thayer on the same subject in 1822. So also of Hayden in relation to the bills of True and Greene against the State. If he Mr. Hayden had examined every figure until he had got them by heart, still they had nothing to do with the charge against Mr. Keyes in this case. The Jury did not sit there as umpires on the accounts of True and Greene, or to examine upon what grounds the Committee on Accounts had proceeded in allowing them. He thought however this course of trying men behind their backs and procuring exparte testimony was to be reprobated; now after clearing away all the evidence as to the truth of the libel, he would proceed to prove its falsehood. He was surprised at the ardor of the closing counsel who had so roundly stated that the whole cause rested entirely on the testimony of Mr. Keyes. In fact under the excitement of argument, Counsel sometimes would say things that they did not even intend to say—it was the common frailty of man. Mr. Fletcher had also cautioned the Jury to receive the testimony of Mr. Keyes with great caution. Did that Jury believe that Mr. Keyes would for the sake of convicting the defendant commit the soul destroying crime of perjury? Would they for a moment believe that he would wilfully prejudice the truth, or was so prejudiced as to be unable to state the truth? Would he take damnation to his soul? What have you seen in his public or private life which could induce you to believe him willing to be guilty of a falsehood? if there is nothing, you will believe

him. Col. Hoyt the first witness corroborates him in every material fact, and states all the facts—he says that there never was any proposition before the Committee to give True and Greene a preference of $500. What will you do with Col. Hoyt? a gentleman of high standing and a Senator; he testified that no such proposition was made. (The Judge observed, "not in his presence.") He, Col. Hoyt was as chairman of that committee in a situation to know, attended to his duty and if any proposition had been made by Mr. Keyes or any body else he undoubtedly would have known it; he says there was none, and undoubtedly there was none made by Mr. K: this went to shew the falsehood of the charge in the libel. Next Mr. Ellis had stated the same facts as to the proposals for printing and their being opened upon Wednesday, &c. and that Mr. Keyes was not present but returned on Saturday as had already been stated; he had been corroborated in these particulars by Hoyt, Perkins and Palfray. An illiberal and unjust attack had been made upon Mr. Keyes and perhaps in relating the transactions between Mr. Ellis and him, Mr. Ellis had exhibited some embarrassment; but in nothing material to the issue. What should Mr. Keyes do when thus assailed as he was by the paper of Mr. Child? his character abused and traduced? nothing else but what he did, call upon a friend and go with him to Boston and Dedham, and by a consultation endeavour to vindicate himself from the aspersion. No one but a vagabond would omit to do this; all the abuse which had been heaped upon Mr. Keyes in this cause was on account of his having done what every citizen or man of character would do under similar circumstances; what every man ought to do, and which in and of itself was perfectly proper. Had Mr. Ellis sworn to that which was true in the present case? he was fully corroborated by the others in every material circumstance, yet the gentleman who had closed the defence had seen fit to amuse himself at the expence of this witness. Next Mr. Robbins's testimony was attempted to be impeached; on this he should make but few remarks—he was examined as to unimportant facts, and as to a conversation held with sundry other people which conversation was not held under oath. They, the defendant's counsel, had attempted to impeach him on the ground of a difference in his relation of a conversation, immaterial to the present issue from others who had related the same conversation. The Solicitor then referred to the letter from Mr. Robbins to Mr Keyes, which was said by the defendant

to have been garbled, and he read a part of it and commented upon it, reconciling its contents with the testimony of others. He said that throughout he should rely explicitly upon the innocence, of Keyes; it was impossible that either Mr. Robbins or Mr. Keyes had been guilty of a falsehood for which hereafter they must so severely feel when they came to answer at the last tribunal for the deeds done in the body. The character of each was above suspicion. That of Mr. Keyes was above the possibility of a doubt; and if there was a doubt he was corroborated in his testimony by five others; the cavillings which had been put into the case ought not to have the weight of a wafer. He (Mr. K.) had most solemnly declared to the Jury in the presence of the Court and his Maker, that he never made or heard of such a proposition at the period spoken of: as a lawyer and as a man he (Mr. K.) knew of the consequences appertaining to the statement of a falsehood both here and hereafter. If there was no other proof but his own declaration of innocence the Jury could not dare to disbelieve him; the witness had been honest in every period and change of his life, both in his public and private capacity; if the Jury could safely rely on the testimony of a human being they could upon that of such a man as this. There was no state of depravity in the human heart which would lead such men as him to testify to a falsehood, and if he did how deep a portion of damnation would be his; if what he (Mr. K.) had said was not true, it was a most diabolical falsehood. And yet after all the reputation and standing of the witness, the Jury were called upon not to believe him. But it was impossible to believe that he had not stated the truth or had deceived the Jury; with regard to the motives of the libeller, if in his charge he had stated a falsehood, he should rely on the opinion of the Court that malice must be implied; no man had a right to publish a falsehood of another.

The law relative to libel had not been materially altered by the late statute. Judge Parsons in his day had laid down the true principles of the law in the case of the Commonwealth *vs.* Clapp, that the truth might be given in evidence to rebut the presumption of malice, and to shew that there were good motives and justifiable ends in view in the publication of the charge; but to give a falsehood in evidence in justification never; there was no such legal doctrine that one might do evil that good may come. When a man sat down to pen a paragraph it was his bounden

duty to know that it was true, he could not utter a falsehood believing it to be true, it was his risk the truth or falsehood of a matter. If the falsehood of a piece could be given in justification, the public newspapers would become a public curse to the country. True it was that under wholesome regulations the press was one of the greatest blessings to mankind; it was the medium of conveying information upon sacred literature, and of public history, and which could not be supplied in any other possible manner. Still the press was capable of being made the greatest possible curse. It might he used for a destruction of the public morals, without a suitable control over it the evil consequences of a destruction even of the very foundations of government would ensue; he would be the last to interfere with the freedom of the press, but he would contend for it, and the only course to be adopted to protect its freedom, was to control the abuse of that freedom.

Mr. Keyes, when he found his character traduced and about to be consigned to infamy; called upon Mr. Child to make a reparation of the injury done him, this had been a subject of rebuke and abuse for his having done it, Mr. Child refused to retract, and then it was said that Mr. Keyes was excited, and who would not be under such circumstances? Mr. Child intimated that he did not know whether it was true or false; Mr. Keyes demanded an immediate recantation, was there any thing imprudent in this? what was there wrong about it? In other parts of our country instead of a simple request to recant or retract, the offender might have thought himself lucky if he escaped with the loss of his nose or ears or being "blown *sky high.*" The falsehood stated against Mr. Keyes was of almost a diabolical nature, and it was the bounden duty of Mr. Child immediately to correct it as the Editor of the Massachusetts Journal. But it was said that Mr. Keyes should have appealed to another newspaper to correct the falsehood, and thus have added to the vindictive spirit of the accuser; he thought that the subsequent conduct of the defendant in pursuing the charge, and reasserting its truth was an additional proof of malice; but at all events if the publication was false and the defendant avowed that he published it, the evidence of malice was complete and he must suffer. With regard to the propriety of appealing to a legal tribunal the protection of individual character, in preference to that of a newspaper, the Court would fully instruct them. But he for himself fully believed that if the latter was the only shield for individual character, the

rights of parties would be subverted, and the liberty of the press as well as the Government itself would not survive the shock for three hours; he should here submit the case in the fullest confidence that the Government had fully proved that the accusation of Mr. Child was in the words of the indictment a false and malicious libel.

MORTON, J.—*Gentlemen of the Jury,*

We are now approaching the close of the third day which has been occupied with the trial of this cause After the time which has been thus consumed, and the labor and learning which have been expended by Counsel in the preparation and argument of the cause, I may well presume that both the principle involved, and the general facts of the case are well understood by you, and that little therefore remains for me to do. I am sensible from my own feelings that you must be fatigued and exhausted; I shall endeavour therefore in the remarks I have to make to be as brief as I am able consistently with my duty, both for your sake and my own. The charge against the defendant is of having published a libel upon a person of the name of Keyes, who as is stated in the Indictment, was at the time of the publication in the possession of a high and important office, being a Senator of the Commonwealth, and Chairman of the Committee of Accounts; one of the most important Committees to which the business of the Commonwealth is intrusted. He was therefore in an important political situation, and the publication complained of, as contained in the Indictment, was concerning his conduct in that situation. This publication therefore if it be a Libel, is one of that class denominated Political Libels. In the very outset it is proper for me to give you the legal definition of a libel, and I would remark that whatever uncertainty there may be as to the law of libel in other countries, and even in that country from whence we derive our origin, its rules are pretty well settled I believe in this Commonwealth.

A libel is defined to be a "malicious defamation, expressed either in printing or writing, or by signs, pictures, &c. tending, either to blacken the memory of one who is dead with an intent to provoke the living, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, or ridicule." This is the language of the law, Gentleman, and you are to decide whether the defendant, in making the publication complained of, has been guilty of this offence. Libels are an

abuse of the freedom of the press. Whenever therefore there is an attempt to maintain a prosecution for libel, it almost necessarily brings under disscussion the freedom of the press. The freedom of the press is indeed of great value: we all feel it to be among our most precious privileges, and essential to the continuance and well being of the happy Government under which we live. It is carefully guarded both by our national and our state constitutions. By the constitution of the United States, Congress is prohibited from passing any law, which would abridge the freedom of speech or of the press; and that the liberty of the press is essential to the security of freedom in a state, is a part of our Declaration of Rights. These are wise provisions, for since our Government depends mainly for its support upon public opinion, it is of immense consequence that the public mind should be correctly informed and educated by the press: for without virtue, morality, and intelligence in the people we could hardly expect to maintain our present Government.

But while all acknowledge the importance of liberty in the press and freedom of speech, we must be sensible that they are properly exercised only in support of the cause of virtue and morality. This being settled, we may inquire in what does the freedom of the press truly consist? and how may it be preserved? It is the business of the press to enlighten the people; and in our elective Government it ought for this purpose to be free. It is perfectly apparent that the people must be informed of the character and qualifications of candidates for public office; or else it is obvious that the great duties of electors cannot be properly and judiciously discharged. What is then the freedom of the press? In England it is defined to be the right to publish any thing the author pleases without previous permission. This definition is thought to be insufficient. But can it be right to publish with impunity falsehood, calumny, and slanders? Obviously not. What then is it? It may be defined here according to the law of this country to be the right to publish truth of any person with good motives and for justifiable ends. This is the freedom of the press, intended to be preserved and guarded in our constitution. We have no reason to apprehend that the press in this country will ever be controlled by a public licenser. There is no danger of encroachment from that quarter. Much has been said too about the licentiousness of the press, and the alarming increase of criminal publications. It is not perhaps important for us now to inquire

whether the opinions expressed on this subject be correct or not. We are not called upon to decide this question, and as we have received no evidence upon it, it is not competent for us to do so. But probably the great apprehensions, which have been expressed on this subject are not altogether well founded. I believe there has been no increase of crime of any description among us; none of the licentiousness of the press; and that recurring to the past within our own memories, we shall find no reason to believe that any increase of criminal publications has prevailed. Yet if we are at all in danger it is from this quarter; I mean the abuse of this invaluable privilege. If the time should ever come when the conductors of the public press should become generally corrupt, and indulge in the indiscriminate dissemination of falsehood, though the freedom of the press would be preserved in form, its substance would be gone. Our citizens could no longer rely on it for safety, all coufidence in its instructions would be lost, and thus its value and usefulness would be destroyed.— Having indulged in these general remarks, I would now call your attention to the subject of our present inquiry. In this we must not forget that we are sitting here as a judicial tribunal. We cannot make or alter the law. We must take it as we find it. Whatever our opinion may be as to what ought to be the law of libel, we have no right here to speculate upon the subject. It is for the Legislature only to change the law; while it exists as it now does according to our understanding of it, we are bound by it, and that strictly. In prosecutions of this kind it is true that the Jury are judges both of the law and the fact, though in civil suits it is otherwise. But this I apprehend relieves the Court from no part of its burden. It is the duty of the Court still, to instruct and advise. The Jury may indeed exercise their own discretion, but they will undoubtedly pay respect to the opinion of the Court and unless it is obviously wrong abide by it. The Indictment sets forth a charge against the defendant in the usual form of publishing what is technically called a libel. It says that certain charges made by the defendant against a person named John Keyes are false and malicious,—and in short libellous, and the allegations are accompanied by proper innuendoes. Stripped of legal phraseology it alleges that the defendant has been guilty of a libel in publishing the following words. "People of Middlesex! we have gone through these troublesome details to prepare you for the fact which we are now to state. In this Committee of

Accounts, which had advertised for sealed proposals for the contract of printing, the Hon. Chairman Mr. Keyes, proposed before a seal was broken, that the contract should be given to the Boston Statesman, provided their proposals were not more than $500 higher than the lowest of the others. This was no more nor less than to give $500 from the Treasury of Massachusetts to that reprobated Jackson Press."

The first inquiry for you is whether these words are libellous or not. To determine this you will carefully read and undersand them; and you will construe them according to their natural and common use. I have already stated to you what a libel is according to the legal definition. It is more briefly a false and malicious publication of any person, tending to bring him into hatred and contempt.—Have these words such a tendency or not? The Government says that they contain a charge of corruption. The substance of the allegation is that Mr. Keyes proposed that True and Greene should have the contract for the public printing in 1827, unless the proposals of other printers were more than five hundred dollars lower. The Government says this is a charge of corruption. You will look at the words and see whether they have that import. Do they import corruption? If they do it is a libel, and of a gross nature. Mr. Keyes was Chairman of the Committee of Accounts; claims upon the Commonwealth to an immense amount pass through the hands of that Committee. They held therefore a very responsible situation. In 1827 the Legislature adopted an order directing the Committee how to proceed in relation to that contract, for the year ensuing, which order was binding on the Committee. The substance of the order was, that the Committee should advertise for proposals, and should accept the lowest proposals offered, having regard to the responsibility of the printer, and the correct execution of his work.

By virtue of this order, the committee were bound to make the contract with the person who offered to do the work upon the lowest terms, if they were satisfied that he was a responsible person and competent to do the work. The question is then whether Mr. Keyes was willing to give a preference to particular printers in direct violation of this order. If so, it was in fact corrupt. Was this the meaning of the paragraph in question? At the close of the paragraph, is the author's comment, or explanation, intended to give his true meaning. It is, that "this was neither more nor less than a proposal to give $500 out of the Treasury of the Commonwealth to that reprobated

Jackson Press." That is, that Mr. Keyes out of favoritism and partiality for certain individuals, or some other improper motives, was willing to give them $500 out of the Treasury of the Commonwealth. Does this import corruption? It is proper that you should see and examine the publication for yourselves.

I can only say that in the opinion of the court it does not import a charge of improper and unfaithful conduct in Mr. Keyes as chairman of the committee of accounts; and if so, it is clearly libellous.

Considering the nature of the order, there can be no misunderstanding I think, upon this point; its terms are explicit and intelligible.

The Committee could have no right, under it to indulge in favoritism or partiality, but were bound to accept the lowest proposals. And notwithstanding the impression of a witness of great respectability, who testified that he himself had always been opposed to these orders, and believed that they had not been much regarded in practice, there is no evidence that they have ever been disregarded by any of the respectable gentlemen whom we have chosen to legislate for us; and we have no right to presume that they have been guilty of unfair and improper practices.

If the witness entertains such an impression there is no wonder that he has been opposed to the passage of such an order, which was manifestly intended to exclude any political or personal partiality.

I will now call your attention (after you have considered the character of the publication,) to the evidence in the case. It is admitted by Mr. Child the defendant, that he is the author and publisher of these remarks. The government then has done its duty so far, this being all that was incumbent upon it to prove, and its case is thus fully established. It is then for the defendant to make out his defence; and although the evidence upon it has spread over an extensive field, I apprehend the defence will be found to lie in a narrow compass.

The first ground of defence is, that the allegations are true. You are to inquire whether they are true or not. For if they are, it is a good and sufficient defence. You will immediately perceive, that as Mr. Keyes was at the time a candidate for the office of Senator in this county, that if true, this was a matter proper to be communicated.

It was important for the electors of Middlesex to know the fact, and if it were true, it was the duty of the defendant, as a public Editor, and of every good citizen know-

ing the fact, to disclose it; the end would be justifiable, if it were to give correct information of the moral and political qualifications of a candidate for eligibility to public office:—and if the end was to give proper information the motives would be presumed to be good. The main question is then, and perhaps it is the only important point in the defence, whether the allegation was true or false. The allegation was made by the defendant, and the burden of proof therefore rests on him. He is to be considered as innocent of the charge of publishing the libel until he is proved to be guilty: and the Government are bound to make out that fact, upon the same principle that in a civil suit the burden is on the plaintiff. But when that is done, it is for the defendant to make out his defence;—and in general whenever a distinct fact is alleged, as to the truth of that, the burden rests on him who makes the allegation. If the defendant, therefore, fails to establish the truth of his charge, he fails in his defence. With these remarks let us see if the defendant has proved the truth of the charge which has been made. This is for you to examine. It may be proper, in the first place, to look at the character of the witnesses. They are none of them impeached; and almost all of them come before you with evidence of more than ordinary respectability of character, having the testimony of their fellow citizens in their favour, from the important offices which they hold. It does turn out, however, that there is an unusual degree of variance in their testimony; an unusual degree of discordance, I will not say contradiction, because I hope you will be able to reconcile the apparent contrarieties.

By these witnesses the defendant is to establish the truth of his charge. There are several witnesses. I do not propose to go at large into the testimony of all of them, but only reviving your recollections of the most material, to inquire whether their testimony is sufficient to establish the truth of the charge. The defendant's principal witness is Mr. Palfray. I should now state, however, the manner in which I think Mr. Child should be holden to prove the truth of the charge. I think he should be holden to prove the charge substantially, not literally:—you are to look to the general intent, rather than the language used:—I do not think he should be holden to prove the charge in the precise words or language that he has used;—for in that case such a defence could never be made out; since no two men living perhaps, in stating the thing, would ever use precisely the same language.

The language, I think, imputes corruption. I think, therefore, the defendant should be holden to prove substantially unfaithful and corrupt conduct on the part of Mr. Keyes, in endeavouring, at the expense of the Commonwealth, to apply the public monies upon a principle of favoritism.

The charge is corruption, and you are to look and see if the defendant has proved this substantially. His first witness is Mr. Palfray. His testimony is certainly important; whether it amounts to direct and complete proof of the charge, and is all the testimony requisite to support it or not, is for you to judge. There are circumstances calculated to give weight to his testimony. He was a member of the Committee with Mr. Keyes; he was a printer by trade, and of course more particularly conversant with the subject of the contract; and what may be more important is, that he was particularly charged with the business by the Committee. This witness states, that there were several conversations in the course of the session, in which the old printers were spoken of as faithful and prompt in their work; and some members, Mr. Keyes, he thinks among them, said they should give them a preference in the contract, if their terms were equal with others. This does not touch the present charge, since all the printers seem to have been put upon an equal footing, and no right of preference was pretended at the expense of the Commonwealth. There would have been nothing wrong in preferring the Statesman printers to others, whose terms were equal; but I apprehend that giving them the public money, by accepting their proposals at a higher rate than others, would be.

Mr. Palfray then states, and all the witnesses agree in this, that after Mr. Keyes had been on the Committee one week, he got leave of absence for the remainder of the session, and did not return until near the end of the session; but that he took his seat again in the Committee on the last day of the session, and was there but for a short time. If ever he was guilty therefore of the matter charged, it must have been after his return, as no proposals were received or called for until after he had left. Whatever passed during his absence must be immaterial, as the facts charged relate to Mr. Keyes.

When Mr. Keyes came back, it is not disputed that all the business of the Committee was done except the printing contract. Mr. Palfray then testifies, that he stated to Mr. Keyes the business before the Committee; that there were only two proposals before the Committee respecting which

there was any question, namely, True and Greene's and Dutton and Wentworth's; that he had made out a table showing the rates of the two proposals, and that it appeared that Dutton and Wentworth's were the lowest; that Mr. Keyes said, that he was satisfied, if the Committee were. But the Committee wished him, as Chairman, to look at the subject himself. That he then looked at the proposals, and pointed out two or three items in True and Greene's that were lower than the same items in Dutton and Wentworth's; that the witness himself then pointed out to him other items that were higher and more important; that Mr. Robbins then said, that he should not be willing to make a change, unless there would be a difference to the Commonwealth of more than $500; to which Mr. Keyes said, "Nor should I." This is the whole testimony of Mr. Palfray on this point.

Gardiner. Your Honour will recollect that Mr. Palfray stated, that Mr. Keyes made remarks at the same time upon the meanness of the Commonwealth in this underbidding policy.

Judge Morton. I meant to call the attention of the Jury only to the more important points. However, gentlemen, as the Counsel prompts me, Mr. Palfray did say that there was some discussion in which Mr. Keyes took part, and that he thought the utility of this system somewhat doubtful.

Does this testimony then of Mr. Palfray's amount to the substance of the charge, made by Mr. Child? Is it substantially correct and true? The publication says that before the seals of the proposals were broken, the preference of True and Greene, to the amount of 500 dollars was proposed. Mr. Palfray does not testify that the proposal was before the seals were broken. You will consider whether it was of more importance that the preference should have been suggested before than after the breaking of the seals. I cannot discover any difference myself. If the conduct of Keyes was corrupt in proposing a preference, it is immaterial whether it was before or after the seals were broken. The evidence should amount generally, I think, to proof of a corrupt and improper preference.

You will then consider how important it is that Keyes should have made the proposition. The statement of the defendant is, that he proposed the $500 preference. The evidence is, however, from Mr. Palfray, that one of the Committee, Mr. Robbins proposed not to change the printers unless it would make a saving of more than $500; and

that Mr. Keyes assented to this. Does this amount to the substance of the charge? If it does, the form of expression is not material. If you think it does not, the defendant has failed in his defence. If you think it does amount to the substance of the charge, and you believe the witness, the defence is made out; but if you do not believe the witness, or if his testimony does not, if true, in your minds come up to the substance of the charge; then the defendant has not made out his defence. In the construction of this conversation, you will consider whether Mr. Robbins might not have meant that he would not, for his part, if it were his own case, take the contract away from the old printers, unless it would, make a difference, meaning to himself, of more than $500 to which Mr. Keyes assented, Saying, "nor would I;" or whether he meant to speak as a member of the Committee and that it should be treated as a proposition before them, and with reference to the contract of the Commonwealth. Mr. Keyes, at any rate, cannot be supposed to have assented to anything stronger than Mr. Robbins proposed. If you are not satisfied that this evidence comes up to the charge, the defendant has failed in making out his case; but if you believe this witness, and that this evidence is true, and that it does come up to the substance of the charge, you will say that it is in itself a defence; and you will see how far it is impaired or supported by the other testimony in the case. You will compare the evidence with this view. If the defence rests solely on Mr. Palfray's position, the first inquiry is how is he supported by the other witnesses, and the circumstances in the case? Defendant's Counsel contend that he is supported by the testimony of Perkins and Hoyt. Does Perkins then corroborate Palfray? All the witnesses agree in certain general statements, as for instance, Mr. Keyes absence and return; though they differ in some particulars which are very important. The question is whether Mr. Palfray is supported in his position that Mr. Keyes assented to Mr. Robbins's proposition for a preference. Mr. Perkins was also one of the Committee of accounts in 1827; he said that at some time Mr. Robbins did state that in his opinion the contract ought not to be taken from the old printers, unless, it would make a difference of $500; but he does not recollect that Keyes assented, or that he was present at the time. He thinks the proposition was made when Mr. Keyes was not present.

Gardiner. The witness said there were several such conversations.

Judge Morton. He did not recollect any such when Keyes was present; once he thought the proposition was made when Hoyt was in the Chair. This testimony therefore is merely negative. So far as it goes to Mr. Keyes's assent, Mr. Perkins's testimony, taken by itself, leaves Mr. Palfray without any additional support, or rather has a slight tendency against it. Then we come to Col. Hoyt. He says he never heard such a proposition assented to by Mr. Keyes; or he never heard the proposition; that all were of opinion that the printing should not be taken from True and Greene, unless their terms were higher; nothing was said, in his hearing, about a preference to the amount of $500. Col. Hoyt was not present at the same time with Mr. Keyes. His testimony, therefore does not support Mr. Palfray's directly. If it supports it in any way, it must be indirectly. But it is contended that the testimony of Perkins and Hoyt, taken together, do corroborate Palfray's. The inference of defendant's counsel from Mr. Hoyt's testimony is that as the proposition was not made before Col. Hoyt, it must have been made before Mr. Keyes. Perhaps this inference is not a necessary one. It might have been made when neither was present. There is then, I think, no evidence in support of the charge, except from Mr. Palfray. You will see how far he is entitled to credit. You will consider the situation in which he stands. He communicated the information on which the article was founded, indirectly through Sprague. His feelings, therefore, may be somewhat interested to support it, and naturally operating in favour of his friend, the defendant; especially as he himself was the innocent cause of the publication. He has also at the defendant's request appeared before the public, and made his own statement in the newspapers. You are not to suppose that any witness has corruptly and intentionally stated what he knows to be false; but still it is your duty, to take into consideration and make allowance for the situation of parties. And this witness's testimony in support of his own statement, is also in support of Mr. Child.

Another circumstance more favorable to the accuracy of his recollections, is that he was a printer himself, and had his attention called to the subject of the State Printing. Probably you will be satisfied that some proposition was made at sometime by somebody, which induced a belief in the mind of this witness that a preference would be given to True and Greene to the amount of $500. It is impor-

tant therefore, for you to ascertain the time when this was made. It is not pretended that this was before Mr. Keyes's leave of absence. It is almost certain that it must have been after that. Unless, therefore, it was in the last half hour of the session, it would seem to be physically impossible that it should have been made, or assented to by Mr. Keyes. One circumstance to be attended to in this connexion is the time when the comparison of the proposals and the bills was made. Mr. Palfray testifies that this was after Mr. Keyes's return, and at the same time when the proposition for a preference was made. He says that Mr. Robbins went to the Secretary's office for the bills. You will look at the testimony of the other witnesses then, as to the time when the bills were sent for. Mr. Robbins says that he went and got the bills, and that the examination of them was had before Mr. Keyes's return. Mr. Ellis says that he saw Robbins go for the bills, and that it was before Keyes returned. The difference of these witnesses and Mr. Palfray is only as to the point of time. But we have Col. Hoyt's testimony also. He says that while he presided, the bills were brought up, and that a comparison of them was had.

Gardiner. I understood Col. Hoyt to say, upon being asked, that the bills were brought up at the time he was in the Chair for the purpose of settling the printing bills of the past year, and not for the purpose of comparing them with the new proposals.

Judge Morton. I mean to state it so. He said they were also compared with the proposals. Unless, therefore, Col. Hoyt has mistated the fact, the time when the bills were sent for, was while Mr. Keyes was absent. So that Mr. Palfray may be mistaken as to the time when these bills were brought from the Secretary's office, and of course as to the time when the conversation was had about a preference, to which he supposes Mr. Keyes assented. This weakens Mr. Palfray's testimony. Another circumstance is his printed statement. In that he says that there were three members of the Committee in favour of the preference, and he names Messrs. Keyes and Ellis as two of them. He says now that Robbins proposed and Keyes assented, but he does not say that any third member agreed with them. If he is mistaken in one point of his testimony what assurance can you have that he is correct in another.

You will then look at the witness on the part of the Government. The first is the prosecutor Mr. Keyes. He testifies expressly that he never made or heard of such

a proposition, or assented to the principle in any way. Perhaps it would be too great a stretch of charity in the Jury to suppose that he could be mistaken in this point. If not, has he then wilfully stated what is untrue? It is true that he has a deep interest at stake. But he is a competent witness for the Government. He is not legally interested in the event of the prosecution so as to disqualify him from testifying, though he may be as much interested in fact as the defendant, who cannot be a witness. The consequences of your verdict may be as important or more so to Mr. Keyes than to the defendant. You will consider whether the witness thus particularly circumstanced is likely to be guilty of wilful perjury, and give to his testimony all the weight that it deserves. The Counsel for the defendant treated him with some severity if not harshness. It was said that his conduct in Mr. Child's office when he went to demand retraction was improper. You will consider on the other hand what had been the conduct of Mr. Child. You will consider whether there was any guilty purpose on the part of Mr. Keyes in demanding an investigation or explanation. If he had been falsely accused you will perhaps consider that he would naturally be irritated at the charge, and not be so cool as one who was disinterested.

He charged Mr. Child with having published a falsehood concerning him; and he says, he would have made explanation, but that Mr. Child said, that if he charged him with falsehood he would hold no further conversation with him. He then required him to retract, perhaps with some violence of manner, but you will consider whether there was or was not some apology for it. Was there in fact any guilt or impropriety in his requiring a retraction, or in the manner of it? When the defendant said, that if he meant to intimate that he had been guilty of an intentional falsehood, he would hold no further intercourse with him, the prosecutor then made an explanation that he did not mean to charge the Editor with intentional falsehood, but that the article itself was false.

Some remarks have also been made upon his applying to other members of the Committee for their statements. This publication was made a short time before the Middlesex election where he was a candidate. If true it was a communication proper to be made at that time, and it could not but have a distructive influence upon the character of the prosecutor. You will consider whether it was unnatural or improper on the part of Mr. Keyes, to take

immediate measures to get evidence from the other members of the Committee. He certainly had a right to repel the charge. To whom then should he apply for assistance? To whom, but to those who were best able to give the information? If he had gone to others to bear testimony of his character it would have been said that he avoided the real inquiry.

If he was to get evidence, it was proper that he should have the statement of several of the Committee in writing. There is no evidence of any attempt, on his part, to get their statements in an improper manner. You will consider whither there is any thing in all this tending to impair his testimony. It was said also, that there were some unfair proceedings on his part about the hand-bills. This is also for your consideration. It is said, that the statements in this hand-bill were not untrue explanations of the facts; but that there was an attempt to mislead the public mind, in publishing a part only of Mr. Palfray's letter as if it were the whole. But there is no evidence that Mr. Keyes had any hand in this, or even saw it before it was published;—and Mr. Shattuck testifies that Mr. Keyes had nothing to do with it. With this circumstance, you will consider the weight of this witnesess' testimony. If he is believed, then the allegation in the libel is not true.

The next witness, on the part of the Government, Mr. Ellis, says there was no such proposition made in the Committee: The whole may depend on the time when it was made. The defendant's Counsel contend, that this witness is not entitled to credit. If so, his testimony is to be thrown out of the case. In some respects he stands in the same situation as Mr. Palfray. He had the same object in view, and may have been governed by it to the same extent. He also made a written statement to the public; and his feelings are doubtless interested to support it. This is a proper subject for your consideration, as also the manner in which he made the statement which was in the presence of Keyes.

We have also the testimony of Mr. Robbins, that he never did make such a proposition as is testified to by Mr. Palfray. Palfray and Perkins say, that he did propose to to employ True and Greene in preference, to the extent of $500. You will consider whether there may not have been same misapprehension of his meaning. You will consider Mr. Robbins' explanation, and the manner in which it is made. He says, that he meant to confine him-

self to the discretion given by the order; that at first he was not satisfied of the responsibility of Dutton and Wentworth, and took pains to ascertain it; and that when he had ascertained that they were sufficiently responsible, he was satisfied that they ought to have the preference; though before that, he was in favour of giving a preference to True and Greene for some indefinite sum, because they had done their work to the satisfaction of the Government. You will consider whether this proposition of preference is not the same as was meant in Messrs. Palfray's and Ellis' statements.

This witness is also committed by a former written statement. Another objection to this witness is more important. Three witnesses, all neighbours and friends of Mr. Robbins, say that he made statements to them at different times, differing from his written statement, and from what he now says on the stand. They say that, immediately after the publication appeared, he stated to them, in effect, *that it was true*, and that Mr. Keyes was in favour of a preference to True and Greene, to the amount of $500. These conversations was said to have been on Friday, the 4th of April. On Saturday, the 5th, he prepared the written statement which he carried to Danforth, one of the witnesses, to be published in the Plymouth Memorial. On the 3d of April he wrote a letter to Keyes, saying the charge was wholly false: yet the next day, it is said, that his conversations with the witnesses were at variance with his written statements. Certainly if a witness is so inconsistent out of Court, he may not be so readily believed in Court. But here was a previous written statement.

Gardiner. I believe, may it please your Honour, that Mr. Thomas testified, that the conversation with him was on Thursday, the 3d of April.

Judge Morton. Admitting that it was, his letter to Mr. Keyes was written on the same day.

Gardiner. There is no such letter, may it please your Honour, in the case.

Judge Morton. If the letter is not in the case, the handbill was put in by the defendant, containing an extract from it; and it bears date on the 3d of April. Now, would a man of common intelligence and honesty, having made a written statement for the public on one day, go on the same day, or the next, to his friends, and make a voluntary contradiction of it? but, may there not be some mistake? may they not have misunderstood him?

Gardiner. I am sorry to interrupt your Honour again;

but I believe the published statements of Mr. Robbins do not explicitly negative the statements, made to the witnesses, otherwise than by implication.

Judge Morton. The extract, published in the hand-bill, speaks of the publication, in the Journal, as a gross and unfounded calumny; Mr. Robbins may have meant to explain what took place in the Committee, in the same way as he does now upon the stand. If he did not, he is destitute of common honesty and common sense

If upon reviewing and weighing the testimony, you are satisfied that the charge made by the defendant is true, he has made out his defence. But if he has failed in your opinion to establish the truth of the charge, then the law implies malice in the publication. The jury are the Judges of the intent. There can be no crime without a criminal intent, and this is the principal ingredient in the offence of a libel. But the law lays down certain general rules, which are founded in the wisdom and experience of centuries. One of these is that a criminal intent is to be inferred from certain acts. Thus if stolen property be found in possession of a person, who is not the owner, the presumption of the law is that it was taken by him with felonious intent. So with a libel; if the publication be false, the law presumes malice. There may be cases indeed in which the falsehood of the publication may not be inconsistent with innocence of all malicious intent, or where the circumstances attending the fact rebut all idea of malice. Thus if the defendant had stated that he had received certain information, and had given his authority, and had stated the information correctly as he had received it to the people of Middlesex; the Jury might in that case be justified in an acquittal. At least it would be different from common cases. But in that case it would have been the duty of the defendant in no particular to exceed the statement communicated to him, and should see whether the fact were so. But if he does not state any authority for the information, and does not state it as information received from another, but simply as a fact, he assumes the responsibility of its truth, and adopts the charge as his own. The language which the defendant adopts, is "People of Middlesex, we have gone through these troublesome details in order to prepare you for the fact which we are now to state;" and he then stated it without qualification intended apparently to give to it the weight of his own name and that of his paper. Upon the question of intent, you will look also into his other pub-

lications, both previous and subsequent, and see whether you find any withdrawal of the charge or whether you find a repetition of it, and an intention to persevere in the charge, and by creating a belief of its truth to deprive the public of the services of a useful public officer. You will consider whether it was not his duty before making such a charge to have inquired into its truth. Can an editor of a public paper be justified in publishing such information, before ascertaining that it is true. If not you will consider whether his motive in making the publication could have been good, and his end good. You will consider whether he would or would not in that case have naturally first sought confirmation from other sources. If actuated by proper motives he would undoubtedly seek diligently for truth. The question was regarding the fitness of a candidate for office. The information was communicated to the defendant in the summer of 1827, and the charge against the candidate was not published until near the spring election of 1828. He had then months to inquire. Did he apply for information to the members of the Committee? He could not know whether the charge were true or not until he inquired. You will consider whether he ought not to have done so before he denounced a member of the Committee for malpractices.

I leave the case with you Gentlemen, and your object must be to apply the law to the evidence before you. If the defendant in your judgment is guilty you are to say so; if he is not guilty you are to say so and no more.

The Jury retired at about 9 *o'clock in the Evening, and on the following Morning returned a Verdict of—GUILTY.*

APPENDIX.

[The following Documents are in the Case.]

Letter of the HON. JOSIAH ROBBINS, *to the Editor of the Plymouth Memorial, copied into the Massachusetts Journal, on*

TUESDAY, APRIL 8, 1828.

From the Plymouth Memorial.

MR. EDITOR: I noticed recently, in the Mass. Journal of last Saturday, an article, in which the Hon. Mr. Keyes is most shamefully and wantonly attacked and abused by that editor as being anti-administration in his sentiments. This charge, as far as I have had opportunity to judge, is altogether unfounded; whenever he conversed on this subject in my presence the last year, he expressed himself decidedly in favor of the present administration, and the re-election of John Q. Adams. To prove it not so, however, the Journal Editor attempts to make a statement relative to a transaction which took place with the Committee of Accounts the past year, in contracting with some one to do the State printing. It is this part of the article, to which I wish more particularly to give my attention, for the purpose of correcting, if possible, any unfavourable impressions which may have been received from it.

As a member of that Committee, then sir, I feel it my duty to state a few particulars relative to that transaction, as far as my recollection, together with some memoranda will aid me in so doing. I would here observe, that but eight or ten days of the June session had elapsed when Mr. Keyes found it necessary to obtain leave of absence, after which the Hon. Col. Hoyt, was appointed to serve in his stead. I do not recollect whether the advertisement was inserted in the papers by Mr. Keyes or Col Hoyt. My impression is, it was done by the latter gentleman, calling on the printers to bring in their proposals for State Printing. *Sealed proposals* were received from quite a number, none, however, from Messrs True and Greene, as stated in the Journal. Mr. Greene personally came before the Committee, *and stated* that we might consider his contract of the preceding year as proposals for the ensuing.

I distinctly recollect that a considerable conversation took place in regard to State Printing. I know very well that we were unanimous in the opinion, that in case True and Greene's offer was as low as any other, we ought to give it to them, because

they had executed their work faithfully and promptly, to the perfect satisfaction of every department of the Government. Had this been the case, they would have had the printing again this year notwithstanding they were opposed to *every member of the Committee on the great national question.* The observation of one gentleman on the Committee, perhaps, it will not be amiss here to state, as his occupation gave him an opportunity of judging of the worth of printing better than any others of the Committee. After carefully examining for some time the proposals of True and Greene he observed that he had but very little doubt but what True and Greene would have the contract, as he did not think it possible for any one to do it even at the price they had offered. Other proposals were opened, and the subject carefully and critically investigated.

The Committee then came to the conclusion that Messrs. Dutton and Wentworth's offer was the lowest. Mr. Keyes still being absent, Col. Hoyt declined concluding the contract, as Mr. Keyes was expected in before the close of the Session, and I think on that very day he (Mr. Keyes) arrived. He then inquired of me what had been done in regard the State Printing. I stated to him how far we had proceeded in the business, and what were our opinions; he then examined the different proposals and his conclusions must have been the same; as he, instead of leaving "the chair and the room—fairly bolted, and did not vote at all," sat down and wrote on Dutton and Wentworth's proposals "*accepted,*" and signed his name as Chairman of the Committee.

As a friend of the Administration, I will offer a few words of advice to the Editor of the Journal, which is, that he henceforth desist from denouncing all those who have been and still are Republicans, as enemies to the Administration, because they have not seen fit to follow him in all the crooked paths which he has marked out. These observations are not made with any ill will towards that Editor, or the cause which he intends to promote, but with a full conviction that the course he pursues, similar to the above, does more hurt than good. *Plymouth April, 5.*

TO JOSIAH ROBBINS, ESQ. OF PLYMOUTH.

Sir: You, like Mr. Ellis, have thought proper to come forth in defence of your late colleague, on the Committee of Accounts, Mr. Keyes, and I beg leave to propose to you the following questions:

1. Did you not, out of the Committee, talk over the subject of the State Printing with Messrs. Keyes and Ellis, and agree with them to give the Statesman Printers *five hundred dollars preference over all others?*

2. Was it not agreed in these caucusing conversations, that *you* should make the proposition in the Committee?

3. Did you not make it?

4. Did not Messrs. *Keyes* and *Ellis* assent to it, and thus far decide the question in favor of the Statesman ?

5. Did you not finally go over to the minority, consisting of Messrs. Palfray and Perkins, because it was demonstrated by the former, that the loss to the Commonwealth, from accepting the Statesman's proposals, would be not $500, (for that you had in violation of the law already agreed to,) but more than $1000 ?

It is not important to us which way you answer these questions, but it is, as we apprehend, of considerable importance to yourself. With your motives, or those of Messrs. Keyes and Ellis, neither we nor the public have, at present, any thing to do. It is the facts that we want, and those you may rely upon it, must and will come. It is not Mr. Ellis, nor you, partakers both in Mr. Keyes' offence, that can exculpate him. We regret, sir, that you did not make your appearance at such time that we could have answered you before the good people of Plymouth county went to the polls. *Ed. Journal.*

[*Handbill issued at Lowell, by the opponents of Mr. Keyes.*]

TO THE ELECTORS OF MIDDLESEX:

SATURDAY, APRIL 5, 1828.

THE Hon. William Ellis, who has been dropped from the Senatorial list in Norfolk, on account of his supposed hostility to the Administration, having publicly asserted that the whole statement in the Massachusetts Journal of last Saturday, in relation to the conduct of Mr. Keyes as Chairman of the Committee on Accounts, is without a shadow of foundation in truth ; and Mr. Keyes having asserted also that the charges and insinuations in said Journal are wholly groundless, the following extract from a letter from another gentlemen of the Committee, published in the Massachusetts Journal of April 5th, is respectfully submitted to your consideration :

" I submit the following statement of the circumstances as near as I can at this time recollect them—not having charged my memory with the particular transactions on this occasion, it is possible they may prove in some respects inaccurate. I hope sincerely that I shall do no injustice to any individual, and those who know me, I am confident will acquit me of having " set down aught in malice."

The subject of the proposals and contract for the State Printing was talked about a good deal in the Committee of Accounts, from time to time during the session, and a decision on the various proposals was postponed until nearly the close of the business before the Committee in the June Session of 1827. In the conversations upon this subject, Messrs. Keyes and Ellis spoke frequently of the great merits of True and Greene, as Printers, and of the great satisfaction which they had given by their manner of

executing their contract, and I thought that a strong disposition was manifested on the part of those gentlemen, and one other, to give the contract to those persons. Towards the last of the session, one of the three gentlemen expressed himself against making a change of printers, unless the difference, or saving to the Commonwealth, by such change, would exceed five hundred dollars. To this suggestion, Messrs. Keyes, Ellis, and one other gentleman, according to the best of my recollection, gave their assent, and as they formed a majority of the Committee, it was considered by the minority as settled that a preference to the above amount would be given to the printers above named; and the next object of the minority was to show that the proposals of True and Greene were more than five hundred dollars higher than the lowest of the others.

On examining and comparing the proposals, Mr. Keyes called the attention of the gentlemen to several items of True and Greene's which he observed were lower than the corresponding ones, in any other proposals, particularly those of Dutton and Wentworth; and although he observed that there were some items of the latter which were lower, yet upon the whole he doubted whether the average of True and Greene's was not as low as Dutton and Wentworth's and appeared to favour the idea that the contract should be given to True and Greene. Another member of the Committee then suggested that some of the heavier and most material items, were higher in True and Greene's proposals than in Dutton and Wentworth's, by *precisely one half;* and the bills of True and Greene for the last year were procured, by which it appeared, that the expense of the printing, on the terms of True and Greene, would be not less than 1000 dollars more than it would according to the terms of Dutton and Wentworth. This fact being shown, there still appeared to be a strong reluctance on the part of Messrs. Keyes and Ellis to reject the proposals of True and Greene. The third gentleman, on seeing the result of the comparison, no longer hesitated, and left Messrs. Keyes and Ellis in the minority.

During all the conversations upon this subject, much was said of the merits of True and Greene, as printers, and a variety of objections started to Dutton and Wentworth; such as that they were unknown and perhaps irresponsible; and much pains were taken by a gentleman of the Committee to have the testimony of the most respectable booksellers of the city, in favour of those printers, presented to the Committee which left no doubt of their respectability. When the Committee, came to vote, and *three* had voted in favour of Dutton and Wentworth, Mr. Keyes observed that a majority had voted, and that it was not necessary to proceed farther. Mr. Ellis did not vote, and Mr. Keyes himself expressed no opinion.

Yours, &c.

W. PALFRAY, Jr.

Salem, April, 2, 1828."

As the election of Senator is just at hand, and different lists of candidates are before the people, I wish to say one word upon the subject. I think we should not act upon this question without reference to the National Administration. In the present political state of our county, I consider the cause of the Administration to be identified with the cause of the Constitution,—of civil liberty, of the "American system;" and the Presidential question to be one of such vast magnitude, that all others of a local, or party, and, at the same time, political character, should be merged in it. It is thought that our legislature will be called upon the ensuing year to elect two persons to represent this Commonwealth in the Senate of the United States; and we know they must decide on the mode of choosing electors of President. The importance then, that the legislature be composed of men firmly attached to the Administration, is very apparent.

But some of the candidates for Senators in Middlesex are suspected of an indifference towards it, perhaps of a real partiality to the cause of Jackson; aud if this suspicion is well founded, I think we should not hesitate to discard them at once. It seems that two of the suspected candidates, Messrs. Keyes and Varnum, have been found in bad company, having been on the same list with Mr. L. M. Parker, who for some time has been a well known Jacksonite; and it is said that the first caucus in Concord, which put the names of these gentlemen together, had on its nominating Committee a majority of Jacksonites. Their claims too are advocated by the same paper, that supported Mr. Parker, which is undoubtedly a Jackson paper, though it may hold out administration colours. This paper is the Bunker-Hill Aurora. These gentlemen now, it is said, make ardent professions of friendship for the Administration, but such professions at this time of day can have no other effect than to increase suspicion; let them be judged according to the deeds they have done, and not what they now say.

I have heard of sins of omission as well as of commission, and I think these candidates are suspected not only for what they *have* done, but also for what they have *not* done. It is believed that they have not often spoken in favour of the Administration in public or private, nor appeared to take much interest in its affairs. I understand that when the subject of the next presidency has been introduced in the presence of Mr. Varnum, he has generally shown a disposition to avoid its discussion, or has been very sparing of his commendation upon Mr. Adams; but has frequently spoken in the highest terms of Gen. Jackson, not only as a military man, but as a statesman; and has even said in substance, that he thought him well qualified for the presidency.—That Mr. Varnum voted against the general ticket system in 1824, the object of which was to give the undivided vote of Massachusetts to Mr. Adams, is not I believe denied. That he voted with Mr. Keyes for John Mills, a known Jacksonite, to be U. S. Senator, I have not heard contradicted. I believe it is admit-

ted also, that he voted to postpone the bill for choosing electors of President till the next session of the legislature; and, in fine, that he and Mr. Keyes have been *on the fence* together during the past year. If what has been published of Mr. Keyes, in relation to a proposed contract with the Jackson editors of the Boston Statesman, is true, and there seems to be conclusive evidence of it, I think this, taken in connexion with his other acts, cannot but convince every unprejudiced mind that he is no friend of the Administration.

In view of these facts, it seems to me, that the people of Middlesex must be strangely infatuated to elect such candidates to the Senate of this state. There was not so much reason to suspect Mr. Mills and Mr. Parker, before they came out full for Jackson, as there now is to suspect Messrs. Keyes and Varnum; and should Jackson's prospects brighten, they too may follow their old friends. Let us beware of them. One enemy in the camp is worse than two out of it.

AN ADMINISTRATIONIST.

Handbill issued at Concord by Mr. Keyes and his friends.

MIDDLESEX ELECTORS.

In order to satisfy the public of the perfect falsity of the charges made against the Hon. Mr. Keyes, by the Massachusetts Journal and Handbills, which are inundating our County, respecting his conduct as Chairman of the Committee of Accounts, and also of the charges of his want of friendship for the National Administration, several electors, have caused the letter of the Hon. Wm. Ellis, and Extracts from the letters of Messrs. Robbins and Palfray, who were on the same Committee with Mr. Keyes to be published:

TO ALL WHOM IT MAY CONCERN.

I hereby certify that I have seen with astonishment a statement in the Massachusetts Journal of last Saturday, in relation to the conduct of Mr. Keyes, while acting as chairman of the committee on accounts the last year, in making a contract for the State Printing. Mr. Keyes had leave of absence, and Col. Hoyt was placed on the committee in his room, and advertised for proposals, which were all received in Mr. Keyes absence, and were examined by the committee before his return. Mr. Keyes returned on the last day of the session, and was informed that the committee had not concluded which proposal to accept as the lowest and best. Mr. Keyes requested Col. Hoyt to act through the remaining business and excuse him—Col. Hoyt declined. Mr. Keyes then, with the rest of the Committee, proceeded to examine the proposals, and put the question to the Committee which they would accept. The Committee unanimously accepted of Messrs. Dutton and Wentworth's proposals, as being the lowest.

Mr. Keyes then wrote on the same—"This proposal is accepted by the committee on accounts as being the lowest," and signed it as Chairman. Having been one of said Committee, and present the whole time with Mr. Keyes, while the subject of State Printing was before the Committee, I feel it my duty to say that the whole statement in said Journal in relation to the conduct of Mr. Keyes, as Chairman of the Committee on accounts, is without a shadow of foundation in truth.

WILLIAM ELLIS.

Dedham, April 2, 1828.

Extracts from a letter from Mr. Robbins, of Plymouth.

"In passing, let me here observe, that the charge of being unfriendly to the Administration of the General Government, and to the election of Mr. Adams, is altogether unfounded."

"One conclusion I distinctly recollect the committee came to, and that was this, in case Messrs. True and Greene's proposals were as low as any other, we ought in justice to give it to them, as we then should not be giving up a certainty for an uncertainty, inasmuch as that they had executed their work faithfully, promptly and to the satisfaction of every department of the Government. This was substantiated to the perfect satisfaction of the Committee, and I state here that we were unanimous in this opinion. *I do utterly deny that any one of the Committee was in favour of giving them any more than another*, unless we were satisfied the person whose offer was the lowest, was not capable of fulfilling his contract in every particular; and in this we were agreed. In conclusion, Sir, I must add that the article alluded to in the journal is one of the *most gross and unfounded* of any thing I ever met with. I am happy to have an opportunity of giving this statement; and had I seen this publication before, I should certainly considered it my duty to have made a public statement of facts for justice sake, and for the respect I have for the individual so basely and wantonly attacked. You are at liberty to make such use of it, or any part thereof as you see fit.

With sentiments, &c.

JOSIAH ROBBINS.

Plymouth, April 3, 1828.

SALEM, APRIL 2, 1828.

D. L. Child, Esq. Editor of Massachusetts Journal.

DEAR SIR:—In reply to yours of the 1st. inst. requesting of me a statement of facts relative to the proceeding of the Committee on Accounts last Summer, in regard to the contract for the State Printing, which you appear anxious to obtain, in order to correct or substantiate the statement made in the Journal of the 29th ult.—I have first to observe, that it was with exceeding re-

gret I perused your publication on this subject, as it contained some material errors, and I thought did much injustice to Mr. Keyes. But when I heard, to my surprise, that the statement was founded in part on some casual remarks made by me to a friend, at the time the transactions took place, I regret it still more, as I never mentioned any of the proceedings of the Committee with a view to bring the subject into public discussion, or to impeach the conduct or motives of any gentleman of the Committee. And it is due to Mr. Keyes, the Chairman, *to state explicitly, that during my intercourse with him on that Committee, I had reason to respect him for his gentlemanly deportment, and his usually correct, intelligent and scrupulous discharge of his official duty.*

W. PALFRAY, Jr.

ELECTORS OF MIDDLESEX!

The enemies of one of your own Citizens, who has long justly enjoyed your confidence, have recently been engaged to defame, to slander and abuse in a manner the most wanton and extraordinary. You have seen the testimony of Messrs. Ellis and Robbins, both on the same Committee with Mr. Keyes. You have seen their most solemn and unqualified assertions that the statements made against him are false and without a shadow of truth. We ask, then, will you remain quiet while his enemies are using every effort to propagate falsehoods and abuse? We trust you will not. Your duty as good citizens requires that you stand firm in the support of one who has served you with fidelity and ability; that you use all proper measures to vindicate the cause of one who has been so maliciously and wantonly abused.

Let us testify by our votes this day that we hold in utter contempt the vile course which has been resorted to, to injure the fair character of one of our respected citizens; we shall thus promote the cause of good order—the cause of justice, and we trust be successful.

"SEVERAL ELECTORS."

From the Massachusetts Journal of April 5.

MR. KEYES, AND THE STATE PRINTING.

We have received a letter from Mr. *Palfray* of Salem, one of the Committee on Accounts of the late Legislature of Massachusetts, which we feel obliged, in justice to all parties, to give entire, although it suggests *motives*, and mitigating circumstances in regard to Mr. Keyes, which we think, might with perfect propriety, have been left to the intelligence and reflection of the gentleman's constituents.

It is proper that we state the manner in which we became possessed of the facts, which we laid before the public, who will now

judge, whether they are substantially supported, or have "not a shadow of foundation in fact," as Mr. *Ellis* has asserted.

During the discussions on this subject of State Printing, in the Committee of Accounts, we once or twice conversed with members of the Committee, and knew that there was unusual difficulty and delay, in coming to a decision on the various proposals put in. In fact, the choice of a State Printer was not made until near the close of the June session, instead of being made according to custom, at the commencement of the same.—This difficulty, and delay, were then understood to have been caused by a manifest and strong disinclination in some members of the Committee, to admit a fair competition between the printers of the Statesman, and other proposers. Subsequently we had a conversation with a gentleman, who writes a letter below, headed "another witness," in which we were informed of the facts, which we stated in the Journal of the 29th ult.

[Here follows Mr. Palfray's entire letter.]

Such is the testimony which we have at present to offer in support of the allegations against Mr. Keyes. We think that the proof goes somewhat beyond the charges, for it appears, that it was not merely "*proposed*," but actually *decided*, that the Statesman should have a preference to the amount of $500, which was, we repeat it, an attempt to give $500 out of the *Treasury of Massachusetts*, to the Statesman printers, a liberal reward for their continual and severe attacks upon Mr. *Webster, and other good men, Senator, Governor, President of the United States, and other distinguished officers and sons of Massachusetts.* Mr. *Keyes* would have given *a large reward to those printers*, for their efforts, common with his own, to elevate Mr. John Mills to the Senatorship, to the exclusion of Mr. Webster. *In fact, if Mr. Keyes's influence had prevailed*, those printers would have *received a reward of at least* $1000 *out of the public chest of Massachusetts*, for opposing the *interests and wounding the honour of Massachusetts.* One word more for ourselves. We consider the proceedings of a Committee of the Legislature to be public, as much as those of the two Houses, and that any person has a right to publish them.

For the Massachusetts Journal.

ANOTHER WITNESS.

Dear Sir: I observe in your account of the conduct of Mr. Keyes, in relation to the State Printing, several errors, although the substance is correct. If you derived your facts, as I presume you did, from our conversation last Summer, the length of time since the communication accounts for the inaccuracies in your statement. I observed to you at the time, that Mr. Palfray would not be willing to have the facts brought before the public, although we agreed that as there could be no secrets in a Legislative Committee, the public were entitled to know the facts. Still

from regard to Mr. Palfray's feelings, I had, myself, abstained from publishing them, and had only mentioned them to you and a few other friends. I will now state to you the manner in which I became possessed of the facts from Mr. Palfray. My acquaintance with him commenced before we met in the Legislature; I knew his great integrity and private worth. Soon after he was appointed on the Committee of Accounts, I told him there had been complaints on the subject of the appointment of State printer, and I wished him to look particularly to this subject. Being a printer, I knew he would understand the business, and that his opinions would, of course, have great weight. Being in the habit of almost daily intercouse, I inquired of him from time to time how the business went on; he told me at different times, that a majority of the Committee were so decidedly in favor of the Statesman, that there appeared no prospect of any change. At one of our conversations, he said the Committee had gone so far as to state, that unless the proposals of other individuals were less than those of the Statesman by 500 dollars, that they would be unwilling to *make any change.* This preference *they* predicated on the ground of the expedition and faithfulness of the printers, and the expense they alleged they had been at to prepare to do the work of the State. Since the change, the *work* has been done better and more promptly. A few days after the last conversation, Mr. Palfray told me there was then a probability of a change, as the Committee had fixed their preference at 500 dollars, and he found, on examination of their former accounts, which he had got from the public offices, that the difference between their proposals and Dutton and Wentworth's was more than double the sum.—Thus the committee were caught in the trap they had set with so much care. The State was spared the disgrace of appointing printers who were continually abusing her best men, and a saving made to the public Treasury, by the vigilance of Mr Palfray, of eleven hundred dollars.

Yours with great respect,

L. G.

From the Massachusetts Journal of April 5.

SCENE BETWEEN AN EDITOR,* A CANDIDATE† AND HIS FRIEND‡.

Candidate. I should not have taken notice of the various statements and insinuations, which you have published against me, *false* as they are, if you had not touched my official character as Chairman of the Committee of Accounts. What you have published on that subject is utterly false, and I now call upon you to retract it fully and unequivocally, and as publicly as you have made the statement.

Editor. You have used a word, sir, which must preclude further conference between us. If you mean by "false statements

*Mr. CHILD. †Mr. KEYES. ‡Mr. PRITCHARD.

and insinuations," that I have *intentionally* misstated any thing, I shall hold no further speech with *you*.

Candidate. You may take it as you please, I do not mean to say that you knew the statements to be false, but I do mean to say that from beginning to end they have no foundation in truth, and I now give you notice that I shall commence an action against you unless they are immediately retracted.

Editor. You will do perfectly right, sir, if what I have published is untrue. I should seek satisfaction in like circumstances. I will refer to the gentleman from whom I received the information; and I will then be prepared either to prove, or retract the statement, to which you refer. I should retract, or correct, any thing which was wrong, as soon as I discovered it to be so, for my own sake as well as yours.

Friend. You will do it in your next paper?

Editor. Certainly, if I find I have been wrong.

Candidate. No, sir, that will not do, I will not wait so long; if you do not retract forthwith, I will commence an action against you, in my own County, where I am known, and where I hope to make you better known. [*going out.*]

Editor. I shall be happy to become known to the good men of Middlesex; for I believe there *are* good men there.

From the Boston Patriot.

Having before published the statement of Mr. Ellis and the card of Mr. Keyes, we consider it but proper to give Mr. Child's rejoinder.

MESSRS BALLARD AND WRIGHT.—As you have declined, for want of room, I presume, to republish from the Journal the whole of the reply to Mr. Ellis's statement and to the advertisement of an Honourable Candidate, I request of you the favour to publish the following results of the testimony of WARWICK PALFRAY, Esq. of Salem, a member of the Committee on Accounts in the late Legislature of Massachusetts.

1st. Mr. Keyes, the Chairman of said Committee, and Mr. Ellis, a member, were in favour of giving a preference to the *Statesman* proposals for doing the State Printing provided those proposals should not be *more* than $500 higher than those of other printers; that is, he was in favour of giving a gratuity of $500 to the *Boston Statesman at all events!*

2d. Mr. Keyes was still in favour of accepting the proposals of the *Statesman* printers, even after it was *demonstrated* by *figures*, that their terms were not less than $1000 higher than those of Dutton and Wentworth; that is, Mr. *Keyes* of *Middlesex*, and Mr. *Ellis* of *Norfolk*, were in favour of giving to the Statesman printers a gratuity of more than $1000 out of the Treasury.

As touching Mr. Keyes's advertisement, I think it necessary simply to state, that HE HAS NOT YET COMMENCED AN ACTION, and

that six days have now elapsed since he waited upon me and informed me, as I understood him, that he *had taken advice and would commence an action* forthwith in the County of Middlesex, unless I came forth on the following day, *last Wednesday*, with a "FULL and UNEQUIVOCAL RETRACTION." During four days, *Wednesday*, *Thursday*, *Friday* and *Saturday*, no "action" was commenced by him, nor "retraction" made by me, and yet on the latter day, there appears in the papers of Suffolk and Middlesex, another THREAT of an action, and a notice that "measures had been taken to *commence* it, and a request that the public would *suspend* their opinion on my "*groundless*" charges.

Is such conduct in a *candidate* decorous? Are such things to be borne in a Republic, which boasts of a free press? How are the characters and qualifications of candidates to be discussed and made known to the people except through the press: and how can the press discharge the duty of enlightening the people, if it be checked, awed, and overborne by menaces from those who seek the honors, trusts, and *emoluments* of the *People!*

Mr. Keyes asks for a suspension of opinion until he has a trial, which must be long AFTER THE ELECTION; perhaps after *two or three* elections. Does he not see the absurdity and unreasonableness of the request, when the people must form their opinions and act on Monday (this day.) Nor will the people even believe him sincere in his absurdity, unless he commences his action immediately, and that I now publicly invite and request him forthwith to do.

D. L. CHILD, *Ed. Mass. Journal.*

BOSTON, APRIL 5.

From the Massachusetts Journal of April 5.

POSTSCRIPT EXTRAORDINARY.

Friday Evening 12 *o'clock.* We have at this late hour received from some kind anonymous friend the following notice, of which we have no objection to extend the circulation.

TO THE PUBLIC.

If the statement of the Hon. William Ellis leaves any doubt in the mind of any one as to the nature of the charge against the subscriber contained in the Massachusetts Journal of the 29th ult. a suspension of any unfavourable opinion is asked, as measures have been taken to hold the editor of that paper to answer for said charge, before a Judicial tribunal. The subscriber would further add, that all the charges and insinuations made against him in the several numbers of said Journal, are wholly groundless.

Signed, JOHN KEYES.

Concord, April 4, 1828.

We would observe upon this for the information of all our friends, and particularly those in Middlesex, that we have yet received no notice of an action except that which will be found in a dramatic sketch in a preceding column. It is necessary to note that Mr. Keyes called on *Tuesday*, APRIL 1ST, and threatened a suit, if a *retraction* were not made before the issuing of the next [last *Thursday's*] Journal. There was fierceness and intimidation in his manner, and we attributed the alarming appearance which he put on, and the menacing language which he used, to a deliberate design to overawe, and drive us to a recantation in the Wednesday's Patriot, a paper which has a large circulation in Middlesex.

Mr. Keyes seemed to have formed in his mind the highly complimentary conclusion, that he could frighten us into the adoption of such a measure, without our venturing to take time to obtain evidence. This suspicion is countenanced by the result; for at this time, *three* days later than he theatened to wait for our recantation, *no action has been commenced.* Mr. Keyes said that he had *taken advice*, and would not wait even one day. Such are the little and ephemeral artifices of small and short sighted politicians. We have to beseech the gentleman to let the bolt fall, and not to hold it so long suspended in his "red right hand." It seems to us that the old adage, touching the shooting of a "bolt," is not verified in this case.

We have long been aware that we gave mortal offence to a number of the most active and conspicuous among the caucussing and bartering politicians of Massachusetts, by the humble part which we acted in the Senatorial election during the winter of 1827; and perhaps the consciousness that we were already no favorites with them, has made us the more readily and cheerfully resist them, and even seek and beard them in their dens at the present time.—We disclaim all personal ill will, and think with Horne Tooke, that mere "personal enmity is motive fit only for the Devil."

We cannot better characterize the motive and design of this notice than by an extract of a letter which acccompanied the copy sent to us.

———, *April* 4.

Dear Sir: On a preceding page is a copy of a notice which has been sent to a paper in this county, and also to the Boston Patriot, with instructions to have it printed in those papers on Saturday, (to-morrow). I hasten to furnish you this information, that you may not be taken by surprize. You will observe the closing sentence, which is a striking example of the *man.* He notifies the public that he has determined to prosecute you, and asks the people not to make up their minds against him *till after election.* One would think that here his business with his constituents might end. But no, he must add just one electioneering sentence to solicit the votes of the people, for this is the pur-

port of the last sentence. The notice I think you will insert tomorrow in the Journal, with your comments, showing its pitiful electioneering design and character; this ought to be done, and hundreds of the Journal should be sent into all parts of Middlesex to counteract the unrighteous effect of this Notice, which appears in other papers without comment."

We conclude by observing to our Middlesex friends, that when Mr. Keyes will have done 'taking measures' we cannot pretend to predict; probably he will never be done 'taking measures' to electioneer himself into as *many* offices as he can get, until they drop from his hands like apples from the little hands of eager children.

He is a good politician for himself, but a bad one for his country. We again remind the electors and our friends in Middlesex, that no action has been commenced; and we inform them, that Mr. Keyes, *as a lawyer*, well knows that *none can be sustained.*

This was published in the Concord Yeoman's Gazette, Lowell Journal and Boston Patriot.

From the Massachusetts Journal of April 10, 1828.

In answer to the inquiries of many of our fellow-citizens, we have to state that Mr. Keyes has *not* commenced an action against the Editor of this paper.

Extract of a letter to the Editor, from Middlesex, dated April 9, 1828.

It is rumored, I know not on what authority, that Mr. Keyes went before the Grand Jury to-day against you. I suppose this may be true, but I only guess at it. The returns I send you, include all the most favourable towns to him.

Respectfully yours.

We are informed that Mr. Keyes, and another person, procured the printing in a handbill on Sunday evening last, of the *first* part of Mr. *Palfray's* letter, omitting all that part *which states the facts respecting Mr. Keyes's efforts to give the contract for printing, to the Statesman;* that to this garbled document Mr. *Palfray's name* was put, and that during Sunday night and Monday morning, this handbill was conveyed by the *honorable* gentleman to every town in the County. This transaction, would alone prove, that Mr. Keyes possesses that integrity and high sense of honor, which qualify men to be Senators of Massachusetts!

Mr. Robbins has been pleased to give it as his opinion, that the Massachusetts Journal is doing more "harm than good to the

cause of the Administration." *We* are of opinion that the excess of zeal in some of the Administration men in Massachusetts, will not make up for the *deficiency* of it in others. Messrs. *Robbins*, *Keyes*, and *Ellis*, were of opinion that we did more "harm than good," to the Administration in 1827, because we exerted our best endeavours, (poor and feeble at the best, and not at all proportioned to the zeal we felt)—to keep the Hon. John Mills from the Senate of the United States. Messrs. *Keyes*, *Ellis and Robbins*, were in favour of sending *that* gentleman into the Senate, (where he would now have occupied the place of Mr. *Webster*,) to *strengthen* the Administration!

We should be extremely pleased to be honored with the approbation of Mr. Josiah Robbins, but *his* ideas of *supporting* the Administration *differed, and still differ*, (if we may judge from his and his friend's late votes in Plymouth,) so widely from *ours*, that we despair of ever entitling ourselves to his commendation. We would hope that sins of ignorance may be forgiven, and that as we do not *intend, and have never intended*, to injure the Administration, Mr. *Robbins*, (who no doubt is *severely afflicted* when any "harm" is done to it,) will find it in his heart to forgive us.

Extract of a letter to the Editor, dated,

SUDBURY, APRIL 8, 1828.

"MR. KEYES *did not receive a vote* in this town. The handbills which came from Concord yesterday morning, (if nothing else,) with an extract from Mr. Palfray's letter to you, would have condemned him in the opinion of our people. Such was the indignation at so wicked and faithless an attempt to deceive, that he had but one vote for County Treasurer. Mr. Nathan Brooks received 68, so far as I am informed. We all feel under additional obligations to you for your untiring zeal and assiduity in the welfare and honour of Middlesex.

A SUBSCRIBER.

Ed. Mass. Journal."

Extract of a letter, to a gentleman in Boston, dated Plymouth, April, 8, 1828.

DEAR SIR.—Although you felt little or no interest in our election, yesterday, you may have some curiosity to know the result, which was as follows:

His Excellency LEVI LINCOLN, 57; Robbins 91.

Hon. MARCUS MORTON, 47; Sprague, 91.

Scattering, for Governor 2; scattering, for Senator, 36. Whole number of votes, 108.

After the famous expose of the Honorable Mr. Robbins, in Saturday's Memorial, it might be somewhat gratifying to Mr.

Child to know in what manner the above vote was effected. All the relations and particular friends of our *Administration* Candidate, Mr. Robbins, and the Chairman of the County Committee, appointed by members of the Legislature *friendly* to the National and State Administrations, appeared at the hustings with their hands and pockets cramed with votes for Morton, and did all they could to carry that ticket. "Straws show which way the wind blows."

Extract from the Journal of the Senate of Massachusetts,

Friday, June the 8th 1827, *(tenth day of the Session.)* Mr. Keyes had leave of absence for the remainder of the session after tomorrow.

Commonwealth of Massachusetts,

Treasury Office, January 12th, 1829.

I HEREBY CERTIFY, that the name of John Keyes is inserted in the Pay Roll of the Senate, dated June 1827, and that he, the said John, signed a receipt thereon for the sum of Thirty Two Dollars, as full payment for fourteen days attendance, and twenty miles travel.

JOSEPH SEWALL, *Treasurer.*